

U.S. COURTS
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

RE:) Chapter 7
) Case No. 98-02141
COMMUNITY HOME HEALTH, INC.)
) **MOTION FOR ALLOWANCE OF**
) **ADMINISTRATIVE EXPENSES**
Debtor.)
)

The Hosac Company, Inc. (Creditor) moves this Court for an Order for allowance of an administrative expense priority claim under Section 503 of the United States Bankruptcy Code and 11 U.S.C. §507(a)(1). The amount of the administrative expense priority requested is for the lease payments due Creditor of \$66,251.81. In support of this motion, Creditor asserts as follows:

1. The bankruptcy petition was filed on June 25, 1998. On the date the bankruptcy petition was filed, Debtor had paid the June, 1998 lease payment.
2. The lease requires Debtor to pay monthly rent and to reimburse Landlord for Tenant's pro-rata portion of Landlord's total annual operating costs (paragraph 2.02 of Lease).

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3. Landlord estimates that Debtor's pro-rata portion of the Landlord's operating costs for 1998 are an annual figure of \$11,462.58. This is \$31.40 per day.

4. The rent for the facility, during the relevant time period is \$21,068.67 per month. In a 31 day month, this amounts to \$679.635 per day.

5. On or about August 5, 1998, the Court conducted a hearing on the Trustee's Motion to Reject Executory Contracts. An order was entered rejecting the executory contract including the unexpired lease held by Creditor on August 14, 1998. That Order required the Trustee to promptly restore and make available the lease property for repossession and turnover to the Lessors.

6. On or about August 19, 1998, Creditor was notified by the Trustee through their respective attorneys of record, that the Trustee had vacated the leased premises at 1109 W. Myrtle. At the time of that letter, Trustee acknowledged that a substantial amount of modular furniture and leased equipment from U.S. Bancorp was still located on the leased premises and that miscellaneous other personal property owned by Citicorp was also located on the second floor of the premises. Also, a conference table and furniture are still located on the premises. While the Trustee acknowledged that personal property was still located in the leased premises. Trustee, however, asserted he had no control over the pickup and removal of this substantial personal property from the leased premises. In fact, personal property is still in the leased premises as of the date of this Motion. Creditor anticipates that the majority will be removed as of September 30, 1998.

7. The continued presence of the modular furniture on the premises has prevented Creditor from painting and performing other mitigating actions to enable the

Creditor to obtain replacement tenants or to conduct appropriate marketing of the property.

8. Despite anticipated additional time beyond September 30, 1998 for the removal of personal property, from the premises, the request contained herein is limited to the amount due through September 30, 1998 as follows:

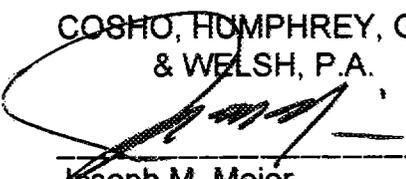
- a. July rent in the amount of \$21,068.67;
- b. August rent in the amount of \$21,068.67;
- c. September rent in the amount of \$21,068.67;
- c. Estate's pro-rata portion of Landlord's operating expenses required by the lease at \$31.40 times 97 days (June 25, 1998 to September 30, 1998) equaling \$3,045.80.
- d. Attorney fees and costs incurred by Creditor.
- e. The total of these claimed administrative expenses are \$66,251.81.

9. Creditor is entitled to an allowance of an administrative expenses under the code sections specified above as well as existing case law. That case law provides in part:

- a. Trustees are required to pay rent at the contact rate until the Trustee rejects the lease and surrenders possession of that Lease. In re: Pacific Atlantic Trading Co., 27 F.3d 401 (9th Cir. 1994);
- b. See also In re: Dosoky, 94 IBCR 179, 181 (Bkrtcy. D. Idaho 1994).

DATED this 29th day of September, 1998.

COSHO, HUMPHREY, GREENER
& WELSH, P.A.


Joseph M. Meier

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on the 29th day of September, 1998, a true and correct copy of the foregoing was delivered as follows:

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