

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Carol J. Anderson
SSN XX-XX-7445

CASE NO. 04-33312 DDO

Debtor.

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 October 6, 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 October 1, 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 27, 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 June 3, 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 \$94,050.00, as evidenced by that certain Promissory Note dated July 31, 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 July 31, 1998, executed by Carol J. Anderson, a single person, recorded on August 4, 1998, as Document No. 171830, 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:

That part of the Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4), and the Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4) of Section 14, Township 113 North, Range 27 West, Sibley County, Minnesota, described as follows: Commencing at the Northwest corner of said Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4); thence on an assumed bearing of East along the North line of said Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) for a distance of 1002.42 feet to the actual point of beginning of the land to be described; thence on a bearing of South 0 degrees 57 minutes 19 seconds for a distance of 422.00 feet; thence on a bearing of East parallel with the said North line of the Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) for a distance of 361.28 feet; thence on a bearing of North 0 degrees 57 minutes 19 seconds West for a distance of 422 feet, more or less, to the North line of said Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4); thence Westerly along the said North line of the Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4) and the North line of the Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) for a distance of 361.28 feet, more or less, to the actual point of beginning.

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 September 3, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of July, 2004 through September, 2004, inclusive, in the amount of \$935.36 each; accruing late charges of \$68.82 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 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 3rd day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 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

NOTE

Loan No: 7810067110

FHLMC LN#: 994950179

July 31, 1998

Arlington

Minnesota

(City)

(State)

Property Address: Route #2, Box 249, Arlington, Minnesota 55307

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 94,050.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Goldstar Mortgage Corp.

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 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 7.000%. 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. PAYMENTS**(A) Time and Place of Payments**

I will pay principal and interest by making payments every month. I will make my monthly payments on the 15th day of each month beginning on September 1, 1998. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on August 1, 2028, I still owe amounts under this Note, I will pay those amount in full on that date, which is called the "maturity date."

I will make my monthly payments at Goldstar Mortgage Corp.

413 Chestnut Street, Chaska, Minnesota 55318

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 625.72

4. BORROWER'S RIGHT TO PREPAY

I have 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 use all of my prepayments to 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 payments unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

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

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

If the Note Holder has not received the full amount of any monthly payment by the end of the 15 calendar days after the date is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.0 % of my overdue payment of principal and interest. 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 due 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 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.

EXHIBIT

A

NO. 1-1112
Registration Tax Herson of \$ 216.43
Paid this 4th day of August 1998
Walter B. Buehler
County Treasurer

By [Signature] Deputy
Countersigned

[Signature]
County Auditor

By [Signature] (Space: Deputy) [This Line For Recording Data]
15414A3

OFFICE OF COUNTY RECORDER
Sibley County, Minnesota
I hereby certify that this document was filed in this office on the
4 day Aug. 1998 at 10 a.m. and was duly recorded as
document number 171830
Eldene Ebert Deputy
COUNTY RECORDER, by
Fees: S.C. \$4.30 W.C. 0 \$1.00 Rec. \$14.00
Well Certificate: Received / Not Required Total \$19.50
Abstr. - yes no / Received from/Return to:

1703
Loan No: 7810067110

MORTGAGE

DOC # A-171830

THIS MORTGAGE ("Security Instrument") is given on July 31, 1998

CARVER CD ABSTRACT & TITLE
411 CHESTNUT ST N
PO 106
CHASKA, MN 55318

The Mortgagor is
Carril L. Anderson, a single person



32002826

DOFT

("Borrower"). This Security Instrument is given to
Goldstar Mortgage Corp.

which is organized and existing under the laws of Minnesota
413 Chestnut Street, Chaska, Minnesota 55318

, and whose address is

("Lender"). Borrower owes Lender the principal sum of NINETY-FOUR THOUSAND FIFTY AND 00/100
Dollars (U.S. \$ 94,050.00).

Assigned # 171831

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 August 1, 2028
and for interest at the yearly rate of 7.000% 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
Sibley County, Minnesota:
SIBLEY COUNTY, MINNESOTA

That part of the Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4), and the Southwest Quarter (SW1/4) of the
Southeast Quarter (SE1/4) of Section 14, Township 113 North, Range 27 West, Sibley County, Minnesota, described as
follows:

Commencing at the Northwest corner of said Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4); thence on an
assumed bearing of East along the North line of said Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) for a
distance of 1002.42 feet to the actual point of beginning of the land to be described; thence on a bearing of South 0 degrees
57 minutes 19 seconds East for a distance of 422.00 feet; thence on a bearing of East parallel with the said north line of the
Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) for a distance of 361.28 feet; thence on a bearing of North 0
degrees 57 minutes 19 seconds West for a distance of 422 feet, more or less, to the North line of said Southwest Quarter
(SW1/4) of the Southeast Quarter (SE1/4); thence Westerly along the said North line of the Southwest Quarter (SW1/4) of
the Southeast Quarter (SE1/4) and the North line of the Southeast Quarter (1/4) of the Southwest Quarter (SW1/4) for a
distance of 361.28 feet, more or less, to the actual point of beginning.

which has the address of Route #2, Box 249
(Street)
Minnesota 55307 ("Property Address");
[Zip Code]

Arlington
[City]

EXHIBIT B

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person in possession of the Property. Lender shall publish a notice of sale, and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

22. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

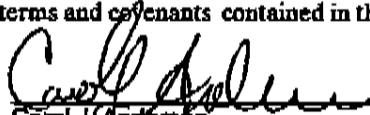
24. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

25. 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)]

- Adjustable Rate Rider
- Graduated Payment Rider
- Balloon Rider
- V. A. Rider
- Condominium Rider
- Planned Unit Development Rider
- Rate Improvement Rider
- Other(s) [specify] _____
- 1-4 Family Rider
- Biweekly Payment Rider
- Second Home 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.


