

07-37-CD
Capital One vs Lynn D. Mauk

Capital One Bank vs Lynn Mauk
2007-37-CD

2031117

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF
DAMAGES HEARING REQUIRED.

GORDON & WEINBERG, P.C.
BY: FREDERIC I. WEINBERG, ESQUIRE
Identification No.: 41360
PAUL M. SCHOFIELD, JR., ESQUIRE
Identification No.: 81894
21 SOUTH 21ST STREET
PHILADELPHIA, PA 19103
215/988-9600

Capital One Bank
6851 Jericho Turnpike, St
Richmond, VA 85241

vs.

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

DOCKET NO. :

07-37-CD
FILED pd \$85.00 A/H
M 1/22/07 ICC A/H
JAN -8 2007 ICC Shft
WAS

William A. Shaw
Prothonotary/Clerk of Courts

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 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 CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGEMENT 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.

David S. Meholic, Court Admin.
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641

COMPLAINT IN CIVIL-ACTION

1. At all times relevant hereto, the defendant(s) was the holder of a credit card, which at the request of the defendant(s) was issued to the defendant(s) by the plaintiff under the terms of which the plaintiff agreed to extend to defendant(s) the use of plaintiff's credit facilities.

2. Defendant(s) accepted and used the aforesaid credit card so issued and by so doing agreed to perform the terms and conditions prescribed by the plaintiff for the use of said credit card.

3. The defendant(s) received and accepted goods and merchandise and/or accepted services or cash advances through the use of the credit card issued by the Plaintiff. A true and correct copy of the Statement of Account is attached hereto as Exhibit "A".

4. All the credits to which the defendant(s) is entitled have been applied and there remains a balance due in the amount of \$1,853.60.

5. Plaintiff has made demand upon the defendant(s) for payment of the balance due of \$1,853.60 but the defendant(s) has failed and refused and still refuses to pay the same or any part thereof.

6. Defendant's last payment on account was made on 6/5/03.

WHEREFORE, plaintiff claims of the defendant(s) the sum of \$1,853.60 plus applicable costs, interest and attorney's fees.

GORDON & WEINBERG, P.C.

BY: 

~~FREDERIC I. WEINBERG, ESQUIRE~~
~~PAUL M. SCHOFIELD, JR., ESQUIRE~~
Attorney for Plaintiff

P01A

VERIFICATION

FREDERIC I. WEINBERG, ESQUIRE, hereby states that he is the attorney for the Plaintiff(s) in this action and verifies that the statements made in the foregoing pleading are true and correct to the best of his knowledge, information and belief.

The undersigned understands that the statements herein are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

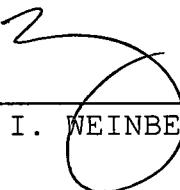

FREDERIC I. WEINBERG, ESQUIRE

EXHIBIT "A"

2031117

Capital One Bank

LYNN MAUK

4121741608042466

AFFIDAVIT

I, **SARA RUBIN**, being duly served sworn according to law, depose and say that:

1. I am the agent for the Plaintiff herein and I have custody and control of the files relating to this account;

2. I have personal knowledge of the facts and circumstances in connection with this case;

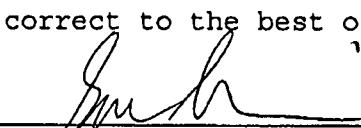
3. Plaintiff's files are maintained in the usual and ordinary course of business;

4. This action is based on a claim for breach of contract and that damages are sought as a direct result of said breach;

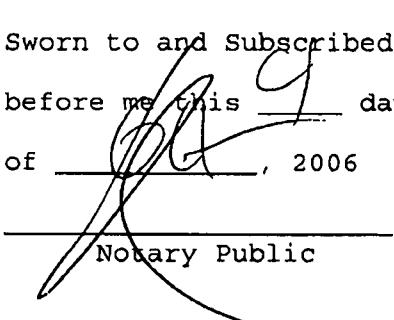
5. After allowing for all offsets and credits, a balance remains on the subject account having account number 4121741608042466 in the amount of \$1,780.33; and

6. If called upon, affiant can testify at trial as to the facts pertaining to this matter.

The above facts are true and correct to the best of my knowledge, information and belief.


SARA RUBIN

Sworn to and Subscribed
before me this 9 day
of July, 2006


Notary Public

KARL HERNANDEZ
Notary Public State of New York
No U1HE6U95733
Qualified in Suffolk County
Commission Expires July 21, 2007

MARC R. GORDON
FREDERIC I. WEINBERG*
PAUL M. SCHOFIELD, Jr.*



*Also member NJ Bar

SAMUEL F. PEPPER
(1905-1992)

PAUL BREEN
(1931-1995)

21 SOUTH 21ST STREET
PHILADELPHIA, PA 19103

November 27, 2006

PHONE: (215) 988-9600
FACSIMILE: (215) 988-9601

Prothonotary of Clearfield County
P.O. Box 549
Clearfield, PA 16830

RE: Capital One Bank vs. LYNN D. MAUK
Our File No. : 2031117

Dear Sir/Madam:

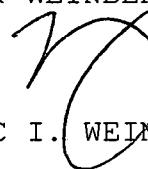
Enclosed for filing please find an original and two copies of the Complaint in Civil Action with regard to the above matter. I am also enclosing herewith this firm's check in the amount of \$85.00 to cover your fees. Kindly return a time-stamped copy in the enclosed self-addressed stamped envelope provided herein for your convenience.

Kindly forward a copy of the Complaint in Civil Action to the Sheriff for service. I have also enclosed this firm's check in the amount of \$100.00 to cover the Sheriff's fees for service and a self-addressed stamped envelope to return the completed Service Order.

Thank you for your attention to this matter.

Very truly yours,

GORDON & WEINBERG, P.C.


FREDERIC I. WEINBERG, ESQUIRE

FIW/EHC
E001

CA

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

Capital One Bank,
Plaintiff

vs.

Lynn D. Mauk,
Defendant

*
*
* NO.: 07-37-CD
*
* Type of Case: Civil
*
* Type of Pleading: Preliminary
* Objections
*
* Filed on Behalf of: Lynn D. Mauk
*
* Counsel of Record for this Party:
* Brenda Zimmerman, Esquire
*
* Supreme Court No.: 77795
*
* MidPenn Legal Services
* 3 West Monument Square, Suite 203
* Lewistown, PA 17044
* (717)248-3099

FILED
01/19/2007 3:00 PM
JAN 25 2007 Atty Zimmerman

William A. Shaw
Prothonotary/Clerk of Courts

68

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAPITAL ONE BANK, :
Plaintiff : Civil Action
vs. : No. 07-37-CD
LYNN D. MAUK, :
Defendant :

DEFENDANT'S PRELIMINARY OBJECTIONS
TO PLAINTIFF'S COMPLAINT

Pursuant to Pa. R.C.P. No. 1028(c), Defendant Lynn D. Mauk, by and through his attorney, Brenda L. Zimmerman and MidPenn Legal Services preliminarily objects to Plaintiff's Complaint and moves for its dismissal as follows:

I. PRELIMINARY OBJECTION RAISING FAILURE OF A PLEADING TO CONFORM TO LAW OR RULE OF COURT Pa. R.C.P. 1028 (a)(2)

1. Plaintiff filed a Complaint demanding damages in the amount of \$1,853.60 plus applicable costs, interest, and attorney's fees.
2. Plaintiff has failed to attach to the Complaint a signed written contract between Plaintiff and Defendant. Such writing would form the very core of Plaintiff's case, but such writing has not been appended to the Complaint, nor its absence explained, as required by Pa.R.C.P. No. 1019(h) and (i).

WHEREFORE, Defendant respectfully requests that the Court sustain Defendant's Preliminary Objections and dismiss Plaintiff's Complaint.

II. PRELIMINARY OBJECTION RAISING INSUFFICIENT SPECIFICITY IN A PLEADING Pa. R.C.P. 1028 (a)(3)

3. The Complaint contains alleged claims for money owed but fails to provide any documentation or accounting of charges allegedly made by Defendant, which would support Plaintiff's claim of damages, such as a breakdown of charges, payments, and interest, so that Defendant can properly formulate a response and assert any counterclaims.

