

04-28176

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Chapter 13 Case:

Case Number BKY 04-34073-GFK

AnneMarie Ernster,

Debtor(s)

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

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

1. JPMorgan Chase Bank as Trustee moves the Court for relief requested below and gives Notice of Hearing.
2. The Court will hold a Hearing on this motion at 10:30 a.m., on November 1, 2004, in Courtroom No. 228B, at the United States Courthouse, at 300 South Fourth Street, St. Paul, Minnesota.
3. Any response to this motion must be filed and delivered no later than October 27, 2004, Which is three days before the time set for the hearing(excluding Saturdays, Sundays, and holidays), or filed and served by mail no later than October 21, 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, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on July 13, 2004. The case is now pending in this court.
5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.
6. On June 26, 2003, Anne Marie Ernster, single made, executed and delivered to Matrix Financial Services Corporation her Note (hereinafter referred to as the "Note"), in the original principal amount of \$147,250.00 bearing interest from the date thereof at the rate of 7.5% per annum until paid, payable in monthly installments commencing on the first day of each and every calendar month thereafter until the principal and interest were fully paid.

7. On June 26, 2003, to secure the payment of the Note, Anne Marie Ernster, single, executed and delivered to Matrix Financial Services Corporation her Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Ramsey County, Minnesota, legally described as follows:

Lot 21, Speiser's Addition, Ramsey County, Minnesota

which property has an address of: 1422 EDGERTON ST, SAINT PAUL, MN 55101. The mortgage was filed for record in the office of the Recorder, County of Ramsey, on September 9, 2003, as Document No. 3670295, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage assignments are attached hereto as Exhibit "A" and made a part hereof by reference.

8. The debtors have filed a plan dated July 23, 2004, which was confirmed by subsequent Court Order. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtors have not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtors are in arrearage for monthly payments as shown below. The last payment received from Debtors was applied to the July, 2004 payment as that was the next payment due. Post-petition arrearage include the following:

1 payments @ \$1,029.59	\$1,029.59
2 payments @ \$1,139.50	\$2,279.00
3 late charges @ \$51.48	\$154.44
Attorneys Fees & Costs	\$800.00
TOTAL POST - PETITION	<u>\$4,263.03</u>

No payments have been made pursuant to the plan. Amounts currently due and owing include the following:

Principal Balance	\$146,919.29
Interest	\$11,325.70
Escrow Shortage	\$4,352.74
Accumulated late fees	\$617.76
Attorneys Fees & Costs	\$2,432.09
TOTAL	<u>\$165,647.58</u>

11. Debtors have claimed said mortgaged property as exempt pursuant to 11 USC 522 (d) (1).
12. Debtors have represented the value of this property to be 160,000.00 on the schedules which accompanied their petition.
13. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law.
14. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, JPMorgan Chase Bank as Trustee moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.
2. For such other and further relief as the Court finds just and proper.

Dated: 10-13-01.

Signed: /s/ NANCY A. NORDMEYER

SHAPIRO & NORDMEYER, L.L.P.
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

VERIFICATION

I, Dan Aintzer, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on:

10-11-01

Signed:

[Signature]

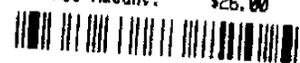
Fidelity National Foreclosure Solutions
1270 Northland Drive, Suite 200
Mendota Heights, MN 55120

170
24
2
0940

DOC# 3670295
Certified Recorded On
SEP. 09, 2003 AT 11:00AM

OFFICE CO. RECORDER
RAMSEY COUNTY MN

Fee Amount: \$26.00



DM

[Space Above This Line For Recording Data]

MORTGAGE

Return To:
MATRIX FINANCIAL SERVICES CORPORATION
ATTN: RECORDS DEPARTMENT
400 N. TUSTIN AVE., SUITE 100
SANTA ANA, CA 92705
Loan No. 0001867662

RETURN TO:
FIDELITY TITLE
1500 Selby Ave
St Paul, MN 55104
Ref. # 5394

RAMSEY COUNTY

Receipt No: 42906 Date: 8/4/2003
Registration tax hereon of \$353.40 Paid
MN Conservation Fund M.S. 473H \$5.00 Paid
Dorothy A. McClung, Auditor by Cdmcshea

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 **June 26 2003**, together with all Riders to this document.

