

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: JULIE A. KUBISTA,

Debtor.

BKY. No.: 04-31471

Chapter 13

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

TO: JULIE A. KUBISTA AND HER ATTORNEY, IAN TRAQUAIR BALL,
ATTORNEY AT LAW, 12 S. 6TH ST., STE. 326, MINNEAPOLIS, MN
55402.

1. Household Industrial Finance Company, 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 March 12, 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 and assignments of mortgage, copies of which are attached hereto as Exhibits A, B, & C, respectively.

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 Chapter 13 Plan confirmed on May 13, 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 \$963.68 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, Household Industrial Finance Company, 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, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262/231605
(F0400)

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

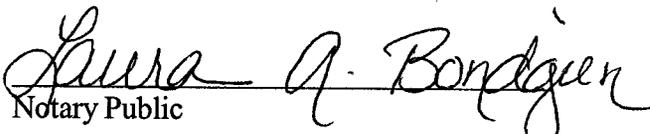
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

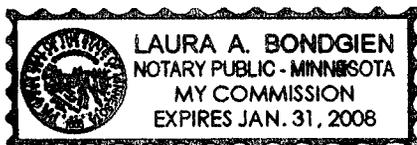
By: 
Scott Barnes

Its: Vice President

Subscribed to and sworn before me this

27th day of August, 2004.


Notary Public



No. 46378 Date 11-09-01

Registration Tax of \$218.50 paid.

Stuung Pohuk
County Treasurer

By John Marshall Deputy
County signed

A 294036

Pgs 8

COUNTY RECORDER
STEELE COUNTY, MN

Certified, filed and/or recorded Fee:
on 11/09/2001 at 1:15 pm -20.00

Well Certificate
 Received
 Not required
Rose P. Branderhorst,
Steele County Recorder
by Jul Deputy

[Space Above This Line For Recording Data]

LOAN NO. 3486795

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on **OCTOBER 23, 2001**. The mortgagor is
JULIE A. KUBISTA, UNMARRIED

This Security Instrument is given to
HOMEOWNERS LOAN CORP., ("Borrower").

which is organized and existing under the laws of **DELAWARE**, and whose address is
3999 S. SHERWOOD FOREST BLVD., STE 2C
BATON ROUGE, LA 70816 ("Lender").

Borrower owes Lender the principal sum of **NINETY-FIVE THOUSAND AND 00/100**

Dollars (U.S. \$ **95,000.00**). 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 29, 2016** and for interest at the yearly rate of **11.815** 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; (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 **STEELE** County, Minnesota:
SEE ATTACHED EXHIBIT "A"

which has the address of **1141 RICE LAKE STREET, OWATONNA** [City]
Minnesota **55060** [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 seised 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.

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Borrower further acknowledges receipt of a copy of this Security Instrument and the Note referenced herein.

Witnesses:

Julie A. Kubista (Seal)
- Borrower
JULIE A. KUBISTA

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

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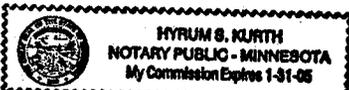
This Instrument was Drafted by ~~not Please Refer to this document for~~
HOMEOWNERS LOAN, - CHAD M. BONADONA
4501 CIRCLE 75 PARKWAY, STE F6300
ATLANTA, GA 30339

State of Minnesota , Steele County ss:

The foregoing instrument was acknowledged before me this 23RD of OCTOBER, 2001 by
JULIE A. KUBISTA , UNMARRIED

Witness my hand and official seal.
My Commission expires: 01-31-05

H. S. J.
Notary Public



LEGAL DESCRIPTION

EXHIBIT "A"

LOT 1, BLOCK 1, VALLEY ADDITION, OWATONNA, STEELE COUNTY, MINNESOTA, ACCORDING TO THE RECORDED PLAT THEREOF.

ABSTRACT PROPERTY.

IMPROVEMENTS THEREON BEAR THE MUNICIPAL ADDRESS: 1141 Rice Lake Street, Owatonna, Minnesota 55060

STEELE COUNTY, MN
Certified, filed and/or recorded Fee:
on 10/10/2002 at 8:15 am -30.00

Well Certificate
[] Received
[] Not required
Avis E. Lewison
Steele County Recorder
by [Signature], Deputy

When Recorded, Mail and Return To:
Household Mortgage Services
577 Lamont Rd.
P.O. Box 1247
Elmhurst, IL 60126

PREPARED BY: BILL LONG
HOMEOWNERS LOAN CORPORATION 4501 CIRCLE 75
PARKWAY, STE D-4300 ATLANTA, GEORGIA 30339

LOAN NO. 3486795

ASSIGNMENT OF MORTGAGE/SECURITY DEED
By Corporation or Partnership

FOR VALUABLE CONSIDERATION,
HOMEOWNERS LOAN CORP.,

under the laws of

DELAWARE

, Assignor (whether one or more), hereby sells, assigns and transfers to

Mortgage Electronic Registration Systems, Inc.
P.O. Box 2026, Flint, MI 48601-2026