4. The Complaint is deficient in reciting factual averments and Defendant is without information upon which he can premise a meaningful response and formulate a defense.

5. The balance due alleged in Paragraphs Two and Three of the Complaint is different than the balance alleged due in Plaintiff's Exhibit A.

WHEREFORE, Defendant respectfully requests that the Court sustain Defendant's Preliminary Objections and dismiss Plaintiff's Complaint.

III. PRELIMINARY OBJECTION RAISING FAILURE OF A PLEADING TO CONFORM TO LAW OR RULE OF COURT Pa. R.C.P. 1028 (a)(2)

6. The Plaintiff/real-party-in interest is Capital One Bank.

7. Pa.R.C.P. No. 1024 requires, *inter alia*, that pleadings containing averments of fact must be verified by the party making those averments.

8. The Complaint is verified by Attorney Frederic I. Weinberg.

9. None of the exceptions to the requirement for verification exist on the face of the record in this case.

10. No verification in conformity with the aforesaid Rule is appended to the Complaint in this case.

WHEREFORE, Defendant respectfully requests that the Court sustain Defendant's Preliminary Objections and dismiss Plaintiff's Complaint.

Respectfully submitted,

MidPenn Legal Services
Attorneys for Defendant

1-23-07
Date

BY: Brenda Zimmerman /RZF/
Brenda Zimmerman, Esquire
ID# 77795
3 W. Monument Square, Suite 203
Lewistown, PA 17044
(717) 248-3099

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

CAPITAL ONE BANK,

Plaintiff : Civil Action

vs. : No. 07-37-CD

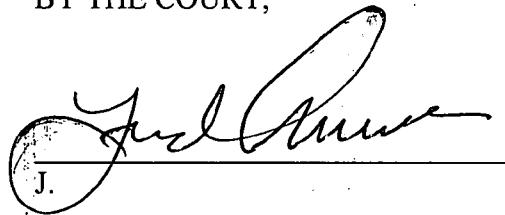
LYNN D. MAUK,

Defendant :

ORDER

AND NOW, this 26 day of January, 2007, upon consideration
of Defendant Lynn D. Mauk's Preliminary Objections filed in the above captioned matter, it is
the Order of the Court that argument has been scheduled for the 5th day of
March, 2007 at 9:30 o'clock A .m. in Courtroom # 1,
Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



J.

FILED
01/02/2007
JAN 29 2007
Atty
Zimmerman

3cc
William A. Shaw
Prothonotary/Clerk of Courts
6K

FILED

JAN 29 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/29/07

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) _____ Plaintiff(s) Attorney _____ Other _____

Defendant(s) _____ Defendant(s) Attorney _____

Special Instructions:

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

Capitol One Bank,
Plaintiff

vs.

Lynn D. Mauk,
Defendant

*
*
* NO.: 07-37-CD

*
* Type of Case: Civil

*
* Type of Pleading: Certificate of Service

*
*
* Filed on Behalf of: Lynn D. Mauk

*
* Counsel of Record for this Party:
*Brenda Zimmerman, Esquire

*
*
*
* MidPenn Legal Services
* 3 West Monument Square, Ste. 203
* Lewistown, PA 17044
* (717)248-3099

FILED 3CC
01/30/07 Atty
FEB 01 2007 Zimmerman
GR

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAPITAL ONE BANK,

Plaintiff : Civil Action
vs. : No. 07-37-CD
LYNN D. MAUK, :
Defendant :
:

PROOF OF SERVICE

The undersigned hereby certifies that on the below stated date, she served a true and correct copy of the within Preliminary Objections, by mailing same to the office of Plaintiff's attorney of record by regular first-class mail, postage pre-paid, addressed as follows, which service satisfies the requirements of Pa.R.C.P. No. 440:

Frederic I. Weinberg, Esquire
GORDON & WEINBERG, P.C.
21 South 21st Street
Philadelphia, PA 19103

MidPenn Legal Services
Attorneys for Defendant

1/30/07

Date

BY: Brenda S. Zimmerman
Brenda Zimmerman, Esquire

2031117

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF
DAMAGES HEARING REQUIRED.

GORDON & WEINBERG, P.C.
BY: FREDERIC I. WEINBERG, ESQUIRE
Identification No.: 41360
PAUL M. SCHOFIELD, JR., ESQUIRE
Identification No.: 81894
21 SOUTH 21ST STREET
PHILADELPHIA, PA 19103
215/988-9600.

Capital One Bank
P.O. BOX 85147
RICHMOND, VA 23276

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

DOCKET NO. : 07-37-CD

LYNN D. MAUK
516 SPRUCE ST
CLEARFIELD PA 16830-1900

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 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 CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGEMENT 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.

David S. Meholic, Court Admin.
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641

FILED
M/2/10 cm acc atty
FEB 13 2007

William A. Shaw
Prothonotary/Clerk of Courts

AMENDED COMPLAINT PURSUANT TO Pa.R.C.P. 1028(c)(1)

1. At all times relevant hereto, the defendant(s) was the holder of a credit card, which at the request of the defendant(s) was issued to the defendant(s) by the plaintiff under the terms of which the plaintiff agreed to extend to defendant(s) the use of plaintiff's credit facilities.

2. Defendant(s) accepted and used the aforesaid credit card so issued and by so doing agreed to perform the terms and conditions prescribed by the plaintiff for the use of said credit card.

3. The defendant(s) received and accepted goods and merchandise and/or accepted services or cash advances through the use of the credit card issued by the Plaintiff. A copy of defendant's signed application for the credit card and statements of account are attached hereto as Exhibit "A".

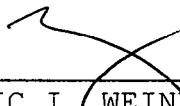
4. All the credits to which the defendant(s) is entitled have been applied and there remains a balance due in the amount of \$1,965.33, which represents principal in the amount of \$1,780.33 plus interest at the rate of 25.90% through February 12, 2007.

5. Plaintiff has made demand upon the defendant(s) for payment of the balance due of \$1,965.33 but the defendant(s) has failed and refused and still refuses to pay the same or any part.

WHEREFORE, plaintiff claims of the defendant(s) the sum of \$1,780.33 at the rate of 25.9% from the date of September 29, 2006,

which amounts to \$1,965.33 through February 12, 2007 together with costs and attorney fees.

GORDON & WEINBERG, P.C.

BY: 

~~FREDERIC I. WEINBERG, ESQUIRE~~
~~PAUL M. SCHOFIELD, JR., ESQUIRE~~
Attorney for Plaintiff

P300

2031117

VERIFICATION

I, SARA RUBIN, agent for Capital One Bank, hereby assert that the information contained in the foregoing Amended Complaint is true and correct to the best of my knowledge, information and belief. This statement and verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to un-sworn falsification to authorities which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Dated:

2-5-07



SARA RUBIN
FOR CAPITAL ONE BANK

MAUK/LYNN D.
4121741608042466

CERTIFICATION OF SERVICE

I, **FREDERIC I. WEINBERG, ESQUIRE**, hereby certify that I, on the date below, served a copy of Plaintiff's Amended Complaint Pursuant to Pa.R.C.P. 1028(c)(1), via First Class Mail, postage pre-paid, to all other parties or their counsel of record.


FREDERIC I. WEINBERG, ESQUIRE

Dated: 2/12/07

EXHIBIT "A"

FORM 1930 ACCEPTANCE CERTIFICATE

IMMEDIATE RESPONSE MEMO/SLIP: This offer will take effect immediately.

CALL TOLL FREE: 1-877-797-CARD

OFFICER'S SIGNATURE

He B. Sodahl



Offer Expires: October 19, 1999

1. Tell us about yourself

| | |
|--|---------------|
| Social Security Number | Date of Birth |
| <i>REDACTED</i> | |
| <small>notwithstanding any provision to the contrary, the consumer's right to privacy is hereby recognized</small> | |

Agree to be
offered

Signature *Lynn D. Mauk* Date *10-5-99*
2633-4-5

2633335930190 016 004
Lynn D. Mauk
516 Spruce St
Clearfield, PA 16830-1900



*Please cross out and change name and address if necessary.
Please print clearly.*

4136

Your account is about to receive the worst credit rating – an R9.

