



UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:
MARGARETTE MCDONALD
c/o Ogle, Liles & Upshaw
P.O. Drawer 1865
Birmingham, Al 35201

Plaintiff(s)

vs.

DARYL L. ROBERTS
106 Woodland Drive
Trussville, Al 35173

Defendant(s)

BK Case No. 01-06501-TBB-7

AP No. 01-00343

CERTIFICATE OF JUDGMENT

I, RICHARD K. MAUK, Acting Clerk of the United States Bankruptcy Court for the Northern District of Alabama, do hereby certify that on JUNE 24, 2003, a Judgment was rendered in the United States Bankruptcy Court for the Northern District of Alabama, Southern Division in the above-styled cause wherein it was **ORDERED** by the Court that:

Margarette McDonald obtained a Judgment against Daryl Roberts without waiver of exemptions for the sum of Thirty Six Thousand Nine Hundred Three Dollars and Sixteen Cents---(\$36,903.16) Dollars, and also the sum of One Hundred Fifty Dollars---(\$150.00) Dollars, cost of said suit, and interest at the rate of .95% per annum from date of said Judgment.

Robert B. Stewart is the Attorney of Record for Margarette McDonald in said cause.

Given under my hand and seal of this Court on July 9, 2003.

**RICHARD K. MAUK, Acting Clerk
United States Bankruptcy Court**

By *Diane O. Burt*
Deputy Clerk

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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U.S. BANKRUPTCY COURT
N.D. OF ALABAMA

In re:)
)
DARYL L. ROBERTS,) Case No. 01-06501-TBB-7
)
Debtor,)
)
_____) Adversary Proceeding No. **AP01 00343**
)
MARGARETTE MCDONALD,)
)
Plaintiff,)
)
vs.)
)
DARYL L. ROBERTS,)
)
Defendant.)

**COMPLAINT TO DETERMINE THE DISCHARGEABILITY OF A DEBT
AND COMPLAINT OBJECTING TO DEBTOR'S DISCHARGE**

COMES NOW Margarete McDonald, by and through the undersigned counsel, and files this Complaint to Determine the Dischargeability of a Debt and to Object to Debtor's Discharge pursuant to 11 U.S.C. § 523 and 11 U.S.C. § 727. In support of the Complaint, Plaintiff shows unto this Court as follows:

1. Daryl L. Roberts (the "Debtor") voluntarily commenced a case (the "Petition") in this Court on September 11, 2001 pursuant to Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Code").

2. This Complaint is brought pursuant to 11 U.S.C. § 523 and § 727 of the Bankruptcy Code and Rule 7001 of the Bankruptcy Rules of Procedure.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This matter is a court proceeding under 28 U.S.C. § 157(b)(2)(I) and (J). The Plaintiff alleges that the Debtor is indebted to her in the sum of Thirty-One Thousand, Eight Hundred Thirteen Dollars and Seven Cents (\$31,813.07).

4. The debt is owed as a result of the Debtor's misrepresentations to the Plaintiff and resultant violations of Alabama securities laws. As a result of the Debtor's violations of Alabama securities laws, a Judgment was rendered in the Circuit Court of Jefferson County, Alabama, on July 16, 1999, in the amount of Twenty-Six Thousand, One Hundred Fourteen Dollars and Thirty Cents (\$26,114.30). A true and correct copy of the Circuit Court's Certificate of Judgment is attached hereto as Exhibit "A" and hereby incorporated by reference. As of the date of the filing of the Debtor's Bankruptcy Petition, the total amount owed pursuant to the above-referenced Judgment was Thirty one Thousand, Eight Hundred Thirteen Dollars and Seven Cents (\$31,813.07).

5. In or about September 1994, Debtor was acting in a fiduciary capacity to the Plaintiff in relation to the Debtor's misrepresentations to the Plaintiff and resultant violations of Alabama securities laws.

6. Debtor's false oaths or accounts include misrepresentations on his Petition that he is "unemployed" and that his spouse provides the family income. Debtor has represented to the Court that he had income in year 2000 of \$123,523.00 from Roberts Financial Group, Inc., a corporation in which he was sole owner that provided financial planning to physicians to operate their

businesses. Debtor has represented to the Court that Roberts Financial Group, Inc., ended business in March 2000. Debtor has subsequently admitted that he currently provides identical financial planning to physicians, continues to be the person in direct contact with the physicians, and arranges that financing through Physician's Capital Corporation ("PCC"), an Alabama corporation formed by Debtor's wife. Debtor has subsequently admitted that, while he receives no compensation from PCC, PCC is operated solely by Debtor out of his home basement, with the same equipment and contacts Debtor had in Roberts Financial Group, Inc., providing the same type of work as Roberts Financial Group, Inc.

