IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

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|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | |
| VYTAS & KATHRYN JONUŠAS, | ) | |
| | ) | CASE NO. BK01-82569 |
| Debtor(s). | ) | |
| | ) | A01-8104 |
| INNOVATIVE MARKETING STRATEGIES, INC., | ) | |
| | ) | |
| Plaintiff, | ) | CH. 7 |
| | ) | |
| vs. | ) | |
| | ) | |
| VYTAS JONUŠAS, | ) | |
| | ) | |
| Defendant. | ) | |

## MEMORANDUM

Trial was held in Omaha, Nebraska, on February 24, 2003, on the adversary complaint to determine dischargeability. Richard Berkshire appeared for the debtor, and William Stockdale and Thomas Whitmore appeared for the plaintiff. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(I).

The debt is excepted from discharge under 11 U.S.C. §§ 523(a)(4) and (a)(6).

## I. Background

The debtor is a business broker. Innovative Marketing Strategies, Inc., the plaintiff, was a prospective buyer which entered into a contract with the debtor or his brokerage company to purchase a telemarketing business. The plaintiff paid a $100,000 earnest money deposit to the debtor’s company. The debtor deposited $25,000 in his business operating account, and $75,000 in his business trust account. However, the sale of the business did not close. The debtor retained the deposited funds for his own or business use, which the plaintiff believes constitutes fraud, conversion, or defalcation while acting in a fiduciary capacity. The plaintiff therefore asks that the debt be excepted from discharge under 11 U.S.C. §§ 523(a)(2), (a)(4), or (a)(6).

## II. Facts

The debtor operated a business brokerage company named Pinnacle Business Brokerage, with locations in Omaha and Kansas City. In April 1999, the owner of Quality Telemarketing entered into an exclusive listing agreement with Pinnacle to sell the telemarketing business. The agreement contained various provisions regarding the payment of a commission to Pinnacle. The listing agreement contemplated a purchase price of $1,750,000 for the business, and a commission to the broker of $120,000.

On January 19, 2000, Innovative Marketing Strategies, Inc. ("IMS"), signed a purchase agreement for the business. The terms of that contract included a total purchase price of $1.5 million, with a $25,000 deposit to be paid at signing. Because this purchase price was less than the amount in the listing agreement, the seller and the broker evidently amended the listing agreement to reflect a lower commission of $110,000. The amendment also provided for the $25,000 earnest deposit to be split evenly between the seller and the broker "in the event of a default." The amendment was signed only by the seller.

Closing of the sale under the terms of the purchase agreement dated January 19, 2000, was to take place March 1, 2000. The sale was contingent, *inter alia*, upon the buyer obtaining financing by February 21, 2000. The closing date later was extended to April 1, and then to May 1.

The parties amended the original purchase agreement by a document signed on January 27, 2000, and January 31, 2000, by the buyer, seller, and broker. The amendment modified a number of terms of the original agreement. The most relevant modification for purposes of this case is the amendment of Paragraph 8 of the original agreement. In its original form, Paragraph 8 stated:

> 8. Broker, who may hold Buyer's deposit check in an uncashed form until the Seller has accepted this agreement, shall hold all deposits.

Filing #42.

The amendment changed that language as follows:

> 2.) Paragraph (8.) Shall be changed to read: ***Broker may hold Buyers [sic] check in an uncashed form until Seller has accepted Buyers [sic] Offer by its signature on this agreement or any amendments, which at that time Broker shall cash the check and deposit it into its Trust Account.***

Filing #41.

On February 23, 2000, a second purchase agreement was prepared. It called for a deposit of $150,000, with closing to occur April 1, 2000. It modified some of the contingencies, and set a deadline of March 15, 2000, for meeting them. Two versions of that agreement are in evidence, each signed only by the buyer. One version contains the same Paragraph 8 as in the original agreement, while the other version of the agreement contains the “modified Paragraph 8" incorporating the language about the deposit being held in the broker’s trust account.

The parties subsequently executed an “amendment/addendum to offer to purchase agreement,” which states that it modifies the January 19, 2000, agreement. Representatives of the buyer, seller, and broker signed the amendment on March 15 and 16, 2000. In it, the parties agreed that the financing contingency would remain in place until May 1, 2000; that the seller would carry back a portion of the $1.5 million purchase price; and that the broker would pay the seller $10,000 if the sale did not close in May 2000.