MINNESOTA Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

VMP-6(MN) (0005)

Page 1 of 15

Initials: *AE*

VMP MORTGAGE FORMS - (800)521-7291



1 of 19

RETURN TO
all states title

0270
20-

JOC# 3757810

Certified Recorded On
MAY 28, 2004 AT 09:00AM

OFFICE CO. RECORDER
RAMSEY COUNTY MN

Fee Amount: \$20.00



Loan No. 0001867662

ASSIGNMENT OF MORTGAGE 8470754
4733

FOR VALUABLE CONSIDERATION. MATRIX FINANCIAL SERVICES CORPORATION

①

ARIZONA, a Corporation existing under the laws of
*, Assignor (whether one or more), hereby sells, assigns and transfers to

, Assignee
(whether one or more), the Assignor's interest in the Mortgage dated June 26 2003
executed by ANNE MARIE ERNSTEB, A SINGLE WOMAN

2-
JPMorgan Chase Bank as Trustee, c/o Residential Funding
Corporation, 2255 North Ontario, Suite 400, Burbank, CA 91504-3190
as Mortgagor, to MATRIX FINANCIAL SERVICES CORPORATION

as Mortgagee, and filed for record
(or in Book of Page), as Document Number 3670295 ✓
(Registrar of Titles) of RAMSEY County, Minnesota, together with all
right and interest in the note and obligations therein specified and the debt thereby secured. Assignor covenants
with Assignee, its successors and assigns, that there is still due and unpaid of the debt secured by the Mortgage
the sum of One Hundred Forty Seven Thousand Two Hundred Fifty and no/100

DOLLARS, with interest thereon from June 26 2003, and that Assignor has good
right to sell, assign and transfer the same.

Drafted By
Date Prepared:
July 2 2003

Send tax statements to:

ASSIGNOR MATRIX FINANCIAL SERVICES CORPORATION

By C. Ellis
C. ELLIS
Its ASST. SECRETARY

By Sandie Barilla
SANDIE BARILLA
Its VICE PRESIDENT

Recording Requested By Return To:
MATRIX FINANCIAL SERVICES CORPORATION
400 N. TUSTIN AVE., SUITE 100
SANTA ANA, CA 92705

Return to:
Shapiro & Nordmeyer



1-3

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case No. 04-34073-GFK

Chapter 13

AnneMarie Ernster,

Debtor(s)

MEMORANDUM OF LAW

JPMorgan Chase Bank as Trustee ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$4,263.03.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than 2 months. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrcty. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrcty. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrcty. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$165,647.58. The fair market value of the property is approximately \$160,000.00. Clearly, the Debtor(s) have no equity in the property.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: _____

10.13.11

Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

Signed: /e/ NANCY A. NORDMEYER

Nancy A. Nordmeyer-121356

Lawrence P. Zielke-152559

Attorney for Movant

7300 Metro Boulevard #390

Edina, MN 55439-2306

(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

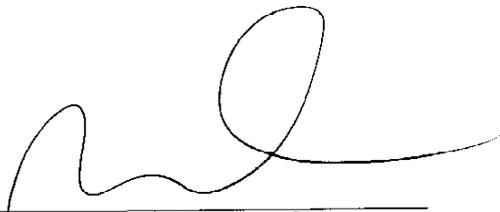
I, **Stephanie Pilegaard** says that on October 13, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

AnneMarie Ernster
1422 Edgerton Street
St. Paul, MN 55101

Mr. Robert J. Hogleund
Attorney at Law
1611 County Road B #106
Roseville, MN 55113

Jasmine Z. Keller, Trustee
12 South 6th Street, #310
Minneapolis, MN 55402

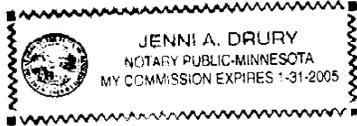
U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415



Stephanie Pilegaard

Subscribed and sworn to before me October 13, 2004.

Notary



04-28176
0436206270

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case No. 04-34073-GFK

AnneMarie Ernster,
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on November 1, 2004.

THIS CAUSE coming to be heard on the Motion of JPMorgan Chase Bank as Trustee, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED,

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow JPMorgan Chase Bank as Trustee, its successors and/or assigns, to foreclose in accordance with state law, the mortgage on the real property commonly known as:

Lot 21, Speiser's Addition, Ramsey County, Minnesota

NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court