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IN RE: SPENCER J. HUBBARD AND DEADRA M. HUBBARD, DEBTOR	UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY CASE NO.: 04-27408/RTL CHAPTER 13 ATTORNEY CERTIFICATION IN OPPOSITION TO NOTICE OF MOTION TO VOID PRIOR CONSENT ORDERS AND DISGORGE FEES TO DEBTORS AND DEBTORS' COUNSEL HEARING DATE: 11/21/06

I, RHONDI LYNN SCHWARTZ, ESQ. of full age, being duly sworn, do hereby certify as follows:

1. I am an Attorney-at-Law in the State of New Jersey and am an associate with the law firm of Shapiro & Diaz, LLP, attorneys for the Secured Creditor, FEDERAL NATIONAL MORTGAGE ASSOCIATION. I have been entrusted with the care and handling of the within matter and I am thoroughly familiar with same.

2. I make this Certification in opposition to Debtors' Motion requesting that this Court void all prior Court Orders in this Bankruptcy proceeding and order a disgorgement of all fees and costs awarded throughout this Bankruptcy proceeding to this Secured Creditor.

3. The Court should deny Debtors' Motion on its face as the Certification filed in support of the motion lacks any legal or factual basis for the extraordinary relief being sought therein.

4. Debtors filed the present Bankruptcy proceeding on May 20, 2004 (Docket Entry 1). Debtors proposed a plan to cure their pre-petition arrears and to maintain their post-

petition payments outside of said plan. Debtors fell delinquent in their post-petition payments to the Secured Creditor and a Notice of Motion to Vacate the Automatic Stay was filed with the Court (Docket Entry 39). Secured Creditor's Certification in support of the Motion for relief from Stay reflected a full and complete post petition payment history reflecting each and every payment received, applied, when applied and to what post petition payment it was applied. This history, in fact, is attached to Debtors' moving papers. The Debtors filed opposition to the motion (Docket Entry 40). See attached ***"EXHIBIT A".*** Secured Creditor responded to the opposition advising counsel for the Debtors that the proofs of payments provided had already been applied to Debtors' post petition account and were reflected on the payment history provided in support of the request for relief from stay. See attached ***"EXHIBIT A".*** The parties agreed to the amount that was due post petition at that time and an Order was entered accordingly, on May 6, 2005, specifying the terms as to how the Debtors intended to cure the arrears over time. See attached ***"EXHIBIT B".***

5. These are the facts and they are not disputed in Debtors' moving papers. Debtors did not represent at the hearing on April 19, 2005 nor do they represent today that they were **not** delinquent and due for the monthly mortgage payments or the amounts due which are reflected in the Order on Motion to Vacate Stay dated May 6, 2005. The Debtors were delinquent and, yes, they were substantially delinquent. Therefore Secured Creditor was entitled to the attorney fees and court costs awarded to them at the April 19, 2005 hearing as well as the thirty (30) day default clause as to any future delinquency.

6. The Debtors, however, have now come before this Court nineteen (19) months later arguing that all Orders entered in this Bankruptcy proceeding should now be deemed void strictly based on an argument that in connection with the initial Motion for Relief from Stay the law firm of Shapiro & Diaz, LLP appended to the Certification a pre-

signed signature page. The Certification in support of the moving papers further goes on to state that another Court, after finding that the law Firm was using these pre-signed Certifications, enjoined the Firm from further use of same in the district of New Jersey. Based solely on this technical defect, the Debtors have brought this motion asking that this Court ignore the actual proceedings which have taken place, the delinquency found to have existed at each default hearing which defaults remain unchallenged and to render all proceedings which occurred subsequent to May 6, 2005 void. Additionally they further ask this Court to order disgorgement of all fees and costs awarded to Secured Creditor that had only been incurred because of the Debtors' continued failure to maintain the required payments outside of the plan, and then, after the fees and costs are disgorged that the Debtors be reimbursed those funds.

7. The law firm does not dispute that the Certification filed in this case appended a "pre-signed" signature page. Nor does it dispute that Judge Morris Stern, *sua sponte,* conducted an investigation into the use of pre-signed signature pages or that in his opinion issued May 25, 2006, he enjoined the parties from future use of this practice. The law firm does dispute, however, the Debtors' arguments that this technical defect in a single pleading in this case renders all subsequent proceedings held herein void without any consideration to the fact that the substantive nature of the initial proceeding remains unquestioned and without any consideration as to the events and circumstances surrounding the subsequent default filings by other counsel on behalf of this Secured Creditor. The Debtors also fail to address the full context of Judge Stern's opinion and his findings.

8. It is quite clear from the record in this case, and supported by paragraph 10 of Debtors' attorney's own Certification, that these Debtors have consistently fallen delinquent post petition requiring Secured Creditor to incur substantial fees and costs in

this regard. It is also quite clear that the Debtors are now attempting to "make money" by having this court overturn several fee and cost awards and to "punish" the Secured Creditor further by issuing sanctions which basically equals the amount the Debtors paid their attorney to defend their actions in this case. There is no basis in support of any of these actions or any of the requests made in Debtors' moving papers. But for the publicity of the Judge Stern case and the finding of a technical defect in the law firm's practice of "pre-signed" signature pages we would not be here today. Again, it must be noted that the Debtors have never questioned their delinquency, the Court's findings throughout this proceeding and the Order entered in the case.

