

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

-----  
In re: SHARON ANN ROWE,

Debtor.

BKY. No.: 04-34571  
Chapter 7

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

-----  
TO: SHARON ANN ROWE AND HER ATTORNEY, DANIEL L.  
RUFFALO, VANDERHEYDEN & RUFFALO, PA, P.O. BOX 6535,  
ROCHESTER, MN 55903.

1. Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., 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 8, 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 than September 2, 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 August 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.

## **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 7 case was filed on August 5, 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, a copy of which is attached hereto as Exhibit A.

6. That pursuant to the provisions of 11 U.S.C. §362(d)(1)(a), the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That the payments due under said mortgage are in default for a partial payment for the month of May, 2004 and full payments of \$619.34 per month from June 1, 2004 to date, plus accrued late charges and inspection fees.

b) That as of the date of filing herein, the amount due under said mortgage loan was approximately \$71,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$5,800.00. According to the Debtor the fair market value of the property is estimated at \$83,600.00.

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, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., 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 pursue its rights under its mortgage and applicable state law, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: August 17, 2004

By:           /e/Thomas J. Reiter          

Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The St. Paul Building  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262/231605  
(D1701)

**THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.**

VERIFICATION

I, Karan Abernethy, Bankruptcy Supervisor with Wells Fargo Bank, N. A., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: August 17, 2004.

WELLS FARGO BANK, N.A.

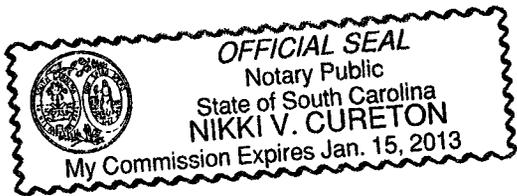
By: Karan Abernethy  
Karan Abernethy

Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

17<sup>th</sup> day of August, 2004

Nikki Cureton  
Notary Public



OFFICE OF COUNTY RECORDER  
Olmsted County, Minnesota



I hereby certify that this document was filed in this office  
on 8/01/2000 at 12:30:00 PM and was duly  
recorded as document number A-881454  
DANIEL J. HALL - County Recorder, by \_\_\_\_\_ Deputy.

Well Certificate:  Received  Not Required  
Absr. - yes  no   
Fees:

Received from/return to:  
ROCHESTER TITLE & ESCROW  
ROCHESTER, MN 55903

(Space Above This Line For Recording Data) HTEC/37569

L1182  
W. Zumbro

# MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on AUGUST 29, 2000  
The mortgagor is SHARON A ROWE, A SINGLE PERSON

("Borrower"). This Security Instrument is given to WELLS FARGO HOME MORTGAGE, INC.

which is organized and existing under the laws of THE STATE OF CALIFORNIA, and whose  
address is P.O. BOX 5137, DES MOINES, IA 503065137

("Lender"). Borrower owes Lender the principal sum of  
SIXTY NINE THOUSAND EIGHT HUNDRED FORTY AND 00/100

Dollars (U.S. \$\*\*\*\*\*59,840.00 ).  
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  
SEPTEMBER 01, 2030 and for interest at the yearly rate of 8.250

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

MINNESOTA Single Family-FNMA/PHLC UNIFORM INSTRUMENT

Form 3024 B/90  
Amended 5/97  
Page 1 of 8  
VMP MORTGAGE FORMS • (800)521-7291



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 OLMTED County, Minnesota:

LOT 11, BLOCK 2, WEST ZUMBRO ADDITION TO THE CITY OF ROCHESTER, OLMTED COUNTY,  
MINNESOTA, TOGETHER WITH THE S 1/2 OF VACATED ALLY LYING ADJACENT TO SAID LOT.

THIS IS A PURCHASE MONEY SECURITY INSTRUMENT.  
TAX STATEMENTS SHOULD BE SENT TO: WELLS FARGO HOME MORTGAGE, INC., P.O. BOX  
5137, DES MOINES, IA 503065137

[Secret. Cl.]

Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees.

