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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Samuel L. Woody,

Debtor.

C/A No. 97-04702-W

JUDGMENT

Chapter 13

ENTERED

APR 19 2002

S. R. P.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court denies Chase Manhattan Mortgage Corporation's ("Chase") Motion for Relief from Automatic Stay (the "Motion"). The Court orders Chase to pay within fifteen days of the judgment the attorney's fees of \$500.00 incurred by Debtor in defending the Motion. The sanction shall be paid to Debtor in care of his counsel, Andrea C. Vantias.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
April 17, 2002.

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CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date noted below.

✓ APR 19 2002 ✓

✓ CREDITOR, DEBTOR'S ATTORNEY, TRUSTEE ✓

SHERIEE R. PHIPPS

Deputy Clerk

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(BNC)

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DISTRICT OF SOUTH CAROLINA

IN RE:

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ORDER

Chapter 13

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S. R. P.

THIS MATTER comes before the Court upon Chase Manhattan Mortgage Corporation's ("Chase") Motion for Relief from Automatic Stay (the "Motion"). In its Certification of Facts, Chase indicates that Samuel L. Woody ("Debtor") failed to make his regular monthly mortgage payments from October 1, 2001 through January 10, 2002. Debtor disputes this assertion and, relying on monthly account statements produced by Chase, argues that he was current in making his monthly payments during the relevant period. Debtor asks the Court to deny Chase's motion, grant Debtor attorney's fees and costs incurred in defending the Motion, and sanction Chase for repeatedly providing inaccurate information. After considering the pleadings and evidence in the matter and the arguments made by counsel at the hearing on the Motion, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule 52 of Civil Procedure, applicable in bankruptcy proceedings by Federal Rule 7052 of Bankruptcy Procedure.¹

FINDINGS OF FACT

1. On June 3, 1997, Debtor filed a Chapter 13 Petition.

¹ The Court notes that, to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and, to the extent any of the Conclusions of Law constitute Findings of Fact, they are so adopted.

2. During the course of his case, Debtor has faced three §362 motions by the holder of the mortgage encumbering his residence. On October 12, 1999, Mellon Mortgage Company filed a §362 motion and alleged that Debtor failed to make his regular monthly mortgage payment. Mellon withdrew its motion on November 24, 1999, citing a clerical mistake stemming from Debtor's retirement from the military as the cause for the creditor not having a record of receiving payments. In its withdrawal, Mellon indicated that it was currently receiving payments. On August 2, 2001, Chase motioned for relief from the stay, and it relied on Debtor's failure to make his regular monthly mortgage payment as grounds for relief. On August 30, 2001, Chase withdrew its motion. Chase then submitted the current Motion before the Court on February 21, 2002.

3. In the current Motion, Chase includes in its Certification of Facts records indicating that *Debtor made no regular mortgage payments from October 1, 2001 to January 10, 2002.*

4. Debtor's mortgage payments to Chase are deducted directly from his military retirement checks and forwarded to Chase. Chase then submits a monthly account statement to Debtor verifying the receipt of the payment.

5. Debtor's account statements from Chase indicate that Chase received the following payments during the period in which it claimed Debtor failed to make payments:

October 4, 2001:	\$660.00
November 8, 2001:	\$660.00
January 3, 2002:	\$660.00
January 17, 2002:	\$652.49.

6. To defend this Motion, Debtor incurred attorney's fees totaling \$500.00.

CONCLUSIONS OF LAW

The evidence indicates that relief from the stay is inappropriate as Debtor is timely paying his mortgage obligation to Chase. Although the account statements indicate some inconsistencies as no payment is reflected in December but two are credited in January, the central issue before the Court is whether, as Chase asserts, Debtor failed to make payments during the four month period. The Court finds Chase's monthly account statements are credible evidence that Debtor made his mortgage payments during the relevant period.

Next, the Court must address the issue of attorney's fees and sanctions. Previously, this Court has dealt with the situation where a creditor has brought a motion seeking relief from the automatic stay when debtors were actually current. See In re Asbill, C/A No. 98-05819-W slip op. (Bankr. D. S.C. Feb. 2, 1999), aff'd 3:99-0773-19 slip op. (D. S.C. Feb. 23, 2000). In Asbill, the Court held that a debtor was entitled to the attorney's fees he incurred in defending a §362 motion based on the erroneous information that the debtor was not making his payments to the creditor. See id. at 8. The Court reasoned that awarding the debtor his attorney's fees pursuant to §105(a) was appropriate to enforce the rules of the Court and to deter the misuse of process. Specifically, the Court noted the number of relief from the automatic stay motions it addresses and that it must

expect that parties, especially sophisticated creditors, base such motions on a proper factual basis and at least accurately represent the state of their own records. More and more frequently, in these days of national lenders and frequent assignments of notes and mortgages, this Court is confronted with creditors who file relief from stay motions asserting that debtors are in arrears when in fact, after a reasonable inquiry, it appears that they are current in their payments. Such a lack of diligence by the creditors is not only a problem for the Court and the debtors, who can not only least afford the additional costs in attorney's fees but whose reorganization in some cases is dependent upon the retention

of the collateral which is the subject of such motions, but is also even a problem for the creditors' attorneys that file these motions. To effectively be able to prosecute these motions and represent the truth of the matter alleged, these attorneys must be able to rely upon their clients and the information provided to them. Id. at 7.

The Court believes the reasoning of the Asbill Order is appropriate in this situation and applies it accordingly. Indeed, Chase is a large-scale, nation-wide creditor, and its system of maintaining one set of records that shows Debtor has not made a payment in four months while another set of records simultaneously provides statements to Debtor showing timely payments is confusing. When Chase brings an action based on incorrect information, it burdens the administration of this Court and, more importantly, debtors who must defend the motion. Pursuant to §105(a), the Court, therefore, awards Debtor the attorney's fees he incurred in defending Chase's Motion, \$500.00. The Court believes that the award of attorney's fees is a sufficient sanction that will deter future abuses by this creditor. The sanction shall be paid to Debtor within fifteen days in care of his counsel, Andrea C. Vantias, Post Office Box 9612, Columbia, South Carolina 29290.

AND IT IS SO ORDERED.

Columbia, South Carolina,
April 17, 2002.


UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
~~was mailed on the date listed below~~ → (BTRC)

✓
APR 19 2002 ✓

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DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

SHEREE R. PHIPPS

Deputy Clerk

✓ (ward)