Your account is close to being charged off.

- The result is an R9 rating – the worst credit rating of all on your credit bureau report.
- It may prevent you from getting credit cards, an apartment, a cell phone, a car loan – or even a job – for as long as 10 years!
- An R9 will limit our ability to offer you financial solutions.
- You will still be responsible for repaying the debt.

Good news – it's not too late.

- Call 1-800-955-6600 for payment options.
- Pay with our free Check by Phone service.
- If you have online access, log on to your account and pay now at www.capitalone.com.
- If you prefer, simply use the remittance coupon below.

© 2003 Capital One Services, Inc. Capital One is a federally registered service mark. All rights reserved.

045-0503

CapitalOne[®]VISA ACCOUNT
4121-7416-0801-2466

NOV 22 - DEC 21, 2003

Page 1 of 1

Account Summary

| | |
|-----------------------------------|------------------|
| Previous Balance | \$885.53 |
| Payments, Credits and Adjustments | \$0.00 |
| Transactions | \$58.00 |
| Finance Charges | \$19.73 |
| New Balance | \$866.26 |
| Minimum Amount Due | \$86.26 |
| Payment Due Date | January 21, 2004 |
| Total Credit Line | \$500 |
| Total Available Credit | \$0.00 |
| Credit Line for Cash | \$500 |
| Available Credit for Cash | \$0.00 |

Payments, Credits and Adjustments

This is our third and final notice that your account is seriously past due. Payment must be received within 72 hours to avoid action by our collection department.

Transactions

| | | | |
|---|--------|---------------|---------|
| 1 | 22 NOV | OVERLIMIT FEE | \$29.00 |
| 2 | 21 DEC | PAST DUE FEE | \$29.00 |

You were assessed a past due fee of \$29.00 on 12/21/2003 because your minimum payment was not received by the due date of 12/20/2003. To avoid this fee in the future, we recommend that you allow at least 7 business days for your payment to reach Capital One.

At your service

To call Consumer 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 payment to:
Auto Receivables Processing
Capital One Services
P.O. Box 85147
Richmond, VA 23265

Send inquiries to:
Capital One Services
P.O. Box 85015
Richmond, VA 23265-5015

Finance Charges

| Please see reverse side for important information | | | |
|---|-----------------------------------|------------------|----------------------|
| | Balance due prior to period | Periodic rate | Corresponding APR |
| PURCHASES | \$511.73 | .0700% | 25.00% |
| CASH | \$105.29 | .0700% | 25.00% |

ANNUAL PERCENTAGE RATE applied this period **25.90%**

▼ PLEASE RETURN PORTION BELOW WITH PAYMENT. ▼

CapitalOne[®]

0000000 0 4121741608042466 21 0966260014000966268

| | |
|--------------------|--|
| New Balance | \$866.26 |
| Minimum Amount Due | \$86.26 |
| Payment Due Date | January 21, 2004 |
| Total enclosed | \$ |
| Account Number: | 4121-7416-0801-2466 |

Please print mailing address and account numbers below using blue or black ink.

Street Apt #

City ZIP

Exte. Phone Alt. Ext. Phone

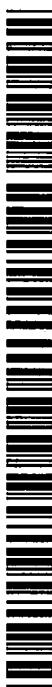
End Address

#903565158486086# MAIL ID NUMBER
LYNN D MAUK
516 SPRUCE ST
CLEARFIELD PA 16830-1900

Capital One Bank
P.O. Box 85147
Richmond, VA 23265

04510 

Please write your account number on your check or money order and mail to Capital One Bank and mail in the enclosed envelope.



216600100
24

1. How To Avoid A Finance Charge.

a. **Grace Period.** You will have a minimum grace period of 29 days without finance charge on new purchases, new balance transfers, new special purchases and new other charge if you pay your total bill before the statement closing date, with the higher of the minimum monthly payment amount or the grace period. There is no grace period on any transaction if you do not pay the total "New Balance".

b. **Avoiding Finance Charge.** Transactions which are not subject to a grace period are accounted finance charge 1) from the date of the transaction or 2) from the date the transaction is processed to you Account or 3) from the last calendar day of the current billing period. Additionally, if you did not pay the "New Balance" from the previous Billing Period, you will be subject to a finance charge on your revised balance until the revised 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 still not do so for the previous month. Unpaid finance charges are added to the next statement you receive.

c. **Minimum Purchase Charge.** In a current billing period that your account is subject to a finance charge, a minimum of \$10.00-\$15.00 will be assessed. If the total finance charge resulting from the application of your periodic rate is less than \$0.50, we will subtract that amount from the \$0.50 minimum and the difference will be deducted from the next statement you receive.

d. **Temporary Reduction in Finance Charge.** We reserve the right to not assess any or all finance charges for any given billing period.

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

i. Finance charge is calculated by multiplying the daily periodic rate by the average daily balance (new purchases, previous special transfers, and special purchases) by the corresponding daily periodic rate(s) 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. If there is a difference between the total daily balance and the total daily calculation for the total periodic finance charge for each segment, we will add up the periodic finance charge for each segment, we will add up the results from each segment to arrive at the total periodic finance charge for your account. We take the daily balance for each segment of your account, we take the beginning balance for each segment, we add up the daily periodic rate and any periodic finance charge calculated on the previous day's balance for that segment. We then subtract any purchases or credits posted to us on that day that are allocated to that segment. This gives us the separate daily balance for each segment of your account. However, you and the New Balance statement will show a single amount and for your New Balance you will be charged a single periodic finance charge which post to your purchase or special purchase segments are not added to the daily balance. 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 billing period. We then multiply the 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 slight variance between this calculation and the amount of the finance charge actually assessed.

ii. The term "New Balance" on the front of this statement next to "Balance Due At Month End" is the monthly average daily balance of your account by your monthly statement closing date.

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 to the same. We then divide the total by the number of days in the billing period. Applied to this, we take the statement and unpaid finance charge included in the balance of each segment. This gives us the daily balance of each segment. Then we add up 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 for each segment.

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

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

b. If the code P (Finance L 0-1000, L000), C (Certificate of Deposit), or S (Bankcard/Time) appears on the front of this statement, the APR is the annual percentage rate of interest and corresponds to APR=1000, P=1000, C=1000 and S=1000.

c. If the code D (Finance L 1000, L000, L000) appears on the front of this statement next to the periodic interest, the periodic rates and corresponding ANNUAL PERCENTAGE RATES may vary monthly and may increase or decrease based on the stated index, as found in *The Wall Street Journal*. Increases or decreases in the margin previously disclosed to you. These changes will be effective on the first day of your billing period covered by your periodic interest, starting at 100% of the margin previously disclosed to you.

d. If the code D (Finance L 1000, L000, L000) or G (Gains, L000) appears on the front of your statement next to the periodic interest, the periodic rates and corresponding ANNUAL PERCENTAGE RATES will vary monthly and may increase or decrease based on the stated index, 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 the margin.

4. **Assessment of Late, Overlimit and Returned Payment Fees.**

If your account has assessed no more than two of the fees listed below during the current billing period, and within 90 days from the date of the statement you mailed to you to avoid paying the fee or to have such fee applied to you if you cancel your account, during the period you may continue to use your account without having to pay the membership fee. To cancel your account, you must mail to us by calling 1-800-225-0000, or by fax to the membership fee prior to the end of the thirty-day period.

5. **Overlimit Your Account.** If a membership fee is assessed to your account during the current billing period, and you have not paid the fee within 90 days from the date of the statement you mailed to you to avoid paying the fee or to have such fee applied to you if you cancel your account, during the period you may continue to use your account without having to pay the membership fee. To cancel your account, you must mail to us by calling 1-800-225-0000, or by fax to the membership fee prior to 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 card and any other payment method you used to pay your account and cancel your account. If you do not cancel your preauthorized billing arrangements, we will consider receipt of a charge your authorization to reopen your account. Additionally, your account will not be closed until you pay all amounts you owe us including any finance charges, interest, late 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 subsequent to your request to close the account. We may retain an charge on your account on your behalf after you have reopened the account to be closed or the request to

cancel it has already been denied. 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 the amount. If you cancel your membership for a year, however, the fee will continue to be charged to the account until the account balance has been paid in full as defined above.

