

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 7 CASE**

Shelly Ann Navarro  
Shelly Ann Reagan  
SSN XXX-XX-2935

**CASE NO. 03-35091 GFK**

Debtor.

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY**

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Bank of America, N.A. (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on November 8, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Courtroom 228B of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than November 3, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 28, 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 Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on July 24, 2003. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001.

This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$87,200.00, as evidenced by that certain Promissory Note dated September 30, 1998, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated September 30, 1998, executed by Shelly A. Reagan, a single person, recorded on , as Document No. 3115584, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Ramsey County, Minnesota and is legally described as follows to-wit:

Lot Thirteen (13), Block One (1), Bartelmy Acres, according to the map or plat thereof on file or of record in the Office of the County Recorder in and for Ramsey County, Minnesota.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of October 19, 2004, Debtor is delinquent in the making of monthly mortgage payments as required for the months of September, 2004 through October, 2004, inclusive, in the amount of \$811.11 each; accruing late charges and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

**WHEREFORE**, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be terminated so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 19th day of October, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Suite 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

NOTE hereby certifies that this copy is a true and correct copy of the original instrument.

September 30, 1998

1077 Sterling Street, Weymouth, MA 01978 (Property Address) Title: Wife Date: 9-30-98

1. **BORROWER'S PROMISE TO PAY**  
In return for the loan that I have received, I promise to pay U.S. \$27,280.00 (this amount is called "principal"). I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. **INTEREST**  
Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 6.875%. The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6 (B) of this Note.

3. **PAYMENT**  
(A) **Time and Place of Payments**  
I will pay principal and interest by making payments every month on the first day of each month beginning on November 1, 1998. I will make these payments until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My payments will be applied to interest before principal. If, on October 1, 2002, I still owe money under this Note, I will pay the amount in full on that date, which is called the "maturity date." I will make my monthly payments at Mortgage Support, Inc., 4830 Hamilton Road, South Bay, MA 02531 or at a different place if notified by the Note Holder.  
(B) **Amount of Monthly Payments**  
My monthly payment will be in the amount of U.S. \$522.84.

4. **PREPAID PAYMENTS**  
I reserve the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so. I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to these changes.

5. **LOAN CHARGES**  
The law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the loan charges collected on or to be collected in connection with this loan exceed the permitted limits, then: (i) any charge shall be refunded to the amount necessary to reduce the charge to the permitted limit; and (ii) any amount collected from which exceeded permitted limits will be refunded to me. The Note Holder may choose to make a reduction of the principal I owe under this Note or by making a direct payment to me. If a refund reduces the principal, the reduction will be treated as a partial prepayment.

6. **BORROWER'S FAILURE TO PAY AS REQUIRED**  
(A) **Late Charge for Overdue Payments**  
If the Note Holder has not received the full amount of any monthly payment by the end of fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00% of my overdue payment of principal and interest or the maximum amount allowed by law. I will pay this late charge promptly but only once on each late payment.  
(B) **Default**  
If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.  
(C) **Notice of Default**  
If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.  
(D) **No Waiver by Note Holder**  
Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.  
(E) **Payment of Note Holder's Costs and Expenses**  
If the Note Holder is required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

7. **SENDER OF NOTICES**  
Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address. Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. **CO-SIGNERS OF PERSONS WHO TAKE THIS NOTE**  
I agree that any person who takes this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligation of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

EXHIBIT A

OCT 02 2003 12:40 FR BANK OF AMERICA

7166352761 TO 916512093339

P.04/12

1177JLU

3115584

instru #	0902
Filing fee	1950
Rec copy	
Car copy	
Initial	
pd by/bill	03

99 FEBN FHL M

*[Signature]*

[Space Above This Line For Recording Date]

**MORTGAGE**

THIS MORTGAGE ("Security Instrument") is given on September 30, 1998.

The mortgagor is Shelly A. Reagan, a single person ("Borrower"). This Security Instrument is given to Mortgage Support, Inc., which is organized and existing under the laws of Minnesota, and whose address is 4833 Manitou Road, Tonka Bay, MN 55331 ("Lender").

Borrower owes Lender the principal sum of Eighty Seven Thousand Two Hundred and no/100 Dollars (U.S. \$87,200.00). 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 October 1, 2028 and for interest at the yearly rate of Six and Seven Eighths 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 under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in Ramsey County, Minnesota

See Attached "Exhibit A"

which has the address of 1077 Sterling Street North  
Maplewood, Minnesota 55119  
("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.

09-537094m Mortgage  
MORTGAGE SUPPORT, INC.  
4833 MANITOU ROAD  
TONKA BAY, MN 55331

MINNESOTA--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
Haslach Document Systems, Inc. Borrower's Initials

SIL Form 3024 9/98 (page 1 of 8 pages)

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EXHIBIT B

0110084

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_

Shelly A Reagan (Seal)  
Shelly A. Reagan -Borrower

Social Security Number 475-86-2935

\_\_\_\_\_

(Seal)  
-Borrower

Social Security Number

\_\_\_\_\_

(Seal)  
-Borrower

Social Security Number

\_\_\_\_\_

(Seal)  
-Borrower

Social Security Number

[Space Below This Line For Acknowledgement]

STATE OF MINNESOTA,

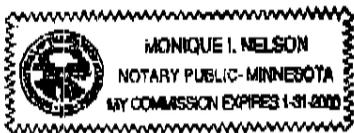
Ramsey

County and:

On this 30th day of September 1998, before me appeared Shelly A Reagan, Single, to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

My Commission expires:

Monique Nelson  
Notary Public



This instrument drafted by:

Mortgage Support, Inc.  
4833 Manitou Road  
Tonks Bay, MN 55331

Wesatch Document Systems, Inc.

Form 3024 9/90 (page 8 of 6 pages)

Borrower's Initials S

8

0110004

File No: 09 537024

EXHIBIT "A" ✓

10/30/98 11:59AM 17783 ACQR 4  
MT\* 200.56

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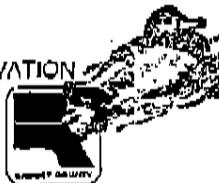
Lot Thirteen (13), Block One (1), Bartelmy Acres, according to the map or plat thereof on file or of record in the Office of the County Recorder in and for Ramsey County, Minnesota.

S.K

AGRICULTURAL CONSERVATION

FEE PAID

RAMSEY COUNTY



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 7 CASE**

Shelly Ann Navarro  
Shelly Ann Reagan  
SSN XXX-XX-2935

**CASE NO. 03-35091 GFK**

Debtor.

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**MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY**

**ARGUMENT**

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of October 19, 2004, Debtor is delinquent for monthly payments for the months of monthly mortgage payments as required for the months of September, 2004 through October, 2004, in the amount of \$811.11 each; accruing late charges and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

**CONCLUSION**

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

. . .  
. . .

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 19th day of October, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Suite 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

CHAPTER 7 CASE

CASE NO. 03-35091 GFK

Shelly Ann Navarro  
Shelly Ann Reagan  
SSN XXX-XX-2935

AFFIDAVIT OF  
DAN ARNTSEN

Debtor.

Dan Arntsen, being first duly sworn on oath, deposes and states:

1. That he/she is the Bankruptcy Manager of Fidelity National Foreclosure Solutions.
2. Bank of America, N.A., is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated September 30, 1998, executed by Shelly A. Reagan, a single person, recorded as Document No. 3115584. The property is located in Ramsey County, Minnesota and is legally described as follows, to-wit:

Lot Thirteen (13), Block One (1), Bartelmy Acres, according to the map or plat thereof on file or of record in the Office of the County Recorder in and for Ramsey County, Minnesota.

3. That he/she has reviewed the account records relating to the Reagan mortgage loan, account no. 2003683105.

4. That as of October 12, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$80,531.77
Interest through October 12, 2004	1,092.17
Attorney's Fees:	700.00
Late Charges:	76.64
Property Inspections:	6.50
 TOTAL:	 \$82,407.08

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of September, 2004 through October, 2004 in the amount of \$811.11 each.

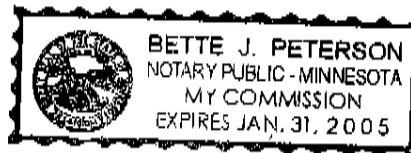
6. This affidavit is given in support of the motion of Bank of America, N.A. for relief from the automatic stay.

FIDELITY NATIONAL FORECLOSURE SOLUTIONS

By: [Signature]  
Its Bankruptcy Manager

Subscribed and sworn to before me  
this 15<sup>th</sup> day of October, 2004.

Bette J. Peterson  
Notary Public  
9732\_1



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Shelly Ann Navarro  
Shelly Ann Reagan  
SSN XXX-XX-2935

Debtor.

**CHAPTER 7 CASE**

**CASE NO. 03-35091 GFK**

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on October 19, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Dan Arntsen, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Shelly A. Navarro  
1077 Sterling St N  
Maplewood, MN 55119-3630

Michael J. Iannacone  
8687 Eagle Point Blvd  
Lake Elmo, MN 55042

James T. Skonnord  
311 Ramsey ST  
St. Paul, MN 55102

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 19th day of October, 2004.

/e/ Diana Waletzko

Diana Waletzko

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Shelly Ann Navarro  
Shelly Ann Reagan  
SSN XXX-XX-2935

**CHAPTER 7 CASE**

**CASE NO. 03-35091 GFK**

Debtor.

**ORDER**

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The above entitled matter came on for hearing upon motion of Bank of America, N.A. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on November 8, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, 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 Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated September 30, 1998, executed by Shelly A. Reagan, a single person, recorded on , as Document No. 3115584 covering real estate located in Ramsey County, Minnesota, legally described as follows, to-wit:

Lot Thirteen (13), Block One (1), Bartelmy Acres, according to the map or plat thereof on file or of record in the Office of the County Recorder in and for Ramsey County, Minnesota

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3),

this Order is effective immediately.

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

\_\_\_\_\_  
Judge of Bankruptcy Court