

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

JAMES & LEILANI ROSSOW

Case No. 91-13400 K

Debtor

DECISION AND ORDER

By prior Order the Court reopened the valuation hearing regarding the debtors' automobile in order to permit the secured creditor to support its allegation that it regularly "nets" NADA "retail values or better" after auction of the vehicles it recovers (if they are in very good condition).

At the further hearing the creditor introduced documentation regarding thirty vehicles it converted to cash in a recent twelve-month period. Of the thirty, nine were sold at auction. In one instance, the high bid equalled the NADA "retail" figure of \$2350. (The creditor "netted" only \$2052.56.) In another the NADA value was not available. In the seven other auctions, the high bid was less than NADA, as follows:

<u>Vehicle</u>	<u>NADA Retail</u>	<u>High Bid</u>	<u>Other Recovery</u>	<u>Net (after all expense)</u>
'87 Pontiac	\$ 5650	\$ 4900	\$246.25 Ins.rebate	\$4639.45
'90 Dodge	7300	5950	459.49 " "	6389.47
'84 Cadillac	6775	2600		2355.17
'88 Mercury	8400	7850		7197.53
'88 Pontiac	8700	3200	162.53 " "	3018.97
'85 Pontiac	2650	2200		1978.99
'87 Chevrolet	3300	2550	1276.00 " "	3339.15

Thus it can be seen that the evidence does not support the creditor's claim that its allowed secured claim should be NADA "retail;" it does not regularly net "retail" after repossession or surrender and sale. (The other automobile transactions documented in the exhibit involved vehicles that are not in good enough condition to auction; and that are advertised for sale. These, of course, do not bring retail prices either.)

The credit union has failed to overcome the presumption that the current method of making suitable adjustments to the NADA "average trade-in" value of the debtor's vehicle (on the pertinent date) is the "fair market value" thereof and should constitute the size of its allowed secured claim.

I note in dictum that the creditor's success in pressing insurance claims as loss payee (for collision damage, etc.) suggests that there should be no reduction to the secured claim for collision damage to the extent of insurance, and this comports, I believe, with current practice.

Dated: Buffalo, New York
June 16, 1992

/S/ MICHAEL J. KAPLAN
U.S.B.J.