

03-1325-CD
DIRECT MERCHANTS CREDIT CARD BANK vs. DUANE SWEAL

BURTON NEIL & ASSOCIATES, P.C.

By: Burton Neil, Esquire

Identification No. 11348

26 South Church Street

West Chester, PA 19380

(610) 696-2120

Attorney for Plaintiff

DIRECT MERCHANTS CREDIT CARD BANK : IN THE COURT OF COMMON PLEAS

17600 North Perimeter Drive, Scottsdale, AZ

Plaintiff

: CLEARFIELD COUNTY, PENNSYLVANIA

v.

: NO. 03-1325-CD

DUANE SMEAL

87 Haupt Street, Irvona PA 16656

Defendant

: CIVIL ACTION - LAW

COMPLAINT 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 (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim 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. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERENCE AND INFORMATION SERVICE

David S. Meholick

Court Administrator

Clearfield County Courthouse

Clearfield, PA 16830

Telephone No. 814-765-2641 Ext. 5982

01-2478

FILED

SEP 08 2003

William A. Shaw
Prothonotary/Clerk of Courts

BURTON NEIL & ASSOCIATES, P.C.

By: Burton Neil, Esquire

Identification No. 11348

26 South Church Street

West Chester, PA 19382

610-696-2120

Attorney for Plaintiff

DIRECT MERCHANTS CREDIT CARD BANK : IN THE COURT OF COMMON PLEAS

17600 North Perimeter Drive

Scottsdale, Arizona

Plaintiff

: CLEARFIELD COUNTY, PENNSYLVANIA

v.

: NO.

DUANE SMEAL

87 Haupt Street, Irvona PA 16656

Defendant

: CIVIL ACTION - LAW

Complaint

1. The plaintiff is Direct Merchants Credit Card Bank, a business corporation, with place of business located at 17600 North Perimeter Drive, Scottsdale, Arizona.

2. The defendant is Dwane Smeal, who resides at 87 Haupt Street, Irvona, Clearfield County, Pennsylvania.

3. At the defendant's request, plaintiff issued the defendant a credit card for the defendant's use in making credit purchases and securing cash advances subject to the terms and conditions governing the use of the credit card. Attached hereto, made a part hereof and marked Exhibit A is a true and correct copy of the terms and conditions.

4. The defendant accepted the credit card and the terms and conditions governing its use for the purchase of goods, merchandise and services and/or for cash advances from vendors who accepted plaintiff's credit card. In using the credit card, the defendant agreed to comply with the terms and conditions governing its use which included the obligation to pay plaintiff for all charges made in full upon receipt of the statement or in installments subject to monthly finance charges.

5. The defendant utilized the credit card by making/obtaining purchases of goods, merchandise and services and/or cash advances from vendors who accepted the credit card. Monthly statements were sent to the defendant which detailed the charges made to the account including finance charges, late and/or, over limit charges. The balance due for the charges made by the defendant including any finance charges, late or over limit charges is \$4,117.26.

6. Defendant did not pay the balance due in full upon receipt of the billing statements and failed to make the required minimum monthly payment set forth in the billing statement. As such, defendant is in default of the terms and conditions governing the use of the credit card.

7. Although demand has been made by plaintiff upon defendant to pay the sum of \$4,117.26, the defendant failed and refused to pay all or any part thereof.

8. Plaintiff alleges it is entitled to recovery of its attorneys fees from defendant pursuant to the terms and conditions governing the account. Plaintiff seeks recovery of attorneys fees in the sum of \$980.00.

Wherefore, plaintiff demands judgment against the defendant in the sum of \$4,117.26, attorneys fees in the sum of \$980.00 and the costs of this action.

BURTON NEIL & ASSOCIATES, P.C.

By: _____
Burton Neil, Esquire
Attorney for Plaintiff

The law firm of Burton Neil & Associates, P.C. is a debt collector.

for all use by such a user. To terminate this authority, you must retrieve the credit card from the previously authorized user and return it to us at the aforementioned address along with a letter explaining why you are doing so.

LOST OR STOLEN CREDIT CARDS AND/OR CHECKS

You agree to notify us immediately if your credit or any transfer or convenience checks are lost or stolen. You may notify us by calling 1 800 265-9988.

