

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:  
RANDY R RICKERT

**NOTICE OF HEARING AND  
MOTION FOR DISMISSAL**

BKY Case No. 03-60680-DDO  
Debtor. Chapter 13

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TO: All parties in interest under Local Rule 9013-3.

1. Viking Savings Association, F.A. (VSA), moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion on September 28, 2004 at 10:00 a.m. in Courtroom 2, 2<sup>nd</sup> Floor, 118 South Mill Street, Fergus Falls, Minnesota 56537.

3. Any response to this motion must be filed and delivered not later than 10:00 a.m. on September 23, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than September 17, 2004, which is seven days before the time set for hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on May 28, 2003. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 1307 and Fed. R. Bankr. P. 1017. This motion is filed under Fed. R. Bankr. P. 9013 and Local Rule 9013-1. Movant requests relief with respect to dismissing this case.

6. That Debtor's Chapter 13 plan was confirmed by Order Confirming Chapter 13 Plan dated July 29, 2003.

7. That pursuant to paragraph 5 of the Plan, Debtor was to pay directly to VSA, the regular monthly payments that came due on Debtor's home mortgage with VSA, subsequent to the date Debtor's petition was filed. Debtor's monthly payments to VSA are \$455.84. Debtor failed to pay \$291.04 of the payment owing for November 2003 and has failed to pay any portion of the payments for December 2003 and January through August

of 2004 for a total default as of the date of this Motion of \$4,393.60.

Wherefore, VSA moves the Court for an Order to dismiss this case and for such other and further relief as may be just and equitable.

Dated: August 30, 2004.

SWENSON LERVICK SYVERSON ANDERSON  
TROSVIG JACOBSON, P.A.

By /e/ Gary I. Syverson

Gary I. Syverson

Attorneys for Viking Savings Association, F.A.

710 Broadway, P.O. Box 787

Alexandria, MN 56308

(320) 763-3141

Atty. Registration # 108133

VERIFICATION

I, Susan <sup>/L.</sup>Skoglund, the Executive Vice President of Viking Savings Association, F.A., the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed August 30, 2004.



Susan L. Skoglund

1311 Broadway

Alexandria, Minnesota 56308

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:  
RANDY R RICKERT

**MEMORANDUM OF LAW IN  
SUPPORT OF MOTION TO DISMISS**

Debtor. BKY Case No. 03-60680-DDO  
Chapter 13

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**FACTS**

The Debtor, Randy R. Rickert filed a Chapter 13 Bankruptcy Petition on May 28, 2003. Debtor's Chapter 13 Plan was confirmed by Order of the Court dated July 29, 2003.

Viking Savings Association, F.A., the movant herein (VSA), holds a mortgage on the Debtor's home. Pursuant to Paragraph 5 of the Plan, Debtor was to maintain regular monthly payments on the VSA mortgage which came due after the date the Petition was filed.

The monthly payment on Debtor's mortgage to VSA is \$455.84. Debtor is delinquent on these monthly payments in the total amount of \$4,393.60, representing a portion of November 2003, and all of December 2003, and January through August of 2004.

VSA is making a motion to dismiss debtor's Chapter 13 case for failure to comply with the plan.

**ARGUMENT**

Pursuant to 11 U.S.C. § 1307(c)(6), the Court may dismiss a Chapter 13 case for cause, including material default by the Debtor with respect to a term of a confirmed plan. Essentially, Debtor was to begin making the regular monthly payments in June of 2003 and as a result, should have paid fifteen payments. Debtor, however, has only paid five full payments and one partial payment. Debtor has paid about one-third of the payments required to be paid to VSA; therefore Debtor is in material default in the plan and VSA's motion to dismiss should be granted.

Dated this 30th day of August, 2004.

SWENSON LERVICK SYVERSON ANDERSON  
TROSVIG JACOBSON, P.A.

By /e/ Gary I. Syverson  
Gary I. Syverson  
Attorneys for Viking Savings Association, F.A.  
710 Broadway, P.O. Box 787  
Alexandria, MN 56308  
(320) 763-3141  
Atty. Registration # 108133

UNSWORN CERTIFICATE OF SERVICE

I, Sheila A. Pfeninger, declare under penalty of perjury that on August 30, 2004, I served the following:

- 1) Notice of Hearing and Motion for Dismissal;
- 2) Memorandum of Law in Support of Motion to Dismiss; and
- 3) Order;

upon the following named by mailing to each of them copies thereof by enclosing same in an envelope with first class mail postage prepaid, and depositing same in the post office at Alexandria, Minnesota, addressed to each of them as follows:

RANDY R. RICKERT  
18221 163RD AVENUE  
OSAKIS MN 56360

BRENDA VELDE  
VELDE LAW FIRM  
1118 BROADWAY  
ALEXANDRIA MN 56308

UNITED STATES TRUSTEE  
1015 US COURTHOUSE  
300 WEST FOURTH STREET  
MINNEAPOLIS MN 55415

MICHAEL J FARRELL, TRUSTEE  
PO BOX 519  
BARNESVILLE MN 56514

Executed on: August 30, 2004

Signed: /e/ Sheila A. Pfeninger  
Swenson Lervick Syverson Anderson  
Trosvig Jacobson, P.A.  
710 Broadway, P.O. Box 787  
Alexandria, MN 56308  
(320) 763-3141

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**ORDER**

RANDY R RICKERT

Debtor.

BKY Case No. 03-60680-DDO  
Chapter 13

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This matter came before the Court on September 28, 2004, at 10:00 a.m., upon motion by Viking Savings Association, F.A., to dismiss the case. The appearances are as noted on the record. The Court made its findings and conclusion on the record. Based upon all of the files and records, it is

**HEREBY ORDERED:**

That the motion of Viking Savings Association, F.A., is granted and debtor's Chapter 13 case is dismissed as a result of material fault by debtor with respect to a term of the confirmed plan, pursuant to 11 U.S.C. § 1307(c)(6).

Dated: \_\_\_\_\_

\_\_\_\_\_  
Dennis D. O'Brien  
U.S. Bankruptcy Judge