

In Re Jeffrey John Hughes

Case No: 05-30490-BKC-SHF

Order entered on March 31, 2006

Motion to Approve Sale and for Surcharge, filed by John P. Barbee, chapter 7 trustee, and upon the Response to Trustee's Motion to Approve Sale and for Surcharge, filed by Home Federal Savings and Loan Association.

The trustee seeks approval of the sale of certain real property located in Ashland, Kentucky, free and clear of any liens, encumbrances or mortgages against the property, and also seeks to impose a surcharge upon the holder of the first mortgage encumbering the property, for the time expended by the trustee, his counsel, and his real estate broker, in the process of (1) assessing the status of the property, (2) negotiating for its proposed sale, (3) submitting the motion to approve the proposed sale for consideration, and presenting argument before the Court, and (4) prospectively preparing and submitting additional motions, and closing documents, attendant to the proposed sale.

By way of its Motion to Approve Sale and for Surcharge, the trustee recites that, due to the passage of time, the property deteriorated, and the prospective buyers, Mike and Cheryl Wheeler, refused to close for the contract price of \$26,000.00. Nonetheless, the trustee represents that these same prospective buyers are willing to close on the property for a reduced price of \$20,000.00. This would not leave enough money for Home Federal Savings and Loan Association's mortgage to be paid in full. Therefore, the trustee seeks a "surcharge" to have trustee, broker and attorney fees paid. Mortgagee, Home Federal Savings and Loan objects to the proposed "surcharge" against its collateral.

Held: It is the trustee, his counsel and his real estate broker, **and not the mortgagee**, who collectively bore the risk that their undertaking in attempting to sell the subject real property might not provide a benefit to creditors or to them. The Court found that no discernable benefit has been bestowed upon the mortgagee as a result of the efforts of the trustee, his counsel and his real estate broker, and as such, a "surcharge" against mortgagee's collateral is not warranted.

Motion to Approve Sale and for Surcharge is **denied**.