CHANGE OF NAME, ADDRESS, TELEPHONE NUMBER OR EMPLOYMENT

You agree to give us prompt notice of any change in your name, mailing address, telephone number or place of employment. Send changes to Cardholder Services, P.O. Box 21222, Tulsa, Oklahoma 74121-1222.

FOREIGN TRANSACTIONS

If you effect a transaction at a merchant that settles in a currency other than U.S. dollars, MasterCard International will convert the charge into a U.S. dollar amount. MasterCard International will use its currency conversion procedure, which is disclosed to institutions that issue MasterCard and cards. Currently, the currency conversion rate used to determine the transaction amount in U.S. dollars is generally either a government-mandated rate or the wholesale rate in effect the day before the transaction processing date, increased by one percent. The currency conversion rate used on the processing date may differ from the rate that would have been used on the purchase date or cardholder statement posting date.

APPLICABLE LAW

This Agreement and your Account will be governed by federal law and the laws of Utah, whether or not you live in Utah and whether or not your Account is used outside of Utah. This Agreement is entered into in Utah and all credit under the Agreement will be extended from Utah. All terms and conditions of this Agreement (including the change of terms provision, the applicable law provision, and the finance charge, late charge, returned check charge, over limit charge, and research charge provisions) are deemed to be material to the determination of the finance charge.

ASSIGNMENT OF ACCOUNT

We may sell, assign or transfer your Account or any portion thereof without notice to you. You may not sell, assign or transfer your Account.

PRIVACY PRACTICES

You agree that from time to time we may receive credit information concerning you from others, such as stores, other lenders and credit reporting agencies, and that we may use this information to credit or manage your credit privileges under this Agreement even if you are not in default with us. You also agree that we may, on a regular basis, furnish purchase, transaction, credit and experience information regarding your Account to others seeking such information, including our affiliates and other third parties. You authorize us to share such information, contained on your application with our affiliates and other third parties. If you fail to fulfill the terms of your credit obligation, a negative report reflecting on your credit record may be submitted in a credit reporting agency. You agree that any government agency may release supervisory personnel may listen to telephone calls between you and our representatives in order to evaluate the quality of our service to you and to other Cardholders.

UPDATED FINANCIAL AND OTHER INFORMATION

Upon request, you agree to promptly give us accurate financial and other information about yourself.

SEVERABILITY

If any provision of this Agreement is finally determined to be void or unenforceable under any law, rule, or regulation, all other provisions of this Agreement will remain valid and enforceable. Your credit card is issued under this Agreement by Direct Merchants Credit Card BankSM, National Association, Salt Lake City, Utah.

First Data Resources provides processing services for Direct Merchants Credit Card Bank, National Association. You may write to us at: P.O. Box 21222, Tulsa, Oklahoma 74121-1222.

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 Cardholder Services, P.O. Box 21222, Tulsa, Oklahoma 74121-1222 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 unsure of.

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 part of your bill that we 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 that 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 to whom we furnished credit information about you that you have a question about your bill. And we must tell you the name of anyone to whom we gave this information. We must tell anyone we report 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 a credit 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.

DIRECT MERCHANTS BANKSM

Cardholder Agreement

AGREEMENT TO TERMS — USE OF YOUR ACCOUNT — DEFINITION OF PARTIES

This is the Agreement which covers your credit card account (called your "Account") with us. You and Direct Merchants Credit Card BankSM, National Association, will be bound by it from the first time you use the Account. If your Account is a joint Account, you and your account holder each promise to pay and are jointly and individually responsible for all amounts due under this Agreement.

In this Agreement, and in your monthly statements, the words "you" and "your" refer to all persons named on the credit card application, credit card or acceptance form, and the words "we," "us," and "our" refer to Direct Merchants Credit Card BankSM, National Association.

PROMISE TO PAY

You promise to pay for: (a) credit extended by Direct Merchants Credit Card Bank, National Association, to you or in anyone whom you permit to use this Account; (b) finance charges, late charges, and other administrative charges (e.g., returned check charges, research charges) provided in this Agreement; and (c) collection costs and attorney's fees as permitted by applicable law if your Account should go into default.

