

00-330-CD  
NATIONAL CITY BANK -vs- KITTY L. SCOTT etal

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

(15) NATIONAL CITY BANK

Plaintiff

vs.

(65) KITTY L. SCOTT and  
(104) LORRAINE M. EMINHIZER

Defendants

No. 00-338-60

COMPLAINT IN CIVIL ACTION - ASSUMPSIT

FILED ON BEHALF OF  
Plaintiff

COUNSEL OF RECORD OF  
THIS PARTY:

LORI A. GIBSON  
PA I.D. #68013  
Weltman, Weinberg & Reis Co., L.P.A.  
2718 Koppers Building  
436 7th Avenue  
Pittsburgh, PA 15219  
(412) 434-7955

WWR#01835072

FILED

MAR 15 2000

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

NATIONAL CITY BANK, successor in  
interest to, EQUIBANK

Plaintiff

vs.

Civil Action No.

KITTY L. SCOTT and  
LORRAINE M. EMINHIZER

Defendants

**COMPLAINT IN CIVIL ACTION - ASSUMPSIT**

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, by entering a written appearance personally or by an 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.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. OF 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

LAWYER REFERRAL SERVICE  
PA BAR ASSOCIATION  
P.O. BOX 186  
HARRISBURG, PA 17108  
(800) 692-7375

COMPLAINT IN ASSUMPSIT - IN PERSONAM ACTION ON THE MORTGAGE NOTE

1. Plaintiff, National City Bank, is a lending institution with its offices located in Cleveland, Ohio 44101.
2. Defendants, Kitty J. Scott and Lorraine M. Eminhizer, are adult individuals residing at 152 Cedar Grove Road, Somerset, New Jersey, Pennsylvania 08873-5208.
3. Plaintiff brings this action in Clearfield County, Pennsylvania because the contract which forms a basis for this claim was entered into in Clearfield County.
4. On or about December 11, 1997, Defendants executed an Equity Reserve Agreement "Note" in favor of Plaintiff in the original principal amount of \$100,000.00. A true and correct copy of said Note is attached hereto, marked as Exhibit "1" and made a part hereof.
5. As security for the payment of the aforesaid Note, Defendants executed and delivered to Plaintiff a Mortgage in the original principal amount of \$100,000.00, a true and correct copy of which is attached as Exhibit "2" and made a part hereof, which Mortgage was recorded on December 15, 1997 in the Office of the Recorder of Deeds of Clearfield County in Mortgage Book Volume 1721, Pages 302.

6. The mortgage covers the real estate known as Treasure Lake Road, 200, Lot 752, Clearfield, Pennsylvania 15801 described more fully in the Mortgage, which premises is solely owned by Defendant, Lorraine M. Eminhizer.

7. The Note and Mortgage are in default because Defendants have failed to make the required monthly payments of principal and interest to Plaintiff since December 13, 1999.

8. By the terms of the parties' agreement, more specifically the "acceleration clause" therein, Defendants' default made the entire balance of the loan immediately due and payable.

9. Plaintiff avers that the following amounts are due on said Note and Mortgage:

Principal	\$90,599.18
Interest through 03/18/00 at the Contract rate of 9.25%	\$ 424.40
Reasonable attorneys fees	\$ 150.00
TOTAL	\$91,173.58


10. Although repeatedly requested to do so by Plaintiff, Defendants have willfully failed and/or refused to pay the principal balance, attorney fees, interest and any part thereof.

11. Contemporaneously hereunder, Defendants have been advised of their right to dispute the validity of this debt or any part thereof, pursuant to the Fair Debt Collection Practices Act 30 Day Notice, attached hereto marked Exhibit "3" and made a part hereof.

WHEREFORE, Plaintiff demands Judgment and against Defendants, Kitty L. Scott and Lorraine M. Eminhizer, jointly and severally, in the amount of \$91,173.58 with appropriate additional attorneys' fees and continuing interest thereon at the rate of 9.25% per annum from March 19, 2000 plus costs.

**THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED SHALL BE USED FOR THAT PURPOSE.**

WELTMAN, WEINBERG & REIS, CO., L.P.A.



LORI A. GIBSON  
PA I.D. #68013  
Weltman, Weinberg & Reis Co., L.P.A.  
2718 Koppers Building  
436 7th Avenue  
Pittsburgh, PA 15219  
(412) 434-7955

WWR#:01835072

National City

481 5032403

Equity Reserve<sup>SM</sup> Agreement

Dated: 12-11-97

Account No.:

448971

You are opening an Equity Reserve Account (Account) with National City Bank of Pennsylvania (Bank) and agree that the following terms and conditions will apply to your account.

Line of Credit: Your account is an open-end line of credit which you may use to obtain cash advances (Advances) from time to time for a period of 10 years. Your Account will mature on the last day of the Statement Period ending in 12-31-2007 (Maturity Date). Bank may at its discretion extend the Maturity Date for one or more additional 10 year periods. Bank will notify you if Bank decides not to extend the Maturity Date on your Account.

The amount of your initial line of credit is \$ 100,000.00 (Credit Line). Any amount you repay will be again available to you. Bank may at its discretion increase your Credit Line, either upon your application or upon Bank's review of your Account. Additional documentation may be required for an increase in your Credit Line. Bank may reduce the amount of your Credit Line under certain conditions described in this Agreement.

Equity Reserve Advances: You may obtain Advances under your Credit Line by issuing special Equity Reserve checks (Checks) supplied by Bank, or by way of any other Bank approved plan. Bank will charge your Checks directly against your Account. The minimum Advance that you can receive is \$100.00. Bank will have no obligation to honor any Check for an amount less than \$100.00; or to make any Advance if the resulting Total New Balance of your Account would exceed your Credit Line, or after the final Maturity Date, or in the event of termination or suspension or your Credit Line under the conditions described in this Agreement.

You should notify Bank when you need more Checks. You should also notify Bank immediately if your Checks are lost or stolen. (Please see "Stop Payment Orders" section of this Agreement). Your statement will list Checks that have been paid, but the actual paid Checks will not be returned to you. You may request copies of paid Checks from the Bank, and a copying fee may be charged.

Bank may issue you a Visa<sup>®</sup> Gold credit card (Card) for use with the Account. The word Card can mean one or more credit cards. You may purchase goods or services from merchants who honor the Card. You may obtain cash advances from Bank or any other financial institution that honors the Card. You may also obtain cash advances by using an automated teller machine (ATM) and your Card or an ATM card as described in this Agreement. If you want ATM access to the Account, you must call or visit your branch to request such access. Please refer to the separate disclosures provided with the ATM card. Bank will charge all Advances to your Account. Bank will have no obligation to honor any Advance which would exceed your Credit Line. If you allow others to make Advance(s) with a Card or ATM card then you are liable for their Advance(s) as well. There is no minimum Advance when you use a Card or an ATM card.

If you allow someone else to use your Card or ATM card and you want to stop such use, you must let the Bank know in writing. If he or she has a Card or ATM card, you must return that Card or ATM card with your written notice.

You must notify Bank immediately if your Cards are lost or stolen, or you believe that some person may be using your Card(s) without permission. You shall not use your Account after notifying Bank of loss, theft or unauthorized use of your Card(s). You will not be held liable for any unauthorized use of the Card after you have notified Bank of the loss or theft by phone at 1-800-352-0188 or in writing at Security Department, 4853 E. Main Street, Columbus, OH 43251-0499. Otherwise you may be liable, but not for more than \$50.00. Bank may terminate the use of your Card if you lose your Card two times or more in a twelve month period. Bank may also terminate the use of your Card if your Total New Balance exceeds your Credit Line by 2% or if you are overlimit for more than one Statement Period.

Bank charges you fees for using ATMs at other financial institutions to cover Bank's costs: \$1.00 for using a MAC<sup>®</sup> ATM and \$2.00 for using a PLUS SYSTEM<sup>®</sup> ATM. These are in addition to the other charges as listed in the Other Charges section of this Agreement.

Finance Charge: Bank figures the finance charge on your Account by applying the periodic rate to the "average daily balance" of your Account (including current transactions). To get the "average daily balance", Bank takes the beginning balance of the Account each day, adds any new Advances and other debits, and subtracts any payments or credits and unpaid finance charges. This gives the daily balance. Then, Bank adds up all the daily balances for the billing cycle (Statement Period) and divides the total by the number of days in the Statement Period. This gives the "average daily balance".

Advances are subject to finance charges from the date of transaction to the date payment is posted to the Account. The periodic rate of finance charge and the annual percentage rate are subject to change, based on the value of an index. The index in effect for each Statement Period shall be the "Prime Rate" of interest as published in the Money Rates Table of The Wall Street Journal as of the 17th Business day of the calendar month preceding the month in which the Statement Period begins rounded upward. If necessary, to the nearest .001% (index). The finance charge for each Statement Period shall be computed at the following periodic rates, depending on the average daily balance for that Statement Period.

Average Daily Balance	ANNUAL PERCENTAGE RATE	Monthly Periodic Rate of FINANCE CHARGE
Up to \$10,000	Index plus .75 % (Currently 9.25 %)	1/12 of Annual Percentage Rate (Currently .77083 %)
\$10,001 to \$25,000	Index plus .75 % (Currently 9.25 %)	1/12 of Annual Percentage Rate (Currently .77083 %)
\$25,001 and up	Index plus .75 % (Currently 9.25 %)	1/12 of Annual Percentage Rate (Currently .77083 %)

The annual percentage rate and the periodic rate of finance charge may increase if the index increases. In the event of an increase, the finance charge will increase and the Minimum Payment amount may increase. When the Minimum Payment amount is either 1.5% of the Total New Balance or the total Finance Charges, an increase or decrease in the annual percentage rate will result in a corresponding increase or decrease in the Minimum Payment amount. However, in no event shall the periodic rate of FINANCE CHARGE be more than 1.50% per month or less than 0.0625% per month, and in no event shall the ANNUAL PERCENTAGE RATE be more than 18.0% or less than 7.5%. Example: If you had an outstanding balance of \$10,000, the minimum payment at the maximum ANNUAL PERCENTAGE RATE of 18.0% would be \$152.25. This annual percentage rate could be reached in the first Statement Period.

The annual percentage rate includes only interest and not other costs. Your monthly statement will disclose the applicable annual percentage rate for the Statement Period. You may obtain rate information by calling any branch.

Other Charges: In addition to finance charges, the following other charges will apply to your Account.

- A late payment fee of \$20.00 or 10% of the unpaid Minimum Payment, whichever is higher, if Bank does not receive your minimum payment at the address shown on your statement within 15 days of the payment due date. Bank may charge an additional late payment fee for each Statement Period that your Account is past due.
- An overlimit fee of \$20.00 whenever the Total New Balance exceeds your Credit Line. Bank may charge an additional \$20.00 for each Statement Period that you remain over your Credit Line.
- A returned payment fee of \$20.00 if you make a payment on your Account which is returned to Bank unpaid because of insufficient funds, a closed account, stop payment, or any other reason.
- A returned check fee of \$20.00 if you write an Equity Reserve Check that Bank dishonors under the "Equity Reserve Advances" section of this Agreement.
- A stop payment fee of \$25.00 if you order Bank to stop payment on an Equity Reserve Check and a \$25.00 fee for renewal of each stop payment.
- A document request fee of \$5.00 per copy. Bank will not charge you for documents you are entitled to by law.

