

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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U.S. BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re: ) Chapter 11  
)  
)  
Fleming Companies, Inc., et al., ) Case No. 03-10945 (MFW)  
) (Jointly Administered)  
)  
Debtors. )

[Re: Docket No. 2034]

Objections Due: July 28, 2003 @ 4:00 p.m.  
Hearing Date: August 4, 2003 @ 11:30 a.m.

**COMBINED OBJECTION TO CURE AMOUNT AND  
TO ASSIGNMENT OF EXECUTORY AGREEMENTS**

**TO: HONORABLE MARY F. WALRATH  
BANKRUPTCY JUDGE**

D/M FOODS, INC., (the "Objectant") by its attorneys Finkel Goldstein Berzow Rosenbloom & Nash, LLP and Jaspan Schlesinger & Hoffman LLP as and for its combined objections to cure amount and to the proposed assumption and assignment of leases respectfully alleges and shows this Court as follows:

**GENERAL BACKGROUND**

1. According to the Cure Amount Schedule prepared by the Debtors, Objectant's contract assignment number is 5059. That Schedule alleges that the cure amount on Objectant's executory agreement(s) totals \$-0-, which is totally erroneous.

# 7/28/03

2. Objectant owns and operates a retail supermarket located at 161 Main Street, Dublin, Pennsylvania. The Objectant is a former customer of the Debtors who supplied Objectant.

**THE FACILITY STANDBY AGREEMENT**

3. At first instance, Objectant contends that to the extent that the Debtors seeks to assign their obligations under a so called facility stand-by agreement ("FSA") such agreement cannot be assigned as it was unilaterally terminated by the Debtors pursuant to a written notice dated May 14, 2003 sent to the Objectant, a copy of which is annexed hereto and made a part hereof as **EXHIBIT "A"**.

4. The Objectant was told by the Debtors that they could not supply Objectant with inventory any longer and that Objectant should find a new wholesale grocer. A copy of the FSA is annexed hereto as **EXHIBIT "B"** as will be hereafter described.

5. Objectant is a member of Retail Marketing Group LLC, a co-operative buying group which obtains promotional rebates and funding from manufacturers based upon high volume purchases. Because the Debtors breached their obligations under the FSA by failing to pay the obligations which it owed to their suppliers, Objectant lost promotional funding totaling \$20,970.01 in 2002.

6. Under provisions of §365 of the Bankruptcy Code, in order to assume and assign this "terminated agreement" damages totaling \$20,970.01 would have to be paid to the Objectant at the time of assignment.

Dated: July 24, 2003

**D/M FOODS, INC.**

By: *Richard Overbeck*  
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