7. Upon information and belief, the Debtor has misrepresented to the Court on Schedule A of his Petition that he has no interest in any real property. Upon information and belief, the Debtor has assigned his interest in one parcel of real property inherited from his father, and has interests in other real property inherited from his father.

8. Upon information and belief, the Debtor transferred/concealed his interests in property within one year before the filing of the Petition.

9. Upon information and belief, the Debtor has failed to satisfactorily explain his loss of assets or deficiency of assets to meet the his liabilities. Debtor has subsequently admitted that he now performs through his wife's corporation, PCC, for no compensation, the identical financial services he provided through Roberts Financial Group, Inc. in 2000 with an income of \$123,523.00.

COUNT ONE

**Determination that Debt is Excepted from Discharge Because Obtained by
False Pretenses/Representations or Fraud**

10. Plaintiff hereby adopts and incorporates the allegations set forth above as if fully set forth herein.

11. Plaintiff avers that the actions and inactions of the Debtor referenced above are violative of § 523(c)(1) and were reasonably relied upon by the Plaintiff to her detriment. Plaintiff avers that the Debtor obtained the debt by false pretenses, false representations or actual fraud on the Plaintiff and is in violation of § 523(a)(2)(A).

COUNT TWO

**Determination that Debt is Excepted from Discharge Based on Fraud
by the Debtor while Acting as Fiduciary**

12. Plaintiff hereby adopts and incorporates the allegations set forth above as if fully set forth herein.

13. Plaintiff avers that under § 523(a)(4) the Debtor is not discharged from the debt based on fraud by the Debtor against the Plaintiff while acting in a fiduciary capacity to the Plaintiff in relation to the Debtor's misrepresentations to the Plaintiff and resultant violations of Alabama securities laws.

COUNT THREE

Determination that Debt is Excepted from Discharge Based on

Debtor's Willful, Malicious Injury to Plaintiff or her Property

14. Plaintiff hereby adopts and incorporates the allegations set forth above as if fully set forth herein.

15. The Plaintiff further avers that the Debtor's actions and inactions in relation to the Debtor's misrepresentations to the Plaintiff and resultant violations of Alabama securities laws and Judgment caused willful and malicious injury to the Plaintiff or her property under § 523(a)(6).

WHEREFORE, Plaintiff prays this Court to determine that the debt of Thirty one Thousand, Eight Hundred Thirteen Dollars and Seven Cents (\$31,813.07), plus attorney's fees and interest is non-dischargeable under 11 U.S.C. § 523(c)(1), § 523(a)(2)(A), § 523(a)(4) and/or § 523(a)(6) and that Plaintiff be granted such other, further and different relief to which she may be entitled.

COUNT FOUR

Objection to Discharge - False Oath or Account

16. Plaintiff hereby adopts and incorporates the allegations set forth above as if fully set forth herein.

17. Plaintiff avers that the Debtor's various representations/omissions in regard to his interest in Physician's Capital Corporation, his interests in real property and in regard to his income are false oaths or accounts which constitute violations of § 727(a)(4)(A) of the Bankruptcy Code.

COUNT FIVE

Objection to Discharge - Transfer of Property of Debtor

18. Plaintiff hereby adopts and incorporates the allegations set forth above as if fully set forth herein.

19. Plaintiff avers that the Debtor's transfer/concealment of property of the Debtor within one year before the filing of his Petition constitutes violations of § 727(a)(2)(A) of the Bankruptcy Code.

