

1 **ROUTH CRABTREE OLSEN, P.S.**
3535 FACTORIA BLVD. SE, SUITE 200
2 BELLEVUE, WA 98006
TELEPHONE (425) 458-2121
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Honorable Judge Samuel J. Steiner
Hearing Location: Seattle
Hearing Date: January 25, 2008
Hearing Time: 9:30 am
Response Date: January 18, 2008

4 **IN THE UNITED STATES BANKRUPTCY COURT**
5 **WESTERN DISTRICT OF WASHINGTON**

6 In re:

7 Alen Janisch

8 Debtor.

Chapter 7 Bankruptcy

No.: 07-15620-SJS

Motion for Relief from Stay
By AccuBanc Mortgage, a division of
National City Bank

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11 **I. Introduction**

12 COMES NOW, AccuBanc Mortgage, a division of National City Bank its successors in
13 interest, agents, assigns and assignors (“Creditor”) and moves this court for an order terminating
14 the automatic stay, allowing Creditor to proceed with and complete any and all contractual and
15 statutory remedies incident to its security interests held in real property commonly described as
16 13011 Meridian Avenue North, Seattle, Washington 98133 (“Property”), and legally described
17 as set forth in the Deed of Trust attached as an Exhibit to this motion. Creditor further seeks
18 relief in order to, at its option, offer, provide and enter into any potential forbearance agreement,
19 loan modification, refinance agreement or other loan workout/loss mitigation agreement and to
20 contact the Debtor via telephone or written correspondence to offer such an agreement, which
21 shall be non-recourse unless included in a reaffirmation agreement. Creditor further moves that,
22 absent objection, the provisions of F.R.B.P. 4001(a)(3) be waived to avoid further deterioration
23 of Creditor’s secured position.
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1 **II. Parties in Interest**

2 On or about May 20, 2005, Alen Janisch ('Debtor' herein), executed and delivered a note
3 in favor of AccuBanc Mortgage, a division of National City Bank in the original principal
4 amount of \$224,000.00.

5 The indebtedness under the note is secured by a deed of trust recorded against the
6 Property. A copy of the deed of trust is attached as Exhibit A and incorporated by this reference.

7 Creditor is the current holder of the note or services the note for the current holder.

8 Debtor filed for protection under Chapter 7 of Title 11 of the United States Code on
9 November 23, 2007.

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11 **III. Default**

12 Debtor is in default pursuant to the terms of the note for failure to make the required
13 payments. Payments are credited as last received to first due. Creditor's loan status reflects
14 payments now owing due after July 1, 2007. The following is a breakdown of the default:

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Date of Contractual Payments	Amount	Total
July 1, 2007 to December 1, 2007	\$1,830.27	\$10,981.62
Accrued Late Charges	\$91.51	\$549.06
Foreclosure Fees & Costs		\$1,858.59
Total Default		\$13,389.27

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19 These figures are an estimate only and are subject to change as additional fees are
20 incurred and payments are made or become due, including but not limited to the attorney fees
21 and costs incurred as a result of the filing of this motion. Please contact Creditor's counsel
22 directly for a reinstatement quote.

1 **IV. Estimate of Obligation**

2 The approximate amount owed under the terms of the note is \$212,514.26. The
3 following is an itemization of this approximate amount:

4 Principal Balance	\$203,661.96
5 Accrued Interest	\$6,444.65
6 Accrued Late Charges	\$549.06
7 Foreclosure Fees & Costs	\$1,858.59
8 Total Due	\$212,514.26

9 This total is an approximation of the lien. This estimate is provided only for the purposes
10 of this motion and cannot be relied upon for any other purpose, including tender of payoff. An
11 exact, itemized payoff figure will be obtained from Creditor upon written request to counsel for
12 the Creditor.

13 Other liens encumbering the Property include a scheduled debt in favor of Kai O.
14 Moldskred with an approximate balance owed of \$150,000.00.

15 **V. Value of the Property**

16 The tax assessed value of the property is \$323,000.00.

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20 **VI. Authority**

21 Under 11 U.S.C § 362(d)(2), a Court shall terminate, annul, modify or condition the stay
22 if the debtor has no equity in the Property and the Property is not necessary for an effective
23 reorganization. In the case at bar, the value of encumbrances, including all liens and costs of
24 liquidation, together with available exemptions, exceed the value of the property such that there
25 is no equity available for the estate. Because the Debtor has chosen to liquidate under Chapter 7
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1 of the Bankruptcy Code, the granting of an Order on Relief from Stay will not adversely affect
2 the prospects of reorganization.

3 Under 11 U.S.C. § 362(d)(1), cause to terminate the automatic stay exists in Debtor's
4 continued failure to make payments towards the obligation. In this case Debtor has failed to
5 make the required payments as due under the terms of the note and thus there is cause to lift the
6 stay.

7 **VII. Conclusion**

8 THEREFORE, Creditor requests this Court enter an order terminating the automatic stay
9 pursuant to 11 U.S.C. § 362 and that Creditor be allowed to immediately proceed with and
10 complete any and all contractual and statutory remedies incident to the security interests held in
11 the Property.

12 DATED: December 28, 2007.

13 **ROUTH CRABTREE OLSEN, P.S.**

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15 By: /s/ Jennifer Aspaas
16 Jennifer Aspaas, WSBA# 26303
17 Attorneys for AccuBanc Mortgage, a division of National
18 City Bank
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