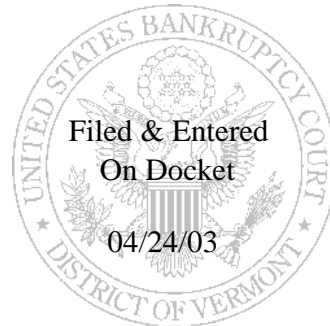


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**RANDY S. BOISE and
MARIE Y. BOISE,
Debtors.**

**Case #03-10015
Chapter 13**

*Appearances: Kathleen Walls, Esq.
Middlebury, Vermont
For the Debtors*

*Richard A. Lang, Jr., Esq.
Burlington, Vermont
For Creditor GMAC*

ORDER
DETERMINING VALUE OF MOTOR VEHICLE

On March 13, 2003, the Court held a confirmation hearing in this case. Creditor General Motors Acceptance Corporation ("GMAC") filed an objection to Debtors' plan contesting the valuation of a 1999 Chevy Venture (hereinafter, "the Vehicle"), which the Debtors sought to "cram down" to \$8,000¹.

The parties presented evidence on the value of the Vehicle at the confirmation hearing,. Based upon the evidence presented, the Court finds that the \$8,000 cram down figure set forth in the plan is less than the midpoint between the NADA wholesale value and the NADA retail value of the Vehicle. Mrs. Boise testified that she believes the Vehicle is worth less than the NADA midpoint value because it : (1) has high mileage; (2) has had transmission work performed on it; (3) has motor issues; (4) is the subject of transmission bulletins from GMAC; (5) has some chipped paint; and (6) was appraised by Shea Motor Co. of Middlebury, Vermont, to be worth between \$6,700 ("wholesale" value) and \$8,900 ("retail" value). On cross-examination, Mrs. Boise further testified that the Vehicle now drives fine, has new tires, and has new transmission parts. She also testified that a Shea Motor Co. Employee physically examined the Vehicle.

At the conclusion of the hearing, the Court confirmed the Debtors' plan subject to the valuation of the Vehicle. The parties were given the opportunity to stipulate to a valuation or submit papers in

¹ Pursuant to 11 U.S.C. § 506(a) the allowed amount of a secured claim is limited to the value of the collateral securing that claim; and pursuant to 11 U.S.C. § 1325(a)(5)(B) a chapter 13 plan shall be confirmed if the plan pays the holder of a secured claim at least the amount of the allowed secured claim. When a plan pays a secured creditor an amount equal to the value of the collateral securing the debt, rather than the full amount of the outstanding balance, this is colloquially known as a "cram down" of the creditor's debt.

support of their respective valuations². On April 10, 2003, GMAC filed a Supplemental Memorandum in Support of Objection of General Motors Acceptance Corporation to Chapter 13 Plan (doc. #27), attaching NADA valuation for a 1999 Chevy Venture with 92,000 miles. See “NADA Official Used Car Guide, Vehicle Summary NADA Values (4/9/2003)” (hereinafter, “Guide”), attached as Ex. A to Supplemental Memorandum. According to the Guide, the wholesale value of such a vehicle is \$7,125 and the retail value is \$10,275. Therefore, the midpoint value for such a vehicle is \$8,700. Further, GMAC argues in its Supplemental Memorandum that the subject Vehicle is in “good” condition, as that term is defined by the Kelley Blue Book, a motor vehicle valuation source analogous to NADA. See, e.g., “Kelley Blue Book, Blue Book Market Watch: Private Party • Information • Condition • Terms,” attached as Ex. B to Supplemental Memorandum.

Debtors filed a Response to GMAC’s Supplemental Memorandum, reiterating their argument that the Vehicle is in poor condition, thereby warranting the low valuation proposed in their plan. See doc. #28. The Court notes that the midpoint between the two values provided by Shea Motor Co. (\$6,700 wholesale and \$8,900 retail) is \$7,800, \$200 less than the \$8,000 valuation proposed by the Debtors’ plan.

Upon consideration of papers submitted and the evidence presented, and pursuant to Vt. LBR 3012-1, the Court finds the Vehicle falls between a fair and good condition. Therefore, a valuation of the Vehicle between the Debtors’ valuation and GMAC’s valuation is warranted. Accordingly,

IT IS HEREBY ORDERED that

- (1) the Vehicle will be valued at **\$8,250.00** and
- (2) the Debtors shall amend their confirmed chapter 13 plan to increase their payments to GMAC to incorporate this valuation, within 2 weeks..

SO ORDERED.

April 23, 2003
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge

² Vt. LBR 3012-1 provides that “The valuation of motor vehicle collateral shall be presumed to be the midpoint between the NADA wholesale value and the NADA retail value unless (I) the parties agree to a different value, (ii) the debtor or secured creditor presents an appraisal undisputed by the other party, or (iii) the value is fixed by the Court as a result of an evidentiary hearing held specifically to determine the value of a particular vehicle.