

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Corliss Harris

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtor

Chapter 13, Case No. 04-60115

TO: Corliss Harris, INCLUDING TRUSTEE AND OTHER INTERESTED PARTIES

1. Columbia National Incorporated, (*Movant*), a corporation, by its undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 1:00 pm on October 26, 2004, in Courtroom 2, 118 South Mill Street, Fergus Falls, MN 56537 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on October 21, 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 October 15, 2004, which is seven days before the time set for the 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. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rules of Bankruptcy Procedure 5005 and Local Rule 1070-1, and is a core

proceeding. The petition commencing this Chapter 13 case was filed on February 4, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to a mortgage lien encumbering real property of Debtor.

6. Debtor above-named are the owner of certain real property located at 426 15th Avenue North, Saint Cloud, MN 56303, legally described as follows, to-wit:

The Southerly 33.00 feet of the Northerly 66.00 feet of Lot 9 and 10. Block 23, Edelbrock's Addition to St. Cloud, according to the map or plat thereof in file or of record in the Office of the County Recorder in and for Stearns County, Minnesota.

7. The indebtedness of Corliss Harris is evidenced by a Promissory Note and Mortgage dated May 28, 1998, filed of record in the Stearns County Recorder's office on June 1, 1998, and recorded as Document No. 874952. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage was subsequently assigned to Movant.

8. Movant has filed a Proof of Claim for delinquent payments. Upon information and belief, said Plan has now been confirmed.

9. Pursuant to said Plan, the Debtor was to maintain monthly payments due and payable pursuant to the indebtedness to Movant outside the Plan.

10. The Debtor has failed to pay the monthly payments on the indebtedness, outside the Plan for the months of July 1, 2004 to the present date and as of the hearing date October 1, 2004 will be due for a total delinquency of \$1,803.81 together with reasonable attorneys fees and costs incurred pursuant to the terms of the note and mortgage.

11. By reason of the foregoing, Debtor is in default on payments under the note, mortgage and the Chapter 13 Plan. Movant is inadequately secured and entitled to have the automatic stay lifted and vacated so it can commence foreclosure against the property under the mortgage pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: September 29, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

AFFIDAVIT OF PETITIONER

Corliss J. Harris Debtor

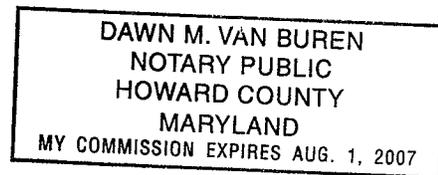
Chapter 13, Case No. 04-60115

STATE OF Maryland
COUNTY OF Howard)

Brenna Doane, being first duly sworn, deposes and states she/he is the authorized representative of Movant and has direct real-time access to the computer records of Movant which are maintained in the ordinary course of business and that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his information.

Brenna Doane

Subscribed and sworn to before me this
15th day of September, 2004.



D. M. Van Buren
Notary Public

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29.50.50

03525055

AFTER RECORDING RETURN TO:
Columbia National Incorporated
Attn: Document Control
P.O. Box 3050, Columbia, MD 21045-6050

874952

98 JUN -1 PM 4:12

MORTGAGE REGISTRATION TAX 109.48
[Signature]
STEARNS COUNTY AUDITOR
[Signature]
DEPUTY AUDITOR

COUNTY RECORDER
STEARNS CO. MN
PATRICIA M. OVERMAN
BY *[Signature]* DEPUTY

[Space Above This Line For Recording Data]

State of Minnesota

MORTGAGE

FHA Case No.
271-7848009-748

THIS MORTGAGE ("Security Instrument") is given on May 28, 1998
The Mortgagor is Corliss J Harris, an unmarried person

20 TRES99 980020429 6/01/1998
MR STATE * 15:29:11
PAID
\$109.48

("Borrower"). This Security Instrument is given to Columbia National Incorporated

which is organized and existing under the laws of State of Maryland, and
whose address is P.O. Box 3050, Columbia, MD 21045-6050
("Lender"). Borrower owes Lender the principal sum of
Forty Seven Thousand Six Hundred and 00/100

Dollars (U.S. \$47,600.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on June 1, 2028 and for interest at the yearly rate of 7.500 percent. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements

FHA Minnesota Mortgage - 4/96

VMP-4R(MN) (9702)

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Initials: CH

VMP MORTGAGE FORMS - (800)521-7291

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under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with power of sale, the following described property located in Stearns County, Minnesota:

Borrower acknowledges that the sum so received from lender under the note secured by this instrument is, in whole, or in part, in purchase money of the property secured hereby.

The Southerly 33.00 feet of the Northerly 66.00 feet of Lots 9 and 10. Block 23, Edelbrock's Addition to St. Cloud, according to the map or plat thereof on file or of record in the Office of the County Recorder in and for Stearns County, Minnsota.

which has the address of 426 15th Ave No, St Cloud [Street, City],
Minnesota 56303 [Zip Code] ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Corliss Harris

MEMORANDUM OF LAW

Debtor

Chapter 13, Case No. 04-60115

11 U.S.C. Section 362(d) provides that on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under section (a) of this section for cause, including lack of adequate protection of an interest in property of such party in interest. Failure of a Chapter 13 debtor to make postconfirmation payments to a mortgagee is sufficient cause for relief from the automatic stay. Reinbold vs. Dewey County Bank, 942 F.2d 1304 (8th Cir. 1991). Following the debtor's filing of the petition on February 4, 2004 no payment has been made to movant for the month(s) of July 1, 2004 to the present and as of the hearing date October 1, 2004 will be due. Accordingly, cause exists for the granting of relief from the automatic stay.

WHEREFORE, Columbia National Incorporated respectfully requests this Court to grant movant relief from the automatic stay of 11 U.S.C. Section 362(a).

Dated: September 29, 2004. USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Corliss Harris

Debtor

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 13, Case No. 04-60115

Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on September 29, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Michael J. Farrell
Chapter 13 Trustee
P.O. Box 519
Barnesville, MN 56514

Samuel V. Calvert
Attorney at Law
PO Box 1044
St. Cloud, MN 56302-1044

Corliss Harris
426 15th Avenue North
Saint Cloud, MN 56303

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Corliss Harris

ORDER

Debtor.

Chapter 13, Case No. 04-60115

The above entitled matter came on for hearing upon motion of Columbia National Incorporated, (*Movant*) pursuant to 11 U.S.C. Section 362 on October 26, 2004 at the U.S. Bankruptcy Court, Fergus Falls, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED THAT:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

The Southerly 33.00 feet of the Northerly 66.00 feet of Lot 9 and 10. Block 23, Edelbrock's Addition to St. Cloud, according to the map or plat thereof in file or of record in the Office of the County Recorder in and for Stearns County, Minnesota.

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this __ day of _____, 2004.

Judge of the Bankruptcy Court