

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
SCOTT ALAN MELLINGER) CASE NO. 09-25561-jpk
) Chapter 7
) Debtor.)

KENNETH A. MANNING)
)
) Plaintiff,)
)
) V.) ADVERSARY NO. 10-2187
)
SCOTT ALAN MELLINGER)
)
) Defendant.)

ORDER FOR HEARING ON MOTION OF DEFAULT JUDGMENT
DENYING DEBTOR'S DISCHARGE ["MOTION"]

This adversary proceeding was commenced by a complaint filed on December 31, 2010. The record establishes that service of process of summons and complaint was properly made upon the defendant, and that the defendant failed to appear or respond to the complaint. A Clerk's Entry of Default has been made. The Motion was filed on June 21, 2011. The Motion seeks to assert a monetary judgment entitlement in the amount of \$5,321.00, together with interest from May 7, 2010 at 3.25%, and a judgment denying the debtor's discharge.

Here are the problems with this case:

1. Paragraphs 13 and 14 of the complaint are based upon alternative relief of revocation, or denial, of discharge. At the time the complaint was filed, it was clear that discharge had not been entered, and that the complaint properly should have sought to deny discharge rather than to revoke a discharge that had been entered.

2. Assuming the complaint sought to assert a ground for denial of discharge, Paragraph 13 asserts grounds under 11 U.S.C. § 727(a)(2)(B) and 727(a)(6)(B). There is no evidence in this record whatsoever, including the averments of the complaint and any affidavit

submitted in support of the motion for default judgment, that any ground under Section 727(a)(2)(B) has been established. With respect to Section 727(a)(6)(B) – there is no evidence in the record that the debtor on the ground of privilege against self incrimination failed to respond to a material question. **The asserted ground should have been Section 727(a)(6)(A), but that ground was not asserted in the complaint.**

3. The complaint does establish an entitlement to a monetary judgment for the amount of funds required to be turned over by the court's order entered on May 7, 2010. However, the pre-judgment interest requested at a rate of 3.25% is based upon a computation unknown to the court and is not explained in any document submitted by the plaintiff in this case. Perhaps it is correct, but perhaps it is not.

It Is Ordered that a hearing will be held on **August 12, 2011, at 11:00 A.M.**, pursuant to Fed.R.Bankr.P. 7055/Fed.R.Civ.P. 55(b)(2) with respect to further proceedings concerning the foregoing Motion.

Dated at Hammond, Indiana on July 19, 2011.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

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