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

BILLING TERMS SUMMARY

(a) Case Of Errors Or Questions About Your Bill

If you think your bill is wrong, or if you need more information on a transaction or bill, write to us on a separate sheet of paper, and add the date of the transaction shown on the front of this statement. We must hear from you within 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 date of the transaction, the amount of the transaction and an explanation. If possible, if you have 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 require you to stop using or take any action to collect the amount of your 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 of the purchase. This right to non-payment of protection only when the purchase price was 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 noncredit card accounts

† Does not apply to merchant noncredit card accounts

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UTGWBK

106105

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 agreement and your check in the enclosedittance envelope, and your payment is received in our processing center by 3 pm. Payments addressed to our Virginia or Georgia processing center must be received on a business day by 3:00 pm, PT. Please allow at least five (5) business days for postal delivery. Payments received by us on any other business day or when we may not be able to receive them on a business day are Monday through Saturday, excluding holidays. We may use your payment card, when paying your payment, when you cash a check, when you authorize us to make a one-time electronic transfer debit from your bank account for the amount of the check. This authorization applies to all checks received during the billing cycle even if sent by someone else. If we cannot process the transfer, you authorize us to make a charge against your bank account using the check, a paper draft or other item.

FREE
Accelerator!

peoplepc™ online
A better way to Internet.



002 UNLIMITED INTERNET ACCESS

PeoplePC Online offers the features you would expect from higher-priced Internet Service Providers, including:

- Virus Protection powered by Symantec™
- Pop-Up Blocker™
- Spam Controls
- Smarter Smart Dialer Technology
- LYNN D MAUK
516 SPRUCE ST
CLEARFIELD PA 16830-1900
- NEW Smart Email Addresses
- NEW Clearer Home Page

SPECIAL LIMITED-TIME OFFER FOR CAPITAL ONE® CARDHOLDERS!

CapitalOne

Account Summary

| | |
|-----------------------------------|-------------------|
| Previous Balance | \$966.26 |
| Payments, Credits and Adjustments | \$0.00 |
| Transactions | \$0.109 |
| Finance Charges | \$22.13 |
| New Balance | \$1052.39 |
| Minimum Amount Due | \$1052.39 |
| Payment Due Date | February 21, 2004 |
| Total Credit Line | \$500 |
| Total Available Credit | \$0.00 |
| Credit Line for Cash | \$500 |
| Available Credit for Cash | \$0.00 |

VISA ACCOUNT

4121-7416-0804-2466

DEC 22, 2003 - JAN 21, 2004

Page 1 of 1

Payments, Credits and Adjustments

This is our third and final notice that your account is seriously past due. Payment must be received within 72 hours to avoid action by our collection department.

Transactions

| | | | |
|---|--------|---------------|---------|
| 1 | 22 DEC | OVERLIMIT FEE | \$29.00 |
| 2 | 21 JAN | PAST DUE FEE | \$35.00 |

You were assessed a past due fee of \$35.00 on 01/21/2004 because your minimum payment was not received by the due date of 01/21/2004. To avoid this fee in the future, we recommend that you allow at least 7 business days for your payment to reach Capital One.

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 inquiries to:
Auto Renewal Processing
Capital One Services
P.O. Box 85147
Richmond, VA 23276

Send inquiries to:
Capital One Services
P.O. Box 85015
Richmond, VA 23288-5015

Finance Charges

| | Please see reverse side for important information | | | |
|-----------|---|------------------|---------------------|---------------------|
| | Balance rate applied to | Periodic rate | Compounding A.R. | FINANCIAL CHARGE |
| PURCHASES | 8591.51 | .07400% | 25.00% | \$12.79 |
| CASH | 9121.38 | .07400% | 25.00% | \$9.51 |

ANNUAL PERCENTAGE RATE applied this period

25.90%

▼ PLEASE RETURN PORTION BELOW WITH PAYMENT. ▼

CapitalOne

0000000 0 4121741608042466 21 1052390014001052394

| | |
|--------------------|-------------------------|
| New Balance | \$1052.39 |
| Minimum Amount Due | \$1052.39 |
| Payment Due Date | February 21, 2004 |
| Total enclosed: | \$ <input type="text"/> |
| Account Number: | 4121-7416-0804-2466 |

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

| | |
|---------------|----------------|
| Street | Apartment |
| City | State Zip |
| Home Phone | Business Phone |
| Email Address | |

#900226515846082# MAIL ID NUMBER
LYNN D MAUK
516 SPRUCE ST
CLEARFIELD PA 16830-1900

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

052931



Please write your account number on your check or money order and mail payable to Capital One Bank and mail in the enclosed envelope.

peoplepc online
A better way to Internet.

UNLIMITED INTERNET ACCESS

SIGN UP
TODAY!

1-888-587-9669

Mention Offer Code: DIAMOND
Or visit www.peoplepc.com/go/diamond

PeoplePC is solely responsible for this offer, and is not affiliated with Capital One. Capital One does not provide, endorse or guarantee, and is not affiliated with, any product or service shown here. Any trademarks mentioned herein are solely owned by the respective entity. All rights reserved. In responding to this offer, you may be consumer using information about yourself to the company that provides this credit - for example, that you are a Capital One customer.

*PeoplePC Online: First 3 months are billed at \$3.97 per month; \$9.95 per month thereafter. Offer available to new dial-up subscribers at least 18 years of age and may not be combined with any other offer. Offer subject to change at any time. Phone Technical Support available for \$1.95 per minute.

†Acceleration is free for 12 months. Offer good for limited time. After the first 12 months, the Accelerated service will automatically revert to the standard PeoplePC Online service. Offer subject to change at any time. With PeoplePC Online Accelerated, certain Web page text and graphics will load faster when compared to standard dial-up Internet service. Actual results may vary. PeoplePC Online Accelerated is only compatible with PeoplePC Online Internet Explorer and specific Windows® browsers. PeoplePC Online Accelerated is not compatible with WinModem 95 with IE 5.5 SP2.

Service not available in all areas. Activation fees, taxes and other fees and restrictions may apply. Telephone bill dispute may apply, even during trial period. You are responsible for determining whether a call to one of our access numbers will result in telephone bill charges. Access may be free, especially during times of peak usage. Pay-up numbers may be checked at PeoplePC's discretion. Continuation is subject to limited procedures. All use is subject to PeoplePC Online's Services Agreement and Acceptance Use Policy. 65K is the maximum speed of service; actual speed may vary.

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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 "New Balance" (the amount of new purchases, new balance transfers, other new purchases below, and in time for it to be reflected by your next statement closing date) before the grace period on credit balances and special transfers. In addition, there is no grace period on any transaction if you do not pay the total "New Balance".

b. Avoiding Finance Charge. Transactions which are not subject to a grace period are assessed finance charge 10 days from the date of the transaction or 20 days from the date the transaction is processed to your Account or 30 days from the last calendar day of the current billing period. Additionally, if you do not pay the "New Balance" (the previous billing period) in full, finance charges will be applied to the full balance. 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 still do not do so for the previous month. Unpaid finance charges are added to the applicable segments of your Account.

c. Temporary Reduction in Finance Charge. We reserve the right to not assess a day or all finance charges for any given billing period.

2. Average Daily Balance (including New Purchases).

a. Finance charge is calculated by multiplying the daily balance (the sum of your "New Balance", new purchases, new balance transfers, new special purchases and new other charges) by the corresponding daily periodic interest that has been previously disclosed to you. At the end of each day during the billing period, we apply the periodic interest rate for each segment of your account to the daily balance of each segment. Then we add up the daily balances for each segment and add up the daily periodic interest for each segment. We add up the periodic finance charge for each segment. We then add up the total periodic finance charge for your account.

b. Assessing of Late, Overlimit and Returned Payment Fees. Your account will be assessed no more than once per the loss listed on that charge during the billing period. Under the terms of your customer agreement, we reserve the right to waive or not to assess any fees without prior notification to you without waiving our right to assess the same or similar fees at a later time.

c. Lowering Your Account. If a nonmember fee

is assessed on the front of this statement, you have 30 days from the date of this statement you mailed to you to avoid paying the fee or to have said 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 at 1-800-243-1333 and (mentioning the membership fee) prior to the end of the thirty day period.

d. If You Close Your Account.