We can accept late or partial payments, or checks or money orders marked "Payment in Full" or otherwise restrictively endorsed without losing any of our rights under this Agreement.

CASH ADVANCES

The term cash advance is defined as and includes the following transactions: (a) Automated Teller Machine (ATM) transactions; (b) transfer and convenience check transactions; and (c) in-bank transactions. Convenience checks are used the same as personal checks. Both transfer and convenience checks are drawn on your Account and billed on your statement. There is a cash advance transaction fee applied to every cash advance transaction. The cash advance transaction fee is equal to 2% of the cash advance, with a minimum fee of \$2 per transaction.

MAXIMUM CREDIT LINE

You may obtain credit by any means approved by us until the total unpaid balance of your Account reaches your maximum credit line. Your cash advance credit limit may be limited to 50% of your maximum credit line. You agree not to allow your total unpaid balance, including finance charges and other charges, to exceed your maximum credit line. We are not required to make cash advances (including accepting transfer or convenience checks or ATM transactions) or extend credit for purchases at your request if you have exceeded your credit line, but if we do, you agree to pay us the excess amount, plus applicable finance charges and an over limit fee, immediately. Your credit line minimum is defined on the enclosed Card Carrier directly above your credit card.

STATEMENTS

We will send you a statement covering each billing cycle in which you have a balance in excess of \$1. The statement will reflect: (a) payments, credits, purchases, cash advances, finance charges, and all other charges made to your Account during the billing cycle; (b) the minimum payment you must make (called the "minimum payment") and the date by which the

minimum payment must be paid in order to avoid late charges; and (c) your available credit.

PAYMENT

Payment is due when you receive your statement each month. We will not impose any late charges if you pay at least the minimum payment reflected in your statement by the date specified, which will always be 25 days from the statement date. If you wish, you may pay more than the minimum payment and at any time you may pay the entire amount due for the current billing cycle (called "new balance"). Send payments to Cardholder Services, P.O. Box 2168, Omaha, Nebraska 68101-2168.

The minimum payment each month will be equal to 2% of the new balance or \$10, whichever is greater, or the amount of the new balance if less than \$10, plus:

- (1) any past due amounts appearing on your statement; and
- (2) the amount by which the new balance exceeds your credit line.

All payments by mail must be made by check or money order. Payments may not be made using a transfer or convenience check. You agree that any payment you make may be returned to you without applying it to your Account and without prenotification or protest, for reasons including, but not limited to, that the check or money order: (1) is not drawn on the U.S. Post Office or a financial institution located in the United States; (2) is missing a signature; (3) is drawn with different numeric and written amounts; (4) contains a restrictive endorsement; (5) is post dated; (6) is not payable to Direct Merchants Bank, or Direct Merchants Credit Card Bank, N.A.; (7) is not payable in U.S. dollars; (8) is not paid upon presentation; or (9) is drawn on a transfer or convenience check. You agree to pay any bank collection fees we incur for any check payments made in U.S. dollars drawn on a financial institution not located in the United States. All payments under this Agreement must be received at the address specified on your billing statement.

ANNUAL FEE

There is an annual fee of \$30 for the Account. The first annual fee will be billed approximately 90 days after your Account is opened and then once per year during the month in which your Account was originally opened.

HOW WE FIGURE FINANCE CHARGES

The periodic finance charge is calculated separately for purchases and cash advances. To calculate the finance charge for purchases, we multiply the average daily balance for purchases times the monthly periodic rate for purchases. There is no finance charge for purchases when a grace period applies. To calculate the finance charge for cash advances, we multiply the average daily balance for cash advances times the monthly periodic rate for cash advances, then add applicable cash advance transaction fees. The Account is subject to a minimum finance charge of \$.50.

AVERAGE DAILY BALANCES

We calculate average daily balances separately for purchases and for cash advances. In each case, we start by calculating a "daily balance" for each day in the billing cycle.

- The daily balance of purchases for any day is equal to the previous day's daily balance for purchases plus any new purchases and any other charges that we add that day and minus any payments and credits we apply to purchases that day.
- We add **NEW** purchases to the daily balance on the purchase date.

If **OLD** charges (like annual fees, late charges, over limit charges and finance charges) appear on a monthly periodic statement, we add them to your daily balance on the day following the closing date of the statement.

