

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Dennis M. Stitzinger
SSN XXX-XX-3743
Karen Stitzinger
SSN XXX-XX-7382

CHAPTER 7 CASE

CASE NO. 04-32943 DDO

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

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

1. Washington Mutual Home Loans (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 September 22, 2004, at 9:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 228A 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 September 17, 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 September 13, 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 May 14, 2004. 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 \$86,473.00, as evidenced by that certain Promissory Note dated December 19, 2003, 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 December 19, 2003, executed by Dennis M. Stitzinger and Karen T. Stitzinger, husband and wife, 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 Sibley County, Minnesota and is legally described as follows to-wit:

The following real property in the City of Gaylord, Sibley County, Minnesota, described as follows: Lot 4, block 49, West Addition to Gaylord. Being the same property conveyed to Dennis M. Stitzinger and Karen T. Stitzinger, husband and wife, recorded 3/29/1999 in document 14084.

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 August 20, 2004, Debtor is delinquent in the making of monthly payments as required for the months of June, 2004 through August, 2004, inclusive, in the amount of \$707.31 each; accruing late charges and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective organization. The value of the property as scheduled by Debtor is \$104,000.00 subject to Secured Creditor's mortgage in excess of \$88,425.77.

The property is also subject to another mortgage in favor of US Bank in excess of \$51,388.55.

Since this is a liquidation case, no reorganization is being attempted.

11. 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.

12. 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 modified 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 20th day of August, 2004.

WILFORD & GESKE

By /e/ Lawrence A. Wilford
Lawrence A. Wilford
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 117109

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

MERS Number 1002033-000028318-1

Loan Number 614766962

FHA Case No.

271-9042602 703

NOTE

DECEMBER 19, 2003

[Date]



810 WEST HIGH AVENUE, GAYLORD, MINNESOTA 55334

[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns.
 "Lender" means WATERMARK FINANCIAL PARTNERS, INC. and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of **EIGHTY-SIX THOUSAND FOUR HUNDRED SEVENTY-THREE AND 00/100ths Dollars (U.S.\$86,473.00)**, plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of **SIX AND ONE-HALF percent (6.500%)** per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT**(A) Time**

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on **FEBRUARY 1, 2004**. Any principal and interest remaining on the first day of **JANUARY, 2034**, will be due on that date, which is called the maturity date.

(B) Place

Payment shall be made at **4562 SOUTH ULSTER STREET, SUITE 300, DENVER, COLORADO 80237** or at such place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of **U.S. \$546.57**. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box.]

 Graduated Payment Allonge Other [Specify] Growing Equity Allonge**5. BORROWER'S RIGHT TO PREPAY**

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

6. BORROWER'S FAILURE TO PAY**(A) Late Charge for Overdue Payments**

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of **FOUR percent (4.000%)** of the overdue amount of each payment.

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

Borrower Initials

FHA Multistate Fixed Rate Note

A

When Recorded Mail To:

WATERMARK FINANCIAL PARTNERS, INC.
4582 SOUTH ULSTER STREET, SUITE 300
DENVER, COLORADO 80237

Loan Number 614766962
MIN 1002033-0000028318-1

WE CERTIFY THE FOREGOING INSTRUMENT IS
A TRUE AND CORRECT COPY OF THE ORIGINAL

BY Debbie Heinig

[Space Above This Line For Recording Data]

FHA Case No.

271-9042602-703

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on **DECEMBER 19, 2003**. The mortgagor is **DENNIS M. STITZINGER and KAREN T. STITZINGER, HUSBAND AND WIFE** ("Borrower"). This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns), as beneficiary. 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. **WATERMARK FINANCIAL PARTNERS, INC.** ("Lender") is organized and existing under the laws of **COLORADO**, and has an address of **4582 SOUTH ULSTER STREET, SUITE 300, DENVER, COLORADO 80237**. Borrower owes Lender the principal sum of **EIGHTY-SIX THOUSAND FOUR HUNDRED SEVENTY-THREE AND 00/100ths Dollars (U.S.\$86,473.00)**. 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 **JANUARY 1, 2034** and for interest at the yearly rate of **SIX AND ONE-HALF 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 MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property located in **SIBLEY County, Minnesota**:

SEE ATTACHED EXHIBIT "A"

which has the address of 810 WEST HIGH AVENUE GAYLORD

[Street]

[City]

Minnesota 55334 ("Property Address");

[Zip Code]

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 understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

Borrower Initials DMS KTS

EXHIBIT B

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)]

- Condominium Rider
- Growing Equity Rider
- Adjustable Rate Rider
- Planned Unit Development Rider
- Graduated Payment Rider
- Non-Own Occp Rider

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:

_____ (Seal) DENNIS M. STITZINGER -Borrower

_____ (Seal) KAREN T. STITZINGER -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

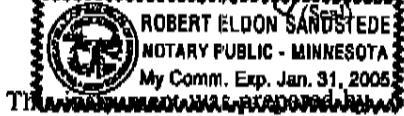
STATE OF MINNESOTA, SIBLEY

County ss:

On this 19TH day of DECEMBER, 2003, before me appeared DENNIS M. STITZINGER and KAREN T. STITZINGER, HUSBAND AND WIFE, to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that They executed the same as free act and deed.

