

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

BERNARD J. SORRENTINO, SR.

CASE NO. 02-61316

Debtor

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LEE E. WOODARD, CHAPTER 7 TRUSTEE

Plaintiff

vs.

ADV. PRO. NO. 04-80047

BERNARD J. SORRENTINO, SR.

Defendant

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APPEARANCES:

LEE E. WOODARD, ESQ.  
Attorney for chapter 7 Trustee/Plaintiff  
One Park Place, 4th floor  
300 South State Street  
Syracuse, New York 13202

BERNARD J. SORRENTINO, SR.  
(03B0299)  
Pro Se Defendant  
Five Points Correctional Facility  
State Route 96  
P.O. Box 119  
Romulus, New York 14541

Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

**MEMORANDUM-DECISION AND ORDER**

Lee E. Woodard, Esq., chapter 7 Trustee (“Trustee”), commenced this Adversary Proceeding seeking a denial of discharge in bankruptcy to Bernard J. Sorrentino, Sr. (“Debtor”),

by the filing of a Complaint<sup>1</sup> on February 24, 2004. The Complaint alleges that the Debtor violated §727(a)(2)(A) and (B) and (a)(4) of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (“Code”), in that the Debtor failed to disclose the existence of certain travelers checks, concealed said travelers checks with an intent to hinder, defraud or delay creditors and made a false oath or account in connection with the travelers checks both in his bankruptcy petition and in response to certain written interrogatories. On March 31, 2004, the Debtor filed a pro se answer to the Complaint.

On or about July 6, 2004, the Trustee served a Demand for Admissions on the Debtor and Yates, pursuant to Federal Rule of Bankruptcy Procedure (“Fed.R.Bankr.P.”) 7036 which incorporates Federal Rule of Civil Procedure (“Fed.R.Civ.P.”) 36. On or about July 15, 2004, the Court received a copy of correspondence from the Debtor to the Trustee dated July 7, 2004, *inter alia*, objecting to “your discovery demands as they are improper,” and suggesting that the Trustee “bring a motion to the attention of Judge Gerling, should you feel otherwise.” Also, on July 15, 2004, the Trustee filed the instant motion seeking an order pursuant to Fed.R.Bankr.P. 7037 which incorporates Fed.R.Civ.P. 37 compelling the Debtor to answer the “interrogatories and/or demands for admissions” or in the alternative, “the responses are deemed admitted for purposes of these proceedings.”<sup>2</sup>

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<sup>1</sup> Dale Yates, Esq. (“Yates”), represented the Debtor in connection with the filing of his bankruptcy petition; however, it is not clear that Yates is representing the Debtor in this Adversary Proceeding. The Court is not aware of any withdrawal of or substitution for Yates, but he has not filed any pleadings on behalf of the Debtor to date.

<sup>2</sup> Fed.R.Civ.P. 36 as incorporated in Fed.R.Bankr.P. 7036, generally, permits the party served with a request to admit 30 days in which to respond, however, where that party indicates that it will not respond, as Debtor has done here, the Court sees no reason why the Trustee was required to wait 30 days before filing the instant motion.

The instant motion came on for a hearing before this Court on August 4, 2004; however, the motion was adjourned to October 26, 2004, in order for arrangements to be made with the New York State Attorney General's Office to have the Debtor appear in opposition to the motion telephonically from the Five Points Correctional Facility in Romulus, New York, where he is presently incarcerated. On October 26, 2004, both the Trustee and the Debtor (telephonically) appeared and argued the motion. At the argument, the Debtor reiterated his position that he would not comply with the Trustee's Demand for Admissions unless ordered to do so by the Court. At the conclusion of the argument, the Court indicated that it would review the Trustee's Demands and issue a written decision.

Upon review of the Trustee's Demand for Admissions, the Court recognizes that the Debtor may not have personal knowledge sufficient to respond to all of the demands, in which case, presumably, he would deny those demands or specifically set forth the reasons why he cannot truthfully admit or deny the demand after reasonable inquiry as set out in the Fed.R.Civ.P. 36(a). It is clear to the Court, however, that the Demand for Admissions are not outside the scope of appropriate discovery in this Adversary Proceeding and the Debtor must provide responses or face the consequences. *See In re Ladouceur*, 1996 WL596718 (N.D.N.Y. Oct. 15, 1996). Based on the foregoing, it is

ORDERED that pursuant to Fed.R.Bankr.P. 7037 which incorporates Fed.R.Civ.P. 37, the Debtor shall, within thirty (30) days of the date of this Order, serve on the Trustee and file with the Court a written answer to each demand set out in the Demand for Admissions dated July 6, 2004, and heretofore served upon him, which answers shall be signed by the Debtor.

Dated at Utica, New York

this 9th day of December 2004

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STEPHEN D. GERLING  
Chief U.S. Bankruptcy Judge