

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:

LARRY GENE KAY

BK.NO. 96-04806-BGC-7

AP.NO. 96-0431

CERTIFICATE OF JUDGMENT

PLAINTIFF: NATIONAL BANK OF COMMERCE OF
BIRMINGHAM

vs.

DEFENDANT: LARRY GENE KAY
220 Hickory Hills Drive
Alabaster, AL 35007

Inst # 1997-35393
10/30/1997-35393
08:45 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
009 MCD 28.50

I, William C. Redden, Clerk of the above named Court hereby certify that on June 6, 1997 plaintiff, National Bank of Commerce, recovered of defendant in said Court a judgment (with)(without) waiver of exemptions for the sum of \$18,000.00 Dollars plus \$0 court costs and that John G. Lowther is plaintiff's attorney of record.

Given under my hand this date 30th day of June, 1997.

WILLIAM C. REDDEN, CLERK
UNITED STATES BANKRUPTCY COURT

By *Deane O. Rust*
Deputy Clerk

Seal of the U.S. Bankruptcy Court
Date of Issuance: June 30, 1997

This Certificate of Judgment, along with copies of a Nondischargeable Judgment, Consent Order, and Consolidated Settlement Agreement is, by agreement of the parties, deemed to be recorded simultaneously with the corresponding documents in the cases of Federal Employees Credit Union vs. Larry Gene Kay and APCO Employees Credit Union vs. Larry Gene Kay. The judgments shall have equal priority regardless of the actual order of filing.

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	
)	
Larry Gene Kay,)	Bankruptcy Case No.: 96-04806-BGC-7
Debtor,)	
National Bank of Commerce of Birmingham)	
)	
Plaintiff,)	
VS.)	Adversary Proceeding No.: 96-00431
)	
Larry Gene Kay,)	
Defendant)	

NONDISCHARGEABLE JUDGMENT

Consistent with the Consent Order entered in the above proceeding contemporaneously herewith, a nondischargeable judgment hereby is granted against Larry Gene Kay, and in favor of National Bank of Commerce of Birmingham, in the total amount of \$ 18,000.00. Pursuant to 11 U.S.C. Section 523 (a), the entire amount of this judgment is excepted from the above-styled bankruptcy case of Larry Gene Kay, any discharge granted therein or pursuant thereto, and any discharge granted to Larry Gene Kay, in or pursuant to any other case under the Bankruptcy Code.

Done this 2nd day of June, 1997.


Benjamin Cohen
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	
)	
Larry Gene Kay,)	Bankruptcy Case No.: 96-04806-BGC-7
Debtor,)	

National Bank of Commerce of Birmingham)	
)	
Plaintiff,)	
VS.)	Adversary Proceeding No.: 96-00431
)	
Larry Gene Kay,)	
Defendant)	

CONSENT ORDER

This matter came before the Court by way of the Complaint under Section 523(a) filed by National Bank of Commerce of Birmingham, on October 8, 1996. The parties having stipulated to a nondischargeable judgment on the terms and conditions set forth below, the Court being satisfied that the terms of the stipulation are fair and reasonable, and based upon the pleadings of record, the arguments and representations of counsel, and for good cause shown, the Court hereby **FINDS, DETERMINES, and CONCLUDES** as follows:

1. Larry Gene Kay, (the "Debtor") filed a voluntary petition for relief under Chapter 7 of Title 11, United States Code, 11 U.S.C. Sec. 101, et seq. (the "Bankruptcy Code") on July 16, 1996 (the "Filing Date"). National Bank of Commerce of Birmingham, ("NBC"), filed the instant adversary proceeding to determine the dischargeability of debt under Section 523(a) of the Bankruptcy Code. The Court has jurisdiction over the adversary proceeding pursuant to 28 U.S.C. Sec. 1334(b). The adversary proceeding is a core proceeding under 28 U.S.C. Sec. 157(b)(2)(I).

2. At the time of the filing of the Debtor's Petition, Debtor owed NBC the total sum of \$40,426.73, arising out of the following three notes: Loan dated March 19, 1996, with a balance on the filing date of \$11,666.38, said loan being partially secured by a 1995 Mitsubishi Eclipse; Loan dated April 22, 1996, with a balance on the filing date of \$15,358.85, said loan being partially secured by a 1996 Mazda 626; and Loan dated April 8, 1996, with a balance on the filing date of \$13,401.50, said loan being partially secured by a 1994 Jeep Cherokee (the "NBC Loans"). NBC claims the NBC

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Loans are nondischargeable under 523(a)(2)(A) and/or 523(a)(4) of the Bankruptcy Code. The parties have stipulated that a portion of the NBC Loans in the amount of \$ 18,000.00, is nondischargeable and shall be excepted from discharge under Section 523(a) of the Bankruptcy Code, provided, that said nondischargeable amount may be satisfied by Debtor as provided in the Consolidated Settlement Agreement attached hereto as Exhibit "A".