Bank does not lose any of its other rights under this Agreement whether or not it charges late payment or overlimit fees. The application of any fee shall not cure the default which initiated the fee.

You may have to pay the cost of an additional title examination (estimated \$35.00) or appraisal (estimated \$275.00) as may be required under the "Suspension or Reduction of Credit Line" or "General" sections of this Agreement.

The following fees are due at the opening of your Account:

\$ 13.50	Filing Fees	\$ 255.00	Appraisal	\$ 9.00	Flood Zone Determination
\$	Title Examination		Title Insurance		
\$ 55.00	Property Report	\$ 1.55	CREDIT REPORT		FEES WAIVED

If Bank waives fees due at opening of Account, you agree to pay such fees should you choose to terminate your Account during the first 12 months.

Security Interest: Your Account will be secured by a mortgage (Mortgage) on your dwelling (Dwelling). You represent and warrant to Bank that at all times during the term of this Agreement your Dwelling shall be occupied by you and shall not be used as rental property. Bank agrees to waive any security interest in the Dwelling to the extent it secures Advances which may be in excess of your Credit Line. You name Bank as loss payee and beneficiary of the proceeds of, and assign to Bank any unearned premiums of all insurance connected with your Account.

You must not adversely affect Bank's interest in the Dwelling by any action or inaction. You must keep the Dwelling in good condition, promptly pay all mortgages and other liens against the Dwelling, and promptly pay all taxes and assessments on the Dwelling. You must not sell or transfer title to the Dwelling without Bank's permission, or use the Dwelling for any illegal purpose.

Insurance: You must keep the Dwelling fully insured against loss or damage on terms which are acceptable to Bank. You must carry flood insurance if required by federal law. You may obtain property insurance from anyone that is acceptable to Bank. You agree to furnish Bank with written evidence of such insurance, with Bank named as loss payee. If you fail to do so, Bank may buy insurance to protect Bank's interest and add the premium cost to the unpaid balance of your Account, subject to the same finance charges as Advances against your Account. You assign to Bank the proceeds from any such insurance policies up to the unpaid balance of your Account. Bank may apply such proceeds, including any return of unearned premiums and payments for claims under such policies, to reduce the unpaid balance of your Account. You appoint Bank as your attorney-in-fact to submit insurance claims for you and to sign your name to any checks or drafts obtained from insurance companies.

Credit Life Insurance

Credit Life Insurance is not required to obtain credit and will not be provided unless you sign a separate enrollment form and agree to pay the additional cost stated on that form. Premiums will be billed to your Account and treated as Advances.

Acknowledgment and Signature: You understand that the second page is also part of this Agreement and is incorporated by reference. Important information regarding your rights to dispute billing errors ("Your Billing Rights") is also printed on the second page. You acknowledge receipt of a completed copy of this Agreement including page two. You intend to be legally bound by all of the terms of this Agreement.

Dated 12-11-97

KITTY L SCOTT

Type or Print Name

X

*[Signature]*

(SEAL)

LORRAINE M EMINHIZER

Type or Print Name

X

*[Signature]*

(SEAL)

Address of Dwelling:

RD L BOX 208

PUNXSUTAWNEY, PA 15730-0000

EXHIBIT

**Tax Deductibility** You should consult a tax advisor regarding the deductibility of interest and charges on your Account.

**General** You shall promptly notify Bank of any change in circumstances which has a substantial adverse effect on your credit. You will furnish Bank with financial statements in a form satisfactory to Bank as Bank may request from time to time. Bank may also require a title examination and/or appraisal from time to time.

If this Agreement is signed by more than one person, each of you may draw Checks on the Account or use the Card or ATM card issued, and each of you is jointly and severally liable for all Advances and charges on the Account. Any of you may direct Bank to not make further Advances on the Account, however, reinstatement will only be made on the joint request of all of you. If you deliver to Bank and the Recorder of Deeds, in the county where the mortgaged Dwelling is located, written notice in the form prescribed by 42 Pa.C.S. section 8143 (c), you will limit the indebtedness secured by the Mortgage to the extent provided by law. Bank will consider this to be a direction by you not to make further Advances and to terminate the Account.

Your rights in your Account may not be assigned. The Mortgage may not be assumed by a subsequent purchaser of the Dwelling.

Bank may delay exercising any of its rights under this Agreement without losing them.

This Agreement and your use of the Account, Credit Line, Cards and Checks, shall be governed by and construed in accordance with the laws of Pennsylvania.

If it is determined for any reason that any part of this Agreement is invalid or unenforceable, this shall not affect the validity or enforcement of any other provision, and this Agreement will then read as if the invalid or unenforceable part were not there.

**Account Statements** Bank agrees to mail or deliver to you a monthly statement for each Statement Period at the end of which your Account has a Total New Balance which is a debit or credit balance of more than \$1 or on which a finance charge has been imposed. Total New Balance is the sum of all outstanding Advances(s), Fees, Payments, other Credits, Debits, and Finance Charge(s).

**Payments** Until the final Maturity Date, your payments will be due monthly. You are required to pay a minimum payment equal to 1.5% of the Total New Balance as shown on each monthly statement, or the total Finance Charges as shown on the statement, or \$100.00 for whatever portion of \$100.00 is necessary to pay Bank in full, whichever is greatest, within 25 days after the statement date. You may pay the unpaid balance of your Account in whole or in part at any time without penalty.

Payments will be applied in the following order: First to all unpaid finance charges, then to all other charges, and then to Advances. Overpayments are credited to the Account and refunded upon request.

The minimum payment may not fully repay the principal that is outstanding on your Account by the Maturity Date. Bank will refinance the remaining unpaid balance on terms then offered by Bank, provided you continue to meet Bank's standards for credit worthiness and collateral value. Otherwise, you will be required to pay the entire balance in a single payment. After the final Maturity Date and prior to refinancing or payment of entire balance outstanding on your Account, you will continue to be bound by this Agreement in that you will be liable for all finance charges and other amounts and you will be required to continue making monthly payments. Bank does not waive its right to receive payment in full by accepting partial payments after the final Maturity Date.

**Stop Payment Orders** Bank agrees to honor an oral or written stop payment order against an item, received from you within a reasonable time prior to payment. A stop payment order against an item must accurately describe the item as to date, number, amount, and payee, and must correctly recite your name and Account number. An oral or written stop payment order remains effective for six months from the date Bank receives notice of the order against an item for less than \$1,000 and for one year against an item for \$1,000 or more. A stop payment order may be renewed for successive periods equal to its original period of effectiveness if Bank receives an oral or written renewal notice prior to the order becoming ineffective. Errors in your name or the Account number, or inaccuracies in the description of the item's number, amount, issue date or payee on your written stop payment order shall relieve Bank from any liability for any mistaken payment or wrongful dishonor. Any errors on Bank's written acknowledgment to you of a stop payment order must be reported in writing to Bank's Equity Reserve Department within 10 calendar days of the written acknowledgment date. Bank shall not be liable for any mistaken payment or wrongful dishonor occurring after the 10-day period, unless errors or inaccuracies are reported to Bank within the 10-day period. You agree to indemnify Bank and hold it harmless from any and all expenses incurred or damages suffered by Bank in honoring a stop payment order. Before Bank will release a stop payment order, Bank's Equity Reserve Department must receive a written request, signed by you requesting the withdrawal of the order. Bank shall not be liable for any damages unless Bank has failed to act in good faith and exercise ordinary care. Bank's acceptance of a stop payment does not mean that the check has not yet been paid. Bank shall have no liability resulting from the payment of a check prior to its actual receipt of a stop payment order and reasonable time to process the order. To place a stop payment order, call toll free 1-800-352-0186, or write Equity Reserve Department, National City Bank of Pennsylvania, P.O. Box 5570, Cleveland OH 44101.

**Termination of Credit Line** Bank can terminate your Account and, after any notice required by law, require you to pay the entire outstanding balance in one payment if:

- You engage in fraud or material misrepresentation in connection with your Account.
- You do not meet the repayment terms of this Agreement.
- Your action or inaction adversely affects the collateral or Bank's rights in the collateral.

Bank may charge and receive court costs should your Account be referred to an attorney for collection or to protect or enforce Bank's security interest plus reasonable attorney's fees should your Account be referred to an attorney who is not a salaried employee of Bank, to the extent permitted under interest after termination, whether prior to or after judgment by a court of competent jurisdiction, shall accrue at the Annual Percentage Rate and Monthly Periodic Rate of Finance Charge as established under this Agreement upon the outstanding unpaid balance, until such balance has been paid in full.

**Suspension or Reduction of Credit Line.** Bank can refuse to make additional extensions of credit or reduce your Credit Line if:

- The value of the Dwelling securing your Credit Line declines significantly below its present appraised value for purposes of the Credit Line.
- Bank reasonably believes you will not be able to meet the repayment requirements due to a material change in your financial circumstances.
- You are in default of a material obligation in this Agreement.
- Government action prevents the Bank from imposing the annual percentage rate provided for or impairs the Bank's security interest such that the value of the interest is less than 120 percent of the Credit Line.
- A regulatory agency has notified the Bank that continued Advances would constitute an unsafe or unsound practice.
- The maximum annual percentage rate is reached.

Bank will give you written notice of any such action and conditions for reinstating your Credit Line. Bank may reinstate the Credit Line when the conditions leading to suspension are cured to Bank's satisfaction. Bank may require you to request reinstatement of credit privileges when the conditions leading to suspension or reduction of your Credit Line no longer exist. An additional title examination and other documentation may be required to reinstate your line, and any costs associated with reinstatement will be borne by you.

**Change in Terms.** Bank may change certain terms of this Agreement at any time by giving you 15 days prior notice:

- The index and margin used for this Account if the original index is no longer available.
- A change that you specifically agree to.
- A change that benefits you.
- An insignificant change.
- Other changes permitted by applicable law.

To the extent permitted by law, any change in terms will apply to balances outstanding on the effective date of the change as well as to balances generated thereafter.

#### 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 a transaction on your bill, write us on a separate sheet at the address 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 information.

- 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.

If you have authorized us to pay your bill automatically from your savings or checking account, you can stop payment on any amount you think is wrong. To stop the payment, your letter must reach us three business days before the automatic payment is scheduled to occur.

#### 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, and 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 charges 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 any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about 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.

#### Special Rule for Credit Card Purchases

If you have a problem with the quality of property or services that you purchased with your Card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right:

- (a) You must have made the purchase in your home state or, if not within your home state, within 100 miles of your current mailing address; and
- (b) The purchase price must have been more than \$50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.