We apply **PAYMENTS** and **CREDITS** on the day they are received.

- The daily balance of cash advances on any day is equal to the previous day's daily balance for cash advances, plus any new cash advances made that day and minus any payments and credits applied to cash advances that day. If you incur cash advance transaction fees during the period covered by a monthly periodic statement, we add them

to your daily balance on the day following the closing date of the statement. We treat any cash advances obtained by transfer or convenience checks as having been made on the transaction date shown on your periodic statement.

After we have calculated all the daily balances for a monthly billing cycle, we add the daily balances for purchases and the daily balances for cash advances, and then divide each sum by the number of days in the billing cycle. The resulting amounts are the average daily balances for purchases and cash advances.

MONTHLY PERIODIC RATE

The monthly periodic rate (as of February, 1980) is 1.875%, which corresponds to an **ANNUAL PERCENTAGE RATE** of 22.45%. The monthly periodic rate is a variable rate that may increase or decrease if the highest prime rate published in *The Wall Street Journal* (the "prime rate") increases or decreases. The monthly periodic rate for any monthly billing cycle will be one-twelfth of the sum of 14.20% plus the prime rate published on the third Tuesday of the month preceding the month in which that billing cycle ends. However, the monthly periodic rate may never fall below 1.34% regardless of the level of the prime rate. An increase in the monthly periodic rate may increase the minimum payment due on your Account.

ADJUSTING FOR GRACE PERIODS

"Grace periods" are periods during which we impose no finance charges on purchases. We impose no finance charge on a purchase added to your daily balance during the billing cycle covered by a periodic statement if that statement shows no previous balance or shows that the previous balance was paid in full within 25 days. Also, we impose no additional finance charge on any purchases included in the new balance of a monthly periodic statement if you pay the new balance in full on or before the date specified in your statement.

LATE CHARGE

At least the minimum payment shown on your statement is due each month when you receive your statement. We may impose a \$15 late charge if you do not pay at least the minimum payment by the date specified in your statement, which will always be 25 days from the statement date.

OVER LIMIT FEE

If you go over your credit line, you will be billed an over limit fee of \$15. This fee will be imposed only once per billing cycle, but will be imposed in each billing cycle that you remain over your credit line.

RETURNED CHECK CHARGE

You agree to pay \$15 each time you make a payment on your Account with a check that is returned uncollected by your bank or other financial institution.

RESEARCH CHARGES

You agree to pay \$5 for each sales slip, statement, transfer or convenience check copy you request if more than one copy is requested per year.

APPLICATION OF PAYMENTS

We apply your payments in the following order, to any unpaid finance charges, administrative charges, promotional balances, cash advances, and purchases.

CHANGE OF TERMS (including finance charges)

SUBJECT TO APPLICABLE LAW, WE MAY CHANGE OR TERMINATE ANY TERM OF THIS AGREEMENT OR ADD NEW TERMS AT ANY TIME WITHOUT LIMITATION, INCLUDING ADDING OR INCREASING FEES, INCREASING YOUR MONTHLY MINIMUM PAYMENT AND INCREASING THE RATE OR AMOUNT OF FINANCE CHARGES, OR CHANGING THE METHOD OF COMPUTING THE BALANCE UPON WHICH FINANCE CHARGES ARE ASSESSED. PRIOR WRITTEN NOTICE WILL BE PROVIDED TO YOU WHEN REQUIRED BY APPLICABLE LAW. CHANGES MAY APPLY TO BOTH NEW AND OUTSTANDING BALANCES.