3. The NBC Loans are partially secured by the motor vehicles hereinabove described. On October 7, 1996, the Court entered a consent order modifying the automatic stay provided by 11 U.S.C. Section 362, to permit NBC to foreclose and otherwise proceed against the 1994 Jeep Cherokee securing the \$13,401.50 Loan. On December 20, 1996, the Court entered a consent order modifying the automatic stay provided by 11 U.S.C. Section 362, to permit NBC to foreclose and otherwise proceed against the 1995 Mitsubishi Eclipse securing the \$11,666.38 Loan, and the 1996 Mazda 626 securing the \$15,358.85 Loan. The parties have stipulated that any proceeds received by NBC as a result of the repossession and sale, after deducting the expenses incurred in connection therewith, shall be applied to the portion of the NBC Loans which are not included in the nondischargeable portion of the NBC Loans, and said proceeds shall not decrease the amount owed by Debtor on the Nondischargeable portion of the NBC Loans.

4. This order is limited to Debtor Larry Gene Kay, and does not extend or apply to Debtor's spouse or any of her assets, and Debtor's spouse has no obligation to NBC with respect to the debts and obligations included in this Order.

WHEREFORE, based upon the foregoing findings of fact and conclusions of law, it is hereby **ORDERED, ADJUDGED and DECREED** that \$ 18,000.00, of the debt owing by the Debtor to NBC is nondischargeable and, pursuant to Section 523(a)(2) of the Bankruptcy Code, is excepted from any discharge received by the Debtor in this or any other case under the Bankruptcy Code; and it is further

ORDERED, ADJUDGED and DECREED that the automatic stay entered pursuant to Section 362(a) of the Bankruptcy Code is hereby terminated with respect to the debt excepted from discharge hereunder; and it is further

ORDERED, ADJUDGED and DECREED that a separate judgment shall enter determining that the debt of the Debtor to NBC in the total amount of \$ 18,000.00, as set forth herein, is nondischargeable and shall be excepted from any discharge received by the Debtor in this or any other case under the Bankruptcy Code; and it is further

ORDERED, ADJUDGED and DECREED that the aforesaid said judgment may be satisfied by Debtor as provided in the Consolidated Settlement Agreement between NBC, Debtor, Federal Employees Credit Union, and APCO Employees Credit Union, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, and hereby approved and made a part of this Order; and it is further

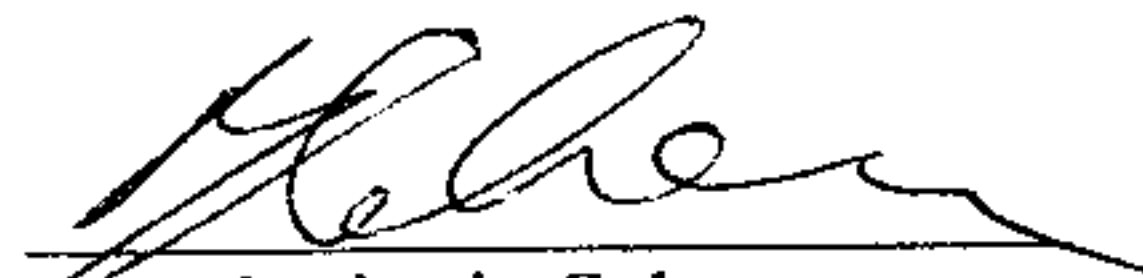
ORDERED, ADJUDGED and DECREED that a judgment certificate shall be issued on the judgment herein, and said judgment certificate may be recorded by NBC as and when it deems

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proper and appropriate, and NBC may proceed, except as otherwise provide herein, to execute upon such judgment by any proceeding available under applicable law; and it is further

