

06-1732-CD
Capital One Bank vs. David Smeal

Capital One vs David Smeal
2006-1732-CD

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

CAPITAL ONE BANK

Plaintiff

No: 06-1732-CD

vs.

COMPLAINT IN CIVIL ACTION

DAVID SMEAL

Defendant

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF
THIS PARTY:

James C. Warmbrodt, 42524
WELTMAN, WEINBERG & REIS CO., I.P.A.
436 Seventh Avenue, Suite 2718
Pittsburgh, PA 15219
(412) 434-7955
FAX: 412-338-7130
05414983 C A Pit SGM

FILED *Atty pd \$85.00*
10/3/2006
OCT 20 2006 1005hff

William A. Shaw
Prothonotary/Clerk of Courts

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

CAPITAL ONE BANK

Plaintiff
vs. Civil Action No
DAVID SMEAL
Defendant

COMPLAINT AND NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, 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. 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.

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COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET ST., SUITE 228
CLEARFIELD, PA 16830
(814) 765-2641, ext 1300-1301

COMPLAINT

1. Plaintiff, CAPITAL ONE BANK is a corporation with offices at 6851 JERICHO TURNPIKE #190 SYOSSET , NY 11791 .

2. Defendant is adult individual(s) residing at the address listed below:

DAVID SMEAL
415 W FRONT ST APT C
CLEARFIELD, PA 16830

3. Defendant applied for and received a credit card bearing the account number 4388642246932035 .

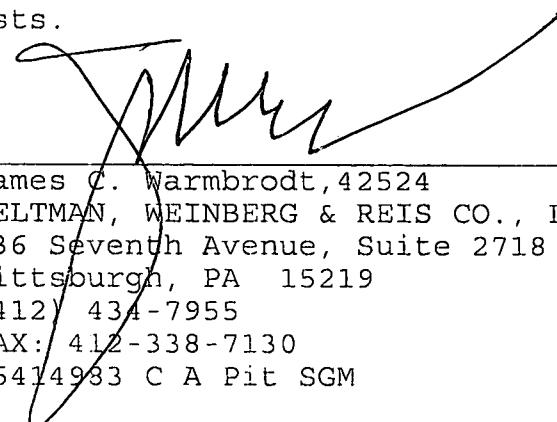
4. Defendant made use of said credit card and has a current balance due of \$2557.30 , as of September 26, 2006 .

5. Defendant is in default by failing to make monthly payments when due. As such, the entire balance is immediately due and payable to Plaintiff.

6. Plaintiff is entitled to the addition of interest at the rate of 25.900% per annum on the unpaid balance from September 26, 2006 . A copy of Plaintiff's STATEMENT is attached hereto, marked as Exhibit "1" and made a part hereof.

7. Although repeatedly requested to do so by Plaintiff, Defendant has willfully failed and/or refused to pay the balance due to Plaintiff.

Wherefore, the Plaintiff prays for judgment in its favor and against Defendant , DAVID SMEAL , INDIVIDUALLY , in the amount of \$2557.30 with continuing interest thereon at the rate of 25.900% per annum from September 26, 2006 plus costs.


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05414933 C A Pit SGM

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

Your account is delinquent.

We want to help!



- To protect your credit with us, you need to make a payment.
- We can help—but **only** if you call us.
- When you call, you can make a **free** check-by-phone payment.

Return your account to good standing.
It's up to you to take the first step.
Call us!

1-800-479-7231

014-1102

CapitalOne

VISA GOLD ACCOUNT
4386-6422-4693-2035

AUG 02 - SEP 01, 2003
Page 1 of 1

Account Summary

Previous Balance	\$1,272.13
Payments, Credits and Adjustments	\$0.00
Transactions	\$64.00
Finance Charges	\$28.93
 New Balance	 \$1,365.06
Minimum Amount Due	\$1,365.06
Payment Due Date	October 01, 2003
 Total Credit Line	 \$500
Total Available Credit	\$0.00
Credit Line for Cash	\$500
Available Credit for Cash	\$0.00

