

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Denise Marie Bock,

Debtor: Chapter 7 Case
Case No. BKY 04-34844-DDO.

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

TO: The Debtor, Debtor's Attorney, Chapter 7 Trustee, United States Trustee, and the other parties in interest specified in Local Rule 9013-3(a).

1. **InterBank, FSB (Movant)**, a secured creditor of the Debtor herein, 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 at 9:30 o'clock a.m., on October 20, 2004, before the Honorable Dennis D. O'Brien, in Courtroom 228A, U.S. Courthouse, 316 North Robert Street, St. Paul, MN, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than October 15, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 11, 2004, which is seven (7) 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 RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rule 9013-2 and Movant seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain real property owned by the Debtor and subject to Movant's first mortgage lien.

5. The Petition commencing this Chapter 7 Case was filed on August 18, 2004, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §157(a), §1334, 11 U.S.C. §362(d), Bankruptcy Rule 5005, Local Rule 1070-1 and other applicable rules. This proceeding is a core proceeding.

6. By certain mortgage dated June 23, 2003, in the original principal amount of \$100,000.00 (**Mortgage**), Movant acquired a first mortgagee's interest in the following real property (**Property**):

The East 44 feet of Lot 3 and the West 6 feet of Lot 2, all in Block 1, Brown's Fairview Addition to the City of Albert Lea, Minnesota.

The Mortgage was filed for record in the office of the County Recorder, in and for Freeborn County, Minnesota, on June 27, 2003, as document number 437083.

7. The subject property has a market value of \$99,000.00. The total amount of debt secured by the subject property is \$101,194.34, including Movant's mortgage. Hence, Debtor has little or no actual equity in the property.

8. Debtor's Three (3) month delinquency under the terms of the Mortgage constitute cause, within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the automatic stay. Movant does not have, and has not been offered, adequate protection of its interest in the Property.

WHEREFORE, Movant, by its undersigned attorney, moves the Court for an order modifying the automatic stay of 11 U.S.C. §362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as the Court may deem to be just, fair and equitable.

Dated this 24th day of September, 2004.

PETERSON, FRAM AND BERGMAN

A Professional Association

BY: /e/Michael T. Oberle
Michael T. Oberle, Atty. Reg. #130126
Attorneys for Movant
Suite 300, 50 East Fifth Street
St. Paul, Minnesota 55101-1197
Telephone: (651) 291-8955

3. Debtor is the mortgagor on a mortgage dated June 23, 2003 which covers real property located in Freeborn County and legally described as follows:

The East 44 feet of Lot 3 and the West 6 feet of Lot 2, all in Block 1, Brown's Fairview Addition to the City of Albert Lea, Minnesota,

and which is commonly known as: 1018 Fountain, Albert Lea, MN 56007. The mortgage was given to secure a promissory note. Copies of the note and the mortgage are attached hereto as Exhibit A and Exhibit B, respectively, and incorporated herein by this reference.

4. On or about August 18, 2004, Debtor filed a Petition under Chapter 7 of Title 11 U.S. Code in the United States Bankruptcy Court for the District of Minnesota.

5. Debtor has failed to make Three (3) payments, resulting in an arrearage of \$2,632.44 including late charges. The total mortgage debt is \$101,194.34, which includes accrued interest through September 30, 2004. Thereafter, interest accrues on the unpaid principal balance at \$17.59 per day. Movant has also incurred attorney's fees and costs in the bringing of this motion.

6. Based upon information and belief, the subject property has a market value of \$99,000.00. The total amount of debt secured by the subject property is \$101,194.34, including Movant's mortgage.

7. I have read the Motion in this matter, and it is true to the best of my knowledge, information and belief.

8. Further, I saith not.

Richard D. Schiller

Subscribed and sworn to before me
this 11th day of September, 2004.

Sheila Owens

Notary Public

SHEILA OWENS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 8, 2005

COPY

**ADJUSTABLE RATE NOTE
(1 Year Treasury Index--Rate Caps)**

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

JUNE 23, 2003
(Date)

EDINA
(City)

MINNESOTA
(State)

1018 FOUNTAIN STREET WEST, ALBERT LEA, MINNESOTA 56007
(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 100,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is INTERBANK FSB, A FEDERAL SAVINGS BANK. I will make all payments under this Note in the form of cash, check or money order.

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 is 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 6.490 %. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on AUGUST 1, 2003. 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. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JULY 1, 2033, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 6545 FRANCE AVE SOUTH #130, EDINA, MINNESOTA 55435

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

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 631.41. This amount may change.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

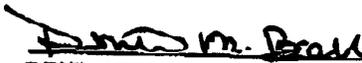
This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


DENISE M. BOCK (Seal)
-Borrower

(Seal)
-Borrower

Pay to the order of InterBank, Fsb
Without Recourse

By: 
Eric M. Haney
Assistant Vice President



[Space Above This Line For Recording Date]

MORTGAGE

After Recording Return To:
INTERBANK FSB
6545 FRANCE AVE SOUTH #130
EDINA, MINNESOTA 55435

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 23, 2003, together with all Riders to this document.
- (B) "Borrower" is DENISE M. BOCK A SINGLE PERSON

Borrower is the mortgagor under this Security Instrument.

- (C) "Lender" is INTERBANK FSB

Lender is a FEDERAL SAVINGS BANK organized
and existing under the laws of MINNESOTA
Lender's address is 6545 FRANCE AVE SOUTH #130, EDINA, MINNESOTA 55435

Lender is the mortgagee under this Security Instrument.

