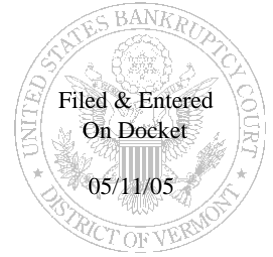


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**Doris Meadowcroft
Debtor.**

**Chapter 7 Case
04-10635**

ORDER
DIRECTING SPECIFIC COMPLIANCE WITH PRIOR ORDER,
DIRECTING DELIVERY OF DOCUMENTS TO THE DEBTOR, AND
IMPOSING SANCTIONS UPON SELECT PORTFOLIO SERVICING, INC. IF IT FAILS TO COMPLY

The conduct of the creditor-mortgagee in this case, as seen through its efforts to obtain relief from stay and the Debtor's persistent efforts to retain this property and get fair treatment from the creditor, is shameful. Almost a year has elapsed since the contested matter began, and over four months has passed since the Court entered an order approving the Parties' stipulation concluding it, and the creditor has yet to comply with that order. For the reasons set forth below, the Court enters this Order directing compliance and imposing sanctions that will apply if the mortgagee and/or its agent fail to comply.

PROCEDURAL HISTORY

On May 21, 2004, Chase Manhattan Bank ("Chase") filed a motion for relief from stay against the Debtor's homestead property in Wilmington, Vermont (doc. #4) (the "Motion for Relief"). At some point thereafter, Select Portfolio Servicing, Inc. ("SPS"), in its capacity as servicing agent for this loan became involved. Although SPS is not a party *per se*, the attorney for Chase has represented to the Court that he has been in communication with SPS in an attempt to comply with the Court's order approving the stipulation on the Motion for Relief. The Debtor, appearing throughout this series of hearings *pro se*, filed an opposition to the Motion for Relief alleging, *inter alia*, that SPS (and its predecessor) failed to process her payments properly, assessed improper charges, miscalculated the outstanding principal and interest balance, made promises regarding refinancing the debt which it did not keep, misrepresented the conditions under which it entered into a forbearance and refinance arrangement, conducted duplicative and exorbitantly priced appraisals of her property, and issued inaccurate reports to credit reporting agencies. The Court held a hearing on the Motion for Relief and the Debtor's opposition thereto on June 14, 2004 at which the Debtor demonstrated that the figures set forth in the Motion for Relief did not match the statements SPS had sent the Debtor. Therefore, the hearing was adjourned until September 21st with a direction that SPS provide the Debtor with a fully executed copy of the workout agreement between the parties and an accurate breakdown of the outstanding arrears, by August 8th.

At the September 21st hearing, the Debtor raised new issues and alleged SPS had not yet provided the information to which she was entitled. The Court determined that there was still additional information needed before any determination could be made on the Motion for Relief and the parties did not yet have that information available. Accordingly, the Court directed SPS to provide a payment history since the default date along with a statement of the present amount due within 10 days, and directed that the Debtor resubmit her application for refinance and provide a complete and final list of disputed charges within one week. On September 29, 2004, the Court entered an interim order directing SPS to provide records and payment history data to the Debtor, directing the Debtor to continue making payments and file a final list of disputed charges, and setting a hearing on the Motion for Relief for November 9, 2004 (doc. # 25). On motion of the Debtor, and with the consent of creditor's counsel, this hearing was first rescheduled to November 9 and then to December 21, 2004. At the hearing held on December 21, 2004, the parties reported that they had reached a settlement and would file a stipulation setting forth the terms of the settlement within one week. On December 23, 2004, the parties filed their stipulation (doc. #32). That stipulation was approved by the order entered January 3, 2005 (doc. #33) (the "Stipulation Order") which directed that:

1. The loan had an outstanding balance of \$98,733.07, consisting of the principal balance as of December 20, 2004 in the amount of \$89,825.01 plus interest accrued through November 30, 2004 in the amount of \$8,908.06.
2. The loan would be recapitalized so that outstanding balance would be paid over remaining life of loan.
3. The Debtor would resume regular monthly payments on recapitalized loan balance beginning on January 5, 2005 and continuing on the 5th day of each month for the term of the existing note (i.e., through April 1, 2028).
4. The mortgage payments on the recapitalized loan balance, beginning on January 5, 2005 would be \$905.07 per month.
5. All outstanding loan charges, penalties and enforcement costs assessed by the lender through January 1, 2005 would be cancelled and waived.
6. The motion for relief from stay was withdrawn.