The January 19, 2000, purchase agreement and the February 23, 2000, purchase agreement both contained the following language in Paragraph 15:

> 15. BUYER AGREES THAT IF BUYER FAILS OR REFUSES TO COMPLETE OR CLOSE THIS TRANSACTION AFTER TIMELY ACCEPTANCE AND SUBSEQUENT POSITIVE PERFORMANCE BY SELLER OF THIS OFFER TO PURCHASE AGREEMENT, THEN ANY DEPOSIT/EARNEST MONEY HELD BY BROKER WILL BE FORFEITED TO BROKER AS LIQUIDATED DAMAGES. BUYER AGREES THAT THE FOREGOING LIQUIDATED DAMAGES ARE REASONABLE IN LIGHT OF BROKER’S EFFORTS TO CLOSE THIS TRANSACTION AND BECAUSE THE DAMAGES TO BROKER IN THE EVENT OF A DEFAULT BY BUYER ARE

> DIFFICULT TO ASCERTAIN BECAUSE OF THEIR UNCERTAINTY. BUYER FURTHER AGREES THAT SUCH DAMAGES ARE NOT IMPOSED AS A PENALTY.

Both purchase agreements contained the following language in Paragraph 17:

> 17. **Contingencies continued:**
>
> A: Buyer must obtain financing at terms and conditions acceptable to Buyer.
>
> B: Any and all equipment, service, software contracts or leases must be reviewed and acceptable to Buyer.
>
> C: Buyer must approve terms and conditions of Sellers [sic] property leases.
>
> D. Seller must supply Buyer all information requested regarding Sellers [sic] business, such information must be completely acceptable to Buyer.
>
> E. Seller must train Buyer in all aspects of Sellers [sic] Business. Terms and conditions must be acceptable to Buyer.
>
> F. Seller agrees to leave in place all security deposits [with] all entities supporting the Businesses or the locations.
>
> G. Seller and Buyer to agree on an employment agreement whereby Seller shall be employed for a period of time acceptable to Buyer.
>
> These final contingencies listed above in # 17 shall be lifted, cancelled and no longer made a contingency ON OR BEFORE 5:00 PM on 2/21/2000 [in original agreement; 3/15/2000 in second agreement]. In the event Buyer represents that Seller has not satisfied the above contingencies, Buyer must deliver to Seller or Seller's Broker written documentation stating such and requesting the full refund of the earnest deposit. Such document must be hand-delivered or sent by certified mail with proof of Seller/Broker

> receiving such document no later than the above date and time. The failure to notify the Seller or Seller's Broker automatically states Buyer is thereby satisfied and lifts the contingencies, and Buyer thereafter agrees to close under the terms of this agreement. IN ACCORDANCE WITH PARAGRAPH 15, ABOVE, THE FAILURE OF BUYER TO NOTIFY SELLER OR SELLER'S BROKER ALSO WILL RESULT IN THE FORFEITURE OF ANY DEPOSIT/EARNEST MONEY IF THIS TRANSACTION FAILS TO CLOSE FOLLOWING TIMELY ACCEPTANCE BY SELLER OF THIS OFFER TO PURCHASE.

The record contains correspondence from IMS to the debtor, purportedly sent by fax, overnight mail, and in some instances by e-mail, in mid-February and late March 2000, notifying him that IMS was unable to secure financing and requesting either a refund of the earnest deposit or an extension of the timelines in the purchase agreement. On March 1, 2000, IMS gave the debtor a check for $75,000 as an additional deposit.

The evidence indicates that IMS's initial earnest-money deposit of $25,000 was deposited into Pinnacle's business operating account on January 24, 2000. The second check, for $75,000, was deposited into an escrow account for LIQ Corporation - Pinnacle Business Brokerage on March 15, 2000. Bank records indicate numerous withdrawals from both accounts. The withdrawals from the operating account appear to be payment of business expenses and draws by the debtor. The trust account reflects deposits of $85,300 between December 30, 1999, and April 25, 2000 (excluding a $27,000 deposit from Schwab which was dishonored), and payments to the debtor or an entity under his control of $69,418.51 during that same time period. These withdrawals were made before the Quality Telemarketing sale was scheduled to close, while the funds representing IMS's deposit were being held by the broker in a trust capacity.

The sale did not close. The debtor testified that IMS failed to provide the financial documentation necessary for closing, in addition to failing to pay the full $150,000 deposit. He also asserts that IMS failed to provide timely notice that it was unable to meet the contingencies. None of the earnest money went to either the buyer or the seller. Mr. Jonušas testified that he treated those funds as his liquidated damages or his commission for the transaction and expended them for his own benefit or the benefit of his company. The plaintiff believes the debtor wrongfully retained and used the money.

