

00-223-CD
PROVIDENCE NATIONAL BANK -vs- LINDA ROSELLINI

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

(14)

PROVIDIAN NATIONAL BANK

NO. 00-223-CB
IN CIVIL ACTION

-vs-

Plaintiff(s)

(15)

LINDA ROSELLI

Defendant(s)

COMPLAINT

CODE -
FILED ON BEHALF OF
PLAINTIFF

COUNSEL OF RECORD
FOR THIS PARTY:

James R. Apple, Esq.
PA I.D. No. 37942

Charles F. Bennett, Esq.
PA I.D. No. 30541

Joel E. Hausman, Esq.
PA I.D. No. 42096

Marylouise Wagner, Esq.
PA I.D. No. 61095

APPLE AND APPLE, P.C.
Firm No. 719

4650 Baum Boulevard
Pittsburgh, PA 15213-1237
Telephone (412) 682-1466
Fax (412) 682-3138

FILED

FEB 22 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

PROVIDIAN NATIONAL BANK

NO.
IN CIVIL ACTION

-vs-

Plaintiff(s)

LINDA ROSELLI

Defendant(s)

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served upon you, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice, for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO
TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT
WHERE YOU CAN GET LEGAL HELP.**

Court Administrator
Clearfield County Courthouse
One North Second Street
Clearfield, Pennsylvania 16830
Telephone Number 814-765-2641 Ex 50-51

COMPLAINT

1. Plaintiff is a National Banking Association located at 4940 Johnson Drive, Pleasanton, CA 94566. As of January 1, 1998, Providian National Bank was merged into First Deposit National Bank, and the resulting entity took the name Providian National Bank." The account that is the subject of this lawsuit may have been either a First Deposit National Bank account or a Providian National Bank account prior to the merger, but is now an account of the new" Providian National Bank, which is the plaintiff herein.
2. Defendant is an individual whose address is 123 E. Scribner Avenue, Dubois, Clearfield County, PA 15801.
3. At a specific instance, the Defendant applied for and was granted credit by the Plaintiff at the terms and conditions agreed upon by the parties, as is more specifically shown by the Account Application and Agreement, true and correct copies of which are attached hereto, marked Exhibit A" and made a part hereof.
4. Defendant made purchases and/or received cash advances using said credit.
5. Plaintiff avers that the terms of the Agreement provide for acceleration of the entire balance due and owing upon Defendant's breach of the Agreement.
6. Thereafter, in breach of obligations under the Agreement, the Defendant failed to make payments as they became due.
7. Plaintiff avers that the balance due amounts to \$14,440.53.
8. Plaintiff avers that interest has accrued at the rate of 23.30% per annum on the balance due from December 3, 1999.
9. Per the terms of the agreement, the Defendant has agreed to pay to the Plaintiff as liquidated damages, the costs of collection, including all reasonable attorneys' fees incurred in the collection of monies owing.

10. Plaintiff avers that pursuant to Plaintiff's agreement with Plaintiff's attorneys, Plaintiff's attorneys are to receive attorneys' fees of 33 1/3% of the debt initially submitted for collection, \$15,581.22.

11. Plaintiff believes, and therefore avers, that said attorneys' fees rate is just and reasonable compensation for the services rendered by said attorneys.

12. Although repeatedly requested to do so by Plaintiff, Defendant has willfully failed and refused to pay the amount due Plaintiff or any part thereof.

WHEREFORE, Plaintiff demands Judgment against Defendant in the amount of \$14,440.53 with appropriate additional interest, attorneys' fees and costs.

APPLE AND APPLE, P.C.

By: Marionise Wagner
Attorneys for Plaintiff(s)

Taken by: BRL

Capital Cash Urgency

Customer Response Form

Call Date: 03/23/96

Finder Number: 216-10209-8357-1

60851428

Invited Name: LINDA S LESKY

New Information:

Name: **LINDA ROSELLI**

Address: 123 E SCRIBNER AVE

City: DUBOISE

State: PA

Zip: 15801

SSN: 160-56-0578

Home Phone: (814) 371-8756

Business Phone: (814) 375-3676 Ext: 0

Own/Rent: Owner

Annual Income: 20,000

Verify Income

Employment: Employed

Comments:

Finder Number: 216-10209-8357-1

Page Number: 7

Reference Number: 4310390321607857

Box : 3315
Year : 96
Batch : 25
SSN : 160-56-0578
Account # : 4310-3903-2160-7857

EXHIBIT

JX3

jkings1.ar.eas



Capital Cash®
First Deposit National Bank
Account Agreement for
Linda Rosselli

WHEN YOU SIGN ANY OF THE CHECKS WE PROVIDE, YOU WILL BE AGREEING TO THIS ACCOUNT AGREEMENT.