However, that was not the end of this saga.

On February 1, 2005, the Debtor filed a letter stating that the mortgage had not yet been modified, the January 5th payment she sent in had not been properly applied, SPS was still charging almost \$3,000 in additional fees and interest on the outstanding balance, and SPS was refusing to report the loan to be in current status to the credit bureaus. In sum, the Debtor alleged that SPS had not complied with any of the terms of the Stipulation Order. The Debtor asserted that she desperately wanted to refinance her mortgage

and felt that she was being “held hostage by SPS.” According to the Debtor, she cannot get any other lending institution to consider her application to refinance as a result of SPS’s refusal to process her payments in compliance with the Stipulation Order and SPS’s failure to issue an accurate statement to credit reporting agencies. A hearing on this letter from the Debtor was set for March 7th and then rescheduled first to April 15th and then to May 10th to accommodate the schedules of the Debtor and SPS’s attorney.

At the hearing held on May 10, 2005, Attorney Lobe indicated that he had advised SPS of the urgency and absolute necessity of complying with the January 3, 2005 order and that SPS has assured him that they were now in compliance and would issue a certification to that effect by May 13, 2005.

FINDINGS AND CONCLUSIONS

Based upon the record in this case and the representations made at the hearings relating to the Motion for Relief and the Stipulation Order,

THE COURT FINDS that as of May 10, 2005 there is no evidence that SPS has complied with the Order of this Court dated January 3, 2005; and

THE COURT FURTHER FINDS that the Debtor is suffering financial and emotional damages as a result of SPS’s violation of this court order; and

THE COURT FURTHER FINDS that the Debtor’s request that SPS issue a letter saying that the subject mortgage loan has been reinstated and that she has made all the payments she was required to make during the period of May 2004 through May 2005 is reasonable and consistent with the settlement underlying the Stipulation herein; and

THE COURT FURTHER FINDS that the Debtor is entitled to damages in the amount of two hundred dollars (\$200) per day for SPS’s failure to comply with the order but that it would be unjust to impose that sanction retroactively since SPS had no notice of the sanction, and the long delay between the date of the initial violation (in January 2005) and the hearing (in May 2005) was not due to conduct by SPS but rather the schedules of the Debtor and the creditor’s attorney.

ORDER

Therefore IT IS HEREBY ORDERED that


1. **By 5:00 P.M. on May 13, 2005** SPS or Chase Manhattan shall file and serve on the Debtor a certification of its compliance with the Court order of January 3, 2005;
2. **By 5:00 P.M. on May 13, 2005**, SPS or Chase Manhattan shall issue a letter to the Debtor saying that the subject mortgage loan has been reinstated and that the Debtor has made all the payments she was required to make during the period of May 2004 through May 2005, which is in a form which the Debtor can send to potential lenders, and accompanied by an amortization schedule tracking the new payment obligation; or file a motion with the Court requesting relief from this

requirement and specifying the reasons it is not able to issue such a letter and/or amortization schedule;

3. In the event SPS cannot comply with this order by issuing said letter to the Debtor, the creditor shall file, **no later than 5:00 P.M. on May 13, 2005**, a motion setting forth the specific reasons why it cannot comply and demonstrate why the Court should not impose sanctions. No extensions of time will be granted except for good cause shown.
4. If the Debtor demonstrates that SPS is not in compliance with the January 3, 2005 Order or has to come to Court to obtain SPS's compliance, SPS shall pay the Debtor \$200 per day for the period of May 13, 2005 through the date the Court finds that SPS is in full compliance with said Order;
5. If SPS fails to comply with the terms of this Order, SPS shall pay the Debtor \$200 per day for the period of May 13, 2005 through the date the Court finds that SPS is in full compliance with this Order.

SO ORDERED.

May 11, 2005
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge