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BUCKNELL STEHLIK SATO & STUBNER, LLP
2003 Western Avenue, Suite 400
Seattle, Washington 98121
(206) 587-0144 • fax (206) 587-0277

JUDGE: Karen A. Overstreet
DATE:
TIME:
CHAPTER: 7
LOCATION: Seattle
RESPONSE DATE:

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

In re:)
)
COURT REPORTING INSTITUTE, INC.)
)
Debtor.)

NO. 06-14202

BANKRUPTCY ESTATE OF COURT)
REPORTING INSTITUTE, INC., by and through)
Michael B. McCarty, Bankruptcy Trustee)
)
Plaintiff,)

ADVERSARY NO. 08-01131

vs.)

STEVE FLEISCHMAN and JANE DOE)
FLEISCHMAN, husband and wife, and the)
marital community comprised thereof, and BANK)
OF AMERICA, N.A.,)
)
Defendants.)

STEVE FLEISCHMAN,)
)
Defendant, Counter)
Claim Plaintiff and)
Third Party Plaintiff,)

**ANSWER OF STEVE
FLEISCHMAN TO TRUSTEE'S
COMPLAINT FOR TURNOVER
OF PROPERTY, and
COUNTERCLAIM CLAIM FOR
DECLARATORY JUDGMENT**

vs.)

**FLEISCHMAN ANSWER TO TRUSTEE'S COMPLAINT FOR
TURNOVER OF PROPERTY, AND COUNTERCLAIM - 1**

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1 BANKRUPTCY ESTATE OF COURT)
 1 REPORTING INSTITUTE, INC., by and through)
 2 Michael B. McCarty, Bankruptcy Trustee,)
)
 3 Plaintiff and Counter)
 4 Claim Defendant,)
)
 5 and)
)
 6 BANKRUPTCY ESTATE OF ALEN JANISCH,)
 7 by and through Edmund J. Wood, Chapter 7)
 7 Trustee,)
 8)
 9 Third Party Defendant.)
)

10 Defendants, Steve Fleischman ("Fleischman"), by and through his counsel, Bucknell Stehlik
 11 Sato & Stubner, LLP, answers and responds to the Trustee's Complaint for Turnover of Property as
 12 follows:
 13

14 **I. ANSWER**

- 15 1. Fleischman has insufficient knowledge to admit or deny the facts alleged in
 16 paragraph 1 of the Complaint and therefore denies the same.
 17
 18 2. Fleischman has insufficient knowledge to admit or deny the facts alleged in
 19 paragraph 2 of the Complaint and therefore denies the same.
 20
 21 3. Fleischman denies the allegations of paragraph 3 of the Complaint.
 22
 23 4. Fleischman admits that this Court has personal and subject matter jurisdiction, and
 24 that the matter is a core proceeding only to the extent it is properly cast as a turnover proceeding.
 25
 26 5. Fleischman denies the allegations of paragraph 5 of the Complaint. Fleischman
 27 affirmatively alleges that the bankruptcy estate of CRI has no interest whatsoever in the funds on
 28

1 bankruptcy estate, Janisch bankruptcy estate, and Fleischman are governed by contract not statutory
2 law; and

3 D. Plaintiff's action cannot proceed absent joinder of a necessary party, the Janisch
4 bankruptcy estate.

5 Fleischman reserves the right to amend this answer to state additional affirmative or other defenses
6 as may become known through discovery in this or related matters.
7

8 **III. COUNTERCLAIM AND THIRD PARTY CLAIM FOR DECLARATORY**
9 **JUDGMENT OF RIGHTS TO FUNDS ON DEPOSIT WITH**
10 **BANK OF AMERICA**

11 Comes now Steve Fleischman who, by and through counsel, Bucknell Stehlik Sato &
12 Stubner, LLP, and alleges the following as his counterclaim and third party claim against the CRI
13 Trustee and Janisch Trustee, respectively:

14 **A. PARTIES AND JURISDICTION**

15 1.1 Steve Fleischman, counterclaim plaintiff, is a resident of King County, state of
16 Washington.