DEFAULT AND TERMINATION OF AGREEMENT

You will be in default under this Agreement upon: (1) your failure to make at least the minimum payment by the date specified in your statement; (2) your violation of any other provision of this Agreement; (3) your death; (4) your becoming the subject of bankruptcy or insolvency proceedings; (5) your becoming the subject of attachment, execution, repossession, lien, judgment or garnishment proceedings; (6) your failure to supply us with any information we reasonably deem necessary; (7) your supplying us with misleading, false, incomplete or incorrect information; (8) our receipt of information that you are unwilling or unable to perform the terms or conditions of this Agreement; (9) our receipt of information from third parties, including credit reporting agencies, which indicates a serious delinquency or charge-off with other creditors; or (10) your moving out of the U.S. After your default, your Account balance will continue to accrue finance charges at the contract rate. Balances outstanding under this Agreement when your credit line is reduced or terminated will continue to accrue finance charges until paid in full and are subject to all the terms and conditions of this Agreement. Upon default, we have the right to terminate or suspend your credit privileges under this Agreement, to change the terms of your Account and this Agreement, to require you to pay your entire Account balance including all accrued but unpaid charges immediately, and to sue you for what you owe. You will pay our court costs, reasonable attorneys' fees and other collection costs related to the default to the extent permitted by applicable law. Upon default, we will apply your payments first to attorneys' fees and then in the order set forth under Application of Payments.

CREDIT AUTHORIZATIONS

Some transactions will require our prior authorization and you may be asked to provide identification. If our authorization system is not working, we may not be able to authorize a transaction, even if you have sufficient available credit. We will not be liable to you if any of these events happen. We are not responsible for any refusal to accept or honor your card.

CARD RENEWAL

Cards are issued with an expiration date. We have the right to renew your card for any reason.

CARD CANCELLATION

The card(s), transfer and convenience checks issued to you remain our property. Upon cancellation, you agree to return your card(s) and any unused transfer or convenience checks to us.

CLOSING YOUR ACCOUNT

You can cancel or close your Account by writing to us at Cardholder Services, P.O. Box 21222, Tulsa, Oklahoma 74121-1222. Your notice becomes effective within five days after we receive it. If you cancel the Account, you must immediately pay everything you owe us, including any amounts owed but not yet billed to you. If you do not pay us immediately, outstanding balances will continue to accrue finance and other charges and be subject to the terms and conditions of this Agreement. You also agree to return your card(s) and any unused transfer or convenience checks to us. We will not honor any transfer or convenience check written on your Account if we receive the check after your Account is cancelled.

LIABILITY FOR UNAUTHORIZED USE

You should retain your copies of all charge slips until you receive your statement, at which time you should verify that the charges are one and the amounts are correct. You may be liable for the unauthorized use of your credit card. You will not be liable for unauthorized use that occurs after you notify us of the loss, theft or possible unauthorized use. Notification may be given by you immediately upon learning of the loss, theft or possible unauthorized use by calling us at 1-800-205-9988 or writing us at Cardholder Services, P.O. Box 21222, Tulsa, Oklahoma 74121-1222. In any case, your liability for unauthorized use of your credit card will not exceed \$50. However, unauthorized use does not include use by a person to whom you have given the credit card or authority to use the Account, and you will be liable

VERIFICATION

Ruth A. Kenny is Agency Assistant for Direct Merchants Credit Card Bank the within Plaintiff in this action, and that the statements of fact made in the foregoing Complaint are true and correct to the best of the undersigned verifier's knowledge and belief. The undersigned understands that the statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Date: 2-6-03

✓ Ruth A. Kenny
Ruth A. Kenny

Dwane Smeal
5458000013344326

In The Court of Common Pleas of Clearfield County, Pennsylvania

DIRECT MERCHANTS CREDIT CARD BANK

Sheriff Docket # 14550

VS.

03-1325-CD

SMEAL, DUANE

COMPLAINT

SHERIFF RETURNS

NOW SEPTEMBER 10, 2003 AT 10:54 AM SERVED THE WITHIN COMPLAINT ON DUANE SMEAL, DEFENDANT AT RESIDENCE, 87 HAUPT ST., IRVONA, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO RUTH SMEAL, WIFE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF. SERVED BY: DAVIS/MORGILLO

Return Costs

Cost	Description
37.81	SHERIFF HAWKINS PAID BY: ATTY CK# 5776
10.00	SURCHARGE PAID BY: ATTY CK # 5777

Sworn to Before Me This

29th Day Of Sept 2003

William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
by Marilyn Harris

Chester A. Hawkins
Sheriff

FILED
013:45:611
SEP 29 2003

William A. Shaw
Prothonotary/Clerk of Courts

BURTON NEIL & ASSOCIATES, P.C.
Burton Neil, Esquire
Identification No. 11348
26 South Church Street
West Chester, PA 19382
610-696-2120
Attorney for Plaintiff