1 SS

COUNTY OF Westmoreland

On the 11<sup>th</sup> day of December, 19 97, before me, the undersigned officer (who certifies that he/she is not an officer or director of National City Bank of Pennsylvania), personally appeared LORRAINE M EMINHIZER, known to me (or satisfactorily proven) to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission Expires:

Notarial Seal  
Cheryl L. McClain, Notary Public  
Arnold, Westmoreland County  
My Commission Expires April 15, 1999

Member, Pennsylvania Association of Notaries

CERTIFICATE OF RESIDENCE

I, Lurana Kelly,

do hereby certify that Mortgagee's precise residence is

20 STANNIX STREET PITTSBURGH PA 15222

12.15.97

CLEARFIELD COUNTY  
ENTERED OF RECORD  
TIME 12:53 PM  
BY Neil C. Stark  
FEES 13.50

Karen L. Stark, Recorder

Lurana Kelly  
Agent for Mortgagee  
I hereby CERTIFY that this document  
is recorded in the Recorder's Office of  
Clearfield County,  
Clearfield County, Pennsylvania.



EXHIBIT

Karen L. Stark  
Karen L. Stark  
Recorder of Deeds

COMMONWEALTH  
OF  
PENNSYLVANIA

Open-End  
Mortgage

FROM LORRAINE M EMINHIZER  
TREASURE LAKE RD 200 LOT 752  
CLEARFIELD PA 15801

TO  
National City Bank of Pennsylvania  
Mail To:  
P.O. Box 5570  
Cleveland, Ohio 44101

COMMONWEALTH  
OF PENNSYLVANIA )  
 ) SS.

COUNTY OF CLEARFIELD )

Recorded on this \_\_\_\_\_ day

of \_\_\_\_\_ 19 \_\_\_\_\_, in the

Recorder's Office of Said County, in Mortgage Book,

Vol. \_\_\_\_\_, Page \_\_\_\_\_

Given under my hand and seal of the said office,  
the day and year aforesaid.

Recorder

0264PLAS

Noted of Record Dec. 15, 1997, 12:53 PM Karen L. Stark, Recorder

[illegible]

187114874  
to provide the security of this mortgage, including taxes, assessments, insurance premiums or costs, the performance of all covenants contained in the Agreement and this Mortgage; the payment of Lender's costs of collection, including costs of suit and, if permitted by law, reasonable attorneys' fees if suit is filed or other action is taken to collect the sums owing or to protect the security of this Mortgage; and the payment of any extension, refinancing, renewal, modification, substitution or amendment of the Agreement, Owner does hereby mortgage, grant and convey to Lender all of the following described real estate, together with all improvements now or hereafter erected, and all easements, rights and appurtenances thereon, located at:

TREASURE LAKE RD 200 LOT 752 SANDY DAM CLEARFIELD PA 15801 CLEARFIELD  
Street Township/City/Municipality/Borough County

Commonwealth of Pennsylvania (the "Property"), which was conveyed to Owner by Deed dated 11/22/95, and duly recorded in the office for the Recording of Deeds in said County in Deed Book No. 1721, Page 302, Tax Parcel Number (or other Uniform Parcel Identifier, if any) 428-602-146-752-24, as the Property is therein described and, ☒ if this box is checked, as the Property is more particularly described in Exhibit "A", which is attached hereto and made a part hereof.

TO HAVE AND TO HOLD the same unto the said Lender, its successors and its assigns, FOREVER.

PROVIDED, HOWEVER, that should Borrower pay in full all sums secured by this Mortgage, and perform all covenants and agreements secured by this Mortgage, the estate hereby granted shall be discharged, provided Lender has no further obligation to make Advances under the Agreement.

Owner and Lender covenant and agree as follows:

1. THIS IS AN ADVANCE MONEY MORTGAGE - It is expressly understood and agreed that this Mortgage secures, inter alia, certain obligatory loans and advances to be made by Lender to Borrower in accordance with the terms of the Agreement, which future advances are secured by this Mortgage as if made on the date hereof. Lender is not obligated to make advances which would cause the outstanding principal balance to exceed the Credit Line, and is not obligated to make advances after the Account is terminated or during periods when further extensions of credit are prohibited or suspended as provided in the Agreement.
2. Owner warrants and represents to Lender that Owner is the sole owner of the Property; has the right to mortgage, grant and convey the Property; that the Property is unencumbered, except for encumbrances now recorded; and that Owner will defend the title to the Property against all claims and demands except encumbrances now recorded.
3. Except for any notice required under applicable law to be given in another manner, any notice to Owner provided for in this Mortgage shall be given by delivering it personally or by mailing such notice by certified mail, addressed to Owner at the address of the Property or at such other address as Owner may designate by notice to Lender as provided herein; and any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Owner as provided herein. If notice is given by certified mail, it shall be deemed to have been given on the date of mailing.
4. Owner shall be in default under this Mortgage upon the terms of the Agreement.
5. Upon default, to the extent permitted by law, after any notice required by law, Lender may at its option declare due and payable the unpaid balance of all sums secured by this Mortgage and may take any action allowed by law or under the terms of the Agreement or this Mortgage, including taking possession of the Property, collecting any and all rents and applying them to the amounts secured by this Mortgage and foreclosing the Mortgage.
6. Any extension of time for payment or reduction of the amount due under the Agreement which is granted by Lender to Borrower shall not operate to release in any manner any other Borrower or Owner under the terms of the Agreement or this Mortgage. Any forbearance by Lender in exercising any right or remedy under this Mortgage or otherwise afforded by applicable law shall not be a waiver of or preclude the exercise of any such right or remedy.
7. Lender's rights and remedies under this Mortgage or otherwise by law shall be cumulative and not alternative and may be exercised as often as necessary; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release of the same.
8. The covenants and agreements contained herein shall bind the Owner's heirs, personal representatives and successors and any person to whom the Property is transferred. If more than one Owner signs this Mortgage, their obligations shall be joint and several. The rights and privileges contained herein shall inure to the Lender's successors and assigns. Lender can sell, transfer or assign this Mortgage without Owner's consent.
9. As additional security hereunder, Owner hereby assigns to Lender any and all leases on the Property, now existing or which may hereafter be made, together with any and all rents and Owner's rights as landlord under law; provided that Owner shall, prior to the declaration of an Event of Default, have the right to collect and retain such rents as they become due and payable.
10. If any provision of this Mortgage shall for any reason be held invalid or unenforceable, no other provision shall be affected thereby, and this Mortgage shall be construed as if the invalid or unenforceable provision had never been a part of it.
11. Owner agrees to promptly pay when due all taxes, assessments, levies, obligations, other charges mortgages and liens on or against the Property. Owner shall keep the Property in good repair, excepting only reasonable wear and tear. Owner will comply with all laws respecting ownership and use of the Property. Owner shall keep the Property insured against loss by fire, and all other risks and hazards as Lender shall require, including flood insurance if required by law, in such amounts as Lender shall require. Owner shall promptly pay, when due, any premiums on such insurance. Owner may obtain such insurance from any insurer(s) of Owner's choice, provided that such insurer(s) shall be acceptable to Lender. All insurance policies shall contain loss payable clauses in favor of Lender, and Owner shall deliver evidence of such insurance to Lender. If Owner fails to pay all taxes, assessments, levies, obligations, other charges, prior mortgages and liens, insurance premiums or to keep the Property insured, Lender may at its option elect to pay the same, which shall thereupon be added to the indebtedness secured hereby and shall bear interest at the rate stated in the Agreement.

## FAIR DEBT COLLECTION PRACTICES ACT 30 DAY NOTICE

By law, this law firm is required to advise you that unless within 30 days after receipt of this notice you dispute the validity of this debt or any portion thereof, the debt will be assumed to be valid by us. If said notification is sent to us in writing, we are required to provide you with verification of the debt. In the event within a 30-day period you request in writing the name of the original creditor, it will be provided to you if different from the current creditor. In the event that you dispute the debt and/or request the name of the original creditor in writing within the 30-day period, no further action will be taken to obtain a Judgment in the pending lawsuit until the verification and/or name of the original creditor has been provided to you.

This law firm is attempting to collect this debt for our client and any information obtained will be used for that purpose.

The above Notice is being given pursuant to the Fair Debt Collection Practices Act and is separate and distinct from the foregoing Complaint which must be responded to in conformity with the instructions therein. Because of the difference in time parameters, we will not move for Default Judgment for at least thirty (30) days from the date of service of this Complaint upon you, and if you request verification, we will not move for Default Judgment until a reasonable time after verification has been provided, and after the expiration of the thirty (30) day period from the date of service.

**EXHIBIT** "3"

01835072

VERIFICATION

The undersigned does hereby verify subject to the penalties of 18 PA.C.S. § 4904 relating to unsworn falsification to authorities, that he/she is Dale R. Henewinkel (Name)  
Consumer Banking Officer of National City (Company), Plaintiff  
(Title)

herein, that he/she is duly authorized to make this Verification, and that the facts set forth in the foregoing Complaint are true and correct to the best of his/her knowledge, information and belief.

Dale R. Henewinkel  
(Signature)

FILED

MAR 15 2013

WILSON A. STAW

Prothonotary

1cc. athy ubsm  
DE \$80.00

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

NATIONAL CITY BANK,  
Plaintiff

v.

KITTY L. SCOTT and  
LORRAINE M. EMINHIZER,  
Defendants


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Civil Action No. 00-330-CD

ENTRY OF APPEARANCE

Please enter the appearance of William M. Blaum, Esquire, for the Defendants,  
Kitty L. Scott and Lorraine M. Eminhizer, in the above-captioned case.

Respectfully submitted,

  
William M. Blaum, Esquire  
Attorney I.D. # 66485  
108 North Washington Avenue  
Suite 1105  
Scranton, PA 18503

WILLIAM M. BLAUM  
ATTORNEY AT LAW  
SUITE 1105  
108 NORTH WASHINGTON AVENUE  
SCRANTON, PA 18503  
(570) 961-2095

FILED

APR 03 2000

William A. Shaw  
Prothonotary

FILED

APR 03 2000

m/8:30/uy  
William A. Shaw  
Prothonotary

2 cent to ATT

*[Handwritten signature]*



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

NATIONAL CITY BANK

Plaintiff

No. 00-330-CD

vs.

KITTY L. SCOTT and  
LORRAINE M. EMINHIZER

AFFIDAVIT OF SERVICE OF COMPLAINT  
AS TO LORRAINE M. EMINHIZER

Defendants

FILED ON BEHALF OF  
Plaintiff

COUNSEL OF RECORD OF  
THIS PARTY:

LORI A. GIBSON  
PA I.D. #68013  
Weltman, Weinberg & Reis Co., L.P.A.  
2601 Koppers Building  
436 7th Avenue  
Pittsburgh, PA 15219  
(412) 434-7955

WWR#01835072

**FILED**

**APR 10 2000**

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

NATIONAL CITY BANK

Plaintiff

No. 00-330-CD

vs.

KITTY L. SCOTT and  
LORRAINE M. EMINHIZER

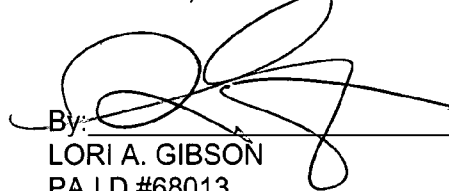
Defendants

**AFFIDAVIT OF SERVICE OF COMPLAINT AS TO LORRAINE M. EMINHIZER**

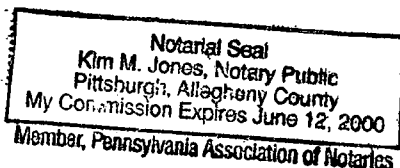
Before me, the undersigned authority, personally appeared Lori A. Gibson, Esquire, who, being duly sworn according to law, deposes and says that on March 16, 2000, she did cause to be sent to Defendant, Plaintiff's Complaint, by Certified Mail, Return Receipt requested, directed to Defendant, Lorraine M. Eminhizer, 152 Cedar Grove Road, Somerset, NJ 08873.

Plaintiff's Complaint has been filed with the Prothonotary of Clearfield County on March 15, 2000. A true and correct copy of Plaintiff's receipt for sending of certified mail is attached hereto, marked as Exhibit "1" and made a part hereof. Plaintiff's Complaint was received by Defendant on March 18, 2000.

WELTMAN, WEINBERG & REIS CO., L.P.A.

By:   
LORI A. GIBSON  
PA I.D.#68013

Weltman, Weinberg & Reis Co., L.P.A.  
2718 Koppers Building  
436 7<sup>th</sup> Avenue  
Pittsburgh, PA 15219  
(412) 434-7955  
WWR#01835072



Sworn to and subscribed  
before me this 7<sup>th</sup>  
day of April, 2000.

  
NOTARY PUBLIC

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Lorraine M. Emphizer  
152 Cedar Grove Road  
Somerset, NJ 08873

**2. Article Number (Copy from service label)**

Z 202 544 312

PS Form 3811, July 1999

**COMPLETE THIS SECTION ON DELIVERY**
**A. Received by (Please Print Clearly)**
**B. Date of Delivery**

3/18

**C. Signature**

X *L. Emphizer*

☐ Agent

☐ Addressee

**D. Is delivery address different from item 1?**

☐ Yes

If YES, enter delivery address below:

☐ No

**3. Service Type**

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

**4. Restricted Delivery? (Extra Fee)**

☐ Yes

Domestic Return Receipt

102595-99-M-1789

Z 202 544 313

US Postal Service

**Receipt for Certified Mail**

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	Lorraine M. Emphizer
Street & Number	152 Cedar Grove Road
Post Office, State, & ZIP Code	Somerset, NJ 08873
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$3.42
Postmark or Date	3/16/00

PS Form 3800, April 1995

EXHIBIT


FILED

APR 10 2003

11/10/2000

William A. Shaw

Prothonotary



**IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

**NATIONAL CITY BANK,  
Plaintiff**

**v.**

**KITTY L. SCOTT and  
LORRAINE M. EMINHIZER,  
Defendants**

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**: Civil Action No. 00-330-CD**

**NOTICE**

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 Answer, New Matter and Crossclaims are served, 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 Defendants. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF  
YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR  
TELEPHONE THE OFFICE SET FORTH BELOW AND TO FIND OUT  
WHERE YOU CAN GET LEGAL HELP.**

Office of Court Administrator  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830  
(814) 765-2641 x 50 or 51

**FILED**

**MAY 25 2000**

**William A. Shaw  
Prothonotary**

**IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

**NATIONAL CITY BANK,**  
**Plaintiff**

**v.**

**KITTY L. SCOTT and**  
**LORRAINE M. EMINHIZER,**  
**Defendants**

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**Civil Action No. 00-330-CD**

**ANSWER, NEW MATTER AND COUNTERCLAIMS OF  
DEFENDANTS, KITTY L. SCOTT AND LORRAINE M. EMINHIZER**

**NOW COMES** Defendants, Kitty L. Scott and Lorraine M. Eminhizer, by and through their attorney, William M. Blaum, Esquire, and hereby file an Answer, New Matter and Counterclaims to the Complaint of Plaintiff, National City Bank as follows:

1. Defendants, Kitty L. Scott and Lorraine M. Eminhizer are without sufficient information to form a belief as to the truth or falsity of the averments contained in Paragraph 1 of Plaintiff's Complaint. Therefore, the averments contained in Paragraph 1 are specifically denied with strict proof thereof demanded at the time of trial.

2. Admitted.

3. Admitted in part and denied in part. It is admitted that Clearfield County is the proper venue of this action. The remaining averments are denied as legal and/or factual conclusions for which no response is required.

4. Admitted in part and denied in part. It is admitted that on or about December 11, 1997, Defendants executed an Equity Reserve Agreement, a true and correct copy of which is attached to Plaintiff's Complaint as Exhibit "1". However, it

**WILLIAM M. BLAUM**  
**ATTORNEY AT LAW**  
**SUITE 1105**  
**108 NORTH WASHINGTON AVENUE**  
**SCRANTON, PA 18503**  
**(570) 961-2095**

is specifically denied that this Equity Reserve Agreement was a "note". To the contrary, the Equity Reserve Agreement was a credit line with a potential principal amount of \$100,000.00.

5. Admitted in part and denied in part. It is admitted that Defendant Lorraine Eminhizer signed an open end mortgage. It is denied that Defendant, Kitty Scott executed an open-end mortgage with a principal amount of \$100,000.00. To the contrary, Defendant Kitty Scott did not recall signing a mortgage. It is admitted that a mortgage was recorded in the Clearfield County Recorder of Deeds Office. However, Defendants are without sufficient information to form a belief as to the truth or falsity whether a correct copy of the open-end mortgage is attached as Exhibit "2", the date when the mortgage was recorded and the book volume and page of the mortgage. Therefore, those allegations are specifically denied with strict proof thereof demanded at the time of trial.

6. Admitted in part and denied in part. It is admitted that the mortgage covers a property located at Treasure Lake Road, Lot 752, Clearfield, PA 18501. However, it is denied that the property is solely owned by Lorraine M. Eminhizer. To the contrary, in order to refinance the Equity Reserve Agreement, the property had to be deeded in the names of both Defendants.

7. Denied. It is denied that the note and mortgage are in default because Defendants have failed to make the required monthly payments of principal and interest to Plaintiffs since December 13, 1999. To the contrary, the note and mortgage are not in default because Defendants have not failed to make the monthly payments of

principal and interest since December 13, 1999. Specifically, Defendants have, in good faith, attempted to keep current with their required payments of principal and interest. Furthermore, Defendants allege that Plaintiff has not acted in good faith regarding this matter. The allegations set forth in Defendants' New Matter and Counterclaims below are set forth as though herein at length. By way of further answer, it is believed and therefore averred that payments have been made to Plaintiff, yet not credited to Defendants including but not limited to the following:

a ) April 1, 1998: \$1,500.00. (See copy of Teller Receipt, attached hereto as part of Exhibit "A");

b ) May 7, 1999: \$1,500.00. (See copy of Check No. 1073, attached hereto as part of Exhibit "A");

c ) October 31, 1999: \$1,277.00. (See copy of Check No. 1173, attached hereto as part of Exhibit "A");

d ) December 7, 1999: \$1,300.00. (See copy of Check No. 1179, attached hereto as part of Exhibit "A");

e ) March 10, 2000: \$1,300.00. (See copy of Check No. 1200, attached hereto as part of Exhibit "A").

By way of further answer, whether or not the note and mortgage are in "default" are legal conclusions for which no response is required. To the extent that a response is required, the Equity Reserve Agreement and mortgage are not in default. By way of further answer, to the extent that Defendants did not sign the mortgage, it cannot be enforced and Defendants cannot be in default of same.

**WILLIAM M. BLAUM**  
ATTORNEY AT LAW  
SUITE 1105  
108 NORTH WASHINGTON AVENUE  
SCRANION, PA 18503  
(570) 961-2095



8. Denied as legal conclusions for which no response is required. Answering Defendants incorporate their response to Paragraph 7 herein as though set forth at length. By way of further answer, it is denied that there is an "acceleration clause" in the equity reserve agreement. To the contrary, there is no "acceleration clause" in the equity reserve agreement. By way of further answer, the portion of the equity reserve agreement which purportedly requires Defendants to pay the entire outstanding balance in one payment is legally unenforceable and/or unconscionable.

9. Denied. Because Plaintiff has continuously refused to provide a complete listing of all of the amounts owed by Defendants, Defendants are without sufficient information to form a belief as to the truth or falsity of the specific amounts which are due and owing under the Equity Reserve Agreement and/or mortgage. In particular, Defendants are without sufficient information to form a belief as to the truth or falsity of the principal amount, any interest on the principal amount since the loan's inception including but not limited to specific, monthly principal amounts since the loan's inception, and interest through March 18, 2000 at the contract rate of 9.25%. By way of further answer, it is believed and therefore averred that Defendants have made payments which have not been credited to them as reflected in Paragraph 7, the averments of which are incorporated herein as though set forth at length. By way of further answer, according to Plaintiff's initial calculations, Defendants believe and therefore aver that they have made payment in an approximate amount of \$33,538.50 since the loan's inception from December 7, 1997 until the present. Pursuant to Plaintiff's own statements, which are referenced without admission or adoption,

Defendants borrowed \$101,405.89 under the Equity Reserve Agreement. Therefore, Defendants believe and therefore aver that they can owe no more than \$67,867.39 plus interest and **not** \$90,599.18 as alleged by Plaintiff.

10. Denied as legal conclusions for which no response is required. To the extent that a response is required, Defendants have not failed and/or refused to pay the principal balance, attorney fees, interest and any part thereof. To the contrary, Defendants have reasonably and appropriately attempted to keep current on the principal and interest amounts under the Equity Reserve Agreement and have not willfully failed and/or refused to pay any principal and/or interest. By way of further answer, Defendants include their response to Paragraph 7 and averments contained in their New Matter and Counterclaims herein as though set forth at length. By way of further answer, Defendants have not been kept fully and completely apprised of the amount that is due and owing under the Equity Reserve Agreement. Plaintiff has also failed to provide a complete transaction history listing all of the amounts due and owing under the Equity Reserve Agreement, notwithstanding repeated attempts for this information.

11. Admitted in part and denied in part. It is admitted that a document is attached to Plaintiff's Complaint as Exhibit "3". Whether or not this document is proper and reasonable 'notice' under the Fair Debt Collection Practices Act is a legal conclusion for which no response is required. By way of further response, Plaintiff has failed to comply with the Fair Debt Collection Act as noted in Defendants' Answer,

New Matter and Counterclaims, which is incorporated herein as though set forth at length.

**WHEREFORE**, Defendants, Kitty L. Scott and Lorraine M. Eminhizer, jointly and severally, demand judgment against Plaintiff.

**NEW MATTER**

12. Defendants incorporate their Answers to Paragraphs 1 through 11 above herein as though set forth at length.

13. On or about December 11, 1997, Defendants entered into an Equity Reserve Agreement.

14. The Equity Reserve Agreement was in essence a credit line with a total potential principal of \$100,000.00.

15. Plaintiff sent monthly statements to Defendants regarding the principal, interest, other charges and the minimum monthly amount owed.

16. In 1998, Plaintiff began taking automatic withdrawals from Defendant, Kitty L. Scott's checking account with Plaintiff.

17. However, said automatic withdrawals were not taken during the appropriate time frames during the month or in the expected amounts.

18. Because Plaintiff was not utilizing the auto payment feature appropriately from Defendant, Kitty L. Scott's account, Defendant in August of 1998 requested that the automatic payment feature be discontinued.

19. In fact, follow-up correspondences/conferences were sent/held in September of 1998, October 15, 1998 and November 10, 1998. (See October 15, 1998 and November 10, 1998 correspondences attached hereto as Exhibit "C".)

20. However, Plaintiff refused and/or failed to stop the automatic payment feature until February of 1999.

21. In fact, Defendant had to close her checking account with Plaintiff before the automatic payments were discontinued.

22. This caused confusion between Plaintiff and Defendants regarding the amounts owed, since automatic payments were being depicted on the various statements Defendant received as both credits and debits.

23. Defendants have consistently and continually told Plaintiff and/or Plaintiff's representatives that it was their intention to refinance this debt.

24. Moreover, Defendants have engaged Progressive Lending, through Dave Matronec and Gerard Sechleer, Esquire to assist in the refinancing of this debt.

25. Moreover, Defendant has continually requested a complete transaction history which shows all of the debits and credits she has been owed under the Equity Reserve Agreement. (See correspondence of December 29, 1999 attached as Exhibit "D".)

26. Defendant has requested this information herself, through her agent, Progressive Lending, and its representative, Dave Matronec, through her counsel, Gerard Sechleer, Esquire, and her current counsel, William M. Blaum, Esquire.

WILLIAM M. BLAUM  
ATTORNEY AT LAW  
SUITE 1105  
108 NORTH WASHINGTON AVENUE  
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27. In fact, Defendant's current counsel sent correspondence to counsel for Plaintiff dated March 29, 2000 which requested a listing of all payments and debits including principal, interest and finance charges. (See March 29, 2000 correspondence to Plaintiff's counsel, attached hereto as Exhibit "E".)

28. Counsel's correspondence also noted that the debt at issue was disputed pursuant to 15 U.S.C.S. Section 1692 and requested verification of the debt pursuant to Section 1692(g). (See March 29, 2000 correspondence to Plaintiff's counsel, attached hereto as Exhibit "E".)

29. Plaintiff has failed to provide a verification of the debt as requested and which is required pursuant to 15 U.S.C.S. Section 1692(g).

30. Furthermore, Plaintiff has failed to "cease collection of the debt" as is required by 15 U.S.C.S. Section 1692(g)(5), until a verification of the debt is provided.

31. Plaintiff, at no time has provided a complete transaction history, which has been requested by Defendants, two attorneys for Defendants, and an agent of Defendants.

32. Defendants have received contradicting statements concerning the amount owed under the Equity Reserve Agreement.

33. For example, they would inquire as to the amount owed from the National City Bank in Punxsutawney, Pennsylvania, and be told that their account is current.

34. On the other hand, they would receive contact from Lakisha Woodman, Ebony Martin, Theresa Endy, who are believed to be employees, agents, servants,

workmen and/or representatives of Plaintiff, that Defendants must make a substantial payment on the loan.

35. Notwithstanding the contradictory information Defendant was receiving, she in fact attempted to make the payments requested by Lakisha Woodman on or about January of 1999, May of 1999 and September of 1999.

36. Moreover, Defendants would receive up to two to three telephone calls per day regarding this loan by Lakisha Woodman and/or other representatives of Plaintiff.

37. Moreover, checks have been mailed to Plaintiff at Plaintiff's address and/or delivered to a branch of Plaintiff, which have never been returned to Defendant and which Plaintiff claims were never received, including checks from the following dates: December 1999, January 2000, and May 10, 2000.

38. Plaintiff has failed to provide the notice required by 41 P.S. Section 403 (Lexis 1999).

39. Plaintiff has failed to provide the notice required by 35 P.S. Section 1680.403.

40. Answering Defendants herein plead the affirmative defense of failure of consideration.

41. Answering Defendants herein plead the defense of unconscionability.

42. As a result of the above, which indicates that Plaintiff has received and accepted payment after December 13, 1999, Answering Defendants herein plead the affirmative defense of waiver, estoppel and/or payment.

43. Answering Defendants herein plead the defense of illegality.

44. Answering Defendants herein plead the affirmative defense of release.

45. Answering Defendants herein plead the defense of license.

46. Answering Defendants herein plead the defense of mistake.

47. Answering Defendants herein plead the defense of failure to mitigate damages.

48. Answering Defendants herein plead the affirmative defense of rescission.

49. Answering Defendants herein plead the affirmative defense of material misrepresentation.

50. Plaintiff's Complaint fails to state a cause of action for which relief can be granted.

51. Answering Defendants herein plead any and all defenses that are available pursuant to 41 P.S. Section 101 (Lexis 1999) et seq.

52. Answering Defendants herein plead any and all defenses that are available pursuant to 15 U.S.C.S. Section 1692 (Lexis 2000) et seq.

53. Answering Defendants herein plead any and all defenses that are available pursuant to 35 P.S. Section 1680.403 et seq.

54. Pursuant to the above, including Plaintiff's failure to provide notice pursuant to 41 P.S. Section 403 (Lexis 1999), Answering Defendants herein raise the defense that this Honorable Court lacks subject matter jurisdiction.

55. Answering Defendants herein plead any and all defenses available pursuant to any applicable statutes of limitation.

WILLIAM M. BLAUM  
ATTORNEY AT LAW  
SUITE 1105  
108 NORTH WASHINGTON AVENUE  
SCRANTON, PA 18503  
(570) 961-2095

56. Service was not properly made on Defendants within thirty days of when the Complaint was filed, therefore Answering Defendants herein plead the defense of lack of service and/or personal jurisdiction.

**WHEREFORE**, Defendants, Kitty L. Scott and Lorraine M. Eminhizer, jointly and severally, demand judgment against Plaintiff.

**COUNTERCLAIMS**

**KITTY L. SCOTT AND LORRAINE M. EMINHIZER**  
**V. NATIONAL CITY BANK**

**Count I - Breach of Contract**

57. Defendants incorporate their Answers to Paragraphs 1 through 56 above herein as though set forth at length.

58. Counterclaim Plaintiffs are Defendants, Kitty L. Scott and Lorraine M. Eminhizer (hereinafter Counterclaim Plaintiffs).

59. Counterclaim Defendant is Plaintiff above, National City Bank (hereinafter Counterclaim Defendant).

60. Counterclaim Plaintiffs have made a reasonable effort to keep their payments current under the Equity Reserve Agreement.

61. As a result, Counterclaim Plaintiffs have made a reasonable effort to meet the repayment terms of the Equity Reserve Agreement.

62. Therefore, Counterclaim Defendant's action, which seeks to require Counterclaim Plaintiffs to pay the entire outstanding balance, represents a breach of the Equity Reserve Agreement.



63. As a result, Counterclaim Plaintiffs seek damages for actual damages, inconvenience, costs, consequential damages, and reasonable attorney fees in defending this action.

**WHEREFORE**, Counterclaim Plaintiffs respectfully request that judgment be entered in their favor and against Counterclaim Defendant in an amount which does not exceed the amount requiring compulsory arbitration.

**Count II - Violation of Fair Debt Collection Act**

64. Defendants incorporate their Answers to Paragraphs 1 through 63 above herein as though set forth at length.

65. The actions of Counterclaim Defendant violate 15 U.S.C.S. Section 1692, et. seq., including but not limited to Sections 1692 (d) and 1692(g) (Lexis 2000).

66. As a result, Counterclaim Plaintiffs request damages pursuant to Section 1692(k) including but not limited to actual damages, costs of the action, and reasonable attorney fees as determined by the Court.

**WHEREFORE**, Counterclaim Plaintiffs respectfully request that judgment be entered in their favor and against Counterclaim Defendant in an amount which does not exceed the amount requiring compulsory arbitration.

**Count III - Unfair Trade Practices and Consumer Protection Law**

67. Counterclaim Plaintiffs incorporate their Answers to Paragraphs 1 through 66 above herein as though set forth at length.

68. The actions of Counterclaim Defendant, by and through its agents, servants, workmen and/or employees including but not limited to Lakisha Woodman,

represent unfair and/or deceptive acts and/or practices as defined by the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. Section 201-202.

69. As a result, Counterclaim Plaintiffs are maintaining a private cause of action against Counterclaim Defendant pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

70. In particular, Counterclaim Plaintiffs are seeking actual damages, treble damages, attorney fees, costs and/or such additional relief as this Court deems just and proper.

**WHEREFORE**, Counterclaim Plaintiffs respectfully request that judgment be entered in their favor and against Counterclaim Defendant in an amount which does not exceed the amount requiring compulsory arbitration.

**Count IV - Violation of 41 P.S. Section 101 et. seq. (Lexis 1999)**

71. Counterclaim Plaintiffs incorporate their Answers to Paragraphs 1 through 70 above herein as though set forth at length.

72. Counterclaim Defendant has not provided the notice which is required pursuant to 41 P.S. Section 403 (Lexis 1999).

73. In particular, Section 403(a) requires that thirty days notice be given prior to a lender accelerating a residential mortgage obligation.

74. Moreover, Counterclaim Defendant has not provided counterclaim plaintiffs with the ability to cure any purported default.

75. As a result, Counterclaim Defendant is liable to Counterclaim Plaintiffs for costs, expenses, and attorneys' fees.

**WHEREFORE**, Counterclaim Plaintiffs respectfully request that judgment be entered in their favor and against Counterclaim Defendant in an amount which does not exceed the amount requiring compulsory arbitration.

Respectfully submitted,



---

William M. Blaum, Esquire  
Attorney I.D. # 66485  
108 North Washington Avenue  
Suite 1105  
Scranton, PA 18503

WILLIAM M. BLAUM  
ATTORNEY AT LAW  
SUITE 1105  
108 NORTH WASHINGTON AVENUE  
SCRANTON, PA 18503  
(570) 961-2095

National City Bank v. Scott and Eminhizer  
Civil Action No. 00-330-CD

**VERIFICATION**

I, **Kitty L. Scott**, do hereby verify that the statements made in the Answer, New Matter and Counterclaims of Defendants, Kitty L. Scott and Lorraine M. Eminhizer to Plaintiff's Complaint are true and correct to my knowledge, information and belief. I further declare that I have a durable power of attorney regarding my mother, Lorraine Eminhizer. The language of the foregoing document is that of counsel and not of the undersigned herself. The undersigned has read the foregoing document and, to the extent that it is based upon information which has been given to her counsel, that information is true and correct to the best of her knowledge, information and belief. This verification is made based upon information that is known at the time that this document has been drafted. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4094 relating to unsworn falsifications to authorities.