 Carol J. Anderson
 475-96-7445

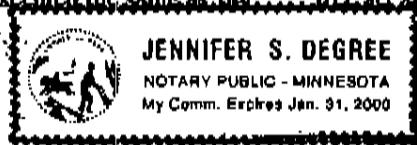
STATE OF MINNESOTA, Carver

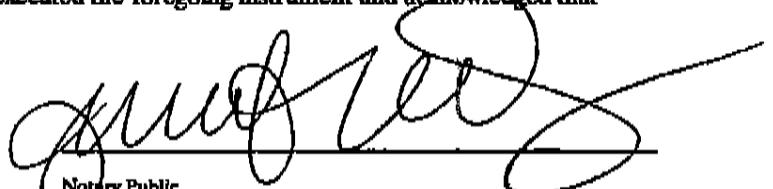
COUNTY as:

On this 31st day of July
Carol J. Anderson, a single person

, 1998, before me appeared

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.




 Notary Public

This Instrument was Prepared By: CARVER COUNTY ABSTRACT AND TITLE
CHASEA, MINNESOTA

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Carol J. Anderson
SSN XX-XX-7445

CASE NO. 04-33312 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 September 3, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of July, 2004 through September, 2004, in the amount of \$935.36 each; accruing late charges of \$68.82 and attorneys fees and costs of \$700.00.

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

The property is also subject to a second mortgage in favor of Wells Fargo Home Equity in excess of \$25,000.00.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrtcy.

S.D.N.Y., 1986).

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 3rd day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

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

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

CHAPTER 13 CASE

CASE NO. 04-33312 DDO

Carol J. Anderson
SSN XXX-XX-7445

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. 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 July 31, 1998, executed by Carol J. Anderson, a single person, recorded August 4, 1998, as Document No. 171830. The property is located in Sibley County, Minnesota and is legally described as follows, to-wit:

That part of the Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4), and the Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4) of Section 14, Township 113 North, Range 27 West, Sibley County, Minnesota described as follows:

Commencing at the Northwest corner of said Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4); thence on an assumed bearing of East along the North line of said Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) for a distance of 1002.42 feet to the actual point of beginning of the land to be described; thence on a bearing of South 0 degrees 57 minutes 19 seconds East for a distance of 422.00 feet; thence on a bearing of East parallel with the said north line of the Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) for a distance of 361.28 feet; thence on a bearing of North 0 degrees 57 minutes 19 seconds West for a distance of 422 feet, more or less, to the North line of said Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4); thence Westerly along the said North line of the Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4) and the North line of the Southeast Quarter (1/4) of the Southwest Quarter (SW1/4) for a distance of 361.28 feet, more or less, to the actual point of beginning.

3. That he has reviewed the account records relating to the Anderson mortgage loan, account no. 0032002826.
4. That as of August 31, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$96,506.78
Interest through August 31, 2004	1,149.18
Attorney's Fees:	700.00
Late Charges:	68.82
Escrow Advance:	3,381.22
 TOTAL:	 \$101,806.00

5. That the mortgage loan is delinquent for post-petition monthly mortgage payments for the months of July, 2004 through August, 2004 in the amount of \$935.36 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 SERVICES

By *[Signature]*
Its Bankruptcy Manager *Dan Arntsen*

Subscribed and sworn to before me
this ___ day of _____, 2004.

Laura A. Bondgien

Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Carol J. Anderson
SSN XX-XX-7445

Debtor.

CHAPTER 13 CASE

CASE NO. 04-33312 DDO

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on September 3, 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:

Carol J. Anderson
38565 248th St
Arlington, MN 55307

Michael J. Farrell
PO Box 519
Barnesville, MN 56514

Ian Traquair Ball
12 S 6th St Ste 326
Minneapolis, MN 55402

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

Wells Fargo
c/o Prenovost, Normandin, et al
2122 N. Broadway, Suite 200-BK
Santa Anna, CA 92706-2614

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

Dated this 3rd day of September, 2004.

/e/ Joanna Cheyka
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Carol J. Anderson
SSN XX-XX-7445

Debtor.

CHAPTER 13 CASE

CASE NO. 04-33312 DDO

ORDER

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 October 6, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. 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 July 31, 1998, executed by Carol J. Anderson, a single person, recorded on August 4, 1998, as Document No. 171830 covering real estate located in Sibley County, Minnesota, legally described as follows, to-wit:

That part of the Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4), and the Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4) of Section 14, Township 113 North, Range 27 West, Sibley County, Minnesota, described as follows: Commencing at the Northwest corner of said Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4); thence on an assumed bearing of East along the North line of said Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) for a distance of 1002.42 feet to the actual point of beginning of the land to be described; thence on a bearing of South 0 degrees 57 minutes 19 seconds for a distance of 422.00 feet; thence on a bearing of East parallel with the said North line of the Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) for a distance of 361.28 feet; thence on a bearing of North 0 degrees 57 minutes 19 seconds West for a distance of 422 feet, more or less, to the North line of said Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4); thence Westerly along the said North line of the Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4) and the North line of the Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) for a distance of 361.28 feet, more or less, to the actual point of beginning

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