

1 Russell A. Brown ABN 10173
CHAPTER 13 TRUSTEE
2 P.O. Box 33970
Phoenix, AZ 85067-3970
3 (602) 277-8996
(602) 253-8346, facsimile
4

5 **IN THE UNITED STATES BANKRUPTCY COURT**
6 **FOR THE DISTRICT OF ARIZONA**

7 In re:
8 MICHAEL THOMAS HERZOG,

9
10 Debtor.

In Proceedings Under Chapter 13

Case No. 2-05-BK-14971 RJH

TRUSTEE'S MOTION TO REOPEN CASE
AND SET HEARING

11
12 Russell A. Brown, Chapter 13 Trustee, by and through counsel undersigned, hereby moves
13 this Court for an Order reopening the Debtor's case for the limited purpose of obtaining clarification
14 regarding the disbursements made by the Trustee. Since the case was closed, it is necessary to
15 reopen the case in order to get the matter before the Court.

16 (1) Debtor filed a petition for Chapter 13 Relief on August 16, 2005. Debtor's Chapter
17 13 Plan was filed on August 30, 2005, providing for fifty monthly payments of \$1,591.00, beginning
18 September 16, 2005.

19 (2) The Debtor made payments totaling \$15,955.00 over the period from September 12,
20 2005 through June 30, 2006.

21 (3) The Debtor filed an Emergency Motion to Dismiss his case on November 17, 2006,
22 which was granted by Order of the Court on November 20, 2006.

23 (4) Since the plan was never confirmed, the funds being held by the Trustee would have
24 otherwise been returned to the Debtor, pursuant to 11 U.S.C. § 1326(a)(2). However, the Chapter
25 13 Trustee must complete his administration of the case before the funds can be returned to the
26 Debtor. *In re Nash*, 765 F.2d 1410, 1413 (9th Cir. 1985).

27 (5) On December 6, 2006 the Trustee received a Notice of Levy on Property/Rights to
28 Property from the Arizona Department of Revenue (attached hereto). A.R.S. § 42-1202(A) requires

1 any person in possession of property subject to levy upon which a levy has been made to surrender
2 such property to the department. In a case that is directly on point, the court found that funds
3 remaining in the Trustee's possession after dismissal are subject to levy by a state taxing authority.
4 *In re Doherty*, 229 B.R. 461 (Bankr.E.D.Wash. 1999). See also *In re Beam*, 192 F.3d 941 (9th Cir.
5 1999). In partial satisfaction of the \$15,820.54 levy, the Trustee sent the Arizona Department of
6 Revenue check #625434, on December 28, 2006, in the amount of \$13,051.91.

7 (6) Before paying on the levy, the Chapter 13 Trustee deducted his percentage fee,
8 pursuant to 28 U.S.C. § 586(e)(2).

9 (7) On February 23, 2007, the Trustee received a letter from the Debtor (attached hereto)
10 alleging that the Trustee had erroneously disbursed monies held in his Trust account.

11 (8) The Trustee maintains that the monies disbursed to the Arizona Department of
12 Revenue were remitted pursuant to the Notice of Levy as required by A.R.S. § 42-1202(A). Any
13 claims that the Debtor believes that he may have on these funds or the validity of the Levy should
14 be brought against the Arizona Department of Revenue, not the Chapter 13 Trustee.

15 (9) Since there are no funds remaining in the Chapter 13 Estate, the Trustee requests that
16 the fee required to reopen the case be waived.

17 WHEREFORE; the Trustee herein requests the case be reopened for the limited purpose of
18 conducting a hearing on the disbursement of the funds and requests that a hearing be set to clarify
19 the disbursement of the funds held by the Chapter 13 Trustee.

20 Dated: February 28, 2007.

21
22
23 /s/ Scott Lieske
24 Scott A. Lieske, Esq. ABN 16250
Staff Attorney for Chapter 13 Trustee
SLieske@ch13bk.com

25 A copy of the foregoing
26 was mailed on February 28, 2007, to:

27 Michael Herzog
28 7119 E. Shea Blvd., Apt. #109-275
Scottsdale, AZ 85254
Debtor

1 Wade F. Waldrip
PATRICK S. SAMPAIR, P.C.
2 2301 W. Dunlap, #103
Phoenix, AZ 85021
3 Attorney for Debtors

4 Robert Hall
Arizona Attorney General's Office
5 1275 W. Washington St.
Phoenix, AZ 85007-2926
6 Attorney for Arizona Department of Revenue

7 Elizabeth C. Amorosi
OFFICE OF THE UNITED STATES TRUSTEE
8 230 N. 1st Ave., Ste. 204
Phoenix, AZ 85003-1706
9

10 /s/ Scott Lieske

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ARIZONA DEPARTMENT OF REVENUE

P.O. BOX 29070 PHOENIX, AZ 85038-9070

NOTICE OF LEVY ON PROPERTY/RIGHTS TO PROPERTY



RUSSELL BROWN
P O BOX 33970
PHOENIX, AZ 85067

Date: 11/30/2006

PLEASE SEND ALL REMITTANCES TO:

ARIZONA DEPARTMENT OF REVENUE
PO BOX 29070
PHOENIX, AZ 85038-9070

The Taxpayer named below is indebted to the
Arizona Department of Revenue in the amount
\$15,820.54

Interest Through: 12/31/2006

Arizona Revised Statutes Section 42-1151 provides a lien for the above tax and statutory additions. Demand for the above total amount due was made on the taxpayer who neglected or refused to pay. The amount is unpaid and still due: therefore, pursuant to ARS Section 42-1201 the following items are levied upon to pay this liability: (1) All property, rights to property, money, credits, and bank deposits belonging to the taxpayer including, without limitations, funds in all safe deposit boxes (certificates of deposit, stocks, bonds, promissory notes), bank accounts of any nature (or for which you are obligates) IN YOUR POSSESSION NOW OR WITHIN 21 DAYS OF LEVY and all money or other obligations owing from you to this taxpayer, not exempt for levy under ARS Section 42-1204 cited on the back of this form, for which you are obligated AT THE TIME OF THE LEVY OR WITHIN TWENTY ONE DAYS AFTER THE DATE OF THE LEVY, and (2) all wages and salary for personal services that you now possess or for which you are obligated FROM THE DATE YOU RECEIVE THIS LEVY UNTIL THE LIABILITY IS FULLY PAID AND A RELEASE OF LEVY IS ISSUED. Wages, salary, and other income are levied upon only to the extent that they do not include amounts specified as exempt from the levy on the attached STATEMENT OF EXEMPTIONS.

DEMAND IS MADE ON YOU TO SATISFY THIS LEVY AS REQUIRED ABOVE. We will apply amounts received from you as payment on this liability. Please make your checks or money orders payable to the Arizona Department of Revenue with the taxpayer identified to insure proper credit. Mail to Arizona Department of Revenue, PO Box 29070 Phoenix AZ 85038-9070.

FAILURE TO SURRENDER or remit the amount to levy upon demand by the Department of Revenue may make you liable for such amount (ARS Section 41-1202).

 Signature

For additional information, CONTACT
khoesel (602) 716-7806:

ANY AND ALL ACCOUNTS

Certificate of Service

name and Address of taxpayer: 2:05-bk-14971-RJH Herzog, Michael Thomas 7206 W. Abraham Lane Glendale, AZ 85308 Identifying Number: 572-78-1384	I certify that this notice of levy was served by the delivering a copy of it to the person named below:
	Name
	Title
	Date and Time
	Authorized Signature

Return to DOR with payment

Revised 4/24/2003

Section 611 pg 1

Michael T. Herzog
7119 E Shea Blvd. #109-275
Scottsdale, Arizona # 85254
February 20, 2007



Russell Brown
Chapter 13 Trustee,
3838 North Central Ave. Suite 800
Phoenix, AZ 85012-1965

Mr. Brown:

It is my understanding that a Bankruptcy Trustee must be bonded in order to act as trustee on a case.

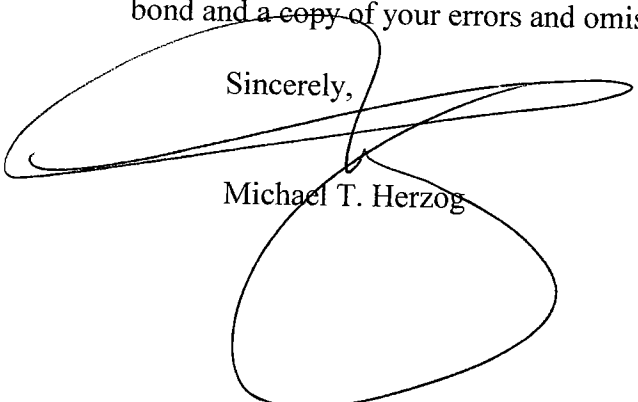
After paying yourself, you paid, from the trust account (case number # 2:05-bk-14971-RJH) the amount of \$13,051.91, ostensibly due to a Notice of Levy on Property which was sent to you (copy enclosed)

Since there is no lien of record, there being no due process, no court action and no judgment which would have led to a lien and no copy recorded with the maricopa County Recorder's office (as per A.R.S. statutes), I contend that you paid funds erroneously and I intend to make a claim against your bond or errors and omissions insurance, whichever you prefer.

Further, the "Notice of Levy" contained no seal, no docket number and no Writ of Garnishment or Execution, which it must in order to be paid.

Would you please immediately send me a copy of both your performance or surety bond and a copy of your errors and omissions insurance.

Sincerely,



Michael T. Herzog

A. pd. 12/28/06

UK# 625434

13,001,411

ARIZONA DEPARTMENT OF REVENUE

P.O. BOX 29070 PHOENIX, AZ 85038-9070

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RUSSELL BROWN
P O BOX 33970
PHOENIX, AZ 85067

Date: 11/30/2006

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