9. Debtors have moved before this Court in an attempt to void all orders in this case with respect to the subject lien on the basis they stem from a defective Certification. This is a conclusion without basis. To the extent the original Certification may have contained a defect, the Debtors' waived this argument by their actions. The record demonstrates that the orders for relief and other interim orders were entered only after the Court held hearings and the parties conferred to reconcile their respective payment records. Although the initial Certification may have been technically defective, nothing in the record reflects that the substantive information contained within the Certification was inaccurate. Further, the record demonstrates that in entering these orders, the Court did not rely on either the form or the substance of the original Certification but rather on information produced and reconciliations reached by the parties.

10. In Debtors' moving papers they concede that they were afforded an opportunity to oppose the original motion for relief and that an order was entered on May 6, 2005 only after a hearing. This admission is that the order (which it refers to as a consent order) was reached after the Debtors were afforded an opportunity to review and challenge the substance of the motion. The Certification is in fact replete with factual omissions which

the Court should consider before awarding such extraordinary relief. The Certification does not advise whether there was a valid basis for the Secured Creditor to seek relief in the first place. It did. While the Certification mentions that after the "consent" order, a Certification of Default was filed on December 19, 2005 and only through a series of motions and oppositions was the stay reinstated, it pointedly omits that all subsequent Certifications of default filed, after the initial Motion for relief from stay, were filed by Michael S. Ackerman, Esq. of Zucker, Goldberg and Ackerman and not Shapiro and Diaz, LLP. The Debtors do not assert that the December Certification of default was substantively or technically deficient or that the Debtors were not in default. The Debtors also fail to mention that the Order Reinstating the Automatic Stay entered on March 2, 2006 was an interim order, continued twice and finally entered in May, 2006 or that less than two months afterward, Mr. Ackerman filed a second certification of default on June 29, 2006 that appears to have been resolved by an order providing for curing of arrearages outside of the plan (Docket Entry 77).

11. The Debtors do not assert that any of the Creditor's filings lacked substantive merit or that the Debtors were *not* in default under the plan or their loan on the occasions when filings for relief were sought. The only claim is that because the original Motion contained a pre-signed signature page and a Judge in another Court enjoined the use of such pre-signed pages in an opinion issued in another case over a year later, that this Court should void all orders entered after the subject filing. Such a conclusion is on its face absurd and ignores that the Motion for relief was substantively valid, the Debtors were afforded an opportunity to contest the Certification and its contents at the time and that the Debtors' subsequent defaults after such filing were intervening events which provided a sound basis for the orders entered.

12. Debtors' Counsel relies heavily on Judge Stern's condemnation of the practice of using "pre-signed" Certifications but he fails to acknowledge that even as Judge Stern condemned the practice and imposed sanctions on the firm, the Court found that the injury was to the integrity of the Court and not to individual Debtors. Judge Stern specifically stated:

> This court believes that S&D through Ms. Schwartz and others did strive to provide accurate data; if the court thought that inaccurate data was being intentionally proffered to promote home foreclosures, a criminal referral would be made. That is not the case here. Moreover, there are indications that Ms. Schwartz and S&D have been fair and flexible with debtors and the debtor's bar in promoting cure settlements.

In re Rivera, 342 B.R. 435, 462, n. 26.

13. The injunction to which the decision refers, if it applies at all, can only have future application and cannot retroactively apply to the Firm's actions a year before Judge Stern issued his opinion. Further, it should be noted that the sanction Judge Stern imposed did not create any relief to the Debtor. Regardless of whether this Court concurs with Judge Stern's findings or the motivation behind his rule to show cause, it is clear that he did not intend his opinion to provide a windfall to Debtors who are in default or to their counsel which is exactly what Debtors' motion seeks to do.

14. If the basis for the motions for relief and certification of default were premised on inaccurate substantive allegations, the time for challenge was at the time they were filed and not nineteen (19) months after they were entered. This is especially true when, as the Certification seems to imply, such orders were consented to by the Debtors.

15. The second type of relief requested is the more troubling and in the Firm's opinion exposes the true intent of the motion. Debtors' request that this Court direct the firm to compile a list of cases, active or dismissed, by case number in which the Firm filed a defective certification and that Debtors' counsel filed an appearance. The relief

sought does not benefit the Debtors in this case or the Court. The only possible purpose for this request is to provide counsel with a list of cases in which he can file similar motions as this one with no countervailing benefit and similarly without merit. As such, it is an improper request.

16. The cases in which both Shapiro & Diaz, LLP and Debtors' counsel filed appearances is a matter of public record. Therefore, if Debtors' counsel believes such a list is relevant to this or any other proceeding, he has equal access to such information to prepare such list. It would be improper for this Court to extend its jurisdiction to cases not before the Court for the purpose of entering or vacating any order except in the case before it and for the reasons above, no such order is appropriate.

WHEREFORE, Shapiro & Diaz, LLP respectfully requests that this Court deny the Debtors' Motion to Void Prior Consent Orders and Disgorge Fees to Debtors and Debtors' counsel.

I HEREBY CERTIFY that the aforementioned statements made by me are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Respectfully submitted,

SHAPIRO & DIAZ, LLP
Attorneys for Secured Creditor

By: RHONDI LYNN SCHWARTZ, ESQ.

Dated: NOVEMBER 7, 2006