## III. Law & Discussion

### A. Liability of corporate officer

It is clearly established, in Nebraska and elsewhere, that a director or officer of a corporation is individually liable for fraudulent acts or false representations of his own or in which he participates, even though his actions may be in furtherance of the corporate business. Huffman v. Poore, 569 N.W.2d 549, 558 (Neb. Ct. App. 1997) (citing 18B Am. Jur. 2d *Corporations* § 1882 at 730-32 (1985)).

The corporate veil may be pierced to hold a shareholder liable when the shareholder has used the corporation to commit fraud, violate a legal duty, or perpetrate a dishonest or unjust act in contravention of the rights of another. Huffman, 569 N.W.2d at 557. However, when a tort action is brought against an officer or director, there is no need to pierce the corporate veil, and liability will be imposed if the elements of the tort are satisfied. Id. See also discussion in Wolf v. Walt, 530 N.W.2d 890, 896-98 (Neb. 1995).

Here, the evidence indicates that the debtor signed the purchase agreement and amendments on behalf of Pinnacle Business Brokerage. He also signed checks on behalf of the company. The plaintiff in this case alleges tortious conduct and fraudulent activities and representations by the debtor in the conduct of his duties as president of Pinnacle Business Brokerage. Under Nebraska caselaw, the corporate entity cannot shield the debtor from the plaintiff’s claims.

### B. Contract interpretation

"When parties reduce an agreement to a writing, which in view of its completeness and specificity reasonably appears to be a complete agreement, it is taken to be an integrated agreement unless it is established by other evidence that the writing did not constitute a final expression." Lincoln Benefit Life Co. v. Edwards, 45 F. Supp. 2d 722, 742 (D. Neb. 1999), aff’d, 243 F.3d 457 (8th Cir. 2001) (quoting Anderzhon/Architects, Inc. v. 57 Oxbow II Partnership, 250 Neb. 768, 774-75, 553 N.W.2d 157, 161 (1996)).

> Under Nebraska law, the intent of the parties must be determined by the plain and ordinary meaning of the contract language as the ordinary or reasonable person

> would understand it. See Daehnke v. Nebraska Department of Social Services, 251 Neb. 298, 557 N.W.2d 17, 21 (1996). "A contract is ambiguous when a word, phrase or provision in the contract has, or is susceptible of, at least two reasonable but conflicting interpretations or meanings." Winfield v. CIGNA Companies, 248 Neb. 24, 532 N.W.2d 284, 286 (1995); see also Union Insurance Co. v. Land and Sky, Inc., 247 Neb. 696, 529 N.W.2d 773, 776 (1995). This determination is to be made on an objective basis, "not by the subjective contentions of the parties; thus, the fact that the parties have suggested opposing meanings of the disputed instrument does not necessarily compel the conclusion that the instrument is ambiguous." Twin Towers, 599 N.W.2d at 843; see also Estate of Stine v. Chambanco, Inc., 251 Neb. 867, 560 N.W.2d 424, 428 (1997). In order to determine whether the agreement between ACTONet and Allou Health is ambiguous we must construe the agreement as a whole. See Daehnke, 557 N.W.2d at 21.

ACTONet, Ltd. v. Allou Health & Beauty Care, 219 F.3d 836, 843 (8th Cir. 2000).

Extrinsic evidence cannot be used to create ambiguity where the terms of the contract are clear and unambiguous. Spanish Oaks, Inc. v. Hy-Vee, Inc., 265 Neb. 133, 147, 655 N.W.2d 390, 403 (2003).

Here, the contract governing the parties' relationship is the initial purchase agreement, dated January 19, 2000, as modified by the amendments/addendums of January 31, 2000, and March 16, 2000, because those documents were signed by all the parties. The second purchase agreement was not executed by the broker or the seller.

The January 31 amendment modifies Paragraph 8 to include the trust account language. The March amendment did not change that. It amended the contingency section, included a term for carrying back part of the mortgage, and added a provision requiring the broker to pay the seller a fee if the sale did not close in May 2000. The amendment specifically states "All other terms and condition of the Offer to Purchase to remain the same[.] [B]oth Buyer and Seller hereby incorporates such in this Amendment/Addendum." Fil. #64.

Notwithstanding testimony to the contrary by debtor, the final agreement, as modified by the January 31 amendment and the March 16 amendment, required that the buyer’s funds be kept in a trust account until closing.

