

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Chapter 13
Bankruptcy Case No. 02-90267

In Re:
James Patterson
Myra Patterson

Debtor(s).

NOTICE OF MOTION AND MOTION
TO VACATE ORDER FOR RELIEF FROM STAY

TO: Bankers National Trust Company of California, N.A. as Custodian or Trustee n/k/a Deutsche Bank National Trust Company and their attorneys Usset & Weingarden, P.L.L.P.; Jasmine Z. Keller, Trustee; U.S. Trustee; all other entities specified in Local Rule 1007(2)

1. The debtor moves the court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion at 1:30 p.m., Monday, September 27, 2004, in Courtroom No. 228 B, United States Bankruptcy Court, at 316 N. Robert Street, St. Paul, MN 55101.
3. Any response to this motion must be filed and delivered not later than three days before the time set for the hearing, or filed and served by mail not later than seven (7) business days before the time set for the hearing. ***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. Secs. 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

5. This motion arises under Bankruptcy Rule 9024. This motion is filed under Bankruptcy Rule 9013 and Local Rules 9013-1, *et seq.* The petition commencing this Voluntary Chapter 13 case was filed on August 13, 2001.

6. The Court entered an Order dated November 4, 2002 that denied the motion of Bankers National Trust Company of California, N.A. as Custodian or Trustee n/k/a Deutsche Bank National Trust Company (*hereinafter Bankers Trust*) for relief from stay, conditioned on a stipulated arrangement to cure the mortgage default.

7. On June 29, 2004, the Court entered an Order granting relief from stay based upon an affidavit of default filed by counsel for Bankers Trust. Said affidavit was filed in error.

8. Attorneys for Bankers Trust have notified Debtors counsel that they agree that the Order granting relief from stay should be vacated and that they will not oppose such a motion.

WHEREFORE, Debtor requests that the Court vacate the order for relief dated June 29, 2004.

Dated: 7/15/04

/e/ Gregory J. Wald
Gregory J. Wald, Attorney for
Debtors
3601 Minnesota Drive, Suite 800
Edina, MN 55435
(651) 222-4426 ID 165244

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Chapter 13
Bankruptcy Case No. 01-81364 RJK

In Re:
Annie P. Powell
SSN: 346-42-2043
Current Address:
3019 Upton Ave.
Minneapolis, MN 55411

Debtor(s).

MEMORANDUM OF LAW

Bankruptcy Rule 9024 incorporates Rule 60 of the Federal Civil Rules of Procedure, and provides relief from an order by reason of mistake and inadvertence. In the present case, attorneys for Bankers Trust were not aware that a payment had just been received when they filed their affidavit of default with the court. The affidavit was in error.

Dated: 7/15/04

/e/ Gregory J. Wald
Gregory J. Wald, Attorney for
Debtors
3601 Minnesota Drive, Suite 800
Edina, MN 55435
(651) 222-4426 ID 165244

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Chapter 13
Bankruptcy Case No. 02-90267

In Re:
James Patterson
Myra Patterson

Debtor(s).

ORDER

At St. Paul, Minnesota this _____ day of _____, 2004.

This matter came before the Court on the Debtor's motion to vacate an order for relief from stay in favor of Bankers National Trust Company of California, N.A. as Custodian or Trustee n/k/a Deutsche Bank National Trust Company dated June 29, 2004. Appearances were noted on the record. Based upon all of the files, records, pleadings and arguments of counsel,

IT IS HEREBY ORDERED:

The order dated June 29, 2004 granting relief from stay to Bankers National Trust Company of California, N.A. as Custodian or Trustee n/k/a Deutsche Bank National Trust Company is vacated.

Dated: _____

U.S. Bankruptcy Judge

VERIFICATION

We, James Patterson and Myra Patterson, declare under penalty of perjury that the foregoing Motion to Vacate Order for Relief from Stay is true and correct to the best of my knowledge, information, and belief.

Dated: 07/17/2004

James H. Patterson

Dated: 7/17/04

Myra A. Patterson

In Re: James & Myra Patterson

**U. S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Debtor(s) Case Number BKY: 02-90267

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

I, Julie Nistler, of the office of Gregory J. Wald, attorney licensed to practice law in this court, with office address of 3601 Minnesota Drive, Suite 800, Edina, MN 55435, declares that on **September 9, 2004**, I served the Notice of Motion and Motion to Vacate Order for Relief from Stay upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Edina, Minnesota addressed to each of them as follows:

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

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

Ussett & Weingarden
Attorneys for Bankers Trust
4500 Park Glen Road, Suite 310
Minneapolis, MN 55416

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

Executed: 9-9-04 Signed: Julie Nistler