At your service

To call Customer Relations or to report a lost or stolen card:
1-800-903-3637

For free online account service and special customer offers, log on to:
www.capitalone.com

Send payments to:	Send inquiries to:
Attn: Remittance Processing	Capital One Services
Capital One Services	P.O. Box 85015
P.O. Box 85147	Richmond, VA 23285-2015
Richmond, VA 23276	

Important Account Information

Capital One is a proud sponsor of the 55th Annual Primetime Emmy Awards Telecast. Tune in Sunday, September 21st on FOX from 8-11 p.m. ET (7-10 p.m. CT) to see the talent you've enjoyed during the past season unite to celebrate another year of groundbreaking work in television. Capital One wants you to be a part of the excitement! Check out Capital One's ad in the September 12th issue of People Magazine or visit redcarpetweekend.com for more details.

660558

EXHIBIT
" / "

Finance Charges

Please see reverse side for important information

	Balance rate applies to	Periodic rate	Corresponding APR	FINANCE CHARGE
PURCHASES	\$1,163.12	.07096%	25.90%	\$25.59
CASH	\$151.95	.07096%	25.90%	\$3.34

ANNUAL PERCENTAGE RATE applied this period

25.90%

▼ PLEASE RETURN PORTION BELOW WITH PAYMENT. ▼

CapitalOne

0000000 0 4388642246932035 01 1365060115001365064

New Balance	\$1,365.06
Minimum Amount Due	\$1,365.06
Payment Due Date	October 01, 2003
Total enclosed	\$ <input type="text"/>
Account Number:	4388-6422-4693-2035

Please print mailing address and/or e-mail changes below using blue or black ink.

Street	Apt. #	
City	State	ZIP
Home Phone	Alternate Phone	@
Email Address		

#9024559734564519# MAIL ID NUMBER
DAVID SMEAL
415 WEST FRONT ST C
CLEARFIELD PA 16830-1437

Capital One Bank
P.O. Box 85147
Richmond, VA 23276



058058





01003100
2

1. How To Avoid A Finance Charge.

† a. **Grace Period.** You will have a minimum grace period of 25 days without finance charge on new purchases, new balance transfers, new special purchases and new other charges if you pay your total "New Balance", in accordance with the important Notice for payments below, and in time for it to be credited by your next statement closing date. There is no grace period on cash advances and special transfers. In addition, there is no grace period on any transaction if you do not pay the total "New Balance."

b. **Accruing Finance Charge.** Transactions which are not subject to a grace period are assessed finance charge 1) from the date of the transaction or 2) from the date the transaction is processed to your Account or 3) from the first day of the month following the transaction. Additionally, if you did not pay the "New Balance" from the previous billing period in full, finance charges continue to accrue to your unpaid balance until the unpaid balance is paid in full. This means that you may still owe finance charges, even if you pay the entire New Balance indicated on the front of your statement by the next statement closing date, but did not do so for the previous month. Unpaid finance charges are added to the applicable segment of your Account.

† c. **Temporary Reduction in Finance Charge.** We reserve the right to not assess any or all finance charges for any given billing period if you pay the entire New Balance. Your account is subject to a finance charge if a minimum total FINANCE CHARGE of \$0.50 will be imposed. If the total finance charge resulting from the application of your periodic rate(s) is less than \$0.50, we will subtract that amount from the \$0.50 minimum and the difference will be billed to the purchase segment of your account.

† d. **Temporary Reduction in Finance Charge.** We reserve the right to not assess any or all finance charges for any given billing period if you pay the entire New Balance.