17 1.2 Counterclaim defendant Michael B. McCarty is the duly appointed Trustee for the
18 Bankruptcy Estate of Court Reporting Institute, Inc ("CRI Trustee" or "CRI Estate").

19 1.3 Third Party defendant Edmund J. Wood is the duly appointed Trustee for the
20 Chapter 7 Bankruptcy Estate of Alen Janisch ("Janisch Trustee" or "Janisch Estate") in case no. 07-
21 15620 pending before this Court.
22

23 1.3 This Court has jurisdiction over this counterclaim pursuant to 28 U.S.C. 157 and
24 1334, and Bankruptcy Rule 7001. This counterclaim and third-party complaint is a core proceeding
25

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27 **FLEISCHMAN ANSWER TO TRUSTEE'S COMPLAINT FOR**
28 **TURNOVER OF PROPERTY, AND COUNTERCLAIM - 4**

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1 pursuant to 28 U.S.C. Section 157(b)(2)(E) to the extent this proceeding is properly cast as a
2 turnover proceeding, and otherwise pursuant to 28 U.S.C. Section 157(b)(2)(A) and/or (O).

3 **B. FACTS**

4 2.1 Steve Fleischman, and Alen Janisch ("Janisch"), the latter acting for the benefit of
5 Court Reporting Institute, entered into a binding agreement ("Letter of Credit Agreement") on or
6 about January 7, 2003 regarding Fleischman's willingness to post cash collateral for a letter of credit
7 to be issued by Bank of America and for the benefit of CRI. A true and correct copy of the Letter of
8 Credit Agreement is attached hereto as Exhibit A.

9 2.2 The Letter of Credit Agreement acknowledges that CRI/Janisch gave Fleischman
10 \$65,000 in the form of a cashier's check.
11

12 2.3 In the Letter of Credit Agreement, CRI and Janisch jointly agreed to be responsible
13 for paying all fees in connection with the letter of credit. CRI and Janisch also agreed that
14 Fleischman would be entitled to all interest earned on the monies supplied by CRI/Janisch, until
15 such time as Fleischman repaid CRI and Janisch the principal amount delivered to him by
16 CRI/Janisch.
17

18 2.4 For his part, Steve Fleischman agreed to assist CRI and Janisch in obtaining the
19 desired letter of credit for the benefit of CRI, and to repay CRI and Janisch, jointly, the principal
20 amount of funds given to him by CRI and Janisch.
21

22 2.5 Pursuant to the Letter of Credit Agreement, CRI and Janisch gave Steve Fleischman
23 \$65,000 in January 2003. Fleischman deposited the money into an account under his name at Bank
24 of America to secure the letter of credit numbered 3053441 in favor of the U.S. Department of
25

1 Education (herein "the Fleischman Account") and for the benefit of CRI. At all times relevant to
2 this matter, Fleischman controlled the Fleischman Account, with full authority to make withdrawals
3 and/or deposits thereto.

4 2.6 Steve Fleischman is informed and therefore believes that the letter of credit numbered
5 3053441 has expired.

7 2.7 At all times relevant hereto, the Fleischman Account has been the property of Steve
8 Fleischman.

9 2.8 Pursuant to the Letter of Credit Agreement, Fleischman is obligated to pay CRI and
10 Janisch jointly for the principal amount of monies CRI and/or Janisch delivered to Fleischman over
11 the period during which Fleischman agreed to post the cash collateral securing the letter of credit
12 required of CRI, deducted by any payments by Fleischman to CRI and/or Janisch and/or the appli-
13 cation of funds from the Fleischman Account toward the obligations of either CRI or Janisch.

15 3.1 Fleischman is contractually entitled to retain all interest earned on the funds in the
16 Fleischman Account.

17 C. CAUSE OF ACTION – DECLARATORY JUDGMENT

18 4.1 Steve Fleischman incorporates herein each of the allegations stated above.