COUNT SIX

Objection to Discharge - Failure to Explain Loss/Deficiency of Assets

20. Plaintiff hereby adopts and incorporates the allegations set forth above as if fully set forth herein.

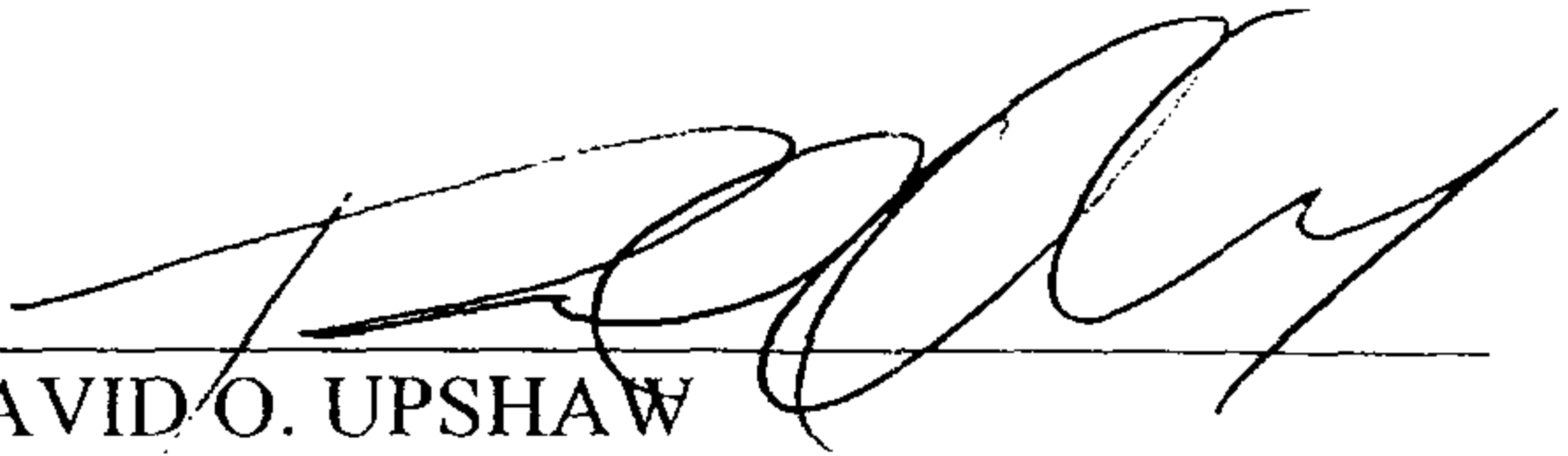
21. Plaintiff avers that the Debtor's failure to satisfactorily explain any loss of assets or deficiency of assets to meet the Debtor's liabilities constitutes violations of § 727(a)(5) of the Bankruptcy Code.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this Court determine the following:

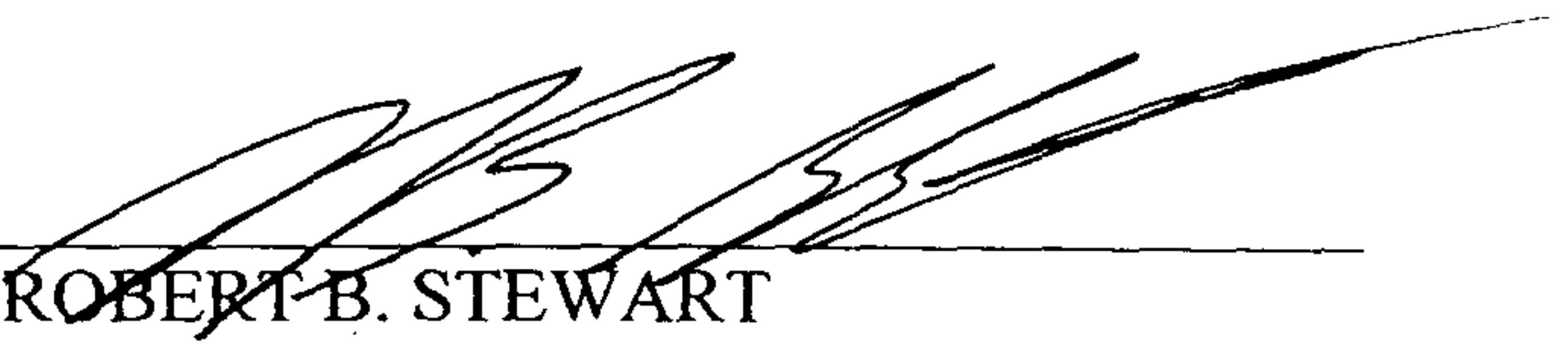
- (a) That the debt of Thirty one Thousand, Eight Hundred Thirteen Dollars and Seven Cents (\$31,813.07) to the Plaintiff is non-dischargeable;
- (b) That the Debtor is not entitled to a discharge;
- (c) That the Plaintiff is entitled to attorney's fees and interest; and

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(d) That the Court grant any such other, further and different relief to which the Plaintiff may be entitled.



DAVID O. UPSHAW
Bar # ASB-0392-W82D



ROBERT B. STEWART
Bar # ASB-8967-T65R

Attorneys for Plaintiff, Margarete McDonald

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