

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

RICHARD AND LINDA MICHALEK : BK No. 01-14026
Debtors Chapter 13

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ORDER DENYING RELIEF FROM STAY

Heard on April 1, 2004 on the motion of People's Credit Union ("People's") for relief from the automatic stay, and the Debtors' motion to amend the confirmation order to include \$1,444 of People's post-petition arrearage into the Chapter 13 plan.

People's total post-petition arrearage is \$8,444, and the Debtors are willing to pay \$7,000 immediately from an exempt pension fund. While People's is agreeable to accepting the \$7,000, it objects to the balance of the arrearage being placed into the Chapter 13 plan.

The Debtor Linda Michalek opined, without objection, that the family residence has between \$160,000 to \$210,000 of equity, and further stated that she and her husband were able to: come up with substantial cash (\$12,000) from earnings to pay for a rental car; purchase two used cars (\$10,000); make repairs to their roof and heating system (\$2,800). She cites these and other extraordinary expenses as the cause of the People's arrearage, and a \$9,000 arrearage to the Chapter 13 Trustee.

Given People's substantial equity cushion, together with the Debtors' offer to immediately pay \$7,000, the motion for relief from stay is DENIED without

prejudice, upon the following conditions: (1) That the Debtors pay \$7,000 to People's forthwith upon receipt of this Order; and (2) that the Debtors pay the balance of the post-petition arrearage to People's in equal installments over three months, with the first payment due on May 3, 2004. If the Debtors default as to either of these conditions People's may, without further application to the Court, file an affidavit of non-compliance explaining the default, and relief from stay will be granted automatically.

The Debtors' motion to amend the confirmation order does not address their \$9,000 arrearage under the Chapter 13 Plan, and the Trustee stated his intent to file a motion to dismiss shortly. When that pleading is filed that issue will be dealt with separately, in the normal course.

Finally, the Trustee's dissatisfaction with the Debtors' performance is based on his belief that whenever the Debtors required cash for unanticipated needs, they drew from free funds, always protecting their exempt assets, at the expense of unsecured creditors. I agree, and find that as to this course of conduct the equities are not with the Debtors. Accordingly, the Debtors' motion to amend the confirmation order is DENIED.

Dated at Providence, Rhode Island, this 12th day of April, 2004.



Arthur N. Votolato
U.S. Bankruptcy Judge