MERS #: 1000460-000 60088824
PH #: 1-888-879-8377

, Assignee (whether

one or more), the Assignor's Interest in the Mortgage/Security Deed dated OCTOBER 23, 2001 executed by
JULIE A. KUBISTA

as Mortgagor/Grantor, to
HOMEOWNERS LOAN CORP.

as Mortgagee/Beneficiary, and filed for record November 9, 2001 as Document Number
A-294030 (or in Book NA of Book Page NA), in the Office of the
(County Recorder) (Steele) of **STEELE** County, MN

described hereinafter as follows:

TOGETHER with the note or notes therein described or referred to, the money due and to become due thereon with interest,
and all rights accrued or to accrue under said Real Estate Mortgage/Security Deed.

(There is No Corporate Seal)

HOMEOWNERS LOAN CORP.

By [Signature]

CHAD BONADONA
Its: PRESIDENT

Witness [Signature]

Witness [Signature]

STATE OF GA }
COUNTY OF FULTON } ss.

On this 23 day of October 2001, before me, a Notary Public
within and for said County, personally appeared

CHAD M. BONADONA

Personally known to me to be the duly authorized agent of the ASSIGNOR and personally known to me to be the same
person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that
as such duly authorized agent of the ASSIGNOR as a free and voluntary act, and as a free and voluntary act and assignment
of said ASSIGNOR, for the uses and purposes therein set forth.

(B)



[Signature]
Signature of Person Taking Acknowledgment

My Commission Expires:

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: JULIE A. KUBISTA,

Debtor.

BKY. No.: 04-31471
Chapter 13

AFFIDAVIT OF MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC. VICE PRESIDENT

STATE OF MINNESOTA)

COUNTY OF DAKOTA)

Scott Barnes, being duly sworn on oath states:

1. That I am a Vice President for Mortgage Electronic Registration Systems, Inc. in the Mendota Heights, Minnesota servicing center. Mortgage Electronic Registration Systems, Inc. services loans for Movant, Household Industrial Finance Company. In my capacity as a Vice President, I have had the opportunity to review the mortgage account of the Debtor.

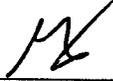
2. That pursuant to the Chapter 13 Plan confirmed on May 13, 2004 the Debtor was to make all current monthly payments due on said mortgage outside of the plan.

3. That to date, the Debtor is in default on said payments from June 1, 2004 to date in the amount of \$963.68 per month, plus post-petition late charges.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

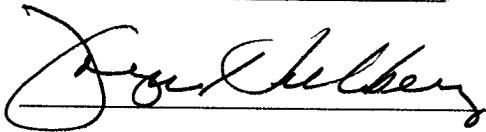
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

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: JULIE A. KUBISTA,

Debtor.

BKY. No.: 04-31471
Chapter 13

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

MEMORANDUM OF LAW

I. Factual Background

The Debtor filed her petition herein on March 12, 2004 under Chapter 13 of the Federal Bankruptcy Code and listed real property located in Steele County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot 1, Block 1, Valley Addition to Owatonna.

The amount due under said mortgage loan was approximately \$118,000.00. Pursuant to the Chapter 13 Plan confirmed on May 13, 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 \$963.68 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 (Bkrctcy. D. Minn. 1982); In re Keays, 36 B.R. 1016 (Bkrctcy. E.D. Pa. 1984); In re David, 64 B.R. 358 (Bkrctcy. 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, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262
(F0400)

UNITED STATES BANKRUPTCY COURT
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UNSWORN DECLARATION FOR PROOF OF SERVICE

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The St. Paul Building, 6 West 5th St., St. Paul, Minnesota 55102 declares that on August 30, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Jasmine Z. Keller
Trustee
12 S. 6th St., Ste. 310
Minneapolis, MN 55402

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

Julie A. Kubista
1141 Rice Lake St.
Owatonna, MN 55060

Ian Traquair Ball
Attorney at Law
12 S. 6th St., Ste. 326
Minneapolis, MN 55402

Household Financial Services, Inc.
1270 Northland Drive, Ste. 200
Mendota Heights, MN 55120

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

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, 2nd Floor

St. Paul, MN 55102-2227

(651) 209-9760

(F0400)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: JULIE A. KUBISTA,

Debtor.

BKY. No.: 04-31471
Chapter 13

ORDER TERMINATING STAY

This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on September 27, 2004 in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota. The movant, Household Industrial Finance Company, was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. 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:

Lot 1, Block 1, Valley Addition, Owatonna,
Steele 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