FILED

NOV 03 2003

William A. Shaw
Prothonotary/Clerk of Courts

DIRECT MERCHANTS CREDIT : IN THE COURT OF COMMON PLEAS
CARD BANK
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
v. : NO. 03-1325 CD
DUANE SMEAL
Defendant : CIVIL ACTION - LAW

Answer to Preliminary Objections

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Denied. Attached to the complaint was a copy of the terms and conditions, that is, the credit card agreement.
6. Admitted. It is admitted that copies of the monthly credit card statements were not attached to the complaint as an exhibit. The defendant previously received the said statements. To the extent he needs them again, they would be available to him through discovery.
7. Denied as stated. The terms and conditions provide for the recovery of attorney's fees. It is admitted that the complaint did not state how the attorney's fees were calculated.
8. Denied. The allegation sets forth no facts for which a responsive pleading is required. Rather, it is a conclusion of law. By way of further response, the details sought by the defendant

in his preliminary objections are available by way of discovery. Further, the defendant should know whether he used the card, received statements and the extent to which payments were made and whether he is in default or not.

Wherefore, plaintiff prays your Honorable Court will dismiss the preliminary objections.

BURTON NEIL & ASSOCIATES, P.C.

By: Burton Neil, Esquire
Attorney for Plaintiff

In making this communication, we advise our firm is a debt collector.

BURTON NEIL & ASSOCIATES, P.C.
Burton Neil, Esquire
Identification No. 11348
26 South Church Street
West Chester, PA 19382
610-696-2120
Attorney for Plaintiff

DIRECT MERCHANTS CREDIT : IN THE COURT OF COMMON PLEAS
CARD BANK
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
v. : NO. 03-1325 CD
DUANE SMEAL
Defendant : CIVIL ACTION - LAW

CERTIFICATE OF SERVICE

I, Burton Neil, Esquire do hereby certify that a I served a true and correct copy of the within Answer to Preliminary Objections on defendant's counsel, Joseph Colavecchi, Esquire, at his/her address of record, to wit: PO Box 131, Clearfield, PA 16830, via first class mail, postage prepaid on 6/21/03.

BURTON NEIL & ASSOCIATES, P.C.

By: Burton Neil
Burton Neil, Esquire
Attorney for Plaintiff

BURTON NEIL & ASSOCIATES, P.C.
Burton Neil, Esquire, Id. no. 11348
26 S. Church Street, West Chester, PA 19382
610-692-2120

Attorney for Plaintiff

DIRECT MERCHANTS CREDIT CARD : IN THE COURT OF COMMON PLEAS
BANK

Plaintiff

: CLEARFIELD COUNTY, PENNSYLVANIA

v.

: NO. 03-1325 CD

DUANE SMEAL

Defendant : CIVIL ACTION - LAW

PRAECIPE FOR ARGUMENT

TO THE PROTHONOTARY:

Per Local Rule 211, kindly list the above referenced matter on the argument list for determination of the Preliminary Objection filed by the defendant and Plaintiff's Answer thereto. This matter does not require the taking of testimony. Defendant is represented by counsel and his address of record is:

Joseph Colavecchi, Esquire
221 East Market Street
Clearfield, PA 16830

BURTON NEIL & ASSOCIATES, P.C.

By: 

Burton Neil, Esquire
Attorneys for Plaintiff

The law firm of Burton Neil & Associates, P.C. is a debt collector.

FILED

FEB 02 2004

W/2:06
William A. Shaw

Prothonotary/Clerk of Courts

CONF TO ATTY

COPY TO C/A

BURTON NEIL & ASSOCIATES, P.C.

By: Burton Neil, Esquire

Id. No. 11348

26 S. Church Street, West Chester, PA 19382

610-692-2120

Attorney for Plaintiff

DIRECT MERCHANTS CREDIT
CARD BANK

: IN THE COURT OF COMMON PLEAS

Plaintiff

: CLEARFIELD COUNTY, PENNSYLVANIA

v.