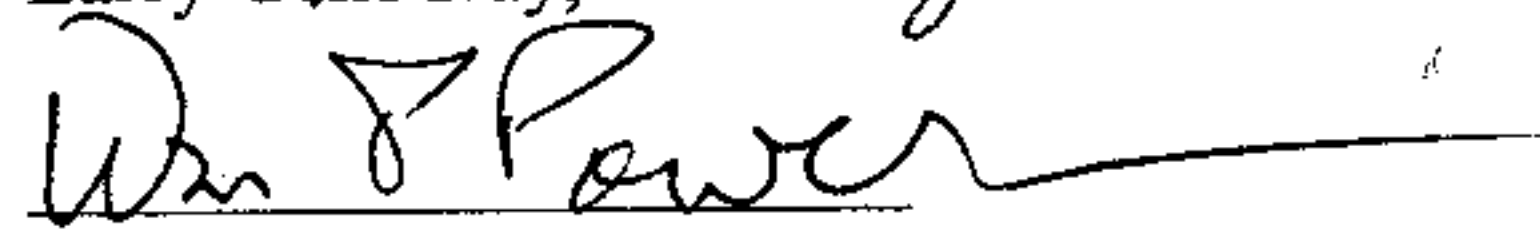
ORDERED, ADJUDGED and DECREED that this Order shall have no effect on NBC's rights under the Court's Lift of Stay Orders of October 7, 1996, and December 20, 1996, and the proceeds obtained by NBC resulting from the repossession and sale, of the motor vehicles, shall be credited to the portion of the NBC Loans which is not included in the nondischargeable judgment, and shall not be credited to the amount owed by Debtor on the nondischargeable judgment.

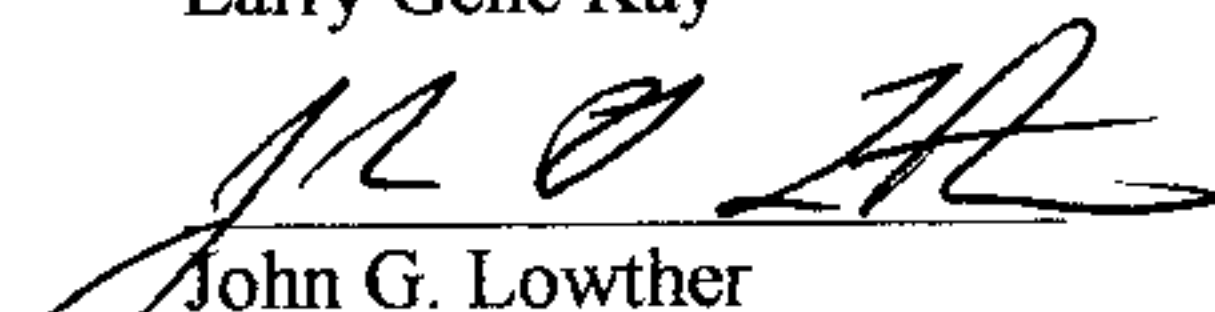
DONE this 2nd day of June, 1997.


Benjamin Cohen
United States Bankruptcy Judge

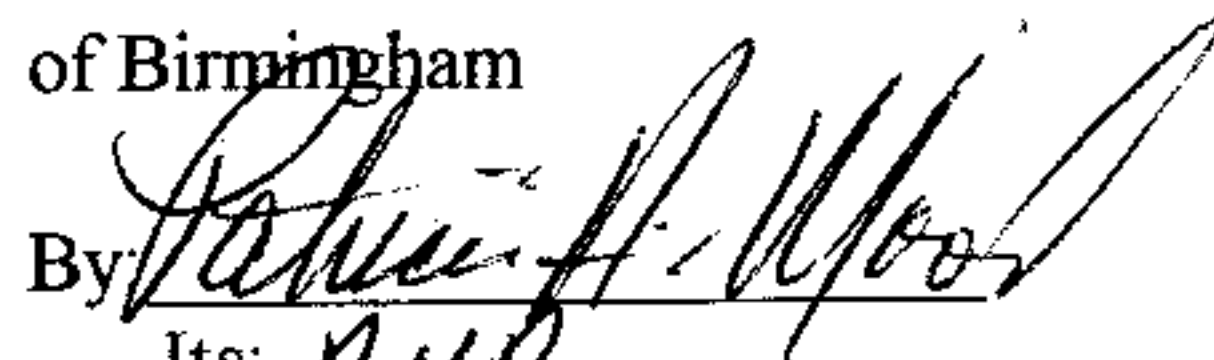
AGREED AND CONSENTED TO BY:


Larry Gene Kay, Debtor


William P. Powers
Attorney for Debtor,
Larry Gene Kay


John G. Lowther
Attorney for NBC

National Bank of Commerce
of Birmingham

By 
Its: AVP

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
Southern Division**

IN RE:

Larry Gene Kay,

DEBTOR,

*
*
*
* **CHAPTER 7**
* **CASE NO: 96-04806-BGC-7**
*

APCO Employees Credit Union

PLAINTIFF,

vs.

