

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

John Frederick Dahlmeier,

Debtor.

Bky. No. 04-34240
Chapter 13 case

RESPONSE TO OBJECTION TO CONFIRMATION

The Debtor John Frederick Dahlmeier (Debtor) makes the following response to the Objection to Confirmation of Modified Plan Dated August 11th, 2004 (Objection) served on the Debtor by AmeriCredit Financial Services, Inc. (AmeriCredit):

1. The Objection does not comply with Local Rule 9013-2.
2. The Debtor filed a Second Modified Plan dated September 15, 2004 on September 17, 2004 and gave notice to all parties in interest.
3. The Objection by AmeriCredit is based on only issues; the value of the collateral and the interest rate paid under the chapter 13 plan. AmeriCredit alleges the value of the collateral securing its claim is \$10,400.00. The Objection offers no evidence for, or basis for determining the calculation of, the value of the collateral. The collateral is a 2001 Honda Civic LX Coupe (Vehicle). The Vehicle is valued at \$7,000.00 in the schedules and chapter 13 plan.
4. The Vehicle was involved in a hit and run automobile accident in January, 2004. See, Statement of Financial Affairs, paragraph 8. The Vehicle suffered over \$2000.00 in damage but is still driveable.

5. The Debtor received insurance proceeds from the accident in the approximate amount of \$1,250.00. The Debtor paid substantially all the proceeds to AmeriCredit. The Debtor was unable to afford the costs of repairs and the vehicle remains in a substantially damaged condition.

6. Attached hereto as Exhibit A is the valuation obtained on the internet from Edmunds.com based on the condition of the vehicle. The valuation is based on a Honda Civic LX in rough condition. The actual condition of the Vehicle might be described as poor, but no valuation is available for a vehicle listed as in poor condition.

7. Exhibit A shows a dealer retail valuation of \$10,402.00 for a vehicle in retail condition. For the Vehicle in the condition it is currently in the valuation is \$6,896.00. The Debtor valued the Vehicle at \$7,000.00.

8. The other basis for the objection is the interest rate used in the chapter 13 plan. The interest rate in the Modified Plan was 8%. The interest rate in the Second Modified Plan is 6%. The interest rate is calculated by using the rationale and decision from Till v. SCS Credit Corporation, 541 U.S. ____ (2004). That decision determined the formula approach or prime-plus approach was the appropriate basis for calculating the interest rate under the chapter 13 cram down provisions. The formula approach uses the prime rate at the time of filing plus an additional amount of interest for the risk factor. Without determining the appropriate risk factor, Justice Stevens indicated a risk factor of 1 to 3% was used by courts around the country.

9. The prime interest rate as of the time of filing was 4.25%. The interest rate used by the Debtor is 6%, or a risk factor of 1.75%. The interest rate used in the chapter 13 plan complies with the decision of the United States Supreme Court.

WHEREFORE, the Debtor requests this Court deny the objection of AmeriCredit and confirm the Second Modified Plan dated September 15, 2004.

September 20, 2004

FOLEY & MANSFIELD P.L.L.P.

/s/ David M. Dahlmeier
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ATTORNEYS FOR DEBTOR



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2001 Honda Civic 2 Dr LX Coupe



True Market Value® Pricing

	Trade-In	Private Party	Dealer Retail
National Base Price	\$7,933	\$9,217	\$10,402
Optional Equipment	\$0	\$0	\$0
Color Adjustment Black	\$0	\$0	\$0
Regional Adjustment for Zip Code 55401	\$84	\$98	\$111
Mileage Adjustment 65,000 miles	\$-1,096	\$-1,096	\$-1,096
Condition Adjustment Rough	\$-1,938	\$-2,211	\$-2,521
Total	\$4,983	\$6,008	\$6,896

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ORDER

The above-entitled matter came before the Court for confirmation of the Second Modified Plan dated September 15, 2004. An Objection to Confirmation was filed by AmeriCredit Financial Services, Inc., a secured creditor. Appearances are as noted in the record. Based on all the pleadings and papers filed herein, the Court makes the following Order:

The Objection to Confirmation is denied and the Second Modified Plan dated September 15, 2004 is hereby confirmed.

Dated: _____, 2004

BY THE COURT

Bankruptcy Judge