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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF WASHINGTON

T.S. MCGREGOR, CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

7	In Re:)	
8	JONES, LARRY D.,)	No. 97-05293-W13
9	Debtor.)	MEMORANDUM DECISION

10

11 THIS MATTER came on for hearing before the Honorable

12 Patricia C. Williams on February 20, 1998 for a valuation hearing

13 to determine the value of the Northland Credit Union collateral.

14 Joseph Harkrader appeared on behalf of the Chapter 13 Trustee;

15 Gregory Heline appeared on behalf of the debtor; and Theodore

16 Schott appeared on behalf of Northland Credit Union. The court

17 reviewed the files and records herein, heard argument of counsel

18 and was fully advised in the premises. The court now enters its

19 memorandum decision.

20 Debtors in this Chapter 13 proceeding own a 1992 all-wheel

21 drive Dodge Caravan. The bankruptcy was commenced on September 25,

22 1997 and in their plan the debtors value the vehicle at \$9,400.

23 The lienholder Northland Credit Union was owed, as of the date of

24 filing, \$13,109.13. An objection to claim has been filed by the

25 debtor and an objection to the Plan has been filed by the creditor.

26 The valuation hearing was held on February 20, 1998 and both

27 parties agreed that the value was to be determined as of the date

28 of the commencement of the bankruptcy proceeding.

MEMORANDUM DECISION - 1

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1 debtor, the relevant market is the retail market. The NADA or
2 Kelly blue book reflects the largest portion of the market which is
3 sales by used automobile dealers. However, private sales are also
4 part of the market. Used vehicles are commonly sold to ultimate
5 consumers by private individuals and businesses. Local newspapers
6 daily advertise such sales and area publications such as Wheels
7 Deals are devoted primarily to advertising and facilitating such
8 sales.

9 In order to determine the fair market value of any asset, be
10 it real estate, heavy equipment or a vehicle, the unique
11 characteristics and condition of the asset must be determined.
12 Through this process, the fair market value is determined. Not
13 only *Rash*, but the cases interpreting it are consistent with this
14 process.

15 Since *Rash*, Judge Small, in the Bankruptcy Court for the
16 Eastern District of North Carolina, has concluded that nothing in
17 the *Rash* decision precludes it from continuing to utilize the NADA
18 retail blue book as the starting point to determine the allowed
19 secured claim for a consumer automobile.

20 The starting point for valuation of an automobile to be
21 retained by a Chapter 13 debtor has been the NADA retail
22 blue book with adjustments agreed to by the debtor, the
23 secured creditor and the Chapter 13 trustee. If the
24 parties do not agree, a hearing is held and the court
determines the value using a replacement standard which
in most cases is retail value. That practice has worked
and will continue in this district.

25 *In re Russell*, 211 B.R. 12 (E.D. N.C. 1997).

26 Judge Killian, in the Bankruptcy Court in the Northern
27 District of Florida, however, concluded that nothing in *Rash* is
28 inconsistent with its continued use of the average of the wholesale

1 and retail NADA values as a starting point. *In re Franklin*, 213
2 B.R. 781 (N.D. Fla. 1997). In *Franklin*, the Florida court
3 concluded that by expressly recognizing the various components
4 which determine retail price such as warranties, reconditioning,
5 etc., the Supreme Court has allowed bankruptcy courts to continue
6 to measure replacement value at some point between wholesale and
7 retail.

8 The Oklahoma Bankruptcy Court in *In re Younger*, 1998 WL 13681
9 (Bankr. W.D. Okla. 1998) thoroughly analyzed not only *Rash* but the
10 above-referenced cases and concluded that nothing in *Rash* precluded
11 it from utilizing the same approach it had taken before *Rash*. That
12 approach was to average the wholesale and retail NADA values and
13 use that as a starting point to determine the allowed secured
14 claim. After determining the appropriate "starting point," all of
15 these courts then examined the unique characteristics of the
16 vehicle in question.

17 *In re McElroy*, 210 B.R. 833 (D. Or. 1997) was the only post-
18 *Rash* decision reported in the Ninth Circuit. In that decision, the
19 court recognized that the term "replacement value" as used in *Rash*
20 is equivalent to the term "fair market value", i.e. the price that
21 a willing buyer would pay a willing seller. The determination of
22 value in that case was based upon a comprehensive evidentiary
23 hearing with expert testimony.

24 This approach was heavily criticized by the Oklahoma court in
25 *Younger*. Although conceding that requiring an evidentiary hearing
26 with expert testimony would result in accurate valuation, the
27 *Younger* court felt that such requirements were impracticable and
28 "virtually impossible" to implement.

1 issue to be considered. As stated in *In re Younger*, the weight of
2 testimony is adversely affected if the witness has not inspected
3 the automobile in question.

4 Much has been made of a single sentence in a footnote to the
5 *Rash* decision to the effect that a retail value may not be
6 replacement value unless certain dealer added items such as
7 warranties and reconditioning are deducted. However, by
8 considering as part of the market the private sales where such
9 items are not added, much of the Supreme Court's concern is
10 eliminated. More importantly, the physical inspection and
11 comparable sales approach result in the adjustments contemplated by
12 the *Rash* court being made. In fact, this is exactly what occurred
13 in the *Franklin* case where the cost of reconditioning the vehicle
14 for sale was deducted from the value. Also, in *McElory*, the court
15 deducted the cost of certain necessary repairs in determining
16 value. There is nothing in *Rash* which mandates a different
17 approach or which requires this or any court to determine profit
18 margins and operation costs of automobile dealers to determine the
19 fair market value of a vehicle.

20 APPLICATION TO FACTS

21 As the debtor primarily relied upon wholesale NADA value, his
22 value is too low. This consumer debtor has no access to the
23 wholesale market. The relevant market for this debtor is the
24 retail market. Mr. Bartlett testified that he used the NADA only
25 fleetingly to determine "where I am at." He does not rely primarily
26 upon the NADA as a physical appraisal is "better." Value is based
27 upon condition, mileage, any mechanical problems and the local
28 market. He inspected the vehicle and relied upon advertisements

1 this would mean "\$400 to \$500" less than the advertised price.
2 Because Mr. Bartlett's primary comparable sale was based upon an
3 advertised price rather than an actual sale price, an adjustment to
4 his opinion of value must be made. Using Mr. Bartlett's estimate,
5 I find that the fair market or replacement value of the 1992 Dodge
6 Caravan is \$11,300.

7 The Clerk of Court is directed to file this Order and provide
8 copies to counsel.

9 DATED this 9th day of March, 1998.

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12 PATRICIA C. WILLIAMS, Bankruptcy Judge

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