Dated: 5/22/00

  
Kitty L. Scott

# National City.

All deposits or payments are credited subject to verification by the bank and final payment.

PLEASE RETAIN THIS RECEIPT.

Need Money?  
Ask About Home Equity Loans.  
The Smart way to borrow.



294247  
NATIONAL CITY  
CINCINNATI  
APR 01 1998  
SELLER #CS  
1500

PRINT LINE  
DESCRIPTION

71-0608-00 (Rev. 1/98)

001 02  
OFFICE # CSR

123  
TRANS #

124458788  
ACCOUNT #

DEP  
TRANS TYPE

100.00  
AMOUNT

Jan 01 98  
TODAY'S DATE

15.00  
FEE

FDIC

DR. KITTY LEE SCOTT

65-216/212  
214

1073

DATE 5/2/99PAY TO THE ORDER OF National City \$ 1,500.00One thousand five hundred and 00/100 DOLLARS ☒ Security Features**SUMMIT**  
BANK670 Franklin Blvd.  
Somerset, N.J. 08873

214

FOR

City of Somerset  
⑆02⑆202⑆62⑆ 42⑆4⑆0258⑆ 5⑆ 1073 ⑆0000⑆50000⑆

On back of check

DR. KITTY LEE SCOTT

65-216/212  
214

1173

DATE Dec 31, 1999PAY TO THE ORDER OF National City Bank \$ 1,277.00One thousand two hundred seventy seven and 00/100 DOLLARS ☒ Security Features**SUMMIT**  
BANK670 Franklin Blvd.  
Somerset, N.J. 08873

214

FOR

Home Equity Payment  
⑆02⑆202⑆62⑆ 42⑆4⑆0258⑆ 5⑆ 1173 ⑆0000⑆27700⑆

On back of check

DR. KITTY LEE SCOTT

65-216/212  
214

1179

DATE 12/7/99PAY TO THE ORDER OF National City \$ 1,300.00One thousand three hundred and 00/100 DOLLARS ☒ Security Features**SUMMIT**  
BANK670 Franklin Blvd.  
Somerset, N.J. 08873

214

FOR Home Equity Line  
Acc # 4489 7198 7503 2903 City of Somerset  
⑆02⑆202⑆62⑆ 42⑆4⑆0258⑆ 5⑆ 1179 ⑆0000⑆30000⑆

On back of check

MY '99 07  
048000122  
National City Bank of PA  
Pittsburgh, PA

00'005'1

CSHACK

62:21 66 70 MAY 12:29  
9 39101 158

CREDIT TO THE ACCOUNT OF  
THE WITHIN NAMED PAYEE  
Absence Of Endowment Qualification  
NATIONAL CITY  
DUBOIS

05/11/99 04/11/99 MY 10  
PAID  
021202  
NATIONAL CITY BANK  
4100 W. 150 CLEV OH 44135  
07000028679

124103525

552244812

NATIONAL CITY BANK  
4100 W. 150 CLEV., OH 44135

11/10/99 04/11/99 3  
PAID  
021202  
NATIONAL CITY BANK  
05000029978

CREDIT TO THE ACCOUNT OF  
THE WITHIN NAMED PAYEE  
Absence Of Endowment Qualification  
NATIONAL CITY  
DUBOIS  
NATL CITY

DE '99 13

041000124 4  
NATIONAL CITY 48  
4100 W 150 CLEV., OH 44135

12/15/99 04/11/99 3  
PAID  
021202  
NATIONAL CITY BANK  
05000037231

DEC 13 99

4045 9363  
CREDIT TO THE ACCOUNT OF  
THE WITHIN NAMED PAYEE  
Absence Of Endowment Qualification  
NATIONAL CITY  
DUBOIS  
NATL CITY  
041000124 4  
4100 W 150 CLEV., OH 44135

$$\hat{A} \hat{B} = \hat{B} \hat{A}$$

'00000E R 0008.' 0Q2 Y 915 78520 M H 27 P-12 Q T 202 12 05



P.O. BOX 1300  
FRANKLIN, PA 16323

## EQUITY LINE OF CREDIT SUMMARY

<b>New Balance</b>	<b>Minimum Payment</b>	<b>Due Date</b>
<b>95,639.31</b>	<b>1,434.00</b>	<b>08/28/98</b>

**Account number** 4489 7198 7503 2903

Amount Enclosed \$ \_\_\_\_\_

PLEASE MAKE CHECK PAYABLE TO:

NATIONAL CITY  
P.O. BOX 85440  
LOUISVILLE, KY 40285-5440

KITTY L SCOTT  
LORRAINE M EMINHIZER  
RD L BOX 208  
PUNXSUTAWNEY PA 15730

661

[illegible][illegible]

4489719875032903009563931000143400

**NationalCity®**

Account number	4489 7198 7503 2903
Credit Limit	\$100,000.00
Available Credit	\$4,360.00
Available for Cash Advance	\$4,360.00
Days in Billing Cycle	33
Statement Closing Date	08/03/98

**ACCOUNT SUMMARY:**Previous Balance

Previous Balance	\$99,264.81
Payments/Credits	\$4,430.00
Purchases/Debits	\$0.00
Cash Advances	\$0.00
Finance Charges	\$804.50
Other Charges	\$0.00
New Balance	\$95,639.31

## TRANSACTIONS

Tran Date	Post Date	Reference Number	Description	Amount
07/09	07/09	7448970JJSQ1HE1JG	PAYMENT-THANK YOU PENNSYLVANIA PA	2,942.00CR
07/26	07/26	F426500JX00CHGDDA	AUTO-PAY - THANK YOU 294247200	1,488.00CR
08/03	08/03	*FINANCE CHARGE*		804.50

**\$ 1434.00 WILL BE DEDUCTED FROM YOUR ACCOUNT AND CREDITED AS YOUR AUTOPAYMENT ON 08/28/98.**

## FINANCE CHARGES SUMMARY

Rate Type	DAILY PERIODIC RATE*	CORRESPONDING ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AVERAGE DAILY BALANCE
Current Purchases	.025340%	9.250%	\$0.00	\$0.00
Current Cash Advances	.025340%	9.250%	\$804.50	\$96,207.15

**BLENDED ANNUAL PERCENTAGE RATE: 9.25%**

**\*THIS RATE MAY VARY**

**CUSTOMER SERVICE 1-800-352-0186**

CUSTOMER SERVICE P.O. BOX 1300 FRANKLIN, PA 16323

**Notice:** See reverse side for important information on your account.

**Exhibit "B"**



P.O. BOX 1300  
FRANKLIN, PA 16323

### EQUITY LINE OF CREDIT SUMMARY

New Balance	Minimum Payment	Due Date
94,901.41	1,423.00	09/26/98

Account number 4489 7198 7503 2903

Amount Enclosed \$ \_\_\_\_\_

PLEASE MAKE CHECK PAYABLE TO:

NATIONAL CITY  
P.O. BOX 85440  
LOUISVILLE, KY 40285-5440

KITTY L SCOTT  
LORRAINE M EMINHIZER  
RD L BOX 208  
PUNXSUTAWNEY PA 15730

225



4489719875032903009490141000142300



ACCOUNT SUMMARY:	Previous Balance	\$95,639.31
	Payments/Credits	\$1,434.00
	Purchases/Debits	\$0.00
	Cash Advances	\$0.00
	Finance Charges	\$696.10
	Other Charges	\$0.00
	New Balance	\$94,901.41

Account number 4489 7198 7503 2903  
Credit Limit \$100,000.00  
Available Credit \$5,098.00  
Available for Cash Advance \$5,098.00  
Days in Billing Cycle 29  
Statement Closing Date 09/01/98

#### TRANSACTIONS

Tran Date	Post Date	Reference Number	Description	Amount
08/28	08/28	F426500L000CHGDDA	AUTO-PAY - THANK YOU 294247200	1,434.00CR
09/01	09/01	*FINANCE CHARGE*		696.10

\$ 1423.00 WILL BE DEDUCTED FROM YOUR ACCOUNT AND  
CREDITED AS YOUR AUTOPAYMENT ON 09/26/98.

FINANCE CHARGES ON YOUR ACCOUNT ARE CALCULATED USING THE FOLLOWING SCHEDULE.

PORTION OF AVERAGE DAILY BALANCE:	MONTHLY PERIODIC RATES	CORRESPONDING NOMINAL ANNUAL PERCENTAGE RATES
UNDER - 9,999,999.00	0.771%	9.250%
9,999,999.00 - 9,999,999.00	0.000%	0.000%

#### FINANCE CHARGES SUMMARY

Rate Type	DAILY PERIODIC RATE*	CORRESPONDING ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AVERAGE DAILY BALANCE
Current Purchases	.025340%	9.250%	\$0.00	\$0.00
Current Cash Advances	.025340%	9.250%	\$696.10	\$94,726.27

BLENDED ANNUAL PERCENTAGE RATE: 9.25%

\*THIS RATE MAY VARY

CUSTOMER SERVICE 1-800-352-0186

CUSTOMER SERVICE P.O. BOX 1300 FRANKLIN, PA 16323

Notice: See reverse side for important information on your account.

# NationalCity®

P.O. BOX 1300  
FRANKLIN, PA 16323

## EQUITY LINE OF CREDIT SUMMARY

New Balance	Minimum Payment	Due Date
97,125.91	2,879.00	10/26/98

Account number 4489 7198 7503 2903

Amount Enclosed \$ \_\_\_\_\_

PLEASE MAKE CHECK PAYABLE TO:

NATIONAL CITY  
P.O. BOX 85440  
LOUISVILLE, KY 40285-5440

KITTY L SCOTT  
LORRAINE M EMINHIZER  
RD L BOX 208  
PUNXSUTAWNEY PA 15730

233

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4489719875032903009712591000287900

## NationalCity®

Account number 4489 7198 7503 2903  
Credit Limit \$100,000.00  
Available Credit \$2,874.00  
Available for Cash Advance \$2,874.00  
Days in Billing Cycle 30  
Statement Closing Date 10/01/98

ACCOUNT SUMMARY: Previous Balance \$94,901.41  
Payments/Credits \$1,423.00  
Purchases/Debits \$1,423.00  
Cash Advances \$1,500.00  
Finance Charges \$724.50  
Other Charges \$0.00  
New Balance \$97,125.91  
Past Due Balance \$1,423.00

A FRIENDLY REMINDER TO A VALUED CUSTOMER.  
IF YOU HAVE NOT ALREADY DONE SO, PLEASE REMIT  
THE AMOUNT PAST DUE.

