

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	
)	
RUDOLPH FRATTO,)	
)	No. 09 CR 795
Defendant,)	
)	Judge Kennelly
and)	
)	
B.K. KREMER INCORPORATED,)	
)	
Third-Party Respondent.)	

MOTION FOR TURNOVER ORDER

The United States of America, by Joel R. Levin, Acting United States Attorney for the Northern District of Illinois, moves for a turnover order and in support states as follows:

1. The court entered a restitution judgment against defendant Rudolph Fratto on January 27, 2010. Fratto has not made a payment since February 3, 2016, and as of May 9, 2017, the judgment balance is \$131,464.10.

2. The United States may use any civil procedure to enforce the judgment. 18 U.S.C. §§ 3613(a) and (f). A citation to discover assets directed to the respondent, B.K. Kremer Incorporated (BK Kremer), was issued on February 22, 2017, and Fratto was served on February 24, 2017.

3. BK Kremer answered the citation on March 10, 2017. A copy of the answer is attached as Exhibit A. Fratto was served with a copy of the answer, as reflected in paragraph 9 of the answer. BK Kremer stated in its answer that it had in its possession or under its control earnings belonging to Fratto at the time the citation was served. Based on BK Kremer’s answer, the United

States is entitled to 25% of Fratto's disposable earnings for each pay period since the citation was served and continuing each pay period until the debt is paid in full, or until B.K. Kremer Incorporated no longer has custody, possession, or control of any disposable earnings belonging to Fratto, or until further order of this court. 18 U.S.C. § 3613(a); 28 U.S.C. § 3205(c)(7).

4. Fratto, through counsel, objected to the garnishment, arguing in essence that the 25% garnishment conflicts with the district court's 10%-of-earnings payment order set out in the judgment order. Dkt. 20 at p. 5. However, circuit precedent rejects the view that the payment order is an *exclusive* remedy preempting the use of other remedies, like wage garnishment. *United States v. Wykoff*, 839 F.3d 581, 582 (7th Cir. 2016) (10% payment order regarded as "minimum amount [defendant] must pay" to restitution and not a defense to garnishment of prison account); *United States v. Lemberger*, __ Fed. App'x __, 2017 WL 213188, at *2 (7th Cir. Jan. 18, 2017) (defendant's payments under the Inmate Financial Responsibility Program did not preclude the seizure of funds in prison account because the two enforcement remedies "are not mutually exclusive").

5. The Clerk of the Court collects all payments on monetary penalties imposed in criminal cases; accordingly, all payments should have "09 CR 795" written in the lower left corner of the check and be submitted to: Clerk of the Court; U.S. District Court, Northern District of Illinois; 219 South Dearborn Street, 20th Floor; Chicago, Illinois 60604.

65. The United States has provided all notices required by law.

WHEREFORE, the United States requests entry of a turnover order directing B.K. Kremer Incorporated to submit to the Clerk of the Court 25% of Rudolph Fratto's disposable earnings for each pay period since the citation was served and continuing each pay period until the debt is paid in full or until B.K. Kremer Incorporated no longer has custody, possession, or control of any

disposable earnings belonging to Fratto, or until further order of this court.

Respectfully submitted,

JOEL R. LEVIN
Acting United States Attorney

By: s/ Joseph A. Stewart

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NORTHERN DISTRICT OF ILLINOIS
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United States of America)	
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v.)	
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Rudolph Fratto,)	No. 09 CR 795
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Defendant,)	
)	
and)	Judge Kennelly
)	
B.K. Kremer Incorporated,)	
)	
Third-Party Citation Respondent.)	

ANSWER OF THIRD-PARTY CITATION RESPONDENT

I, BRUCE KREMER, the PRESIDENT of Respondent, BK KREMER,
(name) (title)

state under penalty of perjury as follows:

Respondent is a CORPORATION organized under the laws of the State of ILLINOIS.
(sole proprietorship, partnership, corporation, government agency)

On 2/22/17, Respondent was served with the Third Party Citation to Discover Assets. With respect to Defendant, Rudolph Fratto, on the day Respondent was served with the Citation, Respondent had in its possession or control the following property of Defendant:

1. Respondent EMPLOYS Defendant.
(Employs - Employed - Never Employed)

If no longer employed, the last day of employment was: _____
State defendant's current employer, if known: _____

2. Defendant's pay period is: weekly, ___ bi-weekly, ___ semi-monthly, ___ monthly.

Enter date present pay period began 2/13/17 and date it ends 2/19/17.
(Present means the pay period in which the Citation was served).