C. 11 U.S.C. § 523(a)(2)(A)

For a debt to be declared non-dischargeable under § 523(a)(2)(A) for fraud, the creditor must show, by a preponderance of the evidence, that: (1) the debtor made a representation; (2) the representation was made at a time when the debtor knew the representation was false; (3) the debtor made the representation deliberately and intentionally with the intention and purpose of deceiving the creditor; (4) the creditor justifiably relied on such representation; and (5) the creditor sustained a loss as the proximate result of the representation having been made. Universal Bank, N.A. v. Grause (In re Grause), 245 B.R. 95, 99 (B.A.P. 8th Cir. 2000) (citing Thul v. Ophaug (In re Ophaug), 827 F.2d 340, 342 n.1 (8th Cir. 1987), as supplemented by Field v. Mans, 516 U.S. 59 (1995)). In Field v. Mans, the Supreme Court held that § 523(a)(2)(A) requires justifiable reliance, in which "[j]ustification is a matter of the qualities and characteristics of the particular plaintiff, and the circumstances of the particular case, rather than of the application of a community standard of conduct to all cases." Id. at 71 (citing the Restatement (Second) of Torts § 545A cmt. b (1976)).

"The intent element of § 523(a)(2)(A) does not require a finding of malevolence or personal ill-will; all it requires is a showing of an intent to induce the creditor to rely and act on the misrepresentations in question.” Merchants Nat’l Bank v. Moen (In re Moen), 238 B.R. 785, 791 (B.A.P. 8th Cir. 1999) (quoting Moodie-Yannotti v. Swan (In re Swan), 156 B.R. 618, 623 n.6 (Bankr. D. Minn. 1993)). “Because direct proof of intent (i.e., the debtor's state of mind) is nearly impossible to obtain, the creditor may present evidence of the surrounding circumstances from which intent may be inferred." Id. (quoting Caspers v. Van Horne (In re Van Horne), 823 F.2d 1285, 1287 (8th Cir. 1987)). The intent to deceive will be inferred when the debtor makes a false representation and knows or should know that the statement will induce another to act. Id. (quoting Federal Trade Comm’n v. Duggan (In re Duggan), 169 B.R. 318, 324 (Bankr. E.D.N.Y. 1994)).

In this case, there is no evidence that Mr. Jonušas intentionally made false statements to IMS. Therefore, § 523(a)(2)(A) does not prohibit the discharge of this debt.

D. 11 U.S.C. § 523(a)(4)

Section 523(a)(4) of the Bankruptcy Code excepts from discharge any debt for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

> With regard to the first element, whether a relationship is a fiduciary relationship within the meaning of section 523(a)(4) is a question of federal law. Tudor Oaks Limited Partnership v. Cochrane (In re Cochrane), 124 F.3d 978, 984 (8th Cir. 1997), cert. denied, 522 U.S. 1112, 118 S. Ct. 1044, 140 L. Ed. 2d 109 (1998). The fiduciary relationship must be one arising from an express or technical trust, and, thus, the fiduciary relationship required under section 523(a)(4) is more narrowly defined than that under the general common law. See id.; Barclays Am./ Bus. Credit, Inc. v. Long (In re Long), 774 F.2d 875, 878 (8th Cir. 1985). Thus, "[t]he broad, general definition of fiduciary – a relationship involving confidence, trust and good faith – is inapplicable." Mills v. Gergely (In re Gergely), 110 F.3d 1448, 1450 (9th Cir. 1997). Indeed, a fiduciary relationship can only arise from an express or technical trust "imposed before and without reference to the wrongdoing that caused the debt." In re Cochrane, 124 F.3d at 984 (quoting Lewis v. Scott (In re Lewis), 97 F.3d 1182, 1185 (9th Cir. 1996)). A merely contractual relationship is less than what is required to establish the existence of a fiduciary relationship. Werner v. Hofmann, 5 F.3d 1170, 1172 (8th Cir. 1993) (per curiam).

Jafarpour v. Shahrokhi (In re Shahrokhi), 266 B.R. 702, 707-08 (B.A.P. 8th Cir. 2001).

Under both Nebraska and Eighth Circuit caselaw, the nature of the business relationship between Mr. Jonušas and his client, in this case the seller, creates a common-law fiduciary relationship as between those two parties.