Your Capital Cash account (the "Account") is a reusable personal loan that allows you to access your account by writing checks. In this Agreement, "you" and "your" mean each person for whom we have opened a Capital Cash Account. "We," "our," "ours," and "us" mean First Deposit National Bank or its assignee. You may not be eligible for an Account if you or a member of your household already have a credit account with us or Providian National Bank. The Account may be used only for personal, family, household, and charitable purposes, and not for any business or commercial purpose. You and we agree as follows:

Special Requirement of this Account: Credit Review Program. In order to keep your Account in good standing, you have agreed not to increase the amount (after any balance transfers have been completed) of your total debt on unsecured revolving credit accounts with other lenders without our authorization. We will review your credit records periodically and contact you if we believe you are not meeting this special requirement.

Cash Advances. Balances you transfer to this Account from other lenders will be posted as cash advances. You may request cash advance checks by calling our toll-free number listed on your statement. You may also access your Account by writing checks. Each check you write on your Account is treated as a cash advance made when we honor the check.

Payments. You will receive a monthly statement showing your outstanding balance. You will pay us in U.S. dollars (checks must be payable at a U.S. office of the bank the check is drawn on) at least the payment due as shown on your statement by the payment due date in accordance with payment instructions on your monthly statement. You may not use your convenience checks to make payments on your Account or to make payments on any other account you have with us or our affiliates. The payment due will be: 2.0% of the new balance shown on your statement plus the amount of any past due payment plus the amount by which the new balance exceeds your credit line plus fees for certain optional services. However, the payment due will not be less than \$15 (unless your new balance is less than \$15, in which case the payment due will be the amount of the new balance). We may require a higher minimum payment if your Account is past due or above the credit line, but we will notify you before doing so. If your payment is more than the payment due, it will be treated as a single payment and none of it will be applied to future payments due. We may accept late or partial payments, or payments marked "paid in full" or marked with other restrictions, without losing our right to collect all amounts owing under this Agreement.

Finance Charge. Finance charges begin to accrue on a debit when it is included in the daily balance ("Balance") and continue until the balance is reduced by a payment or credit. The Balance is reduced by payments as of the date received, and by credits (except for reversals of late and miscellaneous charges) as of the date posted. Debits other than finance charges are included in the Balance as of the dates they are posted which are as follows: cash advance checks that are identified as cashier's checks that we mailed to you at your request, as of seven days after the date we print on the check; cash advance checks we mail to other lenders to transfer balances, as of 10 days after the date on the check; all other checks, as of the date honored; funds electronically transmitted to other lenders to transfer balances, as of the date transmitted. Other debits (except for late, finance, and miscellaneous charges) are included in your Balance as of the date posted. Finance charges are added to your Balance each day and are then posted on the last day of the billing cycle.

To figure the daily finance charge we start with your previous day's Balance, add all debits and subtract all credits for the current day (as explained in the paragraph above) and multiply the net amount by the daily periodic rate (see following paragraph). The finance charge is then added to and included in that day's Balance. We treat a credit balance for any day as zero. We determine the total finance charges for the billing cycle by adding together the finance charge for each day within the billing cycle. To determine the average daily balance shown on your statement, add each day's Balance (including daily finance charge) in the billing cycle and divide by the number of days in the billing cycle. You can multiply this average daily balance by the number of days in the billing cycle and by the daily periodic rate to determine the total amount of your finance charges for the billing cycle. In calculating finance charges, an adjustment will be made for any transaction or payment that would have affected the finance charge calculation in a prior billing cycle had it been posted in that cycle. The balance amounts shown on your statement may differ from the Balances used in computing finance charges, because the latter do not include any late or miscellaneous charges which are included in the balances shown on your statement. There is no period within which credit extended may be repaid without incurring a finance charge.

The daily periodic rate is 0.06000%, corresponding to an ANNUAL PERCENTAGE RATE of 21.90%.

Fees. We will charge your Account up to \$13 for: each returned payment check; each check you write on your Account that we return unpaid; each stop payment order or renewal of such an order; each billing cycle within which your Account is delinquent (late charge). If you request copies of billing statements that were first sent to you more than three months earlier, we may charge a handling fee of \$2.00 for each copy.

Default. You will be in default: if you were not eligible for the Account at the time it was opened; if you fail to comply with any part of this Agreement; if any information you gave us proves to be incomplete or false; upon your death, bankruptcy, or insolvency; if you fail to pay other debts when due; if a bankruptcy petition is filed by or against you; or if we believe in good faith that you may not pay or perform your obligations under this Agreement. On your default we may, without further demand or notice, cancel your credit privileges, declare your Account balance immediately due and payable, and invoke any remedy we may have. In the event of your default, the outstanding balance on your Account shall continue to accrue interest at the APR(s) disclosed in the Finance Charge section of this Agreement, even if we have sued you to collect the amount you owe.

Credit Line. Your credit line is specified from time to time in a separate notice. We may increase or decrease your credit line based on information we obtain from you or your credit records. Your available credit is normally the difference between your credit line and your Account balance (including transactions made or authorized but not yet posted). You will not use your Account for, and we may refuse to honor, any transaction which would cause you to exceed your available credit.

Promise to Pay. You promise to pay us when due all amounts borrowed when you or someone else use your Account (even if the amount charged exceeds your permission), all other transactions and charges to your Account, and collection costs we incur including, but not limited to, reasonable attorney's fees and court costs. (If you win the suit, we will pay your reasonable attorney's fees and court costs.)

Changes. We may change any part of this Agreement or add or remove requirements after notice as required by law. If we change the Finance Charges section of this Agreement, the new finance charge calculation will apply to your whole Account balance from the effective date of the change, whether or not the balance includes items posted to your Account before the change date and whether or not you continue to use the Account.

Cancellation of Account. At any time after at least 30 days notice to you, or without notice if permitted by law, we may cancel the Account and your credit privileges. If your Account is cancelled, finance charges and other fees will continue to be assessed, payments will continue to be due, and all other applicable provisions of this Agreement will remain in effect. You may cancel your credit privileges by notifying us in writing and paying your entire statement balance by the payment due date on the statement which includes your final checks, cash advances, charges, and fees. Your credit privileges will be cancelled and no additional finance charges will be imposed. If your credit privileges are cancelled you may no longer write checks on your Account, and you should destroy any unused checks we have issued to you.

Personal Information; Documents. You will give us at least 10 days notice if you change your name, home or mailing address, telephone numbers, or job. You will promptly give us information about your financial affairs if we ask for it. We may get such information from others, including credit reporting agencies, and provide your address and information about your Account to others. We may also share such information with our affiliates. If you fail to fulfill any of your obligations under this Agreement, a negative credit report reflecting on your credit record may be submitted to credit reporting agencies.

Customer Service; Unauthorized Use, Loss, or Theft of Checks. You will safeguard all checks issued to you from theft. If you discover or suspect that any unused checks are lost or stolen, or that there may be an unauthorized transaction on your Account, you will notify us promptly by telephoning 1-800-964-9212. You will phone, even though you may notify us in writing, so we can act fast to limit losses and liability. If you report or we suspect unauthorized use of your Account, we may suspend your credit privileges until we resolve the problem to our satisfaction. To improve customer service and security, you agree that your calls may be monitored or recorded.

Stop Payment Orders. If you wish to stop payment on a check, you may send us a stop payment order by writing to us at our address for customer service listed on your bill. You can make a stop payment order orally by calling the number listed on your statement. When you make a stop payment order, you must provide your Account number and specific information about the check: the exact amount, the date on the check, the name of the party to whom it was payable, the name of the person who signed it, and the check number. You will be asked to confirm an oral stop payment order in writing. We may disregard your oral order if we do not receive a signed written confirmation within two weeks after the oral order or if you have not adequately described the item so that payment can be stopped by our computer. The order will not be effective if the check was paid by us before we had a reasonable opportunity to act on the order. We may, without liability, disregard a written stop payment order six months after receipt unless it is renewed in writing.

Standard of Care. Transactions in your Account will be processed mechanically without our necessarily reviewing every item. Our processing system will call our attention to certain items which we will examine. We will examine all transactions when you report that your checks have been lost or stolen. We do not intend ordinarily to examine all items, and we will not be negligent if we do not do so. This rule establishes the standard of ordinary care which we in good faith will exercise in administering your Account. Because of our limited review, and because your cancelled checks will not be returned to you with the monthly statement, you should be careful to enter all checks in your check register or otherwise keep a record of them. You agree to check your monthly statements against your record and to notify us promptly of any unauthorized transactions or errors.

Waiver of Certain Rights. We may delay or waive enforcement of any provision of this Agreement without losing our right to enforce it or any other provision later. You waive: the right to presentment, demand, protest, or notice of dishonor; any applicable statute of limitations; and any right you may have to require us to proceed against anyone before we sue you.

Applicable Law; Severability; Assignment. No matter where you live, this Agreement and your Account are governed by federal law and by New Hampshire law. At any time after we determine in good faith that any proposed or enacted legislation, regulatory action, or judicial decision has rendered or may render any material provision of this Agreement invalid or unenforceable, or impose any increased tax, reporting requirement, or other burden in connection with any such provision or its enforcement, we may, after at least 30 days notice to you, or without notice if permitted by law, cancel the Card and your credit privileges and declare your Account balance immediately due and payable. If any provision of this Agreement is held to be invalid or unenforceable, you and we will consider that provision modified to conform to applicable law, and the rest of the provisions in the Agreement will still be enforceable, but we will have the right to cancel your Account and declare your balance immediately due, as provided in the preceding sentence. We may transfer or assign our right to all or some of your payments. If state law requires that you receive notice of such an event to protect the purchaser or assignee, we may give you such notice by filing a financing statement with the state's Secretary of State.

Notices. Other notices to you shall be effective when deposited in the mail addressed to you at the address shown on our records, unless a longer notice period is specified in this Agreement or by law, which period shall start upon mailing. Notice to us shall be mailed to our address for customer service on your statement (or other addresses we may specify) and shall be effective when we receive it.

Your Billing Rights – Keep This Notice for Future Use

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us in Case of Errors or Questions About Your Bill. If you think your bill is wrong, or if you need more information about an entry on your bill, write us, on a separate sheet, at our address for customer service listed on your bill. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following: - your name and Account number - the dollar amount of the suspected error.

- Describe the error and explain, if you can why you believe there is an error. If you need more information, describe the item you are not sure about.

Your Rights and Our Responsibilities After We Receive Your Written Notice. We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct. After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges. We can apply any unpaid amount against your credit line. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charge related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up the missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due. If you fail to pay the amount we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within 10 days telling us that you still refuse to pay, we must tell anyone we report you to that you question your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is. If we don't follow these rules, we can't collect the first \$50 of the questioned amount, even if your bill was correct.

VERIFICATION

JAMIE G. SHEREMETA

Providian National Bank, Plaintiff herein, verify that the statements of fact contained in the foregoing Pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. 4904, relating to unsworn falsification to authorities.

Date



Affiant **JAMIE G. SHEREMETA**
Title - Designated Agent
Address - P.O. Box 9053
Pleasanton, CA.
94566

FILED
REC'D
FEB 22 2000
M 12:30 PM
William A. Shaw
Prothonotary
PP
80.-
BY ATTY
I CERT TO SHERIFF

MARYLOUISE WAGNER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PROVIDIAN NATIONAL BANK
VS
ROSSELLI, LINDA

00-223-CD

COMPLAINT

SHERIFF RETURNS

NOW FEBRUARY 24, 2000 AT 2:08 PM EST SERVED THE WITHIN
COMPLAINT ON LINDA ROSSELLI, DEFENDANT AT RESIDENCE, 123 E.
SCRIBNER AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY
HANDING TO LINDA ROSSELLI A TRUE AND ATTESTED COPY OF THE
ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS
THEREOF.

SERVED BY: SNYDER.

27.88 SHFF. HAWKINS PAID BY: ATTY.
10.00 SURCHARGE PAID BY: ATTY.

SWORN TO BEFORE ME THIS

2nd DAY OF March 2000
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co., Clearfield, PA.

SO ANSWERS,

Christie A. Hawkins
by Marilyn Hamr

CHESTER A. HAWKINS
SHERIFF

FILED

MAR 02 2000
0306 pm
William A. Shaw
Prothonotary *EAS*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

PROVIDIAN NATIONAL BANK,

Plaintiff

vs.

LINDA ROSSELLI,

Defendant

No. 00 - 223 C.D.

Type of Case: CIVIL

Type of Pleading: DEFENDANT'S
PRELIMINARY OBJECTIONS TO
PLAINTIFF'S COMPLAINT

Filed on Behalf of: LINDA ROSSELLI,
Defendant

Counsel of Record for this Party:

TONI M. CHERRY, ESQ.
Supreme Court No.: 30205

GLEASON, CHERRY AND
CHERRY, L.L.P.
Attorneys at Law
P. O. Box 505
One North Franklin Street
DuBois, PA 15801

(814) 371-5800

FILED

MAR 24 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

PROVIDIAN NATIONAL BANK, :
Plaintiff :
: No. 00 - 223 C.D.
vs. :
: LINDA ROSSELLI, :
Defendant :

DEFENDANT'S PRELIMINARY OBJECTIONS TO
PLAINTIFF'S COMPLAINT

Defendant, LINDA ROSSELLI, by her undersigned counsel, preliminarily objects to Plaintiff's Complaint pursuant to Pa.R.C.P. 1028(a)(3) as follows:

**PRELIMINARY OBJECTION RAISING INSUFFICIENT SPECIFICITY
OF PLAINTIFF'S COMPLAINT**

1. Plaintiff filed a Complaint against the Defendant in this matter, alleging, *inter alia*, a balance due as a result of various monies loaned to Defendant as a result of a loan application by Defendant and the granting of that loan application by Plaintiff. A true and correct copy of Plaintiff's Complaint is attached as Exhibit "A".
2. Paragraph 3 of Plaintiff's Complaint alleges that, "At a specific instance, the Defendant applied for and was granted credit by the Plaintiff ...".
3. That Paragraph 4 alleges that, "Defendant made purchases and/or received cash advances using said credit."
4. That Pa.R.C.P. 1019(f) requires that averments of time, place and items of special damages shall be specifically stated.

5. That Plaintiff's Complaint fails to state with specificity the time when Defendant applied for credit; the time when Defendant was granted such credit and the time when Defendant made purchases and/or received cash advances that Plaintiff alleges have not been repaid.

6. The aforementioned Paragraph 3 fails to state in any respect the time when Defendant applied for and was granted credit by the Plaintiff nor the place where such events occurred.

7. In Paragraph 4 Plaintiff fails to allege when Defendant made such purchases and/or when she received cash advances nor does Plaintiff allege the amounts of such purchases and/or cash advances.

8. That in Paragraph 6 Plaintiff alleges that Defendant failed to make payments as they became due but does not state the amount of the payments nor when such payments were due.

9. Pa.R.C.P. 1019(a) requires that the material facts on which a cause of action is based shall be stated in a concise and summary form.

10. The aforementioned paragraph of Plaintiff's Complaint fails to set forth with sufficient specificity what payments were due and what payments Defendant failed to make and the amounts of those payments.

11. That Plaintiff fails to state with specificity the amount of attorney's fees Plaintiff is demanding and its basis for demanding counsel fees in the amount of 33-1/3% of the debt initially submitted.

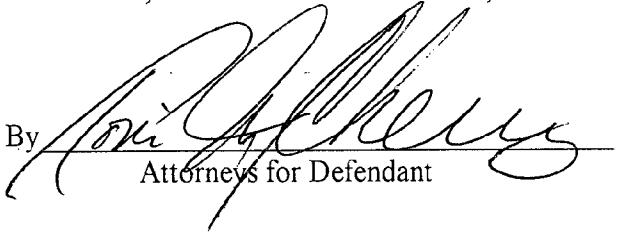
12. Plaintiff's Complaint lacks sufficient specificity to apprise Defendant of the issues to be litigated, to allow her to adequately prepare and assert defenses to Plaintiff's allegations, and/or to identify and join any potentially responsible parties as additional defendants.

WHEREFORE, Defendant, LINDA ROSSELLI, respectfully requests that this Court order Plaintiff to more specifically plead the averments of Paragraphs 3, 4, 6, 10 and 11 of Plaintiff's Complaint.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By


Attorneys for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

PROVIDIAN NATIONAL BANK

NO. 00-223-C0
IN CIVIL ACTION

-vs-

Plaintiff(s)

LINDA ROSELLI

Defendant(s)

COMPLAINT

CODE -
FILED ON BEHALF OF
PLAINTIFF

**COUNSEL OF RECORD
FOR THIS PARTY:**

James R. Apple, Esq.
PA I.D. No. 37942

Charles F. Bennett, Esq.
PA I.D. No. 30541

Joel E. Hausman, Esq.
PA I.D. No. 42096

Marylouise Wagner, Esq.
PA I.D. No. 61095

APPLE AND APPLE, P.C.
Firm No. 719
4650 Baum Boulevard
Pittsburgh, PA 15213-1237
Telephone (412) 682-1466
Fax (412) 682-3138

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

FEB 22 2000

Attest:

William L. Green
Prothonotary

EXHIBIT "A"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

PROVIDIAN NATIONAL BANK

NO.
IN CIVIL ACTION

-vs-

Plaintiff(s)

LINDA ROSELLI

Defendant(s)

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TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT
WHERE YOU CAN GET LEGAL HELP.**

Court Administrator
Clearfield County Courthouse
One North Second Street
Clearfield, Pennsylvania 16830
Telephone Number 814-765-2641 Ex 50-51

COMPLAINT

1. Plaintiff is a National Banking Association located at 4940 Johnson Drive, Pleasanton, CA 94566. As of January 1, 1998, Providian National Bank was merged into First Deposit National Bank, and the resulting entity took the name Providian National Bank." The account that is the subject of this lawsuit may have been either a First Deposit National Bank account or a Providian National Bank account prior to the merger, but is now an account of the new" Providian National Bank, which is the plaintiff herein.

2. Defendant is an individual whose address is 123 E. Scribner Avenue, Dubois, Clearfield County, PA 15801.

3. At a specific instance, the Defendant applied for and was granted credit by the Plaintiff at the terms and conditions agreed upon by the parties, as is more specifically shown by the Account Application and Agreement, true and correct copies of which are attached hereto, marked Exhibit A" and made a part hereof.

4. Defendant made purchases and/or received cash advances using said credit.

5. Plaintiff avers that the terms of the Agreement provide for acceleration of the entire balance due and owing upon Defendant's breach of the Agreement.

6. Thereafter, in breach of obligations under the Agreement, the Defendant failed to make payments as they became due.

7. Plaintiff avers that the balance due amounts to \$14,440.53.

8. Plaintiff avers that interest has accrued at the rate of 23.30% per annum on the balance due from December 3, 1999.

9. Per the terms of the agreement, the Defendant has agreed to pay to the Plaintiff as liquidated damages, the costs of collection, including all reasonable attorneys' fees incurred in the collection of monies owing.

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APPLE AND APPLE, P.C.

By: Charynse Wagner
Attorneys for Plaintiff(s)

Taken by: BRL

Capital Cash Urgency

Customer Response Form

Call Date: 03/23/96

Finder Number: 216-10209-8357-1

60851428

Invited Name: LINDA S LESKY

New Information:

Name: **LINDA ROSELLI**

Address: 123 E SCRIBNER AVE

City: DUBOISE

State: PA

Zip: 15801

SSN: 160-56-0578

Home Phone: (814) 371-8756

Business Phone: (814) 375-3676 Ext: 0

Own/Rent: Owner

Annual Income: 20,000

Verify Income

Employment: Employed

Comments:

Finder Number: 216-10209-8357-1

Page Number: 7

Reference Number: 4310390321607857

Box : 3315
Year : 96
Batch : 25
SSN : 160-56-0578
Account # : 4310-3903-2160-7857

EXHIBIT A PA3
jking1.ar.eas


 Capital Cash®
 First Deposit National Bank
 Account Agreement for
 Linda Rosseli

WHEN YOU SIGN ANY OF THE CHECKS WE PROVIDE, YOU WILL BE AGREEING TO THIS ACCOUNT AGREEMENT.

Your Capital Cash account (the "Account") is a reusable personal loan that allows you to access your account by writing checks. In this Agreement, "you" and "your" mean each person for whom we have opened a Capital Cash Account. "We," "our," "ours," and "us" mean First Deposit National Bank or its assignee. You may not be eligible for an Account if you or a member of your household already have a credit account with us or Providian National Bank. The Account may be used only for personal, family, household, and charitable purposes, and not for any business or commercial purpose. You and we agree as follows:

Special Requirement of this Account: Credit Review Program. In order to keep your Account in good standing, you have agreed not to increase the amount (after any balance transfers have been completed) of your total debt on unsecured revolving credit accounts with other lenders without our authorization. We will review your credit records periodically and contact you if we believe you are not meeting this special requirement.

Cash Advances. Balances you transfer to this Account from other lenders will be posted as cash advances. You may request cash advance checks by calling our toll-free number listed on your statement. You may also access your Account by writing checks. Each check you write on your Account is treated as a cash advance made when we honor the check.

Payments. You will receive a monthly statement showing your outstanding balance. You will pay us in U.S. dollars (checks must be payable at a U.S. office of the bank the check is drawn on) at least the payment due as shown on your statement by the payment due date in accordance with payment instructions on your monthly statement. You may not use your convenience checks to make payments on your Account or to make payments on any other account you have with us or our affiliates. The payment due will be: 2.0% of the new balance shown on your statement plus the amount of any past due payment plus the amount by which the new balance exceeds your credit line plus fees for certain optional services. However, the payment due will not be less than \$15 (unless your new balance is less than \$15, in which case the payment due will be the amount of the new balance). We may require a higher minimum payment if your Account is past due or above the credit line, but we will notify you before doing so. If your payment is more than the payment due, it will be treated as a single payment and none of it will be applied to future payments due. We may accept late or partial payments, or payments marked "paid in full" or marked with other restrictions, without losing our right to collect all amounts owing under this Agreement.

Finance Charge. Finance charges begin to accrue on a debit when it is included in the daily balance ("Balance") and continue until the balance is reduced by a payment or credit. The Balance is reduced by payments as of the date received, and by credits (except for reversals of late and miscellaneous charges) as of the date posted. Debits other than finance charges are included in the Balance as of the dates they are posted which are as follows: cash advance checks that are identified as cashier's checks that we mailed to you at your request, as of seven days after the date we print on the check; cash advance checks we mail to other lenders to transfer balances, as of 10 days after the date on the check; all other checks, as of the date honored; funds electronically transmitted to other lenders to transfer balances, as of the date transmitted. Other debits (except for late, finance, and miscellaneous charges) are included in your Balance as of the date posted. Finance charges are added to your Balance each day and are then posted on the last day of the billing cycle.

To figure the daily finance charge we start with your previous day's Balance, add all debits and subtract all credits for the current day (as explained in the paragraph above) and multiply the net amount by the daily periodic rate (see following paragraph). The finance charge is then added to and included in that day's Balance. We treat a credit balance for any day as zero. We determine the total finance charges for the billing cycle by adding together the finance charge for each day within the billing cycle. To determine the average daily balance shown on your statement, add each day's Balance (including daily finance charge) in the billing cycle and divide by the number of days in the billing cycle. You can multiply this average daily balance by the number of days in the billing cycle and by the daily periodic rate to determine the total amount of your finance charges for the billing cycle. In calculating finance charges, an adjustment will be made for any transaction or payment that would have affected the finance charge calculation in a prior billing cycle had it been posted in that cycle. The balance amounts shown on your statement may differ from the Balances used in computing finance charges, because the latter do not include any late or miscellaneous charges which are included in the balances shown on your statement. There is no period within which credit extended may be repaid without incurring a finance charge.

The daily periodic rate is 0.06000%, corresponding to an ANNUAL PERCENTAGE RATE of 21.90%.

Fees. We will charge your Account up to \$13 for: each returned payment check; each check you write on your Account that we return unpaid; each stop payment order or renewal of such an order; each billing cycle within which your Account is delinquent (late charge). If you request copies of billing statements that were first sent to you more than three months earlier, we may charge a handling fee of \$2.00 for each copy.

Default. You will be in default: if you were not eligible for the Account at the time it was opened; if you fail to comply with any part of this Agreement; if any information you gave us proves to be incomplete or false; upon your death, bankruptcy, or insolvency; if you fail to pay other debts when due; if a bankruptcy petition is filed by or against you; or if we believe in good faith that you may not pay or perform your obligations under this Agreement. On your default we may, without further demand or notice, cancel your credit privileges, declare your Account balance immediately due and payable, and invoke any remedy we may have. In the event of your default, the outstanding balance on your Account shall continue to accrue interest at the APR(s) disclosed in the Finance Charge section of this Agreement, even if we have sued you to collect the amount you owe.