- (D) "Note" means the promissory note signed by Borrower and dated JUNE 23, 2003
The Note states that Borrower owes Lender ONE HUNDRED THOUSAND AND 00/100
Dollars (U.S. \$100,000.00)
plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 1, 2033

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.



(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

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

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) 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 and Lender's successors and assigns, with power of sale, the following described property located in the

COUNTY

of FREEBORN

[Name of Recording Jurisdiction]

[Type of Recording Jurisdiction]

THE EAST 44 FEET OF LOT 3 AND THE WEST 6 FEET OF LOT 2, ALL IN
BLOCK 1, BROWN'S FAIRVIEW ADDITION TO THE CITY OF ALBERT LEA,
MINNESOTA, AND LYING AND BEING IN THE COUNTY OF FREEBORN AND STATE
OF MINNESOTA.

A.P.N. #: 34-114-0040



BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Denise M. Bock (Seal)
DENISE M. BOCK -Borrower

____ (Seal)
-Borrower

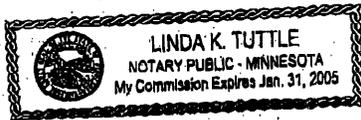
Witness:

Witness:

____ [Space Below This Line For Acknowledgment]

State of Minnesota,
County of FREEBORN

The instrument was acknowledged before me on June 23, 2003
by DENISE M. BOCK, a Single Person



Linda K. Tuttle
Notary Public

(Seal)

My commission expires:

This instrument was drafted by:

Tax statements for the real property described in this instrument should be sent to:

INTERBANK FSB
6545 FRANCE AVE SOUTH #130
EDINA, MINNESOTA, 55435

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Denise Marie Bock,

Debtor: Chapter 7 Case
Case No. BKY 04-34844-DDO.

MEMORANDUM OF LAW

InterBank, FSB (**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 certain real property owned by Debtor. The Debtor is delinquent with respect to payments due under the mortgage for the months of July 2004 through September 2004 in a total amount of \$2,632.44, including late charges. The total mortgage debt is \$101,194.34, which includes accrued interest through September 30, 2004. Thereafter, interest accrues on the unpaid principal balance at \$17.59 per day.

The subject property has a market value of \$99,000.00. The total amount of debt secured by the subject property is \$101,194.34, including Movant's mortgage.

ARGUMENT

Under §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. §362(d)(1). Debtor has failed to make payments due under the terms of the mortgage for a period of over Three (3) months. Debtor has little or no actual equity in the property; hence, Movant lacks adequate protection in the form of an equity cushion in the property. Furthermore, debtor has otherwise failed to provide Movant with adequate protection of its interest in the property.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re Tainan, 48 B.R. 250 (Bkrtcy E.D. Pa. 1985); In Re Quinlan, 12 B.R. 516 (Bkrtcy. W.D. Wis. 1981).

Accordingly, Movant is entitled to an order terminating the stay of 11 U.S.C. §362(a) and authorizing it to foreclose its mortgage on the property.

Dated this 24th day of September, 2004.

PETERSON, FRAM AND BERGMAN
A Professional Association

BY: /e/ Michael T. Oberle
Michael T. Oberle
Atty. Reg. #130126

Attorneys for Movant
Suite 300, 50 East Fifth Street
St. Paul, Minnesota 55101
Telephone: (651) 291-8955

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: Denise Marie Bock,

**Debtor: Chapter 7 Case
Case No. BKY 04-34844-DDO.**

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

I, Michael T. Oberle, employed by **PETERSON, FRAM AND BERGMAN, P.A.**, attorneys licensed to practice in this court, with an office at Suite 300, 50 East Fifth Street, St. Paul, MN, 55101, declare that on September 24, 2004 I served the annexed: a) Corrected Notice of Hearing and Motion for Relief from Stay, b) Affidavit in Support of Motion for Relief from Stay, c) Memorandum of Law, and d) proposed Order for Relief upon each of the parties listed below by mailing to each of them a copy of each thereof, enclosed in an envelope, first class postage prepaid, and by depositing same in the post office at St. Paul, Minnesota, directed to them at their last known addresses, as follows:

United States Trustee
300 S 4th St # 1015
Minneapolis MN 55415-1329

Denise Marie Bock
1018 Fountain
Albert Lea, MN 56007

Michael S. Dietz
Chapter 7 Trustee
505 Marquette Bldg.
P.O. Box 549

Jamie A. Kylo, Esq.
P.O. Box 181
Albert Lea, MN 56007

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

Signed: /e/ Michael T. Oberle

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Denise Marie Bock,

Debtor: Chapter 7 Case
Case No. BKY 04-34844-DDO.

ORDER FOR RELIEF FROM AUTOMATIC STAY

The above-entitled matter came before the Court on October 20, 2004, on the motion of InterBank, FSB (**Movant**) seeking relief from the automatic stay of 11 U.S.C. §362(a). Based upon the statements of counsel and all of the files, records and proceedings herein, the Court now finds that cause exists entitling Movant to the requested relief.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362(a) is immediately terminated as to Movant; and, Movant, its successors or assigns, are hereby authorized to foreclose pursuant to Minnesota law that certain Mortgage dated June 23, 2003, filed for record in the office of the County Recorder in and for Freeborn County, Minnesota, on June 27, 2003, and recorded as Document No. 437083 and covering real property located in Freeborn County, Minnesota, which is legally described as follows:

The East 44 feet of Lot 3 and the West 6 feet of Lot 2, all in Block 1, Brown's Fairview Addition to the City of Albert Lea, Minnesota.

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

Dated this ____ day of _____, 2004.

Dennis D. O'Brien
United States Bankruptcy Judge