> The relationship between a real estate broker and a property owner for whom the agent has by oral or

> written contract agreed to sell the owner's property is that of principal and agent. A real estate agent owes a fiduciary duty (1) to use reasonable care, skill, and diligence in procuring the greatest advantage to his client, and (2) to act honestly and in good faith, making full disclosures to his client of all material facts affecting his interests. 12 C.J.S. Brokers ss 23 to 57, pp. 66 to 132.

Vogt v. Town & Country Realty, 194 Neb. 308, 315, 231 N.W.2d 496, 501 (1975).

In Cochrane, the Court of Appeals found that an attorney-client relationship was “the type of relationship for which the attorney’s breach of fiduciary duties to the client may give rise to a finding of a ‘defalcation’ with the meaning of § 523(a)(4).” 124 F.3d at 984.

> In the present case, Cochrane’s relationship with his clients existed before and notwithstanding the wrongdoing for which judgment against him was procured or, in other words, without reference to his wrongdoing. Cochrane had been engaged by Tudor Oaks and two Tudor Oaks partners to represent them in the bank foreclosure on Tudor Oaks’s failing multimillion dollar condominium project. His clients understood that he would assemble a group of investors (i.e., KSCS) to buy out the project while allowing Tudor Oaks to retain a 20% interest. Cochrane instead kept the 20% interest for himself as a “fee” and also failed to disclose to his clients that he was a 25% shareholder in KSCS. He breached his fiduciary duties by failing to disclose his status as a KSCS shareholder and by usurping Tudor Oaks’s expected 20% interest in the real estate, which, in fact, he kept for himself. In light of these facts, the bankruptcy court did not err in finding, for purposes of applying § 523(a)(4), that he had committed an act by defalcation while acting in a fiduciary capacity.

Id.

Mr. Jonušas also owed a fiduciary duty to the buyer based on the parties’ contractual relationship. Similar to Cochrane, Mr. Jonušas’ fiduciary duty arose before and without reference to the alleged misappropriation of the money at issue here. The

January 31, 2000, amendment/addendum to the purchase offer agreement specifically amended Paragraph 8 of the agreement to state: “Broker may hold Buyer’s check in an uncashed form until Seller has accepted Buyer’s Offer by its signature on this agreement or any amendments, which at that time Broker shall cash the check and deposit it into its Trust Account.” As noted above, an addendum signed by all parties as of March 16, 2000, modified some of the financing contingencies but otherwise incorporated all other terms and conditions of the purchase agreement. Paragraph 8 as amended creates a fiduciary relationship between the buyer and Mr. Jonušas.

The buyer’s lack of financing ultimately doomed the sale and prevented a closing. Mr. Jonušas testified that he did not receive any notice from the buyer via hand-delivery or certified mail, pursuant to the contract, that it would not be able to meet the contingencies in the purchase agreement. He believes the buyer failed to abide by the terms of the contract. Debtor’s belief, however, is not supported by the contractual language. The contract does not require the buyer to give such notice of its own inability to satisfy the contingencies. Under Paragraph 17, such notice is necessary when the buyer believes the <u>seller</u> has failed to satisfy the contingencies. In this case, there are no allegations that the deal fell through because of anything the seller did or failed to do.

Under the case law in the Eighth Circuit, a bankruptcy court can find a “defalcation” under 11 U.S.C. § 523(a)(4) without evidence of intentional fraud or other intentional wrongdoing. The Eighth Circuit Court of Appeals stated in <u>Cochrane</u>:

> Defalcation is defined as the “misappropriation of trust funds or money held in any fiduciary capacity; [the] failure to properly account for such funds.” Under section 523(a)(4), defalcation “includes the innocent default of a fiduciary who fails to account fully for money received.” . . . An individual may be liable for defalcation without having the intent to defraud.

<u>Cochrane</u>, 124 F.3d at 984 (quoting <u>Lewis v. Scott</u>, 97 F.3d 1182, 1186 (9th Cir. 1996)).

In this case, Mr. Jonušas testified that he could have paid the money back if necessary. However, he did not. He used the money, which he held in his capacity as a business broker and which was to be held in a “trust account,” for his own purposes. This constitutes a defalcation while acting in a fiduciary capacity, rendering the debt non-dischargeable under § 523(a)(4).

E. 11 U.S.C. § 523(a)(6)

The applicable law in this circuit has been explained as follows:

> Under section 523(a)(6), a debtor is not discharged from any debt for "willful and malicious injury" to another. For purposes of this section, the term willful means deliberate or intentional. See Kawaauhau v. Geiger, 523 U.S. 57, 61, 118 S. Ct. 974, 140 L. Ed. 2d 90 (1998) (§ 523(a)(6) requires deliberate or intentional injury); In re Long, 774 F.2d 875, 881 (8th Cir. 1985) (to meet willfulness component of § 523(a)(6), debtor's actions creating liability must have been "headstrong and knowing"). To qualify as "malicious," the debtor's actions must be "targeted at the creditor . . . at least in the sense that the conduct is certain or almost certain to cause financial harm." In re Long, 774 F.2d at 881.

Hobson Mould Works, Inc. v. Madsen (In re Madsen), 195 F.3d 988, 989 (8th Cir. 1999).

Debts arising from a debtor’s conversion of property belonging to another may be non-dischargeable under § 523(a)(6). See, e.g., United States v. Foust (In re Foust), 52 F.3d 766 (8th Cir. 1995) (debtor willfully and maliciously converted FmHA’s security interest in debtor’s crops and proceeds); Zio Johnos, Inc. v. Ziadeh (In re Ziadeh), 284 B.R. 893 (Bankr. N.D. Iowa 2002) (debtor contractor admitted converting funds which were to be used only for creditor’s remodeling project); Mercantile Bank of Arkansas, N.A. v. Speers (In re Speers), 244 B.R. 142 (Bankr. E.D. Ark. 2000) (debtor’s failure to remit proceeds of sale of third party’s vehicle, which he knew to be subject to bank’s security interest, constituted crimes of theft and defrauding secured creditor, and was non-dischargeable under § 523(a)(6)); Payne v. Lomantini (In re Lomantini), 252 B.R. 469 (Bankr. E.D. Mo. 2000) (Debtor acted as plaintiff’s agent in selling car and was entitled to $300 for doing so; instead, he kept the proceeds and paid his own creditors. The court found conversion under Missouri law and excepted the debt from discharge under § 523(a)(6).)

In this case, it is clear that Mr. Jonušas unilaterally determined that he was entitled to the full amount of IMS's deposit as liquidated damages and effected a self-help remedy. He expended the funds while they were being held in trust, as the contingency deadline(s) had not yet passed. For purposes of § 523(a)(6), the debtor's conduct was both willful and malicious, in that he knew he was holding the funds in trust and that other parties to the transaction may have a claim to the funds under the terms of the contract. In addition, he knew that by using the money himself he was depriving any other rightful owner of it. Therefore, the debt is excepted from discharge under § 523(a)(6).

## IV. Conclusion

The contractual arrangement among the parties created a fiduciary relationship between the debtor and the buyer. Debtor's failure to hold IMS's earnest money in an escrow account constitutes a defalcation while acting in a fiduciary capacity, excepting this debt from discharge under 11 U.S.C. § 523(a)(4). The debtor also acted willfully and maliciously in using the earnest money for his own purposes, thereby excepting this debt from discharge under 11 U.S.C. § 523(a)(6).

The plaintiff is entitled to recover the sum of $100,000 plus post-judgment interest at the federal judgment rate from the date of judgment entry. Separate judgment will be entered.

DATED: May 27, 2003

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Notice given by the Court to:
*William Stockdale
*Thomas Whitmore
Richard Berkshire
U.S. Trustee

Movant (*) is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

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| IN THE MATTER OF: | ) | |
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| VYTAS & KATHRYN JONUŠAS, | ) | |
| | ) | CASE NO. BK01-82569 |
| Debtor(s). | ) | |
| | ) | A01-8104 |
| INNOVATIVE MARKETING STRATEGIES, INC., | ) | |
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| Plaintiff, | ) | CH. 7 |
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| vs. | ) | |
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| VYTAS JONUŠAS, | ) | |
| | ) | |
| Defendant. | ) | |

JUDGMENT

Trial was held in Omaha, Nebraska, on February 24, 2003, on the adversary complaint to determine dischargeability. Richard Berkshire appeared for the debtor, and William Stockdale and Thomas Whitmore appeared for the plaintiff.

IT IS ORDERED: For the reasons set forth in the Memorandum of today's date, judgment is hereby entered in favor of the plaintiff, and against the defendant. The plaintiff is awarded the sum of $100,000, plus post-judgment interest at the federal judgment rate from the date hereof. That obligation is excepted from discharge under 11 U.S.C. §§ 523(a)(4) and (a)(6).

DATED: May 27, 2003

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Notice given by the Court to:
*William Stockdale
*Thomas Whitmore
Richard Berkshire
U.S. Trustee

Movant (*) is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.