You can request to close your account by calling our Customer Relations

Department. You must destroy your credit card and account access checks, cancel the preauthorized billing arrangement, and cancel the nonmember fee if you have a nonmember fee. We will consider the receipt of a charge your authorization to reopen your account. Additionally, your account will not be closed until you pay all amounts you owe us including any unearned or unused discounts, any finance charges, any past due or late 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 your account or they appear later due to your failure to pay amounts you owe us. If you have a nonmember fee charged depending on your account after you have terminated it, it is necessary to be paid at the time you request to close your account.

3. Annual Percentage Rate (APR).

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

b. If the code "1 (Interim L-C-000, UD00), a (Certificate of Deposit), or 8 (Bankcard Prime)" appears on the front of this statement, the APR is the same as the periodic interest rate and corresponding ANNUAL FINANCIAL RATE (AFR) may vary quarterly and may increase or decrease based on the stated interest, as found in the *New Street Journal*, plus the margin previously disclosed to you. These changes will be effective on the first day of your billing period, provided that you do not change, cancel or close your account during the period, ending on the previous statement. APR, AFR and UD00.

c. If the code "D (Interim L-C-000, G-C-000, UD00 (Revised Monthly)) appears on the front of your statement next to the periodic interest, the periodic rates and corresponding ANNUAL FINANCIAL RATE (AFR) may vary monthly and may increase or decrease based on the stated interest, as found in the *New 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 once per the loss listed on that charge during the billing period. Under the terms of your customer agreement, we reserve the right to waive or not to assess any fees without prior notification to you without waiving our right to assess the same or similar fees at a later time.

e. Lowering Your Account.

If a nonmember fee is assessed on the front of this statement, you have 30 days from the date of this statement you mailed to you to avoid paying the fee or to have said 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 at 1-800-243-1333 and (mentioning the membership fee) prior to the end of the thirty day period.

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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 had been closed, we will not be responsible for the transaction and the fee 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 amount permitted by law, until the account balance has been paid in full as defined above.

4. Using Your Account.

Your card or account cannot be used in connection with any internet gambling transactions.

BILLING STATE'S SUMMARY

(In Case Of Errors Or Questions About Your Bill)
If you think your bill is wrong, or you need more information on a transaction or bill, write or call us at the address for services shown on the front of this statement. We must hear from you no later than 60 days after we sent you the bill on which the error or problem appeared. You can call our Customer Relations number, but doing so will not prevent you from writing to your biller, giving us the same information you would have given us if you had called. Please include the amount of the suspected error, a description of the error, an explanation, if possible, of why you believe there is an error, or if you need more information, a description of the item or service you are unsure about. You do not have to pay any amounts you dispute while we are investigating. If we still do not agree with the part of your bill that is in question, while we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

1. ↑ 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 contact the merchant and the merchant may not have the right not to honor the transaction due to the property or services. You have the protection only when the purchase price was 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 service, all purchases are covered regardless of where or location of purchase.) Please remember to sign an acknowledgement.

† Does not apply to consumer noncredit card accounts

‡ Does not apply to business noncredit card accounts

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OTGWAK

GORDON & WEINBERG, P.C.
BY: FREDERIC I. WEINBERG, ESQUIRE
Identification No.: 41360
PAUL M. SCHOFIELD, JR., ESQUIRE
Identification No.: 81894
21 SOUTH 21ST STREET
PHILADELPHIA, PA 19103
215/988-9600

Capital One Bank

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

DOCKET NO. : 07-37-CD

LYNN D. MAUK

AFFIDAVIT OF SERVICE

STATE OF PENNSYLVANIA :
: ss
COUNTY OF PHILADELPHIA :

FREDERIC I. WEINBERG, ESQUIRE, being duly sworn according to law, deposes and says that on February 12, 2007, he mailed a copy of the Amended Complaint in the above-captioned matter to the defendant's attorney, Brenda L. Zimmerman, Esquire, by regular mail. Attached hereto, made part hereof, and marked Exhibit "A" is a true and correct copy of the letter enclosing the Amended Complaint. I further state that the facts set forth herein are true and correct to the best of my knowledge, information and belief.

GORDON & WEINBERG, P.C.

BY: 

FREDERIC I. WEINBERG, ESQUIRE
Attorney for Plaintiff

Sworn to and subscribed
before me this 19th day
of February, 2007.

Barbara A. Pisani

Notary Public
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
BARBARA A. PISANICK, Notary Public
City of Philadelphia, Phila. County
My Commission Expires July 29, 2009

FILED

FEB 23 2007
M 10:30 AM
William A. Shaw
Prothonotary/Clerk of Courts

CERT TO ATTY

February 12, 2007

Prothonotary of Clearfield County
P.O. Box 549
Clearfield, PA 16830

RE: Capital One Bank vs. LYNN D. MAUK
Our File No. : 2031117

Dear Sir/Madam:

Enclosed for filing please find an original and two copies of Plaintiff's Amended Complaint with regard to the above matter. Kindly file same with the Court and return a time-stamped copy in the enclosed self-addressed stamped envelope provided herein for your convenience.

Thank you for your attention to this matter.

Very truly yours,

GORDON & WEINBERG, P.C.

FREDERIC I. WEINBERG, ESQUIRE

FIW/EHC

cc: Brenda L. Zimmerman, Esquire (w/encl.)

A

William A. Shaw
Prothonotary/Clerk of Courts

FEB 23 2007

FILED

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

Capitol One Bank,
Plaintiff

vs.

Lynn D. Mauk,
Defendant

*
*
* NO.: 07-37-CD
*
* Type of Case: Civil
*
* Type of Pleading: Preliminary Objections
* to Amended Complaint
*
* Filed on Behalf of: Lynn D. Mauk
*
* Counsel of Record for this Party:
* Brenda Zimmerman, Esquire
*
*
* MidPenn Legal Services
* 3 West Monument Square, Ste. 203
* Lewistown, PA 17044
* (717)248-3099

FILED
0 1:48pm 6K
MAR 05 2007 3CC TO ATTY

William A. Shaw
Prothonotary/Clerk of Courts

6K

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAPITAL ONE BANK,

:

Plaintiff : Civil Action

:

vs. : No. 07-37-CD

:

LYNN D. MAUK,

:

Defendant :

DEFENDANT'S PRELIMINARY OBJECTIONS
TO PLAINTIFF'S AMENDED COMPLAINT

Pursuant to Pa. R.C.P. No. 1028(c), Defendant Lynn D. Mauk, by and through his attorney, Brenda L. Zimmerman and MidPenn Legal Services preliminarily objects to Plaintiff's Amended Complaint and moves for its dismissal as follows:

I. PRELIMINARY OBJECTION RAISING FAILURE OF A PLEADING TO CONFORM TO LAW OR RULE OF COURT Pa. R.C.P. 1028 (a)(2)

1. Plaintiff filed an Amended Complaint demanding damages in the amount of \$1780.33 plus interest, costs, and attorney fees.
2. Plaintiff has failed to attach to the Amended Complaint a signed written contract between Plaintiff and Defendant which reflects the terms that are alleged such as the interest rate or right to attorney fees. Such writing would form the very core of Plaintiff's case, but such writing has not been appended to the Amended Complaint, nor its absence explained, as required by Pa.R.C.P. No. 1019(h) and (i). The "acceptance certificate" document attached as Exhibit "A" is "redacted" and does not reflect the terms and conditions alleged by Plaintiff.

WHEREFORE, Defendant respectfully requests that the Court sustain Defendant's Preliminary Objections and dismiss Plaintiff's Amended Complaint.

II. PRELIMINARY OBJECTION RAISING INSUFFICIENT SPECIFICITY IN A PLEADING Pa. R.C.P. 1028 (a)(3)

3. The Amended Complaint contains alleged claims for money owed but fails to provide any documentation or accounting of charges allegedly made by Defendant, which would support Plaintiff's claim of damages, such as a breakdown of charges, payments, and interest, so that Defendant can properly formulate a response and assert any counterclaims.

