

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: CHRISTINE MICHELLE FEHRMAN,  
  
Debtor.

BKY. No.: 04-30606  
Chapter 13

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

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TO: CHRISTINE MICHELLE FEHRMAN AND HER ATTORNEY, CRAIG  
W. ANDRESEN, ATTORNEY AT LAW, 2001 KILLEBREW DR., STE.  
330, BLOOMINGTON, MN 55425.

1. Mortgage Electronic Registration Systems, Inc., its successors and assigns, as nominee for Southstar Funding, LLC, its successors and assigns, by its undersigned attorneys, Reiter & Schiller, will make a motion for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 27, 2004 at 9:30 A.M. in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota, or as soon as counsel may be heard before The Honorable Dennis D. O'Brien, United States Bankruptcy Court Judge.

3. Any response to this motion must be filed and delivered not later September 22, 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 16, 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.

## **MOTION TO LIFT AUTOMATIC STAY**

4. This Court has jurisdiction over this motion 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 February 5, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtor that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage, a copy of which is attached hereto as Exhibit A.

6. That pursuant to the provisions of 11 U.S.C. §362, the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That pursuant to the Second Modified Chapter 13 Plan confirmed on July 15, 2004 the Debtor was to make all current monthly payments due on said mortgage outside of the plan.

b) To date, the Debtor is in default on said payments from June 1, 2004 to date in the amount of \$866.08 per month, plus post-petition late charges.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Mortgage Electronic Registration Systems, Inc., its successors and assigns, as nominee for Southstar Funding, LLC, its successors and

assigns, by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to foreclose its security interest, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: August 27, 2004

By: /e/Thomas J. Reiter  
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Academy Professional Building  
25 North Dale Street, 2<sup>nd</sup> Floor  
St. Paul, MN 55102-2227  
(651) 209-9760  
Attorney Reg. 152262/231605  
(F0391)

**THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.**

VERIFICATION

I, Scott Barnes, Vice President with Mortgage Electronic Registration Systems, Inc. declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: August 27, 2004

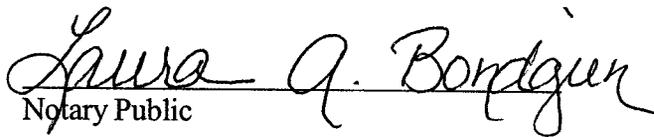
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.

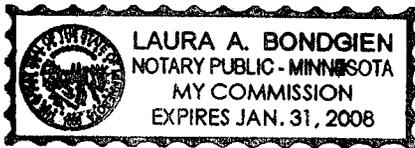
By:   
Scott Barnes

Its: Vice President

Subscribed to and sworn before me this

27th day of August, 2004.

  
Notary Public



344  
Premiere  
Title

515643

Document No.  
515643

OFFICE OF COUNTY RECORDER  
RICE COUNTY, MINN

No. of Pages 21



I hereby certify that the within instrument was filed in this office  
for record on 04-25-2003 at 10:12  AM  PM

04252003

Marsha DeGroot, County Recorder



*Marsha DeGroot*  
Deputy

21 pgs  
500  
2600

Date <u>4.25.03</u>	Receipt # <u>2318</u>
Mortgage Registration Tax Paid of \$ <u>236.90</u>	
Fran Windschitl, Rice County Auditor/Treasurer	
<i>Fran Windschitl</i>	
Deputy	

[Space Above This Line For Recording Data]

R

# MORTGAGE

Return To:

MIN100190821191000014

SouthStar Funding, LLC  
400 Northridge Road, Suite  
1000, Atlanta, GEORGIA 30350

## DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated April 24, 2003 together with all Riders to this document.

(B) "Borrower" is Christine Fehrman, an unmarried person

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is SouthStar Funding, LLC

Lender is a Limited Liability Company organized and existing under the laws of DELAWARE

*(Signature)*

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

Witnesses:

\_\_\_\_\_

  
Christina Fahrman (Seal)  
-Borrower

\_\_\_\_\_

\_\_\_\_\_ (Seal)  
-Borrower

File No.: 200300053

### EXHIBIT A

Parts of Lots 4 and 5, Block 81, in the Original Town, Now City, of Faribault, Rice County, Minnesota, Described as follows: Beginning at a point in the north line of said Lot 4, a distance of 60.00 feet Easterly from the Northwest corner of said Lot 4; thence North 90° 00' 00" East, along said North line (for purposes of this description bearing of said North line is assumed), a distance of 41.33 feet; thence South 0° 00' 00", a distance of 66.65 feet; thence South 21° 45' 41" East 13.30 feet; thence North 90° 00' 00" East 6.23 feet; thence South 0° 00' 00", a distance of 53.00 feet to a point in the South line of said Lot 5, Block 81; thence North 90° 00' 00" West, along said South line, 46.42 feet to a point 66.00 feet Easterly from the Southwest corner of said Lot 5; thence North 0° 01' 52" West, parallel with the West line of said Block 81, a distance of 12.00 feet; thence North 90° 00' 00" West, 6.00 feet; thence North 0° 01' 52" West, 120.00 feet to said point of beginning; containing 6,000 square feet, more or less.

Abstract Property.



MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.

Dated: August 27, 2004

By: 

Scott Barnes  
Vice President  
1270 Northland Drive, Ste. 200  
Mendota Heights, MN 55120

Subscribed to and sworn before me this

27th day of August, 2004.





UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

-----  
In re: CHRISTINE MICHELLE FEHRMAN,  
  
Debtor.

BKY. No.: 04-30606  
Chapter 13

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

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**MEMORANDUM OF LAW**

I. Factual Background

The Debtor filed her petition herein on February 5, 2004 under Chapter 13 of the Federal Bankruptcy Code and listed real property located in Rice County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described on Exhibit A attached to the Notice of Hearing and Motion for Relief from Automatic Stay.

The amount due under said mortgage loan was approximately \$107,000.00. Pursuant to the Second Modified Chapter 13 Plan confirmed on July 15, 2004 the Debtor was to make all current monthly payments due on said mortgage outside of the plan. The Debtor is in default on said payments from June 1, 2004 to date in the amount of \$866.08 per month, plus post-petition late charges.

II. Argument

**GOOD CAUSE EXISTS TO GRANT THE MOVANT  
RELIEF FROM THE STAY FOR CAUSE.**

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following

conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtor has failed to meet her contractual obligation in making payments as they become due after the filing of this petition, and such a failure constitutes “cause” entitling the Movant to relief from the automatic stay under 11 U.S.C. §362 (d)(1). A continued failure by a debtor to maintain regular payments to a secured creditor is sufficient “cause” to entitle a creditor to relief from stay. In re Whitebread, 18 B.R. 193 (Bkrcty. D. Minn. 1982); In re Keays, 36 B.R. 1016 (Bkrcty. E.D. Pa. 1984); In re David, 64 B.R. 358 (Bkrcty. S.C.N.Y. 1986).

In view of the Debtor’s inability to make payments toward her loan obligation, the Movant's interest in the real property of the Debtor is not adequately protected. A continuing default by the Debtor will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtor is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtor. The Debtor’s offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

### **CONCLUSION**

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: August 27, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Rebecca F. Schiller

Attorneys for Movant

The Academy Professional Building

25 North Dale Street, 2<sup>nd</sup> Floor

St. Paul, MN 55102-2227

(651) 209-9760

Attorney Reg. 152262/231605

(F0391)



REITER & SCHILLER

Dated: August 30, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2<sup>nd</sup> Floor

St. Paul, MN 55102-2227

(651) 209-9760

Attorney Reg. 152262

(F0391)



the Southwest corner of said Lot 5; thence North 0°01'52" West, parallel with the West line of said Block 81, a distance of 12.00 feet; thence North 90°00'00" West, 6.00 feet; thence North 0°01'52" West, 120.00 feet to said point of beginning; containing 6,000 square feet, more or less, Rice County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

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

\_\_\_\_\_  
The Honorable Dennis D. O'Brien  
Judge of U.S. Bankruptcy Court