: NO. 03-1325-CD

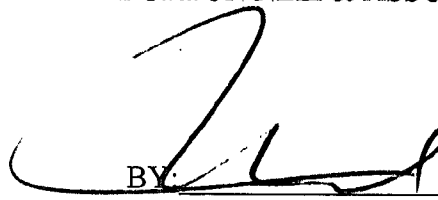
DUANE SMEAL

Defendant : CIVIL ACTION - LAW

CERTIFICATE OF SERVICE

I, Burton Neil hereby certify that a true and correct copy of the Praecipe for Argument was sent via First Class U.S. Mail postage pre-paid on January 27, 2004 to Counsel for the Defendant, Joseph Colavecchi at his address of record, to wit: 221 East Market Street, Clearfield, PA 16830.

BURTON NEIL & ASSOCIATES, P.C.

BY 
Burton Neil, Esquire
Attorneys for Plaintiff

In making this communication, we advise that our firm is a debt collector.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DIRECT MERCHANTS CREDIT
CARD BANK,

Plaintiff

vs.

DUANE SMEAL,

Defendant

CIVIL DIVISION

No. 03 - 1325 - CD

DEFENDANT'S PRELIMINARY
OBJECTIONS TO PLAINTIFF'S
COMPLAINT

Filed on Behalf of:

Defendant, DUANE SMEAL

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

FILED

SEP 18 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

DIRECT MERCHANTS CREDIT CARD :
BANK, : No. 03 - 1325 - CD
Plaintiff :
Vs. :
DUANE SMEAL, :
Defendant :

**DEFENDANT'S PRELIMINARY OBJECTIONS
TO PLAINTIFF'S COMPLAINT**

Defendant, Duane Smeal, a/k/a Philip Duane Smeal, by his attorney, Joseph Colavecchi, Esquire, files Preliminary Objections to Plaintiff's Complaint and respectfully avers as follows:

1. Plaintiff filed a Complaint in the Court of Common Pleas of Clearfield County, Pennsylvania, on or about September 8, 2003, alleging that Defendant was issued a credit card by Plaintiff.

2. Plaintiff alleged in their Complaint that Defendant is in default of the terms of the agreement, having not made payment to Plaintiff.

3. Plaintiff alleges that Defendant has incurred a debt in the amount of \$4,117.26, plus attorney fees in the sum of \$980, plus costs of this action, pursuant to an alleged agreement.

4. This action would appear to be an allegation of an alleged breach of contract by Defendant.

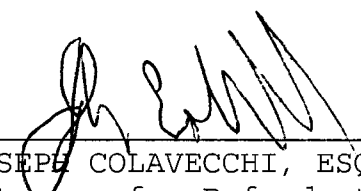
5. Plaintiff has failed to attached a copy of the alleged written agreement between Plaintiff and Defendant pursuant to Pennsylvania Rule of Civil Procedure 1019(h).

6. Plaintiff has failed to attach copies of any statements or alleged statements that were sent to Defendant which would set out how the sum of \$4,117.26 was calculated.

7. Plaintiff has failed to produce a copy of any written agreement which would justify attorney's fees requested of \$980 as set forth in Plaintiff's Complaint.

8. Plaintiff's Complaint is insufficient on its fact and should be dismissed because Plaintiff failed to produce a copy of the original agreement pursuant to Pennsylvania Rule of Civil Procedure 1019(h) and a statement of the account detailing purchases made and costs incurred.

WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be stricken pursuant to Pennsylvania Rule of Civil Procedure 1028, on the ground of legal insufficiency.



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Defendant

CA/

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
CIVIL DIVISION
No. 03 - 1325 - CD

DIRECT MERCHANTS CREDIT
CARD BANK,
Plaintiff

vs.

DUANE SMEAL,
Defendant

DEFENDANT'S PRELIMINARY
OBJECTIONS TO PLAINTIFF'S
COMPLAINT

FILED
SEP 18 2003

William A. Shaw
Prothonotary/Clerk of Courts

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P.O. BOX 131
CLEARFIELD, PA 16830

UP

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

DIRECT MERCHANTS CREDIT
CARD BANK

vs.