2. **Average Daily Balance (including New Purchases).**

a. Finance charge is calculated by multiplying the daily balance of each segment of your account (e.g., cash advance, purchase, special transfer, and special purchase) by the corresponding daily periodic rates) that has been previously disclosed to you. At the end of each day during the billing period, we apply the daily periodic rate for each segment of your account to the daily balance of each segment. We then add up the results of these daily calculations to arrive at your periodic finance charge for each segment. We add up the results from each segment to arrive at the total periodic finance charge for your account. To get the daily balance for each segment of your account, we take the beginning balance for each segment and add any new transactions and periodic finance charge assessed on the previous day's balance for that segment. We then subtract any payments or credit posted as of that day that are allocated to that segment. This gives us the separate daily balance for each segment of your account. However, if you paid the New Balance shown on your previous statement in full (or if your new balance was zero or a credit amount), new transactions which post to your purchase or special purchase segment will not add to your daily balances. We calculate the average daily balance by adding all the daily balances together and dividing the sum by the number of the days in the current billing cycle. To calculate your total finance charge, multiply your average daily balance by the daily periodic rate and by the number of days in the billing period. Due to rounding on a daily basis, there may be a slight variance between this calculation and the amount of finance charge actually assessed.

b. If the code 'Z' or 'N' appears on the front of this statement next to "Balance Rate Applied To," we multiply the average daily balance of each segment by your monthly

periodic rate. To obtain the average daily balance for the billing period covered by this statement, we take the beginning balance of each segment each day, add any new transactions to each segment, and subtract any payments or credits. (If the code 'N' appears on the front of this statement next to "Balance Rate Applied To," we also subtract any unpaid finance charge included in the balance of each segment.) This gives us the daily balance of each segment. Then we add all the daily balances for each segment for the billing period and divide by the total number of days in the billing period. This gives us the average daily balance of each segment.

3. **Annual Percentage Rates (APR).**

a. The term "Annual Percentage Rate" may appear as "APR" on the front of this statement.

b. If the code 'S' (Prime), '13-mo. LIBOR', 'C' (Certificate of Deposit) or '5 (Prime)' appears on the front of this statement next to the periodic rate(s), the periodic rates and corresponding ANNUAL PERCENTAGE RATES may vary quarterly and may increase or decrease based on the stated indices, as found in *The Wall Street Journal*, plus the margin previously disclosed to you. These changes will be effective on the first day of your billing period covered by your periodic statement ending in the month of January, April, July and October.

c. If the code 'D' (Prime), '11-mo. LIBOR' or '10-mo. LIBOR Repaid Monthly') appears on the front of your statement next to the periodic rate(s), the periodic rates and corresponding ANNUAL PERCENTAGE RATES may vary monthly and may increase or decrease based on the stated indices, as found in *The Wall Street Journal*, plus the margin previously disclosed to you. These changes will be effective on the first day of your billing period each month.

d. **Assessment of Late, Overlimit and Returned Payment Fees.** Your account will be assessed no more than two of the fees listed here that occur during any billing period. Under the terms of your customer agreement, we reserve the right to waive or not to assess any fees without prior notice to you without waiving our right to assess the same or similar fees at a later time.

5. **Renewing Your Account.** If a membership fee appears on the front of this statement, you will have 60 days from the date of this statement to pay the fee to avoid paying the fee or to have such fee credited to you if you cancel your account. During this period, you may continue to use your account without having to pay the membership fee. To cancel your account, you must notify us by calling our Customer Relations Department and pay your "New Balance" in full (excluding the membership fee) by the end of the thirty day period.

6. **If You Close Your Account.** You can request to close your account by calling our Customer Relations Department. You must destroy your credit cards and account access checks, cancel all preauthorized billing, and cease using your account. If you do not cancel preauthorized billing arrangements, we will consider receipt of a charge you are authorized to renew your account. Additionally, your account will be closed until you pay all amounts you owe us including: any transactions you have authorized, finance charges, past due fees, overlimit fees, returned payment fees, cash advance fees and any other fees assessed to your account. You are responsible for these amounts whether they appear on your account at the time you request to close the account or they are incurred subsequently to your request to close the account. This may result in charges appearing on your account after you have requested the account to be closed or the reopening of

your account if it has already been closed. For example, if you authorized a purchase from a merchant and we receive the transaction from the merchant after your account has been closed, your account will be reopened, the amount of the charge will be added to your account, and you will be responsible for payment. If there is a membership fee for your account, the fee will continue to be charged, to the extent permitted by law, until the account balance has been paid in full as defined above.

7. **Use Your Account.** Your card or account cannot be used in connection with any internet gambling transactions.