### TRANSACTIONS

Tran Date	Post Date	Reference Number	Description	Amount
09/10	09/10	7448970LE01MLWTF0	CONVENIENCE CHECK PITTSBURGH PA	1,500.00
09/26	09/26	F426500LW00CHGDDA	AUTO-PAY - THANK YOU 294247200	1,423.00CR
09/26	09/26	F426500M2000Q1274	AN ADJUSTMENT TO YOUR ACCOUNT	1,423.00
10/01	10/01	*FINANCE CHARGE*		724.50

\$ 2879.00 WILL BE DEDUCTED FROM YOUR ACCOUNT AND  
CREDITED AS YOUR AUTOPAYMENT ON 10/26/98.

### FINANCE CHARGES SUMMARY

Rate Type	DAILY PERIODIC RATE*	CORRESPONDING ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AVERAGE DAILY BALANCE
Current Purchases	.025340%	9.250%	\$0.00	\$0.00
Current Cash Advances	.025340%	9.250%	\$724.50	\$95,305.31

BLENDED ANNUAL PERCENTAGE RATE: 9.25%  
\*THIS RATE MAY VARY

CUSTOMER SERVICE 1-800-352-0186  
CUSTOMER SERVICE P.O. BOX 1300 FRANKLIN, PA 16323  
Notice: See reverse side for important information on your account.

# NationalCity®

P.O. BOX 1300  
FRANKLIN, PA 16323

## EQUITY LINE OF CREDIT SUMMARY

New Balance	Minimum Payment	Due Date
97,921.96	4,347.00	11/27/98

Account number 4489 7198 7503 2903

Amount Enclosed \$ \_\_\_\_\_

PLEASE MAKE CHECK PAYABLE TO:

NATIONAL CITY  
P.O. BOX 85440  
LOUISVILLE, KY 40285-5440

KITTY L SCOTT  
LORRAINE M EMINHIZER  
RD L BOX 208  
PUNXSUTAWNEY PA 15730

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4489719875032903009792196000434700

## NationalCity®

Account number 4489 7198 7503 2903  
Credit Limit \$100,000.00  
Available Credit \$2,078.00  
Available for Cash Advance \$2,078.00  
Days in Billing Cycle 32  
Statement Closing Date 11/02/98

ACCOUNT SUMMARY:

Previous Balance	\$97,125.91
Payments/Credits	\$2,879.00
Purchases/Debits	\$2,879.00
Cash Advances	\$0.00
Finance Charges	\$776.05
Other Charges	\$20.00
New Balance	\$97,921.96
Past Due Balance	\$2,879.00

YOUR ACCOUNT IS DELINQUENT. YOUR ACCOUNT  
PRIVILEGES MAY BE REVOKED. IF YOU HAVE NOT  
DONE SO, PLEASE REMIT THE AMOUNT PAST DUE.

### TRANSACTIONS

Tran Date	Post Date	Reference Number	Description	Amount
10/26	10/26	F426500MZ000Q1303	AN ADJUSTMENT TO YOUR ACCOUNT	2,879.00
10/26	10/26	F426500MV00CHGDDA	AUTO-PAY - THANK YOU 294247200	2,879.00CR
11/02	11/02		LATE FEE	20.00
11/02	11/02	*FINANCE CHARGE*		776.05

\$ 4347.00 WILL BE DEDUCTED FROM YOUR ACCOUNT AND  
CREDITED AS YOUR AUTOPAYMENT ON 11/27/98.

### FINANCE CHARGES SUMMARY

Rate Type	DAILY PERIODIC RATE*	CORRESPONDING ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AVERAGE DAILY BALANCE
Current Purchases	.025340%	9.250%	\$0.00	\$0.00
Current Cash Advances	.025340%	9.250%	\$776.05	\$95,705.31

BLENDED ANNUAL PERCENTAGE RATE: 9.25%

\*THIS RATE MAY VARY

CUSTOMER SERVICE 1-800-352-0186

CUSTOMER SERVICE P.O. BOX 1300 FRANKLIN, PA 16323

Notice: See reverse side for important information on your account.

# NationalCity®

P.O. BOX 1300  
FRANKLIN, PA 16323

## EQUITY LINE OF CREDIT SUMMARY

New Balance	Minimum Payment	Due Date
92,847.94	1,392.00	12/27/98

Account number 4489 7198 7503 2903

Amount Enclosed \$ \_\_\_\_\_

PLEASE MAKE CHECK PAYABLE TO:

NATIONAL CITY  
P.O. BOX 85440  
LOUISVILLE, KY 40285-5440

KITTY L SCOTT  
LORRAINE M EMINHIZER  
RD L BOX 208  
PUNXSUTAWNEY PA 15730

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4489719875032903009284794000139200

## NationalCity®

Account number 4489 7198 7503 2903  
Credit Limit \$100,000.00  
Available Credit \$7,152.00  
Available for Cash Advance \$7,152.00  
Days in Billing Cycle 30  
Statement Closing Date 12/02/98

ACCOUNT SUMMARY:

Previous Balance	\$97,921.96
Payments/Credits	\$5,786.50
Purchases/Debits	\$0.00
Cash Advances	\$0.00
Finance Charges	\$692.48
Other Charges	\$20.00
New Balance	\$92,847.94

### TRANSACTIONS

Tran Date	Post Date	Reference Number	Description	Amount
11/13	11/13	7448970NHSQ1HBMGP	PAYMENT-THANK YOU PENNSYLVANIA PA	1,439.50CR
11/27	11/27	F426500NV00CHGDDA	AUTO-PAY - THANK YOU 294247200	4,347.00CR
12/02	12/02		LATE FEE	20.00
12/02	12/02	*FINANCE CHARGE*		692.48

\$ 1392.00 WILL BE DEDUCTED FROM YOUR ACCOUNT AND  
CREDITED AS YOUR AUTOPAYMENT ON 12/27/98.

### FINANCE CHARGES SUMMARY

Rate Type	MONTHLY PERIODIC RATE*	CORRESPONDING ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AVERAGE DAILY BALANCE
Current Purchases	0.729%	8.750%	\$0.00	\$0.00
Current Cash Advances	0.729%	8.750%	\$692.48	\$94,991.34

BLENDED ANNUAL PERCENTAGE RATE: 8.75%

\*THIS RATE MAY VARY

CUSTOMER SERVICE 1-800-352-0186

CUSTOMER SERVICE P.O. BOX 1300 FRANKLIN, PA 16323

Notice: See reverse side for important information on your account.

**NationalCity®**

P.O. BOX 1300  
FRANKLIN, PA 16323

**EQUITY LINE OF CREDIT SUMMARY**

New Balance	Minimum Payment	Due Date
96,505.74	4,354.50	01/29/99

Account number 4489 7198 7503 2903

Amount Enclosed \$ \_\_\_\_\_

PLEASE MAKE CHECK PAYABLE TO:

NATIONAL CITY  
P.O. BOX 85440  
LOUISVILLE, KY 40285-5440

KITTY L SCOTT  
LORRAINE M EMINHIZER  
RD L BOX 208  
PUNXSUTAWNEY PA 15730

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4489719875032903009650574000435450

**NationalCity®**

ACCOUNT SUMMARY:	Previous Balance	\$92,847.94
	Payments/Credits	\$1,392.00
	Purchases/Debits	\$4,347.00
	Cash Advances	\$0.00
	Finance Charges	\$682.80
	Other Charges	\$20.00
	New Balance	\$96,505.74
	Past Due Balance	\$2,907.50

Account number 4489 7198 7503 2903  
Credit Limit \$100,000.00  
Available Credit \$3,494.00  
Available for Cash Advance \$3,494.00  
Days in Billing Cycle 33  
Statement Closing Date 01/04/99

YOU HAVE NOT RESPONDED TO OUR PREVIOUS REQUESTS  
FOR PAYMENT. YOUR ACCOUNT PRIVILEGES HAVE BEEN  
REVOKED. REMIT THE TOTAL AMOUNT DUE TODAY.

**TRANSACTIONS**

Tran	Post	Reference Number	Description	Amount
Date	Date			
12/03	12/03	F426500P1000Q1337	OPENING BAL ADJUSTMENT-PAYMENTS	4,347.00
12/03	12/03		*FINANCE CHARGE* PREV CYCLE CASH ADVANCE	5.21
12/27	12/27	F426500PT00CHGDDA	AUTO-PAY - THANK YOU 294247200	1,392.00CR
01/04	01/04		LATE FEE	20.00
01/04	01/04	*FINANCE CHARGE*		677.59

\$ 4354.50 WILL BE DEDUCTED FROM YOUR ACCOUNT AND  
CREDITED AS YOUR AUTOPAYMENT ON 01/29/99.

**FINANCE CHARGES SUMMARY**

Rate Type	MONTHLY PERIODIC RATE*	CORRESPONDING ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AVERAGE DAILY BALANCE
Current Purchases	0.708%	8.500%	\$0.00	\$0.00
Current Cash Advances	0.708%	8.500%	\$677.59	\$95,705.31

BLENDED ANNUAL PERCENTAGE RATE: 8.56%

\*THIS RATE MAY VARY

CUSTOMER SERVICE 1-800-352-0186

CUSTOMER SERVICE P.O. BOX 1300 FRANKLIN, PA 16323

Notice: See reverse side for important information on your account.

National City Bank  
Punxsutawney Branch  
Punxsutawney, Penna.

October 15, 1998

To Whom It May Concern:

I have been into the Bank on several occasions to inquire why the automatic payment service is fluctuating so much. They had no answers or more correctly claimed that I had to see someone in authority. Therefore, this letter of inquiry.

It appears that some months the payment has been taken out before the due date and thus NSF, and some months it appears that it may not have been taken at all. I would like to understand your process or correct this payment schedule so not to be charged penalties or added interest.

Please feel free to contact after 4:00 at 938-7189 - or in writing to: RD1 Box 208, Punxsutawney, Penna. 15767

Thank you for your assistance.

Kitty Lee Scott

National City Bank  
Punxsutawney, Pa.

November 10, 1998

To Whom It May Concern:

I am writing in concern of the automatic withdrawal process occurring on my account. I wrote to you in October with my concern and have not had a response. I have been in several times to speak to a teller and have been told to wait for someone who could help. After waiting long periods of time, I would have to leave to return to work.

I requested of the teller to give me the form to stop the automated withdrawals as payments tend to be withdrawn before the due date. Therefore, I am requesting that the auto-payments are suspended as of this month and I will make payments by check.

Thank you for your assistance.

Kitty Scott



**Kitty L. Scott**  
RD 1 Box 208  
Punxsutawney PA 15767

December 29, 1999

Attn: Dale Hanewinkel  
National City Bank  
Consumer Loan Services Collection Dept.  
P.O. Box 94956  
Cleveland OH 44101

Dear Mr. Hanewinkel,

This letter is in response to collection efforts made by several people in your office on National City Bank Account #4489-7198-7503-2903.