Larry Gene Kay

DEFENDANT.

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*
*
* **Adv. No: 96-00467**
*
*
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*

Federal Employees Credit Union

PLAINTIFF,

vs.

Larry Gene Kay

DEFENDANT.

*
*
*
* **Adv. No: 96-00466**
*
*
*
*

**National Bank of Commerce
of Birmingham**

PLAINTIFF,

vs.

Larry Gene Kay

DEFENDANT.

*
*
*
* **Adv. No: 96-00431**
*
*
*
*

CONSOLIDATED SETTLEMENT AGREEMENT

The above referenced Adversary Proceedings were consolidated for the purpose of trial.

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U.S. District Court
N.D. OF ALABAMA

97 MAY 14 PM 2:06

FILED

The Plaintiffs jointly entered into settlement negotiations with the debtor and an agreement was reached resolving each of the Adversary Proceedings. A Consent Order and a Non-Dischargeable Judgment has been entered in each of the Adversary Proceedings. The parties have reached an agreement pertaining to the satisfaction of their judgments. The parties agree to comply with the terms of this Consolidated Settlement Agreement until the judgments are satisfied in full. The parties agree as follows:

1. Each of the Plaintiffs have the right to pursue and recover the collateral securing the individual obligations. Any recovery made from the disposition and sale of the collateral shall be applied to the discharged portion of the obligation. Recovery from the sale of collateral shall be separate and distinct from this agreement and the Consent Orders set out in each Adversary Proceeding. Furthermore, the Debtor agrees to assist the Plaintiffs in obtaining possession of their collateral. Such assistance shall include, but not be limited to, executing a Consent Order granting relief from the automatic stay.
2. The Debtor agrees to make voluntarily payments to a designated representative of the Plaintiffs in an amount equal to the amount that could be obtained through the issuance of a State Law Garnishment. The payment is due on the 15th day of each month.
3. The Debtor agrees to provide a copy of a pay stub to each creditor on a monthly basis so that the amount described in paragraph 2 above can be properly determined.
4. The Plaintiffs agree that any money received from either voluntary payments or through legal process of any sort shall be divided between the Plaintiffs on a pro-rata basis as follows:

APCO Employees Credit Union	51%
Federal Employees Credit Union	13%
National Bank of Commerce of Birmingham	36%
5. The Plaintiffs agree not to issue a garnishment on the Debtors wages as long as the Debtor makes voluntary payments as set out in this agreement. This is the only limitation on the Plaintiffs right to recover. Specifically, the Plaintiffs have the right to execute on any asset located or take any other remedy available except as set out above. If the Debtor is more than 10 days late on any voluntary payment then the Plaintiff's have the right to issue a garnishment on the debtor's wages.

LGK

6. The Plaintiffs agree that the Non-Dischargeable Judgments, the Consent Order and this Consolidated Settlement Agreement are to be recorded together and the liens created by the recording of the judgments are to have identical lien priority regardless of the actual order of filing.
7. If at any time after the entry of the judgment the Plaintiffs do not receive a voluntary payment from the Debtor for a period of sixty (60) days, at the request of any of the Plaintiffs, the Plaintiffs agree to turn each of the judgments over to an attorney for collection. The Plaintiffs agree to pay the collection attorney on a 25% contingency basis. The Plaintiffs agree to use either of the attorneys of record in these Adversary Proceedings or a third attorney to be jointly selected by the Plaintiffs.
8. In the event the judgments are turned over to the attorney for collection as set out in paragraph 7 above, all of the terms of this agreement remain in full force and effect and any recovery made by such attorney shall be disbursed consistent with this agreement.
9. The Plaintiffs agree to satisfy each of the judgments upon the total payment by the Debtor of \$30,000.00 within five (5) years of the date of this agreement.

Consented to by:

APCO Employees Credit Union

By: Donna E. Rayland
Its Collection Dept. Mgr.

Date: _____

Federal Employees Credit Union

By: Dolores A. Neal
Its Manager

Date: _____

LL K

National Bank of Commerce of Birmingham

Date: _____

By: _____

Its AVP

Larry Kay

Date: _____

Larry Kay

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