BILLING RIGHTS SUMMARY

(In Case Of Errors Or Questions About Your Bill) If you think your bill is wrong, or if you need more information on a transaction, bill, write to us on a separate sheet as soon as possible at the address for inquiries shown on the front of this statement. 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 call our Customer Relations number, 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, a description of the error and an explanation of why you believe there is an error, or if you need more information, a description of the item you are unsure about. You do not have to pay any amount in question while we are investigating it, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot repossess you as delinquent or take any action to collect the amount you question.

† 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 service if you have a protection only when the purchase price was no more than \$50.00 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.) Please remember to sign all correspondence.

† Does not apply to consumer non-credit card accounts

‡ Does not apply to business non-credit card accounts

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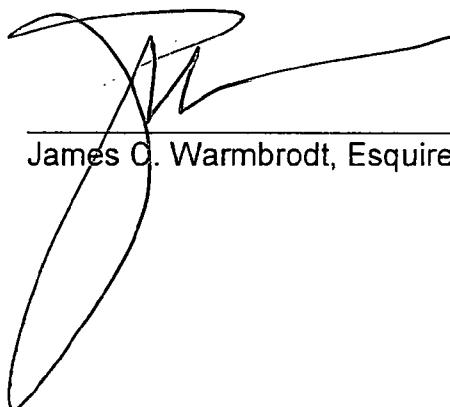
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Important Notice: Your payment will be credited to your account as of the date we receive it, provided you send the bottom portion of this statement and your check in the enclosed remittance envelope, and your payment is received in our processing center by 3 p.m. Payments addressed to our Virginia or Georgia processing center must be received on a business day by 3:00 p.m. ET. Payments addressed to our Washington processing center must be received on a business day by 3:00 p.m. PT. Please allow at least five (5) business days for postal delivery. Payments received by us at any other location or in another form may not be credited the same day we receive them. Our business days are Monday through Saturday, excluding holidays. Please do not use staples, paper clips, etc. when preparing your payment.

VERIFICATION

The undersigned does hereby verify subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, that he is an attorney for the Plaintiff herein and makes this Verification based upon the facts as supplied to him by the Plaintiff because the Plaintiff is outside the jurisdiction of the court and the Plaintiff's Verification cannot be obtained within the time allowed for the filing of this pleading; and that the facts and circumstances set forth in this pleading, are true and correct to the best of his knowledge, information and belief.



James C. Warmbrodt, Esquire

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

CAPITAL ONE BANK

Plaintiff No. 06-1732-CD

vs. PRAECLPICE TO SETTLE, DISCONTINUE
DAVID SMEAL AND END

Defendant

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF
THIS PARTY:

James C. Warmbrodt
PA I.D #42524
WELTMAN, WEINBERG & REIS CO., L.P.A.
2718 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955

WWR#05414983

FILED

JAN 31 2007

1/1/07

William A. Shaw
Prothonotary/Clerk of Courts

no C/C

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

CAPITAL ONE BANK

Plaintiff

vs.

Civil Action No. 06-1732-CD

DAVID SMEAL

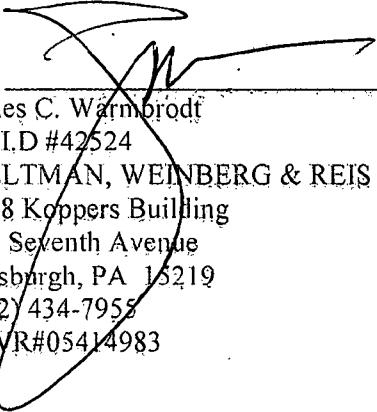
Defendant

PRAECIPE TO SETTLE DISCONTINUE AND END

TO THE PROTHONOTARY OF COUNTY:

Settle, Discontinue and End the above-captioned matter upon the records of the Court and mark the costs paid.