I have received numerous phone calls from your office claiming I am late on my mortgage. I have canceled checks that show that payments were made. I would like to reconcile my canceled checks with the late payments that are claimed by National City Bank. I have repeatedly asked that I be provided with a check posting history for my account both from your office as well as other National City Bank offices. Each time my request has been denied.

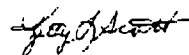
I have been repeatedly threatened with legal action and foreclosure by your office with no written justification for these actions provided.

I have asked Theresa Eady, Ebony Martin x6853 and Nicole x6649 (who refused to provide her last name) to immediately stop calling and for all communication with me regarding my account to be placed in writing only. Your office has repeatedly ignored my request. I am still receiving harassing and threatening phone calls with no written justification provided.

I will not accept any additional phone calls from National City Bank. All future correspondence with me is to be done in writing only.

I have, in good faith, been trying to correct any errors made by myself or National City Bank regarding my account. I have gotten no cooperation from National City Bank in that regard. Please forward any documentation you have regarding my payment history to me so that I can begin to correct this problem.

Sincerely,



Kitty L. Scott

cc: Attorney Jay Sechleer  
Comptroller of Currency, U.S. Department of the Treasury  
Mike Fisher, Office of the Attorney General, Commonwealth of Pennsylvania  
Connie Penegrew, National City Bank

**Kitty L. Scott**  
RD 1 Box 208  
Punxsutawney PA 15767

December 29, 1999

Attn: Dale Hanewinkel  
National City Bank  
Consumer Loan Services Collection Dept.  
P.O. Box 94956  
Cleveland OH 44101

Dear Mr. Hanewinkel,

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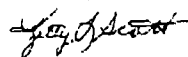
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I have, in good faith, been trying to correct any errors made by myself or National City Bank regarding my account. I have gotten no cooperation from National City Bank in that regard. Please forward any documentation you have regarding my payment history to me so that I can begin to correct this problem.

Sincerely,



Kitty L. Scott.

cc: Attorney Jay Sechleer  
Comptroller of Currency, U.S. Department of the Treasury  
Mike Fisher, Office of the Attorney General, Commonwealth of Pennsylvania  
Connie Pettigrew, National City Bank

**WILLIAM M. BLAUM, ATTORNEY AT LAW**

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108 NORTH WASHINGTON AVENUE

SUITE 1105

SCRANTON, PA 18503

PHONE: 570-961-2095

FAX: 570-961-2990

March 29, 2000

**Via Facsimile (412) 434-7959**

Lori A. Gibson, Esq.  
Weltman, Weinberg & Reis Co., L.P.A.  
2718 Koppers Building  
436 7<sup>th</sup> Avenue  
Pittsburgh, PA 15219

**Re: National City Bank v. Kitty L. Scott and Lorraine M. Eminhizer**

Dear Ms. Gibson:

It was a pleasure speaking with you today regarding the above-captioned matter. As I indicated, my office will be entering an appearance for Kitty Scott and Lorraine M. Eminhizer shortly.

My clients are currently attempting to refinance the National City Bank obligation. As part of the refinance, they require a payment/transaction history from the inception of this obligation to the present. We would like to see a listing of all payments and debits including principal, interest, and/or finance charges. Please consider this correspondence to serve as notification that the debt at issue is disputed pursuant to 15 U.S.C.S. Section 1692(g). Likewise, we are requesting verification of that debt pursuant to Section 1692 (g) as well.

Thank you for granting my office a twenty-day extension to respond to your complaint. During this period of time, we will be reviewing the payment/transaction history that your office provides to determine the amount that is owed to National City Bank.

**Exhibit "E"**

Lori A. Gibson, Esq.  
March 29, 2000  
Page -2-

Should you have any questions, please feel free to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'William M. Blaum'. The signature is fluid and cursive, with a prominent horizontal stroke across the middle.

William M. Blaum

WMB:vc

cc: Kitty L. Scott and Lorraine M. Eminhizer (via regular mail)  
Progressive Lending, Attention: Dave (via facsimile)  
Jay Sechleer (via facsimile)

**CERTIFICATE OF SERVICE**

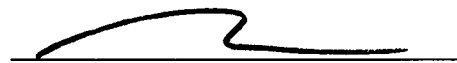
On the 24<sup>th</sup> day of May, 2000, I William M. Blaum, Esquire, hereby certify that I served the within Answer, New Matter and Counterclaims of Defendants, Kitty L. Scott and Lorraine M. Eminhizer to Plaintiff's Complaint on the persons listed below and in the following manner:

Via UPS Next Day Air:

Prothonotary  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830

Via First Class Mail, Postage Prepaid:

Lori A. Gibson, Esq.  
Weltman, Weinberg & Reis Co., L.P.A.  
2718 Koppers Building  
436 7<sup>th</sup> Avenue  
Pittsburgh, PA 15219

  
William M. Blaum, Esquire  
Suite 1105  
108 N. Washington Avenue  
Scranton, PA 18503  
(570) 961-2095

FILED

MAY 25 2000

M/15/ROCC

William A. Shaw

Prothonotary



IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

NATIONAL CITY BANK,  
Plaintiff

v.

KITTY L. SCOTT and  
LORRAINE M. EMINHIZER,  
Defendants


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Civil Action No. 00-330-CD

DEMAND FOR JURY TRIAL

Defendants, Kitty L. Scott and Lorraine M. Eminhizer demand a jury trial in  
this matter.

Respectfully submitted,

  
William M. Blaum, Esquire  
Attorney I.D. # 66485  
108 North Washington Avenue  
Suite 1105  
Scranton, PA 18503

FILED

MAY 25 2000

William A. Shaw  
Prothonotary

WILLIAM M. BLAUM  
ATTORNEY AT LAW  
SUITE 1105  
108 NORTH WASHINGTON AVENUE  
SCRANTON, PA 18503  
(570) 961-2095

FILED

MAY 25 2000

William A. Shaw  
Prothonotary

Copy to CA  
NCC ~~CA~~

FILED



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

NATIONAL CITY BANK,

Plaintiff

No.: 00-330 CD

vs.

KITTY L. SCOTT and  
LORRAINE M. EMINHIZER,

Defendant(s)

**TYPE OF PLEADING:**

**PRAECIPE TO SETTLE, DISCONTINUE  
& END WITHOUT PREJUDICE TO  
REFILE**

FILED ON BEHALF OF:  
Plaintiff

COUNSEL OF RECORD OF  
THIS PARTY:

**FILED**

OCT 10 2000

William A. Shaw  
Prothonotary

JAMES P. VALECKO, ESQ.  
PA I.D. #79596  
Weltman, Weinberg & Reis Co., L.P.A.  
2718 Koppers Building  
436 7<sup>th</sup> Avenue  
Pittsburgh, PA 15219  
(412) 434-7955  
WWR#01835072

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

NATIONAL CITY BANK,

Plaintiff

No.: 00-330-CD

vs.

KITTY L. SCOTT and  
LORRAINE M. EMINHIZER,

Defendant(s)

PRAECIPE TO SETTLE, DISCONTINUE & END WITHOUT PREJUDICE TO REFILE

PROTHONOTARY:

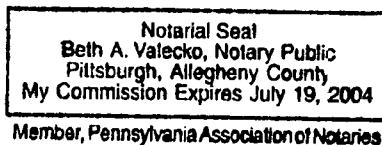
Kindly settle discontinue and end without prejudice to refile the above-captioned matter  
and mark the docket accordingly.

Respectfully submitted:

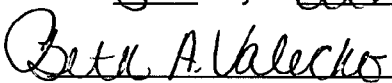
Weltman, Weinberg & Reis Co., L.P.A.

By: 

JAMES P. VALECKO, ESQ.  
PA I.D. #79596  
Weltman, Weinberg & Reis Co., L.P.A.  
2718 Koppers Building  
436 7<sup>th</sup> Avenue  
Pittsburgh, PA 15219  
(412) 434-7955



Sworn and subscribed before  
This 3rd day of Oct., 2000

  
Notary Public

FILED

OCT 10 2000

William A. Shaw  
Prothonotary

<sup>12</sup>ms  
Ct. Do. to

Att. Vadecka

qpy to CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA  
CIVIL DIVISION

COPY

NATIONAL CITY BANK  
Plaintiff(s)

vs.

No. 00-330-CD

KITTY L. SCOTT and LORRAINE M.

EMINHIZER  
Defendant(s)

CERTIFICATE OF DISCONTINUANCE  
COUNTY OF CLEARFIELD  
COMMONWEALTH OF PENNSYLVANIA

I, WILLIAM A. SHAW, Prothonotary of the Court of Common Pleas in and  
for the County and Commonwealth aforesaid do hereby certify that the above  
case was this day, the 10th of OCTOBER,      A.D. 2000, marked:

SETTLED, DISCONTINUED and ENDED WITHOUT PREJUDICE.

Record costs in the sum of \$80.00 have been paid in full by

James P. Valecko, Esquire

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this  
Court at Clearfield, Clearfield County, Pennsylvania this 10th day of  
October A.D. 2000.

\_\_\_\_\_  
Prothonotary

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

115-  
NATIONAL CITY BANK,  
Plaintiff

v.

65  
62  
KITTY L. SCOTT and  
LORRAINE M. EMINHIZER,  
Defendants

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Civil Action No. 00-330-CD


MUTUAL PRAECIPE TO DISCONTINUE WITH PREJUDICE

TO THE PROTHONOTARY:

Please discontinue this matter, including the Complaint of Plaintiff, National  
City Bank and the Counterclaim of Defendants, Kitty L. Scott and Lorraine M.  
Eminhizer, **with prejudice.**

Respectfully submitted,

  
James P. Valecko, Esquire  
Attorney I.D. No. 79596  
Weltman, Weinberg & Reis Co., L.P.A.  
2718 Koppers Building  
436 7<sup>th</sup> Avenue  
Pittsburgh, PA 15219  
(412) 434-7955  
Attorney for Plaintiff

  
William M. Blaum, Esquire  
Attorney I.D. No. 66485  
108 N. Washington Avenue  
Scranton, PA 18503  
(570) 961-2095  
Attorney for Defendants

**FILED**

EFF 07 2001

William A. Shaw  
Prothonotary

FILED

FEB 07 2001

M/11/12 / Cent. Des. to

William A. Shaw

Prothonotary

Atty

Copy CA Rep

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

CIVIL DIVISION

National City Bank  
Plaintiff(s)

Vs.

No. 00-330-CD

Kitty L. Scott and  
Lorraine M. Eminhizer  
Defendant(s)

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County  
and Commonwealth aforesaid do hereby certify that the above case was this day, the  
7th of February A.D. 2001, marked:

Discontinued with prejudice.

Record costs in the sum of \$80.00 have been paid in full by James P. Valecko,  
Esquire.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at  
Clearfield, Clearfield County, Pennsylvania this 7th day of February A.D. 2001.



Prothonotary