

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN RE: CASE NO. 13-10777 )  
)  
PHILLIP GERALD HANDSHOE )  
)  
Debtor )  
)  
)  
YVETTE GAFF KLEVEN, TRUSTEE )  
)  
Plaintiff )  
)  
vs. )  
)  
PHILLIP GERALD HANDSHOE )  
)  
Defendant )

NOT INTENDED FOR PUBLICATION

PROC. NO. 14-1019

**DECISION AND ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**

At Fort Wayne, Indiana, on September 23, 2014.

By this adversary proceeding, the plaintiff/trustee seeks to have the debtor's discharge revoked pursuant to § 727(d)(3) of the United States Bankruptcy Code as the result of his failure to comply with the court's order of January 14, 2014, in the underlying bankruptcy case. That order, which was granted without objection, required the debtor to turnover to the trustee an accounting and receipts verifying how his 2012 state and federal income tax refunds were spent; documentation identifying the source of \$4,735 deposited into his bank account on February 19, 2013; and an accounting and receipts verifying how \$4,000 withdrawn from the account on February 21, 2013 was spent. The matter is before the court on the plaintiff's motion for summary judgment.

There has been no response within the time required. N.D. Ind. L.B.R. B-7056-1; N.D. Ind. L.B.R. B-7007-1(a). See also, Fed. R. Civ. P. Rule 56(c)(1)(B). Consequently, the court may decide

the motion based upon the proposition that “the facts as claimed and supported by admissible evidence . . . exist without controversy . . . .” N.D. Ind. L.B.R. B-7056-1. This does not mean, however, that the motion should be granted merely because it is unopposed. “[T]he party moving for summary judgment has the burden to show that he is entitled to judgment under established principles; and, if he does not discharge that burden, he is not entitled to judgment.” Adickes v. S.H. Kress and Co., 398 U.S. 144, 161, 90 S. Ct. 1598, 1610 (1970). Thus, an unopposed motion cannot be granted automatically. Instead, the court is required to go beyond the lack of opposition and make the further finding that, given the undisputed facts, summary judgment is proper as a matter of law. Weinco, Inc. v. Katahn Associates, Inc., 965 F.2d at 565, 568 (7th Cir. 1992).

The plaintiff served requests for admissions upon the defendant on May 12, 2014. The defendant was asked to:

1. Admit that you have not obeyed the Bankruptcy Court’s Turnover Order dated January 14, 2014, because you have not supplied the Bankruptcy Trustee with an accounting and receipts verifying how your 2012 state and federal income tax refunds were spent.
2. Admit that you have not obeyed the Bankruptcy Court’s Turnover Order dated January 14, 2014, because you have not supplied the Bankruptcy Trustee with documentation identifying the source of the monies deposited into your bank account on February 19, 2013, in the amount of \$4,735.00.
3. Admit that you have not obeyed the Bankruptcy Court’s Turnover Order dated January 14, 2014, because you have not supplied the Bankruptcy Trustee with an accounting and receipts verifying how the cash withdrawal of \$4,000.00 on February 21, 2013 was spent.

The defendant did not respond to those requests. By failing to respond, the defendant has admitted he has not obeyed the court’s order of January 14, 2014, and that he has not provided the trustee with the information requested. The motion for summary judgment is based upon those facts;

facts which have been “conclusively established” by the defendant’s failure to respond to the request for admissions. Fed. R. Civ. P. Rule 36(b). Section 727(d)(3) authorizes revocation of a debtor’s discharge if the debtor has refused to obey a lawful order of the court. 11 U.S.C. §§ 727(d)(3); 727(a)(6). The debtor’s admissions satisfy the requirements of 11 U.S.C. §§ 727(d)(3); (a)(6)(A) warranting revocation of the debtor’s discharge.

Thus, having considered the motion, together with the materials submitted in support thereof, the court concludes that there is no genuine issue of material fact and plaintiff/trustee is entitled to the entry of judgment in its favor as a matter of law.

IT IS THEREFORE ORDERED that the plaintiff/trustee’s motion for summary judgment is granted and the debtor/defendant’s discharge will be revoked. Judgment will be entered accordingly.

*/s/ Robert E. Grant*  
Chief Judge, United States Bankruptcy Court