Credit Line. Your credit line is specified from time to time in a separate notice. We may increase or decrease your credit line based on information we obtain from you or your credit records. Your available credit is normally the difference between your credit line and your Account balance (including transactions made or authorized but not yet posted). You will not use your Account for, and we may refuse to honor, any transaction which would cause you to exceed your available credit.

Promise to Pay. You promise to pay us when due all amounts borrowed when you or someone else use your Account (even if the amount charged exceeds your permission), all other transactions and charges to your Account, and collection costs we incur including, but not limited to, reasonable attorney's fees and court costs. (If you win the suit, we will pay your reasonable attorney's fees and court costs.)

Changes. We may change any part of this Agreement or add or remove requirements after notice as required by law. If we change the Finance Charges section of this Agreement, the new finance charge calculation will apply to your whole Account balance from the effective date of the change, whether or not the balance includes items posted to your Account before the change date and whether or not you continue to use the Account.

Cancellation of Account. At any time after at least 30 days notice to you, or without notice if permitted by law, we may cancel the Account and your credit privileges. If your Account is cancelled, finance charges and other fees will continue to be assessed, payments will continue to be due, and all other applicable provisions of this Agreement will remain in effect. You may cancel your credit privileges by notifying us in writing and paying your entire statement balance by the payment due date on the statement which includes your final checks, cash advances, charges, and fees. Your credit privileges will be cancelled and no additional finance charges will be imposed. If your credit privileges are cancelled you may no longer write checks on your Account, and you should destroy any unused checks we have issued to you.

Personal Information; Documents. You will give us at least 10 days notice if you change your name, home or mailing address, telephone numbers, or job. You will promptly give us information about your financial affairs if we ask for it. We may get such information from others, including credit reporting agencies, and provide your address and information about your Account to others. We may also share such information with our affiliates. If you fail to fulfill any of your obligations under this Agreement, a negative credit report reflecting on your credit record may be submitted to credit reporting agencies.

Customer Service; Unauthorized Use, Loss, or Theft of Checks. You will safeguard all checks issued to you from theft. If you discover or suspect that any unused checks are lost or stolen, or that there may be an unauthorized transaction on your Account, you will notify us promptly by telephoning 1-800-964-9212. You will phone, even though you may notify us in writing, so we can act fast to limit losses and liability. If you report or we suspect unauthorized use of your Account, we may suspend your credit privileges until we resolve the problem to our satisfaction. To improve customer service and security, you agree that your calls may be monitored or recorded.

Stop Payment Orders. If you wish to stop payment on a check, you may send us a stop payment order by writing to us at our address for customer service listed on your bill. You can make a stop payment order orally by calling the number listed on your statement. When you make a stop payment order, you must provide your Account number and specific information about the check: the exact amount, the date on the check, the name of the party to whom it was payable, the name of the person who signed it, and the check number. You will be asked to confirm an oral stop payment order in writing. We may disregard your oral order if we do not receive a signed written confirmation within two weeks after the oral order or if you have not adequately described the item so that payment can be stopped by our computer. The order will not be effective if the check was paid by us before we had a reasonable opportunity to act on the order. We may, without liability, disregard a written stop payment order six months after receipt unless it is renewed in writing.

Standard of Care. Transactions in your Account will be processed mechanically without our necessarily reviewing every item. Our processing system will call our attention to certain items which we will examine. We will examine all transactions when you report that your checks have been lost or stolen. We do not intend ordinarily to examine all items, and we will not be negligent if we do not do so. This rule establishes the standard of ordinary care which we in good faith will exercise in administering your Account. Because of our limited review, and because your cancelled checks will not be returned to you with the monthly statement, you should be careful to enter all checks in your check register or otherwise keep a record of them. You agree to check your monthly statements against your record and to notify us promptly of any unauthorized transactions or errors.

Waiver of Certain Rights. We may delay or waive enforcement of any provision of this Agreement without losing our right to enforce it or any other provision later. You waive: the right to presentment, demand, protest, or notice of dishonor; any applicable statute of limitations; and any right you may have to require us to proceed against anyone before we sue you.

Applicable Law; Severability; Assignment. No matter where you live, this Agreement and your Account are governed by federal law and by New Hampshire law. At any time after we determine in good faith that any proposed or enacted legislation, regulatory action, or judicial decision has rendered or may render any material provision of this Agreement invalid or unenforceable, or impose any increased tax, reporting requirement, or other burden in connection with any such provision or its enforcement, we may, after at least 30 days notice to you, or without notice if permitted by law, cancel the Card and your credit privileges and declare your Account balance immediately due and payable. If any provision of this Agreement is held to be invalid or unenforceable, you and we will consider that provision modified to conform to applicable law, and the rest of the provisions in the Agreement will still be enforceable, but we will have the right to cancel your Account and declare your balance immediately due, as provided in the preceding sentence. We may transfer or assign our right to all or some of your payments. If state law requires that you receive notice of such an event to protect the purchaser or assignee, we may give you such notice by filing a financing statement with the state's Secretary of State.