3. Calculate wages subject to garnishment:

(A) Gross wages (minus mandatory contributions to pension/retirement plans)	(A)\$	<u>1,080</u>
(B) Enter Total FICA, State and Federal Tax, and Medicare	(B)\$	<u>242</u>
(C) Disposable Earnings (Net): Subtract Line (B) from Line (A)	(C)\$	<u>838</u>
(D) Enter Twenty Five Percent (25%) of Line (C)	(D)\$	<u>210</u>

Please return to: United States Attorney's Office, Financial Litigation Unit, 219 South Dearborn Street, 5th Floor, Chicago, Illinois 60604

- (E) Enter Ten Percent (10%) of Line (C) (E)\$ 84
- (F) % of Gross (Divide Line E by Line A) (F)\$ 7.8%
- (G) Current Federal minimum wage per pay period (\$7.25 per hour).
Using the applicable pay period, enter the appropriate amount:
(G)\$ 217.50
If Defendant is paid every week or less, enter 30 times the minimum wage or \$ 217.50
If Defendant is paid every two weeks, enter 60 times the minimum wage or \$435.00
If Defendant is paid semi-monthly, enter 65 times minimum wage or \$487.50
If Defendant is paid monthly, enter 130 time minimum wage or \$942.50
- (H) Subtract Line G from Line C (H)\$ 620.50
- (I) Enter Line D or Line H, whichever is smaller (I)\$ 210.00
(If the smaller amount is zero or less, do not withhold any wages this pay period).
- (J) Enter child support or other court ordered deduction (J)\$ 0
- (K) Subtract Line J from Line I. (K)\$ 210.00

LINE K IS THE AMOUNT TO BE WITHHELD FROM EMPLOYEE'S PAYCHECK FROM THE DATE OF SERVICE OF THE CITATION AND NOT DISBURSED UNTIL FURTHER ORDER OF COURT.

4. Are there prior garnishments or other court-ordered withholdings which are presently in effect including, but not limited to, child support and alimony?

Yes ___ No X

If the answer is yes, describe below and attach a copy of the garnishment order.

N/A

5. Besides wages, does Respondent have custody, control or possession of any property now owed or to be paid in the future, in which Defendant has an interest, including but not limited to, a pension or 401(k), bonus, vacation pay, sick pay, or reimbursement of expenses?

Yes ___ No X

If yes, please describe below (continue on additional sheets if necessary):

N/A

6. If Defendant has or had a pension or 401(k), please state whether Defendant continues to be entitled to benefits (answer yes or no) and identify the name, address, telephone number and e-mail address of the third-party administrator or trustee.

Yes ___ No X

If yes, please describe below (continue on additional sheets if necessary):

N/A

7. If you deny that you hold property subject to the judgment of the United States, check one of the following statements: N/A

Respondent believes the following claim of exemption/election of exemption applies: _____

Respondent has the following objections, defenses, or set-offs to the United States' right to attached and garnish Respondent's indebtedness to Defendant: _____

On the date Respondent was served with the Citation, Respondent was not indebted or under liability to Defendant, and/or Respondent did not have in his/her/its possession or control any wages, income or other property belonging to Defendant, or in which Defendant has an interest and it not liable as a Respondent in this action.

8. The original Answer must be delivered in person or sent by first-class mail to the United States Attorney's Office, Financial Litigation Unit, 219 South Dearborn Street, 5th Floor, Chicago, Illinois 60604.

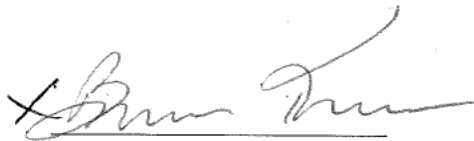
9. Respondent mailed a copy of this Answer by first-class mail to:

(A) Defendant, Rudolph Fratto, at [REDACTED] DARREN ILLIANS [REDACTED]

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I verify under penalty of perjury that the foregoing is true and correct.

Executed this 6TH of MARCH, 2017.
Day Month


(Please sign name)

BRUCE KREYER
(Please print name)

1-847-980-2094
Telephone Number

Please return to: United States Attorney's Office, Financial Litigation Unit, 219 South Dearborn Street, 5th Floor, Chicago, Illinois 60604