



IT IS ORDERED as set forth below:

Date: April 23, 2010

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: 08-71756-PWB
	:	
BILLIE JEANNE HARRIS	:	
and STIRLYN HARRIS,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtors.	:	BANKRUPTCY CODE
	:	
_____	:	
CHASE HOME FINANCE, LLC AS	:	
SERVICER FOR JPMC SPECIALTY	:	
MORTGAGE LLC,	:	
	:	
Movant	:	
	:	
v.	:	CONTESTED MATTER
	:	
BILLIE JEANNE HARRIS	:	
STIRLYN HARRIS	:	
MARY IDA TOWNSON, Trustee,	:	
	:	
Respondents.	:	

**ORDER DENYING WITHOUT PREJUDICE MOTION FOR RELIEF FROM
AUTOMATIC STAY PURSUANT TO CONSENT ORDER**

Chase Home Finance, LLC, as servicer for JPMC Specialty Mortgage LLC (“Movant”)

seeks relief from the automatic stay based upon the Debtors' alleged default under the terms of a consent order entered June 17, 2009. The consent order provides that if the debtors fail to comply with its terms, including the repayment of post-petition arrears, and upon failure to cure a default within 10 days after the mailing of a notice of default to the Debtors and their counsel, the Movant may file a motion and affidavit of default with the Court and the Court may enter an order terminating the automatic stay without further notice or hearing.

In support of its default motion the Movant has attached an "Affidavit of Default Under Consent Order" sworn to and attested by its counsel. The affidavit states that she is "the attorney for the Movant in this matter and *has been advised* that the Debtors are delinquent under the terms of [the Consent Order]." (Affidavit, ¶ 2) (emphasis added).

An affidavit must be based on personal knowledge of the facts. Use of the phrase "has been advised" suggests that this affidavit is not based on facts within the attorney's personal knowledge, but rather on hearsay. If the Movant's attorney has not personally reviewed the necessary documents that show the Debtors' default, then she is not the appropriate person to aver such facts. Instead, the motion should attach the affidavit of the person with the personal knowledge to attest that the Debtors have defaulted on the payments due under the Order. Because the present affidavit is not evidence of a default, it is

ORDERED that the default motion for relief from the automatic stay is denied without prejudice.

End of Order

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