

**United States Bankruptcy Court  
District of New Mexico**

**Document Verification**

**Case Title:** Clara Josephine Sandoval  
**Case Number:** 03-15192  
**Chapter :** 7  
**Judge Code:** SA  
**First Meeting Location:** Albuquerque  
**Reference Number:** 7 - 03-15192 - SA

Document Information		
<b>Number:</b>	37	
<b>Description:</b>	Minutes of Oral Ruling Held On 03/10/04 Re: [7-1] Motion For Valuation of 1991 Cutlass Mobile Home at \$ 6,121.00 with Conseco Finance by Clara Josephine Sandoval .	
<b>Size:</b>	4 pages (8k)	
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Filer Information		
<b>Submitted By:</b>	Jill L. Peterson	
<b>Comments:</b>	Minutes of Hearing Held on Mar. 10, 2004 on Oral Ruling on Valuation of Debt with Conseco.	

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

**Clerk's Minutes**

Before the Honorable James Starzynski

James Burke, Law Clerk  
Jill Peterson, Courtroom Deputy

**\*\*Hearing was Digitally Recorded**

Date:  
MARCH 10, 2004

In Re:  
CLARA SANDOVAL  
No. 13-03-15192 S

Oral Ruling on Valuation of Debt with Conseco

Attorney for Debtor: Phil Montoya  
Attorney for Conseco: Dan Duncan  
Trustee: Kelley Skehen

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TIME STARTED: 3:05

TIME ENDED: 3:19

Summary of Proceedings:

Exhibits \_\_\_\_\_

Testimony \_\_\_\_\_

DEBT VALUED AT \$18,000.00

MONTOYA WILL PREPARE ORDER

RULING:

1334 and 157; core; 7052

Issue is what is the replacement value (Associates Comm'l Corp. v. Rash, 117 S.Ct. 1879 (1997)) of debtor's 1991 Cutlass model mobile home (single wide with a floor area of 16 x 76 but what the Debtor calls 16 x 80 with the outside portion counted) for purposes of determining the secured claim of Conseco.

The Debtor originally asserted that the mobile home had a value of \$6,121. At trial she testified that the home was worth about \$10m (base price of \$8,871 plus value of "extras" such as masonite siding and a garden-style tub). The debtor is of course competent to testify about the value of the property; however, her testimony is subject to scrutiny as is any other testimony; admissibility is not necessarily credibility. Her testimony was based in part on her research on an apparently outdated NADA internet site (NADAGuide.com) (ex D-1).

The debtor also tendered evidence of what it would cost to purchase other mobile homes that were in fact newer by several years but otherwise largely comparable. Had this particular testimony been admissible, the Court would probably have reached a substantially lower figure for the value of the mobile home at least in part because what mobile homes are selling for in this particular market would be more probative of value than the more generalized NADA value drawn from sales around the southwestern United States. However, because the testimony was not disclosed to Conseco in accordance with Rule 7026(e)(1) (requiring supplemental disclosure), it is not admissible, and therefore the Court has not considered the testimony.

The Debtor also testified that she had purchased the mobile home four years ago for \$27,000 (Ex C-1 shows a purchase price of \$26,471 at 13.25% APR), that it was overpriced then, but that because of her poor credit, this was the best she could do. She also testified about the difficulties of finding places for single wides and other circumstances that made owning a double wide easier in the greater Albuquerque area.

Conseco provided expert testimony that the mobile home was in very good condition and that the cost to replace the home would be \$20,000-23,000 - that would be the retail value on a Greentree lot. Conseco's ex C-4 was an NADA worksheet that showed a retail value of \$19,121 from the NADA Jan-April 2004 edition; ex C-5 was an NADA worksheet that showed a retail value of \$17,454 from the NADA May-Aug 2003 edition. Conseco's testimony was also that single wides are basically as valuable as double wides on a per square foot basis. This was presumably in response to Debtor's testimony about the more limited choices available for single wides. Conseco also provided evidence that the outdated NADA site used a category - "economy" - that is no longer in use for valuations, and that the Debtor had used the incorrect input to derive the values for the mobile home. (Debtor also ran into a problem when NADA began charging a fee for access to its website.)

The Debtor's value of \$10,000 is too low; this home is well maintained, and based on Conseco's testimony, the Court discounts Debtor's ex D-1. At the same time, the proposed value of \$20-23m is too high. That figure undoubtedly includes some of the items which may not be counted in the value to the debtor, Rash at 117 S.Ct. at 1886 n. 6, but because Debtor did not provide testimony on that issue by cross examination or otherwise, the Court has no basis to disagree with the figure on that ground. In any event, the NADA worksheet of ex C-5 is probably closer to reality, at \$17,454, than the higher figures provided by Conseco in ex C-4 or by testimony. Debtor filed her petition on June 27, 2003, virtually the exact midpoint of the period covered by the NADA edition from which the information in C-5 is drawn. And the theoretical date on which the valuation should be measured is the petition date.

The C-5 figure should be increased by \$759 to reflect the garden tub, fiberglass shower stall and masonite siding which appear not to have been included in the C-5 calculation but do appear in the C-4 calculation. The leads to a total of \$18,213.

Whether that figure should be further reduced to account for what the Debtor testified were the increasing limitations on places to locate a single wide is questionable. While one would expect that the NADA values would reflect that factor, it may be that the phenomenon is peculiar to limited areas, including the greater Albuquerque metropolitan area, and therefore are not reflected in the NADA values very clearly. Effectively the generalized responses from Conseco's witnesses on this issue were not very convincing, but on the other hand the Debtor attached no specific value to that factor, although she might have been able to quantify that factor by getting

into evidence of what single wifes were being sold for by the various sellers in the area, including individual owners. Nevertheless, the Court finds that some reduction should be attributed to that factor, and believes that a conservative figure would be about \$200.

Thus, the Court ends up with a figure of \$18,013, which the Court concludes should be rounded down to \$18,000 even.