Notices. Other notices to you shall be effective when deposited in the mail addressed to you at the address shown on our records, unless a longer notice period is specified in this Agreement or by law, which period shall start upon mailing. Notice to us shall be mailed to our address for customer service on your statement (or other addresses we may specify) and shall be effective when we receive it.

Your Billing Rights - Keep This Notice for Future Use

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us in Case of Errors or Questions About Your Bill. If you think your bill is wrong, or if you need more information about an entry on your bill, write us, on a separate sheet, at our address for customer service listed on your bill. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following: - your name and Account number - the dollar amount of the suspected error.

- Describe the error and explain, if you can why you believe there is an error. If you need more information, describe the item you are not sure about.

Your Rights and Our Responsibilities After We Receive Your Written Notice. We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct. After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges. We can apply any unpaid amount against your credit line. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

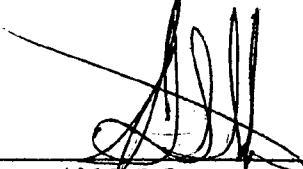
If we find that we made a mistake on your bill, you will not have to pay any finance charge related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up the missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due. If you fail to pay the amount we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within 10 days telling us that you still refuse to pay, we must tell anyone we report you to that you question your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is. If we don't follow these rules, we can't collect the first \$50 of the questioned amount, even if your bill was correct.

VERIFICATION

JAMIE G. SHEREMETA

Providian National Bank, Plaintiff herein, verify that the statements of fact contained in the foregoing Pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. 4904, relating to unsworn falsification to authorities.

Date



Affiant **JAMIE G. SHEREMETA**
Title - Designated Agent
Address - P.O. Box 9053
Pleasanton, CA.
94566

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

PROVIDIAN NATIONAL BANK,
Plaintiff

: No. 00 - 223 C.D.

vs.

LINDA ROSSELLI,
Defendant

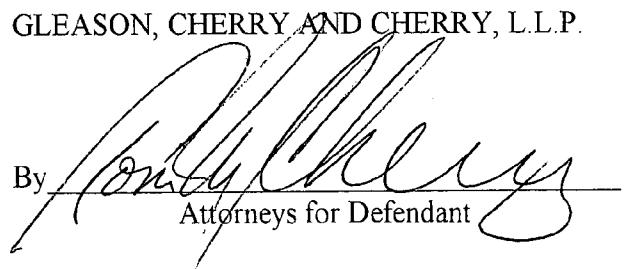
CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2000, a true and correct copy of Defendant's Preliminary Objections to Plaintiff's Complaint was served upon counsel for Plaintiff by mailing the same to her by United States First Class Mail, Postage Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

MARYLOUISE WAGNER, ESQ.
Apple and Apple, P.C.
Attorneys at Law
4650 Baum Boulevard
Pittsburgh, PA 15213-1237

GLEASON, CHERRY AND CHERRY, L.L.P.

By


Attorneys for Defendant

Dated: March 24, 2000

FILED

03:45 PM

MAR 24 2000

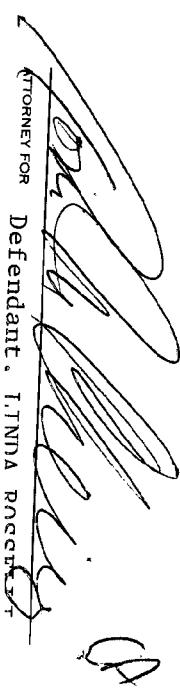
William A. Shaw
Prothonotary

Judge At Cherry

E
Kos

LAW OFFICES
GLEASON, CHERRY & CHERRY, I.L.L.P.
P.O. Box 505
DuBois, PENNSYLVANIA 15801-0505

ONE NORTH FRANKLIN STREET


ATTONEY FOR
Defendant. T.TINA PROCTOR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

PROVIDIAN NATIONAL BANK, :
Plaintiff :
: No. 00 - 223 C.D.
vs. :
: LINDA ROSELLI, :
Defendant :
:

P R A E C I P E

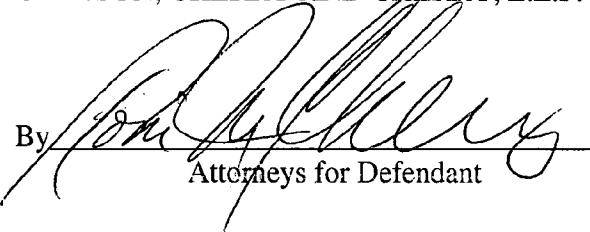
TO WILLIAM A. SHAW, PROTHONOTARY

Sir:

Please mark Defendant's Preliminary Objections to Plaintiff's Complaint withdrawn.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By 
John P. Cherry
Attorneys for Defendant

Date: July 1, 2002

FILED

JUL 03 2002

William A. Shaw
Prothonotary

I CAME TO MARY

COPY TO C/A

EKA

FILED

JUL 03 2002

William A. Shaw
Prothonotary