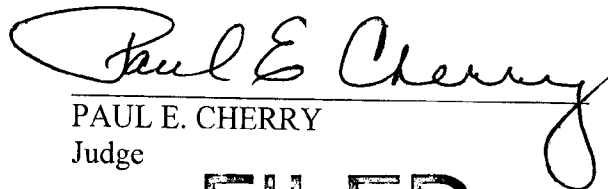
DUANE SMEAL

:
:
:
: No. 03-1325-CD
:
:
:

ORDER

NOW, this 9th day of February, 2004, upon consideration of Attorney Colavecchi's Preliminary Objections to Plaintiff's Amended Complaint, a Rule is hereby issued upon the Plaintiff to Appear and Show Cause why the Objections should not be granted. Argument is scheduled the 2 day of March, 2004, at 2:30 P.M. in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


PAUL E. CHERRY
Judge

FILED

FEB 06 2004

William A. Shaw
Prothonotary

BURTON NEIL & ASSOCIATES, P.C.
Burton Neil, Esquire, Id. no. 11348
26 S. Church Street, West Chester, PA 19382
610-692-2120

Attorney for Plaintiff

DIRECT MERCHANTS CREDIT CARD : IN THE COURT OF COMMON PLEAS
BANK

Plaintiff

: CLEARFIELD COUNTY, PENNSYLVANIA

v.

: NO. 03-1325 CD

DUANE SMEAL

Defendant : CIVIL ACTION - LAW

PRAECIPE FOR ARGUMENT

TO THE PROTHONOTARY:

Per Local Rule 211, kindly list the above referenced matter on the argument list for determination of the Preliminary Objection filed by the defendant and Plaintiff's Answer thereto. This matter does not require the taking of testimony. Defendant is represented by counsel and his address of record is:

Joseph Colavecchi, Esquire
221 East Market Street
Clearfield, PA 16830

BURTON NEIL & ASSOCIATES, P.C.

By: _____

Burton Neil, Esquire
Attorneys for Plaintiff

The law firm of Burton Neil & Associates, P.C. is a debt collector.

FILED

FEB 02 2004

m/2:00/2
William A. Shaw
Prothonotary/Clerk of Courts
COPY TO ATT
COPY TO C/A

BURTON NEIL & ASSOCIATES, P.C.
By: Burton Neil, Esquire
Id. No. 11348
26 S. Church Street, West Chester, PA 19382
610-692-2120

Attorney for Plaintiff

DIRECT MERCHANTS CREDIT : IN THE COURT OF COMMON PLEAS
CARD BANK

Plaintiff

: CLEARFIELD COUNTY, PENNSYLVANIA

v.

: NO. 03-1325-CD

DUANE SMEAL

Defendant : CIVIL ACTION - LAW

CERTIFICATE OF SERVICE

I, Burton Neil hereby certify that a true and correct copy of the Praeipie for Argument was sent via First Class U.S. Mail postage pre-paid on January 27, 2004 to Counsel for the Defendant, Joseph Colavecchi at his address of record, to wit: 221 East Market Street, Clearfield, PA 16830.

BURTON NEIL & ASSOCIATES, P.C.

BY: 

Burton Neil, Esquire
Attorneys for Plaintiff

In making this communication, we advise that our firm is a debt collector.

BURTON NEIL & ASSOCIATES, P.C.

BY: Yale D. Weinstein, Esquire

Identification No. 89678

26 South Church Street

West Chester, PA 19382

610-696-2120

ATTORNEY FOR: Plaintiff

DIRECT MERCHANTS CREDIT CARD BANK

: IN THE COURT OF COMMON PLEAS

Plaintiff

: CLEARFIELD COUNTY, PENNSYLVANIA

VS.

: NO. 03-1325-CD

DUANE SMEAL

Defendant

: CIVIL ACTION - LAW

PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

Kindly discontinue the above-captioned action without prejudice.

BURTON NEIL & ASSOCIATES, P.C.

BY: 

Yale D. Weinstein, Esquire
Attorney for Plaintiff

The law firm of Burton Neil & Associates is a debt collector.

01-2478

FILED

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MAR 01 2004

William A. Shaw
Prothonotary

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

CIVIL DIVISION

Direct Merchants Credit Card Bank

**Vs.
Duane Smeal**

No. 2003-01325-CD

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 on March 1, 2004, marked:

Discontinued, Settled, and Ended.

Record costs in the sum of \$132.81 have been paid in full by Attorney.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 1st day of March A.D. 2004.

William A. Shaw, Prothonotary