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

By: 

James C. Wernbrodt

PA I.D #42524

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

2718 Koppers Building

436 Seventh Avenue

Pittsburgh, PA 15219

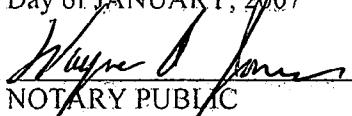
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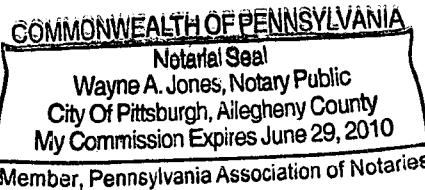
WWR#05414983

Sworn to and subscribed

Before me the 23

Day of JANUARY, 2007


Wayne A. Jones
NOTARY PUBLIC



In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 1 of 1 Services

Sheriff Docket #

102056

CAPITAL ONE BANK

Case # 06-1732-CD

vs.

DAVID SMEAL

TYPE OF SERVICE COMPLAINT

SHERIFF RETURNS

NOW February 02, 2007 AFTER DILIGENT SEARCH IN MY BAILIWICK I RETURNED THE WITHIN COMPLAINT "NOT FOUND" AS TO DAVID SMEAL, DEFENDANT. MOVED TO 309 WALNUT ST., ATTEMPTED NOT HOME.

SERVED BY: /

Return Costs

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	WELTMAN	2620357	10.00
SHERIFF HAWKINS	WELTMAN	2620357	24.00

Sworn to Before me This

____ Day of _____ 2007

So Answers,

Chester A. Hawkins
by Marilyn Harris
Chester A. Hawkins
Sheriff

FILED

03-18-01
FEB 02 2007

William A. Shaw
Prothonotary/Clerk of Courts

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CIVIL DIVISION

CAPITAL ONE BANK

Plaintiff

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(412) 434-7955
FAX: 412-338-7130
05414983 C A Pit SGM

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

OCT 20 2006

Attest.

William L. Bane
Prothonotary/
Clerk of Courts

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

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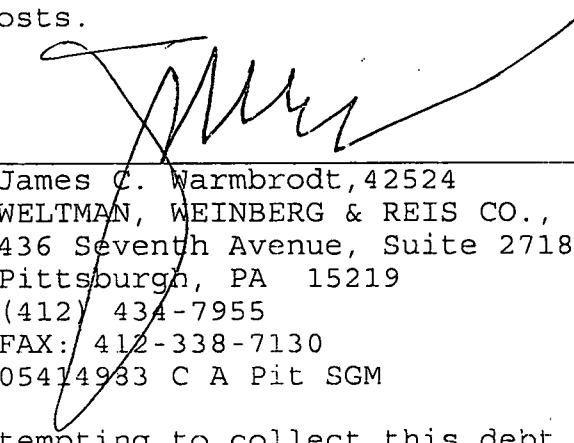
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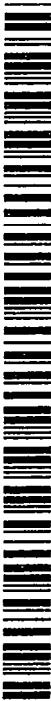
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05414933 C A Pit SGM

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



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תורת הרים

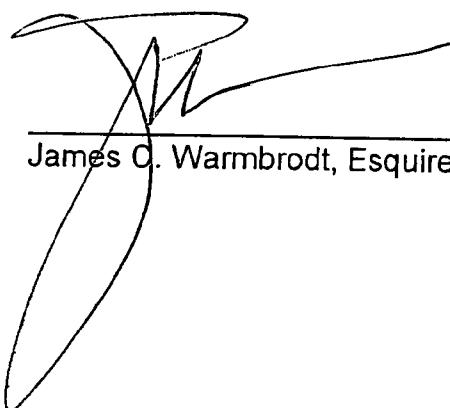
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CHURCH

Important Notice: Your payment will be credited to your account as of the date we receive it, provided you send the bottom portion of this statement and your check in the enclosed remittance envelope, and you: payment is received in our processing center by 3 p.m. Payments addressed to our Virginia or Georgia processing center must be received on a business day by 2:00 p.m. ET. Payments addressed to our Washington processing center must be received on a business day by 3:00 p.m. PT. Please allow at least five (5) business days for postal delivery. Payments received by us at any other location or in another form may not be credited the same day we receive them. Our business days are Monday through Saturday, excluding holidays. Please do not use staples, paper clips, etc. when preparing your payment.

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James C. Warmbrodt, Esquire