My Commission Expires: Jun 31, 2005

Robert Eldon Sandstede
Notary Public



, of
, Minnesota.

INSTRUMENT PREPARED BY
BRIG COUPE
WATERMARK FINANCIAL
4582 SOUTH ULSTER ST.
DENVER, CO 80237

EXHIBIT "A"

**THE FOLLOWING REAL PROPERTY IN THE CITY OF GAYLORD, SIBLEY
COUNTY, MINNESOTA, DESCRIBED AS FOLLOWS:**

LOT 4, BLOCK 49, WEST ADDITION TO GAYLORD.

**BEING THE SAME PROPERTY CONVEYED TO DENNIS M. STITZINGER AND
KAREN T. STITZINGER, HUSBAND AND WIFE, RECORDED 03/29/1999 IN
DOCUMENT 14084.**

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Dennis M. Stitzinger
SSN XXX-XX-3743
Karen Stitzinger
SSN XXX-XX-7382

CASE NO. 04-32943 DDO

Debtor.

**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 August 20, 2004, Debtor is delinquent for the monthly payments as required for the months of June, 2004 through August, 2004, in the amount of \$707.31 each; accruing late charges and attorneys fees and costs of \$700.00.

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

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$104,000.00 subject to Secured Creditor's mortgage in excess of \$88,425.77.

The property is also subject to another mortgage in favor of US Bank in excess of \$51,388.55.

Since this is a liquidation case, no reorganization is being attempted.

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 is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

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

Dated this 20th day of August, 2004.

WILFORD & GESKE

By /e/ Lawrence A. Wilford

Lawrence A. Wilford
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 117109

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Dennis M. Stitzinger
SSN XXX-XX-3843
Karen Stitzinger
SSN XXX-XX-7382

CASE NO. 04-32943 DDO

**AFFIDAVIT OF
DAN ARNTSEN**

Debtor.

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

1. That he is the Bankruptcy Manager of Fidelity National Foreclosure Services.

2. Washington Mutual Home Loans, 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 December 19, 2003, executed by Dennis M. Stitzinger and Karen T. Stitzinger, husband and wife. The property is located in Sibley County, Minnesota and is legally described as follows, to-wit:

The following real property in the City of Gaylord, Sibley County, Minnesota, described as follows: Lot 4, Block 49, West Addition to Gaylord. Being the same property conveyed to Dennis M. Stitzinger and Karen T. Stitzinger, husband and wife, recorded 3/29/1999 in document 14084.

3. That he has reviewed the account records relating to the Stitzinger mortgage loan, account no. 0614766962.

4. That as of August 10, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$86,132.81
Interest through August 10, 2004	1,549.24
Attorney's Fees:	700.00
Late Charges:	43.72
TOTAL:	\$88,425.77

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of June, 2004 through August, 2004 in the amount of \$707.31 each.

6. This affidavit is given in support of the motion of Washington Mutual Home Loans for relief from the automatic stay.

FIDELITY NATIONAL FORECLOSURE SERVICES

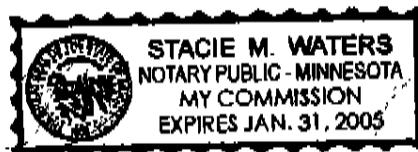
By


Its Bankruptcy Manager

Subscribed and sworn to before me
this 12 day of August, 2004.


Notary Public

9733_1



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Dennis M. Stitzinger
SSN XXX-XX-3743
Karen Stitzinger
SSN XXX-XX-7382

CASE NO. 04-32943 DDO

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

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 August 20, 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:

Dennis M. Stitzinger
Karen Stitzinger
21286 250th Street
New Ulm, MN 56073

Michael S. Dietz
505 Marquette Bldg
PO Box 549
Rochester, MN 55903

Mark C. Halverson
Halverson & Associates
PO Box 3544
Mankato, MN 56002-3544

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

US Bank
PO Box 790179
St. Louis, MO 63179-0179

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

Dated this 20th day of August, 2004.

/e/ Diana Waletzko _____
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Dennis M. Stitzinger
SSN XXX-XX-3743
Karen Stitzinger
SSN XXX-XX-7382

CHAPTER 7 CASE

CASE NO. 04-32943 DDO

Debtor.

ORDER

The above entitled matter came on for hearing upon motion of Washington Mutual Home Loans (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on September 22, 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 December 19, 2003, executed by Dennis M. Stitzinger and Karen T. Stitzinger, husband and wife, covering real estate located in Sibley County, Minnesota, legally described as follows, to-wit:

The following real property in the City of Gaylord, Sibley County, Minnesota, described as follows: Lot 4, block 49, West Addition to Gaylord. Being the same property conveyed to Dennis M. Stitzinger and Karen T. Stitzinger, husband and wife, recorded 3/29/1999 in document 14084

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

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

this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court