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))

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider   | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> 1-4 Family Rider       |
| <input type="checkbox"/> Graduated Payment Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> Balloon Rider           | <input type="checkbox"/> Rate Improvement Rider         | <input type="checkbox"/> Second Home Rider      |
| <input type="checkbox"/> VA Rider                | <input type="checkbox"/> Other(s) [specify]             |   |

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:

_____	<i>Sharon A. Rowe</i>	_____ (Seal)
	SHARON A. ROWE	_____ Borrower
_____		_____ (Seal)
		_____ Borrower
_____ (Seal)		_____ (Seal)
_____ Borrower		_____ Borrower
_____ (Seal)		_____ (Seal)
_____ Borrower		_____ Borrower
_____ (Seal)		_____ (Seal)
_____ Borrower		_____ Borrower

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: SHARON ANN ROWE,

BKY. No.: 04-34571

Chapter 7

Debtor.

**AFFIDAVIT OF MOVANT'S  
BANKRUPTCY SUPERVISOR**

-----  
STATE OF SOUTH CAROLINA )

COUNTY OF YORK)

Karan Abernethy, being duly sworn on oath states:

1. That I am a Bankruptcy Supervisor in the Bankruptcy Department for Wells Fargo Bank, N.A. in the Fort Mill, South Carolina servicing center. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtor.

2. That the payments due under said mortgage are in default for a partial payment for the month of May, 2004 and full payments of \$619.34 per month from June 1, 2004 to date, plus accrued late charges and inspection fees.

3. That as of the date of filing herein, the amount due under said mortgage loan was approximately \$71,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$5,800.00. According to the Debtor the fair market value of the property is estimated at \$83,600.00.

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.

WELLS FARGO BANK, N.A.

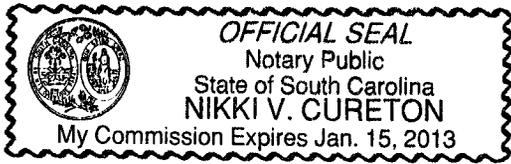
Dated: August 17, 2004

By: Karan Abernethy  
Karan Abernethy  
Bankruptcy Supervisor  
3476 Stateview Blvd.  
Fort Mill, SC 29715

Subscribed to and sworn before me this

17<sup>th</sup> day of August, 2004

Nikki V. Cureton  
Notary



UNITED STATES BANKRUPTCY COURT  
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**MEMORANDUM IN SUPPORT  
OF MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY**

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**MEMORANDUM OF LAW**

I. Factual Background

The Debtor filed her petition herein on August 5, 2004 under Chapter 7 of the Federal Bankruptcy Code and listed real property located in Olmsted County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot 11, Block 2, West Zumbro Addition to the City of Rochester,  
together with the S ½ of vacated alley lying adjacent to said lot.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$71,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$5,800.00. According to the Debtor the fair market value of the property is estimated at \$83,600.00. The payments due under said mortgage are in default for a partial payment for the month of May, 2004 and full payments of \$619.34 per month from June 1, 2004 to date, plus accrued late charges and inspection fees.

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 not offered any form of adequate protection to the Movant as the loan debt increases. The combined encumbrances on the property total approximately \$76,800.00 and the fair market value of the property is estimated at \$83,600.00. Any purported equity in said real property would be consumed by per diem interest and marketing costs.

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 17, 2004

By:           /e/ Thomas J. Reiter            
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Saint Paul Building  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262/231605  
(D1701)

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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 18, 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.

Charles W. Ries, Trustee  
Maschka Riedy & Ries  
P.O. Box 7  
Mankato, MN 56002-0007

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

Sharon Ann Rowe  
1821 1<sup>st</sup> St. NW  
Rochester, MN 55901

Daniel L. Ruffalo  
Vanderheyden & Ruffalo  
P.O. Box 6535  
Rochester, MN 55903

Federal Diversified  
P.O. Box 2040  
Omaha, NE 68103-2040

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

REITER & SCHILLER

Dated: August 18, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

6 W. Fifth Street

Seventh Floor

St. Paul, MN 55102-1420

(651) 297-6400

Attorney Reg. 152262

(D1701)

UNITED STATES BANKRUPTCY COURT  
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In re: SHARON ANN ROWE,

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**ORDER TERMINATING STAY**

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This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on September 8, 2004 in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota. The movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., 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 11, Block 2, West Zumbro Addition to the City of Rochester, Olmsted County, Minnesota, together with the S ½ of vacated alley lying adjacent to said Lot.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Dennis D. O'Brien  
Judge of the U.S. Bankruptcy Court