19 4.2 A genuine, justiciable controversy exists between the CRI Trustee, Janisch Trustee,
20 and Steve Fleischman as to the parties' relative rights or interests in the Fleischman Account,
21 Fleischman's obligation to repay CRI and/or Janisch, and Fleischman's right to retain all interest
22 earned on funds on deposit in the Fleischman Account. As noted, Fleischman maintains that the
23 Fleischman Account is his property. By its Complaint in this action the CRI Trustee has claimed to
24
25

1 be the owner of the Fleischman Account. In informal discussions in the past, counsel for the Janisch
2 Trustee has claimed a right or entitlement to the Fleischman Account. Thus, the parties' interests are
3 directly adverse, each claiming ownership and the right to use the same property, i.e., the amounts
4 on deposit in the Fleischman Account.

5 4.2 The substantial controversy between the CRI Estate, Janisch Estate and Steve
6 Fleischman is real and ripe for decision, considering that the CRI Trustee presently seeks a deter-
7 mination that all funds in the Fleischman Account are estate property, and Steve Fleischman denies
8 such matters and claims the funds in the Fleischman Accounts as his. The court's declaratory judg-
9 ment of the rights of the parties will finally determine the rights, liabilities and obligations of the
10 parties.
11

12 **IV. PRAYER FOR RELIEF**

13
14 WHEREFORE, Fleischman prays for the following relief:

15 A. A declaration that the funds on deposit in the Fleischman Account are not property of
16 the CRI or Janisch Estates;

17 B. A declaration determining the parties' relative rights and obligations under the Letter
18 of Credit Agreement;

19 C. A declaration establishing that Steve Fleischman is entitled to retain all interest
20 earned on the funds on deposit in the Fleischman Account, at any time;

21 D. A declaration as to the proper payee of the principal amount of funds received by
22 Steve Fleischman from CRI and/or Janisch, less deductions by Fleischman for obligations of CRI
23 and/or Janisch;
24
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26
27 **FLEISCHMAN ANSWER TO TRUSTEE'S COMPLAINT FOR
28 TURNOVER OF PROPERTY, AND COUNTERCLAIM - 7**

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1 E. Entry of judgment dismissing the Trustee's Complaint for turnover of property
2 pursuant to 11 U.S.C. Section 542;

3 F. An award of attorneys' fees and costs to the extent allowable under contract, statute or
4 equitable principle; and

5 G. Such other and further relief as the Court deems just and appropriate.

6 DATED this 8th day of August 2008.
7

8 BUCKNELL STEHLIK SATO & STUBNER, LLP

9 /s/ Edwin K. Sato

10 _____
11 Edwin K. Sato, WSBA #13633
12 of Attorneys for Steve Fleischman

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**FLEISCHMAN ANSWER TO TRUSTEE'S COMPLAINT FOR
TURNOVER OF PROPERTY, AND COUNTERCLAIM - 8**

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EXHIBIT A

January 7, 2003

This is to put in writing an agreement between Steve Fleischman and Alen Janisch. Steve is posting an irrevocable letter of credit to the United States Department of Education for Court Reporting Institute, Inc., a Washington State corporation. The letter of credit is for \$65,000 and is posted for a one-year period. Alen and Steve have agreed to the following steps:

1. Court Reporting Institute, Inc./Alen Janisch gave to Steve Fleischman \$65,000 in the form of a cashier's check on January 6, 2003 to secure the letter of credit.
2. Court Reporting Institute, Inc./Alen Janisch agree to pay all fees in regard to the Letter of Credit.
3. Steve Fleischman is to keep any interest earned on the \$65,000 until such time the \$65,000 is returned to Court Reporting Institute, Inc./Alen Janisch.
4. Court Reporting Institute/Alen Janisch will attempt to release Steve Fleischman from liability as soon as possible, with the first attempt to be as soon as the 2002 financial statements for Court Reporting Institute are released. (Expected June 2003.)
5. At such time Steve Fleischman is released from liability, he, Steve Fleischman will return the \$65,000 to Curt Reporting Institute, Inc./Alen Janisch.



Steve Fleischman



Alen Janisch

Date 1-27-2003