4. The statements that have been attached to the Plaintiff's Amended Complaint are nearly illegible. Furthermore, they do not reflect the amount the Plaintiff has alleged is due and are not sufficiently specific as to dates of use of the account, charges, payments, etc.

5. The Amended Complaint is deficient in reciting factual averments and Defendant is without information upon which he can premise a meaningful response and formulate a defense.

WHEREFORE, Defendant respectfully requests that the Court sustain Defendant's Preliminary Objections and dismiss Plaintiff's Amended Complaint.

Respectfully submitted,

MidPenn Legal Services
Attorneys for Defendant

3-5-07
Date

BY: Brenda Zimmerman, Esq.
Brenda Zimmerman, Esquire
ID# 77795
3 W. Monument Square, Suite 203
Lewistown, PA 17044
(717) 248-3099

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

Capitol One Bank,
Plaintiff

vs.

Lynn D. Mauk,
Defendant

*

* NO.: 07-37-CD

*

* Type of Case: Civil

*

* Type of Pleading: Certificate of
Service

*

* Filed on Behalf of: Lynn D. Mauk

*

* Counsel of Record for this Party:

* Brenda Zimmerman, Esquire

*

*

* MidPenn Legal Services

* 3 West Monument Square, Ste. 203

* Lewistown, PA 17044

* (717)248-3099

FILED
03/09/2007 2:00 PM
MAR 09 2007
Atty Zimmerman

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAPITAL ONE BANK,

Plaintiff : Civil Action

vs. : No. 07-37-CD

LYNN D. MAUK,

Defendant :

PROOF OF SERVICE

The undersigned hereby certifies that on the below stated date, she served a true and correct copy of the Preliminary Objections to Plaintiff's Amended Complaint, by mailing same to the office of Plaintiff's attorney of record by regular first-class mail, postage pre-paid, addressed as follows, which service satisfies the requirements of Pa.R.C.P. No. 440:

Frederic I. Weinberg, Esquire
GORDON & WEINBERG, P.C.
21 South 21st Street
Philadelphia, PA 19103

MidPenn Legal Services
Attorneys for Defendant

3-8-07
Date

BY: Brenda Zimmerman (rif)
Brenda Zimmerman, Esquire

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

CAPITOL ONE BANK

vs.

: No. 07-37-CD

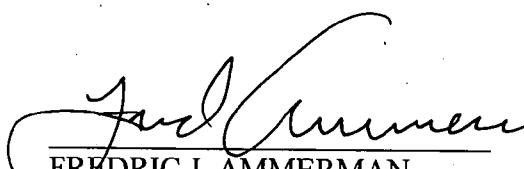
LYNN D. MAUK

ORDER

AND NOW, this 14 day of March, 2007, it is the ORDER of the Court that argument on Defendant's Preliminary Objections to Amended Complaint in the above captioned matter has been scheduled for Wednesday, May 2, 2007 at 1:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

It is the responsibility of the Petitioner to serve certified copy of said scheduling Order on the Plaintiff.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED
03/08/2007 4CC
MAR 14 2007 Atty Zimmerman

William A. Shaw
Prothonotary/Clerk of Courts

(6P)

FILED
m10:35pm
MAR 19 2001
NO CC
S

William A. Shaw
Prothonotary/Clerk of Courts

GORDON & WEINBERG, P.C.

BY: FREDERIC I. WEINBERG, ESQUIRE

Identification No.: 41360

PAUL M. SCHOFIELD, JR., ESQUIRE

Identification No.: 81894

21 SOUTH 21ST STREET

PHILADELPHIA, PA 19103

215/988-9600

Capital One Bank

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

DOCKET NO. : 07-37-CD

LYNN D. MAUK

PLAINTIFF'S RESPONSE TO PRELIMINARY OBJECTIONS
TO PLAINTIFF'S AMENDED COMPLAINT

Plaintiff, Capital One Bank, by and through its counsel, Frederic I. Weinberg, Esquire, responds to defendant's preliminary objections, and in support thereof avers as follows:

I. Response to Preliminary Objection for Failure to Conform to Rule of Court

1. Admitted.

2. Denied. The plaintiff attached the appropriate document in the form of defendant's acceptance of the credit card account. It was redacted so as to not publish the defendant's social security number and date of birth. Plaintiff's counsel has forwarded to non-redacted copy directly to defendant's counsel rendering this allegation moot.

WHEREFORE, plaintiff respectfully requests this honorable Court to overrule

defendant's preliminary objections.

II. Response to Preliminary Objection Raising Insufficient Specificity in a Pleading

3. Denied. Plaintiff's complaint identifies a specific amount due and attaches copies of statements to support the charges.

4. Denied. While plaintiff believes the statements to be legible, plaintiff sent better copies to defense counsel and has attached better copies hereto as Exhibit "A", rendering this allegation moot.

5. The Amended Complaint is not deficient in any manner. The Amended Complaint sets forth the amount claimed under a credit card agreement and the statements identify the specific account. The defendant is in a position to properly defend this action.

WHEREFORE, plaintiff respectfully requests this honorable Court to overrule defendant's preliminary objections.

GORDON & WEINBERG, P.C.

BY: 

FREDERIC I. WEINBERG, ESQUIRE
PAUL M. SCHOFIELD, JR., ESQUIRE
Attorney for Plaintiff

VERIFICATION

FREDERIC I. WEINBERG, ESQUIRE, hereby states that he is the attorney for the plaintiff in this action and verifies that the statements made in the foregoing pleadings are true and correct to the best of his knowledge, information and belief.

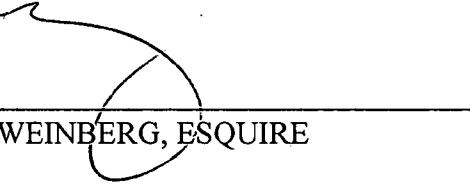
The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.



FREDERIC I. WEINBERG, ESQUIRE

CERTIFICATION OF SERVICE

I, **FREDERIC I. WEINBERG, ESQUIRE**, hereby certify that I, on the date below, served a copy of Plaintiff's Response to Preliminary Objections to Plaintiff's Amended Complaint, via First Class Mail, postage pre-paid, to all other parties or their counsel of record.


FREDERIC I. WEINBERG, ESQUIRE

Dated: March 16, 2007

EXHIBIT "A"

FREE
Accelerator!

peoplepc™ online

A better way to Internet.



41741608042

SIGN UP
TODAY!

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Mention Offer Code: DIAMOND
Or visit www.peoplepc.com/go/diamond

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- Pop-Up Blocker™
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- LYNN D MAUK
M16 SPRUCE ST
CLEARFIELD PA 16830-1900
- 548 SPRUCE ST
CLEARFIELD PA 16830-1900

SPECIAL LIMITED-TIME OFFER FOR CAPITAL ONE® CARDHOLDERS!

CapitalOne

VISA ACCOUNT

4121-7416-0804-2466

DEC 22, 2003 - JAN 21, 2004

Page 1 of 1

Account Summary

| | |
|-----------------------------------|-------------------|
| Previous Balance | \$966.26 |
| Payments, Credits and Adjustments | \$0.00 |
| Transactions | \$64.00 |
| Finance Charges | \$22.13 |
| New Balance | \$1,052.39 |
| Minimum Amount Due | \$1,052.39 |
| Payment Due Date | February 21, 2004 |
| Total Credit Line | \$500 |
| Total Available Credit | \$0.00 |
| Credit Line for Cash | \$500 |
| Available Credit for Cash | \$0.00 |

Payments, Credits and Adjustments

This is our third and final notice that your account is seriously past due. Payment must be received within 72 hours to avoid action by our collection department.

Transactions

| | | | |
|---|--------|---------------|---------|
| 1 | 22 DEC | OVERLIMIT FEE | \$29.00 |
| 2 | 21 JAN | PAST DUE FEE | 35.00 |

You were assessed a past due fee of \$35.00 on 01/21/2004 because your minimum payment was not received by the due date of 01/21/2004. To avoid this fee in the future, we recommend that you allow at least 7 business days for your payment to reach Capital One.

