

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

RICHARD ANDERSON : BK No. 01-12175
Debtor : Chapter 13

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TITLE: *In re Anderson*

CITATION: Unpublished

**ORDER (1) GRANTING MOTION FOR RELIEF FROM STAY
AND (2) AUTHORIZING DEBTOR'S COUNSEL TO WITHDRAW APPEARANCE**

Heard on the Motion of Ameriquest Mortgage Company for leave to foreclose its mortgage on the Debtor's home. Also before the Court is the Motion of James Murray, Esq., to Withdraw as Debtor's Counsel. After extensive hearings and the Court's sua sponte view of the subject property at 956 Hope Street, Bristol, Rhode Island, I make the following findings of fact and conclusions of law:

(1) Under the note and mortgage, Ameriquest is owed \$307,520;

(2) There is a pre-petition arrearage totaling \$29,581 and a post-petition arrearage of \$16,568. The Debtor has made no post-petition payments to Ameriquest;

(3) There is a second mortgage on the property held by the Debtor's acquaintance, Joseph M. Faria, with a principal balance of approximately \$16,000;

(4) Ameriquest's appraisal dated March 2001 sets the market value of the property at \$300,000;

(5) The Debtor's selling broker testified that the market value of the property, in its present condition, is \$299,000;

(6) The Debtor's testimony that by the expenditure of \$12,000 the market value of the property would be \$550,000 is totally unsupported and is rejected because it is completely unrealistic;

(7) Based on all of the evidence, I find that the market value of the property is between \$300,000 and \$350,000. Notwithstanding its historical significance, limitations on the marketability of this property include the fact that it would appeal only to a very specific buyer, given its highest and best use as a bed and breakfast type inn, its limited income potential in its present condition, and the expense necessary to restore it to competitive, income producing condition;

(9) Relief from stay is warranted both under 11 U.S.C. § 362 (d)(1) and (2), because the Debtor has made *no* payments to Ameriquest, (the pre and post-petition arrearages total \$46,149), and because there is no equity in the property. To the extent that the Debtor relies on the property to fund the plan, such a plan is not feasible because there is no equity with which to fund the plan;

(10) Ameriquest's Motion for Relief from Stay is GRANTED;

(11) In accordance with the comments by its counsel on the record, Ameriquest will not attempt to dispossess the Debtor until after January 1, 2002;

(12) James Murray, Esq.'s Motion to Withdraw is GRANTED.

Enter judgment consistent with this Order.

Dated at Providence, Rhode Island, this 21st day
of December, 2001.

/s/ Arthur N. Votolato
Arthur N. Votolato
U.S. Bankruptcy Judge