

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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IN RE: LORI ALKIRE,

Debtor.

Case No. 04-30196-DDO

Chapter 7

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FIRST NATIONAL BANK OF OMAHA,

Plaintiff,

v.

LORI ALKIRE,

Defendant.

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**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND**

A.P. No. 04-3107

**A. The following are the Findings of Fact:**

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §1334 and §157, and this matter is a core proceeding pursuant to 28 U.S.C. §157.

2. The Debtor filed a Petition, and an Order for Relief was entered under 11 U.S.C. Chapter 7 on January 15, 2004.

3. At all times mentioned herein, the Defendant, Lori Alkire, had possession of a First National Bank of Omaha credit account, number 4046-7301-4764-0627, which the Defendant opened in October 2002.

4. On November 6, 2003, the balance on the abovementioned account was \$8,746.61.

5. On November 7, 2003, the Defendant took a single cash advance in the amount of \$6,200.00. See copies of account

statements, attached to the Complaint, incorporated therein, and marked Exhibit A.

6. The Defendant failed to make the minimum monthly payments and did not even make a single payment on this account after incurring the abovementioned \$6,200.00 cash advance.

7. On October 16, 2003, even prior to taking the abovementioned \$6,200.00 cash advance on this account, the Debtor contacted her attorney regarding filing bankruptcy.

8. On November 7, 2003, the same day the Debtor took the abovementioned \$6,200.00 cash advance on this account, she met with her bankruptcy attorney and paid \$910.00 towards her bankruptcy filing fees and bankruptcy attorney's legal fees.

9. On January 15, 2004, more than sixty days after paying her bankruptcy attorney's legal fees in full, the Debtor's Chapter 7 bankruptcy was actually filed with the Court.

10. Pursuant to the Debtor's sworn Statement of Financial Affairs, in the year prior to and up through the Debtor's bankruptcy filing, the Debtor did not transfer any property other than in the ordinary course of the Debtor's financial affairs, the Debtor did not suffer any losses from fire, theft, other casualty, or gambling, and the Debtor did not have any property repossessed, sold at foreclosure, or transferred through a deed in lieu of foreclosure.

11. At the time of the bankruptcy filing, pursuant to the Debtor's sworn Schedule I, the Debtor's monthly income was zero.

12. At the time of the bankruptcy filing, pursuant to the Debtor's sworn Schedule J, the Debtor's monthly living expenses were approximately \$1,840.00.

13. The minimum monthly payments on the Debtor's \$52,000.00 of unsecured debt were between \$1,100.00 and \$1,600.00 each month (based upon minimum monthly payments estimated at between 2% and 3% of the outstanding principal balances on her total unsecured debt).

14. At the time of the bankruptcy filing, the Debtor had no monthly disposable income from which to pay even the minimum monthly payments on her unsecured debt which was in excess of \$52,000.00 (the Debtor listed the balance on the Plaintiff's account in her sworn Schedule F as \$8,746.61 (which was the approximate balance on this account as of October 20, 2003, however, the actual balance on this account at the time of the bankruptcy filing was \$15,952.27 (see Exhibit A attached to the Complaint), therefore, the Debtor's total unsecured debt was at least \$52,203.73 (\$44,998.07 listed by the Debtor on her sworn Schedule F, plus \$7,205.66 of additional debt owing to the Plaintiff not listed by the Debtor in her sworn Schedule F)).

15. When the Defendant accepted and opened this credit account with the Plaintiff, she agreed to abide by the terms set forth in the account agreement.

16. The Defendant's use of this account was governed by the terms of the account agreement.

17. At the time the Defendant incurred the abovementioned \$6,200.00 cash advance, the Defendant represented that she had the

intention and ability to repay said debt and represented that she agreed to abide by the terms of the account agreement.

18. The Plaintiff relied upon the Defendant's representation of intent and ability to repay and representation of agreement to abide by the terms of the account agreement in allowing the Defendant to use this account on November 7, 2003.

19. The Plaintiff was justified in its reliance upon the Defendant's representation of intent and ability to repay and representation of agreement to abide by the terms of the account agreement because:

i. At the time of the account opening the Plaintiff reviewed the income of applicant, whether the applicant owned or rented her home, the length of time the applicant had resided at her current address, the name of the applicant's current employer and the employer's phone number, the applicant's social security number, date of birth, current address and phone number. A credit report on the applicant was acquired. The criteria that was reviewed included the Debtor's credit score, a check to see that the income was at or above the minimum standard, a check to see if the applicant already had over a maximum number of credit cards or was over a set amount deemed to be a high revolving balance, a check to see if the applicant had more than a set amount of inquiries for credit, a check to see if there were derogatory reports from current creditors, and a check for previous bankruptcies, judgments, or judicial liens. At the time of the application, the

debtor met or exceeded all the minimum criteria set to allow the opening of a credit card account.

ii. The Debtor opened this credit account in October 2002, the account had been in existence for a year and a half prior to her filing bankruptcy, the account continued to remain open given her payments made on the account, the Plaintiff's reviewing her credit scores while the account was open, and given the Debtor's absence from Bankruptcy Risk reports reviewed while the account was open.

iii. The Defendant did not advise the Plaintiff that she would be unable to honor the above representations or that she would be unable to abide by the terms of the account agreement at the time that she made the representations and made the charges set forth in Exhibit A of the Complaint.

20. The Defendant's use of this account did not raise and should not have raised any "red flags" or suspicions on the part of the Plaintiff regarding the truthfulness of the Defendant's representation of intent and ability to pay the Plaintiff and representation of agreement to abide by the terms of the account agreement.

21. The Defendant incurred the abovementioned \$6,200.00 cash advance on the account at a time when the Defendant was unable to meet her existing financial obligations as they became due.

22. At the time the Defendant incurred the abovementioned \$6,200.00 cash advance, the Defendant intended to deceive the Plaintiff in that she either had no intention to repay said debt to

the Plaintiff, or the Defendant knew or should have known that she had no ability to repay said debt to the Plaintiff, or the Defendant made such representation of intent and ability to repay and representation of agreement to abide by the terms of the account agreement with a reckless disregard as to the truthfulness of said representation.

**B. Conclusion of Law:**

Therefore, the Defendant obtained said money from the Plaintiff by false pretenses, false representation, or actual fraud, in the amount of \$6,200.00, and for the above reasons, this indebtedness to Plaintiff, First National Bank of Omaha, is nondischargeable in bankruptcy pursuant to 11 U.S.C. §523(a)(2)(A).

Dated: September 29, 2004      LET JUDGMENT BE ENTERED ACCORDINGLY.

/e/ Dennis D. O'Brien

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HONORABLE DENNIS D. O'BRIEN  
UNITED STATES BANKRUPTCY JUDGE

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on 09/30/04 Lori A. Vosejka, Acting Clerk, By DLR
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STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF RAMSEY )

I, Doretta Raymond, hereby certify: That I am the Judicial Assistant for Judge Dennis D. O'Brien of the United States Bankruptcy Court for the Third Division of the District of Minnesota, at St. Paul, Minnesota; that on September 30, 2004, true and correct copies of the annexed **ORDER** were placed by me in individually stamped official envelopes; that said envelopes were addressed individually to each of the persons, corporations, and firms at their last-known addresses appearing hereinafter; that said envelopes were sealed and on the day aforementioned were placed in the United States mails at St. Paul, Minnesota, to:

U. S. TRUSTEE  
1015 U. S. COURTHOUSE  
300 SO. 4th STREET  
MINNEAPOLIS, MN 55415

LORI ALKIRE  
3804 WILLOW WAY  
ST PAUL MN 55122-1627

FIRST NATIONAL BANK OF OMAHA  
1620 DODGE ST STOP 3105  
OMAHA NB 68197-3105

JENNIFER M BERQUIST, ESQ.  
401 N 3RD ST STE 590  
MINNEAPOLIS, MN 55401

and this certificate is made by me.

/e/Doretta Raymond