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:

Attn: Remittance Processing
Capital One Services
P.O. Box 85147
Richmond, VA 23276

Send inquiries to:

Capital One Services
P.O. Box 85015
Richmond, VA 23285-5015

52931S

Finance Charges

Please see reverse side for important information

| | Balance rate applied to | Periodic rate | Corresponding APR | FINANCE CHARGE |
|-----------|----------------------------|------------------|----------------------|-------------------|
| PURCHASES | \$581.54 | .07096% | 25.90% | \$12.79 |
| CASH | \$424.38 | .07096% | 25.90% | \$9.34 |

ANNUAL PERCENTAGE RATE applied this period

25.90%

▼ PLEASE RETURN PORTION BELOW WITH PAYMENT. ▼

CapitalOne

0000000 0 4121741608042466 21 1052390014001052394

| | |
|--------------------|-------------------------|
| New Balance | \$1,052.39 |
| Minimum Amount Due | \$1,052.39 |
| Payment Due Date | February 21, 2004 |
| Total enclosed | \$ <input type="text"/> |
| Account Number: | 4121-7416-0804-2466 |

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 | | |

#9002265158486082# MAIL ID NUMBER
LYNN D MAUK
516 SPRUCE ST
CLEARFIELD PA 16830-1900

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

052931

Please write your account number on your check or money order made payable to Capital One Bank and mail in the enclosed envelope.

peoplepc™ online
A better way to Internet.

UNLIMITED INTERNET ACCESS

SIGN UP
TODAY!

1-888-587-9669

Mention Offer Code: DIAMOND
Or visit www.peoplepc.com/go/diamond

PeoplePC is solely responsible for this offer, and is not affiliated with Capital One. Capital One does not provide, endorse or guarantee, and is not affiliated with, any product or service shown here. Any trademarks mentioned herein are solely owned by the respective entity. All rights reserved. By responding to this offer, you may be communicating information about yourself to the company that provides this product - for example, that you are a Capital One customer.

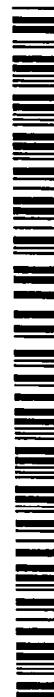
*PeoplePC Online: First 3 months are billed at \$4.97 per month; \$9.95 per month thereafter. Offer available to new dial-up subscribers at least 18 years of age and may not be redeemed with any other offer. Offer subject to change at any time. Phone technical support available for \$1.95 per minute.

†Accelerator is free for 12 months. Offer good for limited time. After the first 12 months, the Accelerated service will automatically revert to the standard PeoplePC Online service. Offer subject to change at anytime. With PeoplePC Online Accelerated, certain Web page text and graphics will load faster when compared to standard dial-up Internet service. Actual results may vary. PeoplePC Online Accelerated is only compatible with PeoplePC Online Internet Service and specified Windows® browsers. PeoplePC Online Accelerated is not compatible with Windows® 95 with IE 5.5 SP2.

Service not available in all areas. Access fees, taxes, and other fees and restrictions may apply. Telephone toll charges may apply, even during trial periods. You are responsible for determining whether a call to one of our access numbers will result in telephone toll charges. Access may be limited, especially during times of peak usage. Dial-up numbers may be subject to PeoplePC's discretion. Continuous use subject to timeout procedures. All use is subject to PeoplePC Online's Services Agreement and Acceptable Use Policy. 56K is the maximum speed of service; actual speed may vary.

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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 applied, you will not incur a finance charge. 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) on the first calendar day of the current billing period. 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 date. You may, but do not do so for the previous month. Unpaid finance charges are added to the applicable segment of your account.

c. **Minimum Finance Charge.** For each billing period, your account is subject to a finance charge, a minimum total FINANCE CHARGE of \$0.50 will be imposed. If the periodic charge resulting from the application of your periodic rate to the "New Balance" is less than this 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.

2. Average Daily Balance (Includes New Purchases).

a. **Periodic Rate.** We calculate by averaging the daily balance of each segment of your account (i.e., cash advance, purchase, special transfer, and special purchase) by the corresponding daily periodic rate(s) 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. Then at the end of the billing period, we add up the daily balance of each segment to calculate the total periodic finance charge for each segment. We then 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 any periodic finance charge calculated on the previous day's balance for that segment. We then subtract any payments or refunds made on the previous 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 (a credit amount)), new transactions which post to your purchase or special purchase segments are not added to the daily balances. We calculate the average daily balance by totaling the daily balances together and dividing the result 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 discrepancy in the 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 periodic finance charge for each segment of each month.) This gives us the daily balance of each segment. Then, we add up 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 P (Prime), G (1-mo. LIBOR), C (Certificates of Deposit), or S (Bankcard 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*. These changes will be effective on the day of your billing period covered by your periodic statement ending in the months January, April, July and October.

c. If the code D (Prime), F (1-mo. LIBOR) or G (3-mo. LIBOR Replicated Monthly) appears on the front of your statement next to the periodic rates, 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*. These changes will be effective on the first day of your billing period each month.

4. Assessment of Late, Overlimit and Returned Payment Fees. Your account will be assessed no more than two of the fees listed below during any billing period. Under the terms of your customer agreement, you have the right to waive or not to assess any fees without prior notification 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 have 30 days from the date this statement was mailed to you to cancel your account. If you do not cancel your account within 30 days, you will be charged a membership fee. If you cancel your account, you must notify us by calling our Customer Relations Department and pay your "New Balance" in full (excluding the membership fee) prior to the end of the thirty-day period.

6. **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 your authorization to reopen your account. Additionally, you must notify us if you plan to close 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 or at a later time. You must also pay all amounts due 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 amount of the fee has been paid in full as defined above.

7. **Using 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 you've been charged, or you need more information about a transaction on your bill, call or write 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 prevent you from writing to us. In your letter, give us the following information: your name and account number, the date of the suspected error, a description of the error, and an explanation, if possible, 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 report your delinquency or take any action to collect the amount you question.

4. † 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. You have this protection only when the purchase price was more than \$50.00 and the problem occurred 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

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529315

01LGLBAK

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 a paper check when preparing your payment. When you send us a check, you authorize us to make a one-time electronic transfer debit from your bank account for the amount of the check. This authorization applies to all checks received during the billing cycle even if sent by someone else. If we cannot process the transfer, you authorize us to make a charge against your bank account using the check, a paper draft or other item.

Your account is about to receive the worst credit rating – an R9.

Your account is close to being charged off.

- The result is an R9 rating – the worst credit rating of all on your credit bureau report.
- It may prevent you from getting credit cards, an apartment, a cell phone, a car loan – or even a job – for as long as 10 years!
- An R9 will limit our ability to offer you financial solutions.
- You will still be responsible for repaying the debt.

Good news – it's not too late.

- Call 1-800-955-6600 for payment options.
- Pay with our free Check by Phone service.
- If you have online access, log on to your account and pay now at www.capitalone.com.
- If you prefer, simply use the remittance coupon below.

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045-0503

Capital One®

VISA ACCOUNT

4121-7416-0804-2466

NOV 22 - DEC 21, 2003

Page 1 of 1

Account Summary

| | |
|-----------------------------------|------------------|
| Previous Balance | \$888.53 |
| Payments, Credits and Adjustments | \$0.00 |
| Transactions | \$58.00 |
| Finance Charges | \$19.73 |
| New Balance | \$966.26 |
| Minimum Amount Due | \$966.26 |
| Payment Due Date | January 21, 2004 |
| Total Credit Line | \$500 |
| Total Available Credit | \$0.00 |
| Credit Line for Cash | \$500 |
| Available Credit for Cash | \$0.00 |

Payments, Credits and Adjustments

This is our third and final notice that your account is seriously past due. Payment must be received within 72 hours to avoid action by our collection department.

Transactions

| | | | |
|---|--------|---------------|---------|
| 1 | 22 NOV | OVERLIMIT FEE | \$29.00 |
| 2 | 21 DEC | PAST DUE FEE | 29.00 |

You were assessed a past due fee of \$29.00 on 12/21/2003 because your minimum payment was not received by the due date of 12/20/2003. To avoid this fee in the future, we recommend that you allow at least 7 business days for your payment to reach Capital One.

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:
Attn: Remittance Processing
Capital One Services
P.O. Box 85147
Richmond, VA 23276

Send inquiries to:
Capital One Services
P.O. Box 85015
Richmond, VA 23285-5015

495105

Finance Charges

Please see reverse side for important information

| | Balance rate applied to | Periodic rate | Corresponding APR | FINANCE CHARGE |
|-----------|-------------------------|---------------|-------------------|----------------|
| PURCHASES | \$511.73 | .07096% | 25.90% | \$10.89 |
| CASH | \$415.29 | .07096% | 25.90% | \$8.84 |

ANNUAL PERCENTAGE RATE applied this period

25.90%

▼ PLEASE RETURN PORTION BELOW WITH PAYMENT. ▼

Capital One®

0000000 0 4121741608042466 21 0966260014000966268

| | |
|--------------------|-------------------------|
| New Balance | \$966.26 |
| Minimum Amount Due | \$966.26 |
| Payment Due Date | January 21, 2004 |
| Total enclosed | \$ <input type="text"/> |
| Account Number: | 4121-7416-0804-2466 |

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 | | @ |

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



0495105

#9035565158486086# MAIL ID NUMBER
LYNN D MAUK
516 SPRUCE ST
CLEARFIELD PA 16830-1900



1. How To Avoid A Finance Charge.
 - a. **Grace Period.** You will have a minimum grace period of 25 days without finance charges on new purchases, new balance transfers, new special purchases and new other charges if you pay your total "New Balance," in accordance with the Imprint Notice for payments below, and in time for it to be credited by you 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. **Acquiring 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 calendar day of the current billing period. Additionally, if you did not pay the "New Balance" from the previous billing period in full, finance charges will be applied 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. **Minimum Finance Charge.** For each billing period that you did not pay the "New Balance" in full, a minimum total FINANCE CHARGE of \$0.50 will be applied. 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.
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 rate(s) that has been previously disclosed to you. At the end of each day during the billing period, we apply the daily periodic rate to each segment of your account to obtain the daily balance of each segment. Then at the end of the billing period, we 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 a running beginning balance for each segment and add new transfers and any periodic finance charge calculated on the previous day's balance for that segment. We then subtract any payments or credits 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 the new balance is less than the previous amount), new transactions which post to your purchase or special purchase segments are not added to the 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 for each day of 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 Due 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 for each segment, add in any new transfers to each segment and subtract any payments or credits. (If the code N appears on the front of this statement next to "Balance Due 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 up 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 on the front of this statement.
 - b. If the code P (Prime), L (3-mo. LIBOR), C (Certificate of Deposit), or S (Bankcard Prime) appear on the front of this statement next to the periodic rate(s), the periodic rates are 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 covered by your periodic statement ending in the months January, April, July and October.
 - c. If the code M (Prime), N (1-mo. LIBOR) or G (3-mo. LIBOR) appear on the front of this 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.
4. **Annual Fees, 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 notification to you without waiving our right to assess the same or similar fees at a later time.
5. **Protecting Your Account.** If a membership fee appears on the front of this statement, you have 30 days from the date this statement was mailed to you 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 return it to Capital One Financial Services Department and pay you "New Balance" in full (excluding the membership fee) prior to 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 card(s) and account access checks, cancel all preauthorized billing, and contact us if you need assistance to do so. If you do not cancel preauthorized billing arrangements, we will issue a receipt of a charge your authorization to reopen your account. Additionally, your account will not 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 subsequent 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, you will be responsible for 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. **Using 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 or bill, write to us on a separate sheet as soon as possible at the address for inquiries or problems listed below. We will hear from you no later than 60 days after we send you the first bill on which the error or problem appears. 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, if possible, of why you believe there is an error; and you need to include a description of the item you are unsure about. You do not have to pay the 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 report you as delinquent or take any action to collect the amount you question.

4.† 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 been unable to resolve the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. You have this protection only when the purchase price was 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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01LGLBAK

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

DOCKET # 102323
NO: 07-37-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: CAPITAL ONE BANK
vs.
DEFENDANT: LYNN D. MAUK

SHERIFF RETURN

NOW, January 09, 2007 AT 2:40 PM SERVED THE WITHIN COMPLAINT ON LYNN D. MAUK DEFENDANT AT 516 SPRUCE ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO LYNN MAUK, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DEHAVEN / HUNTER

| PURPOSE | VENDOR | CHECK # | AMOUNT |
|-----------------|--------|---------|--------|
| SURCHARGE | GORDON | 27813 | 10.00 |
| SHERIFF HAWKINS | GORDON | 27813 | 20.00 |

FILED
09:00AM
APR 25 2007
CS

Sworn to Before Me This

____ Day of _____ 2007

So Answers,

William A. Shaw
Prothonotary/Clerk of Courts

Chester A. Hawkins
by Maury Hark
Chester A. Hawkins
Sheriff

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

Capitol One Bank,
Plaintiff

vs.

Lynn D. Mauk,
Defendant

*

* NO.: 07-37-CD

*

* Type of Case: Civil

*

* Type of Pleading: Certificate of
Service

*

* Filed on Behalf of: Lynn D. Mauk

*

* Counsel of Record for this Party:

* Brenda Zimmerman, Esquire

*

*

* MidPenn Legal Services

* 3 West Monument Square, Ste. 203

* Lewistown, PA 17044

* (717)248-3099

FILED *100*
07-37-CD Atty
MAY 01 2007 Zimmerman
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CAPITAL ONE BANK, :
Plaintiff : Civil Action
vs. : No. 07-37-CD
LYNN D. MAUK, :
Defendant :

PROOF OF SERVICE

The undersigned hereby certifies that on March 19, 2007, she served a copy of the scheduling Order entered March 14, 2007 on the Plaintiff by mailing same to the office of Plaintiff's attorney of record by regular first-class mail, postage pre-paid, addressed as follows:

Frederic I. Weinberg, Esquire
GORDON & WEINBERG, P.C.
21 South 21st Street
Philadelphia, PA 19103

Brenda L. Zimmerman 1/17/1

By Brenda L. Zimmerman
Attorney for Defendants
3 West Monument Square, Suite 203
Lewistown, PA 17044
(717) 248-3099

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

CAPITOL ONE BANK :
-VS- : No. 07-37-CD
LYNN D. MAUCK :

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FILED 2007-05-03 10:30 AM
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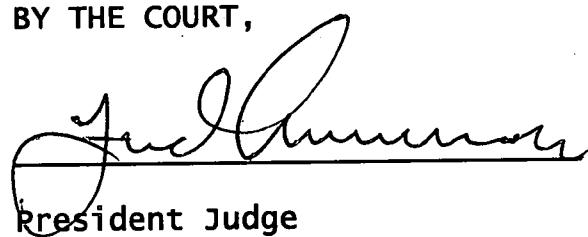
William A. Shaw
Prothonotary/Clerk of Courts
GK

ORDER

AND NOW, this 2nd day of May, 2007, this being the date and time set for argument relative the Preliminary Objections to the Amended Complaint filed on behalf of the Defendant; the Court noting that the Preliminary Objections are similar to those as previously filed, which were not cured by the Plaintiff filing an Amended Complaint; the Court noting that Defense counsel has filed appropriate certificates of service relative service of the Preliminary Objections to the Amended Complaint and the scheduling order of March 14, 2007, to counsel for the Plaintiff; neither counsel for the Plaintiff nor any representative of the Plaintiff having appeared, and the Court having been provided with no notice or explanation as to why they have failed to appear; in consideration of the Preliminary Objections to the Amended Complaint, it is the ORDER of

this Court that the said Preliminary Objections be and are hereby granted. The Amended Complaint is hereby dismissed.

BY THE COURT,

A handwritten signature in black ink, appearing to read "Judd L. Johnson". The signature is fluid and cursive, with "Judd" and "Johnson" being the most distinct parts.

President Judge

FILED

MAY 03 2007

Prothonotary/Clerk of Courts
William A. Shaw

DATE: 5/3/07

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions: