

07-1798-CD
Citibank vs Ben Oshell al

FILED *Att'y pd*
NOV 05 2011 85.00
11/05/2011 *ICC Sheriff*
William A. Shaw
Prothonotary/Clerk of Courts

Burton Neil & Associates, P.C.
By: Brit J. Suttell, Esquire ID. NO. 204140
1060 Andrew Drive, Suite 170
West Chester, PA 19380
(610) 696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA), N.A.
701 East 60th Street N
Sioux Falls, SD 57117

: IN THE COURT OF COMMON PLEAS

Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA

v.

BEN OSHELL aka BENJAMIN OSHELL
1391 Irvona Road, Irvona PA 16656-8501

: NO. 07-1798-CD

Defendant : CIVIL ACTION - LAW

Complaint - Notice

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

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

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERENCE AND INFORMATION SERVICE

David S. Meholic0.

Court Administrator

Clearfield County Courthouse

Clearfield, PA 16830

Telephone No. 814-765-2641 Ext. 5982

C-12757



Burton Neil & Associates, P.C.
By: Brit J. Suttell, Esquire ID. NO. 204140
1060 Andrew Drive, Suite 170
West Chester, PA 19380
(610) 696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA), N.A. : IN THE COURT OF COMMON PLEAS
701 East 60th Street N
Sioux Falls, SD 57117

Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
v.

: NO.

BEN OSHELL aka BENJAMIN OSHELL
1391 Irvona Road, Irvona PA 16656-8501
Defendant : CIVIL ACTION - LAW

Complaint

1. Plaintiff is CITIBANK (SOUTH DAKOTA), N.A., with place of business located at 701 East 60th Street North, Sioux Falls, South Dakota.
2. Defendant is Ben Oshell aka Benjamin Oshell, who resides at 1391 Irvona Road, Irvona, Clearfield County, Pennsylvania.
3. Plaintiff is a national banking association, engaged in various types of banking business including consumer lending through the issuance of credit cards.
4. Plaintiff furnished consumer credit to the defendant by means of a credit card with account number 5466160154154403 hereinafter referred to as the credit card account.
5. Plaintiff kept accurate running records of all debits and credits to the account.
6. Plaintiff mailed to defendant monthly statements for the account including the billing statement attached hereto as Exhibit A. The monthly statements accurately stated the previous balance, the debits and credits to the account for the prior billing period.
7. Before plaintiff mailed Exhibit A, defendant had for many months made payments on account of the billing statement or retained the statement without payment.

8. Defendant's actions as set forth above constituted an account stated between parties for the sum of \$3,840.17 which sum reflects the Exhibit A statement balance less credits, if any, which were applied subsequent to the date of Exhibit A.

Wherefore, plaintiff demands judgment against defendant for the sum of \$3,840.17, and the costs of this action.

Burton Neil & Associates, P.C.

By: 

Brit J. Suttell, Esquire
Attorney for Plaintiff

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

Citi PremierPass® Card

Account Activity
Nov 16-Dec 15, 2006

Payment Due Date:

01/09/2007

Payment must be received by 5:00 PM
local time on the payment due date.

Minimum Amount Due:

\$3,840.17

Total New Balance:

\$3,840.17

Quick Reference

Revolving Credit Line

\$3,000

Available Revolving Credit Line

\$0

Cash Advance Limit

\$900

Available Cash Limit

\$0

Important Account Information

Your late fee was based on your account balance as
of the payment due date 12/11/06, which was
\$3,701.81.

Detach and follow payment instructions on reverse

Make check payable to: **Citi PremierPass® Card**

Total New Balance:
\$3,840.17
Minimum Amount Due:
\$3,840.17

Payment Due Date:
01/09/2007

000000 PW 32 A O
BEN OSHELL
1391 IRVONA RD
IRVONA PA 16656-8501

Account Number:
5466 160 5415 4403
Amount Enclosed:

Payment must be received by 5:00 PM
local time on the payment due date.

CITI CARDS
P.O. BOX 182564
COLUMBUS, OH 43218-2564

EXHIBIT

A

Access Your account online: citicards.com

How to Reach Us
1-800-967-9800

Customer Service
BOX 6062
SIOUX FALLS, SD
57117

At a Glance

Previous Balance	Amount Over Revolving Credit Line	Past Due	Finance Charges	Total New Balance
\$3,701.81	\$840.17	\$1,005.19	\$99.36	\$3,840.17

Standard Purchases

Sale	Post	Description	Amount
00000000	12/15	LATE FEE - NOV PAYMENT PAST DUE	39.00
00000000	12/15	PURCHASES*FINANCE CHARGE*PERIODIC RATE	99.36
00000000	12/15		0000000000

Account Summary

Previous Balance	(+) Purchases & Advances	(-) Payments & Credits	(+) FINANCE CHARGE	(=) New Balance
3,701.59	39.00	0.00	99.36	3,839.95
Advances	0.22	0.00	0.00	0.22
Total	3,701.81	39.00	0.00	99.36

Rate Summary

PURCHASES	Balance Subject to Finance Charge	Periodic Rate	Nominal APR	ANNUAL PERCENTAGE RATE
Standard Purch	3,749.39	0.088333%(D)	32.240%	32.240%
ADVANCES				
Standard Adv	0.22	0.088333%(D)	32.240%	32.240%

Citi PremierPass® Card

How to Reach Us
1-800-967-9800

Customer Service
BOX 6062
SIOUX FALLS, SD 57117

Access your account online: citicards.com

News from Citi

The pur/adv min due displayed above includes any transactions that exceed your revolving credit line.

Help is available! Please call the toll-free number shown above to learn about our special payment options. Call Monday - Friday, 7 am to 9 pm, or Saturday, 8 am to 5 pm, Central Time. Please give us the opportunity to assist you.

Our records show home phone 814-672-5238 and business phone 000-000-0000. Please update coupon if incorrect.

Verification

I, Shauna Houghton am an employee of Citicorp Credit Services, Inc., (USA) which is by contract the service provider for plaintiff CITIBANK (SOUTH DAKOTA), N.A. retained to perform services on its behalf. I am authorized to make this verification as attorney-in-fact for plaintiff under powers of attorney from plaintiff to Citicorp Credit Services, Inc. (USA) and to me. The foregoing averments of fact in the within pleading are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to the authorities.

✓ Shauna Houghton
Signature Shauna Houghton

Ben Oshell
5466160154154403

Timothy D. McNair, Esquire
Pa. I.D. #34304
821 State Street
Erie, PA 16501
(814) 452-0700
Attorney for Defendant

FILED ^{ICE}
M 10/29/01 Atty
DEC 03 2001 McNair

William A. Shaw
Prothonotary/Clerk of Courts

CITIBANK (SOUTH DAKOTA), N.A.	:	IN THE COURT OF COMMON PLEAS
701 East 60 th Street N	:	
Sioux Falls, SD 57117	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	NO. 07-1798-CD
BEN OSHELL aka BENJAMIN OSHELL	:	
1391 Iriona Road	:	CIVIL ACTION - LAW
Iriona, PA 16656-8501	:	
Defendant	:	

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

NOW COMES the Defendant, Ben Oshell, by his attorneys, Law Offices of Timothy D. McNair and Timothy D. McNair, Esquire and files the following Preliminary Objections to Plaintiff's Complaint, as follows:

I. Preliminary Objection pursuant to Pa.R.C.P. 1019(h).

1. Plaintiff's Complaint states, at paragraph 4, that Plaintiff furnished Consumer Credit to the Defendant by means of a credit card.
2. Plaintiff fails to state whether or not the Credit Card Agreement was oral or in writing, as required by Pa.R.C.P. 1019(h).
3. In the event that, as is likely, the Agreement was in writing, Plaintiff has failed to attach a copy of the writing.

WHEREFORE, Plaintiff objects to the Complaint for failure to conform to Rule of Court pursuant to Pa.R.C.P. 1028(a)(2), and moves to strike same.

II. Preliminary Objection - Lack of Subject Matter Jurisdiction.

4. Defendant incorporates herein by reference the averments of paragraphs 1 through 3 of these Preliminary Objections as though fully set forth at length.

5. Upon information and belief, the Agreement between Plaintiff and Defendant was in writing. Defendant, after reasonable search, is unable to locate an exact copy of the writing which was subsequently amended from time to time unilaterally by the Plaintiff.

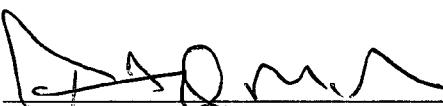
6. Defendant believes and therefore avers that the Agreement contains a mandatory arbitration clause for all disputes arising under it.

7. Defendant respectfully moves that Plaintiff be ordered to arbitrate its claim in accordance with the arbitration language, if any, of the written contract between Plaintiff and Defendant.

WHEREFORE, Defendant respectfully moves that this matter be stayed and referred to binding arbitration pursuant to the terms of the written Agreement between the parties.

Respectfully submitted,

LAW OFFICES OF TIMOTHY D. McNAIR

By: 

Timothy D. McNair, Esquire
821 State Street
Erie, PA 16501
(814) 452-0700

CITIBANK (SOUTH DAKOTA), N.A. : IN THE COURT OF COMMON PLEAS
701 East 60th Street N :
Sioux Falls, SD 57117 : CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff :
: NO. 07-1798-CD
BEN OSHELL aka BENJAMIN OSHELL :
1391 Irvona Road : CIVIL ACTION - LAW
Irvona, PA 16656-8501 :
Defendant :
:

ORDER

AND NOW, to-wit this _____ day of _____, 2007, upon
consideration of the Preliminary Objections heretofore filed by Defendant, Ben Oshell, it is
ORDERED that said Preliminary Objections are SUSTAINED.

Plaintiff is directed to amend its Complaint and to attach a copy of any written
Agreement between Plaintiff and Defendant regarding the account including any
amendments.

This case is STAYED and shall be referred to arbitration in accordance with the terms
of the Agreement between Plaintiff and Defendant.

BY THE COURT:

J.

CITIBANK (SOUTH DAKOTA), N.A. : IN THE COURT OF COMMON PLEAS
701 East 60th Street N :
Sioux Falls, SD 57117 : CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff :
: NO. 07-1798-CD
BEN OSHELL aka BENJAMIN OSHELL :
1391 Irvona Road : CIVIL ACTION - LAW
Irvona, PA 16656-8501 :
Defendant :
:

CERTIFICATE OF SERVICE

On this 30th day of November, 2007, the undersigned does depose and say that he served a true and correct copy of Defendant's Preliminary Objections to Plaintiff's Complaint upon the following by first class, United States mail:

Brit J. Suttell, Esquire
Burton Neil & Associates, P.C.
1060 Andrew Drive, Suite 170
West Chester, PA 19380

Ben Oshell
1391 Irvona Road
Irvona, PA 16656-8501



Timothy D. McNair, Esquire
Attorney for Defendant

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

FILED

DEC 21 2007

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William A. Shaw
Prothonotary/Clerk of Courts

NO. 07-1798-CD 3 cent

Atty
McNamee
(60)

CITIBANK (SOUTH DAKOTA), N.A.,
Plaintiff
vs.
BEN OSHELL a/k/a BENJAMIN OSHELL,
Defendant

ORDER

NOW, this 19th day of December, 2007, upon receipt of the Preliminary Objections to Plaintiff's Complaint filed on behalf of the Defendant, it is the ORDER of this Court that argument on the Defendant's Preliminary Objections is scheduled for the 25th day of February, 2008 at 11:00 m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, PA 16830.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

DATE: 12-21-07

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:

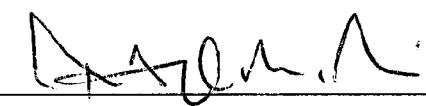
Timothy D. McNair, Esquire
Pa. I.D. #34304
821 State Street
Erie, PA 16501
(814) 452-0700
Attorney for Defendant

CITIBANK (SOUTH DAKOTA), N.A. : IN THE COURT OF COMMON PLEAS
701 East 60th Street N :
Sioux Falls, SD 57117 : CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff :
: NO. 07-1798-CD
BEN OSHELL aka BENJAMIN OSHELL :
1391 Irvona Road : CIVIL ACTION - LAW
Irvona, PA 16656-8501 :
Defendant :
:

CERTIFICATE OF SERVICE

On this 2nd day of January, 2008, the undersigned does depose and say that he served a true and correct copy of Judge Ammerman's December 19, 2007 Order scheduling argument on the Defendant's Preliminary Objections for February 25, 2008 at 11:00 a.m. by first class, United States mail upon the following:

Brit J. Suttell, Esquire
Burton Neil & Associates, P.C.
1060 Andrew Drive, Suite 170
West Chester, PA 19380



Timothy D. McNair, Esquire
Attorney for Defendant

FILED NOCC
112:3904
JAN 04 2008
WAT
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103395
NO. 07-1798-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: CITIBANK (SOUTH DAKOTA) N.A.
vs.
DEFENDANT: BEN OSHELL aka BENJAMIN OSHELL

SHERIFF RETURN

NOW, November 09, 2007 AT 9:18 AM SERVED THE WITHIN COMPLAINT ON BEN OSHELL aka BENJAMIN OSHELL DEFENDANT AT 1391 IRVONA ROAD, IRVONA, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO BEN OSHELL, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	NEIL	35132	10.00
SHERIFF HAWKINS	NEIL	35132	44.19

FILED
03:00pm
FEB 15 2008

William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

Day of 2008
2007

So Answers,

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

FILED ^{No CC}
 2/1/04 2008
 FEB 25 2008 (6K)

William A. Shaw
 Prothonotary/Clerk of Courts

Burton Neil & Associates, P.C.
 By: Brit J. Sutell, Esquire ID. NO. 204140
 1060 Andrew Drive, Suite 170
 West Chester, PA 19380
 (610) 696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA), N.A. : IN THE COURT OF COMMON PLEAS

Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA

v.

BEN OSHELL aka BENJAMIN OSHELL : NO. 07-1798-CD

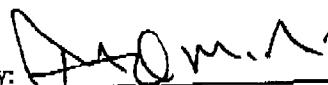
Defendant : CIVIL ACTION - LAW

**STIPULATION TO WITHDRAW PRELIMINARY OBJECTIONS AND STAY ARBITRATION
 PURSUANT TO PA. R.C.P. 1329**

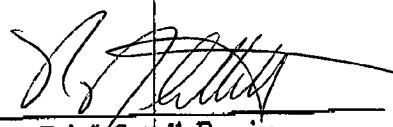
TO THE PROTHONOTARY:

Kindly withdraw defendant's Preliminary Objections which were filed with the Court and
 stay the proceedings pending private Arbitration pursuant to Pa.R.C.P. 1329.

By:


 Timothy D. McNair, Esquire
 Attorney for Defendant

By:


 Brit J. Sutell, Esquire
 Attorney for Plaintiff

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

Burton Neil & Associates, P.C.
By: Brit J. Suttell, Esquire ID. NO. 204140
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA), N.A. : IN THE COURT OF COMMON PLEAS
Plaintiff
v. : CLEARFIELD COUNTY, PENNSYLVANIA
: NO. 07-1798-CD
BEN OSHELL a/k/a BENJAMIN OSHELL
Defendant : CIVIL ACTION - LAW

Certificate of Service

I, Brit J. Suttell, Esquire, do hereby certify that I served a true and correct copy of the within
Stipulation to Withdraw Preliminary Objections and Stay Arbitration Pursuant to Pa. R.C.P. 1329
on defendant's counsel, Timothy D. McNair, Esquire, at his address of record via first class mail,
postage prepaid on the date set forth below.

Burton Neil & Associates, P.C.

Date: February 21, 2008

By:



Brit J. Suttell, Esquire
Attorney for Plaintiff

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

C-12757

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COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CITIBANK (SOUTH DAKOTA), N.A.
701 East 60th Street North
Sioux Falls, SD

Plaintiff(s)

v.

BEN OSHELL a/k/a BENJAMIN OSHELL
1391 Irvona Road
Irvona Pa 16656-8501

Defendant(s)

CIVIL ACTION

Case No. 07-1798-CD

Type of Pleading: Plaintiff's Motion to Confirm
Arbitration Award and Remove Stay

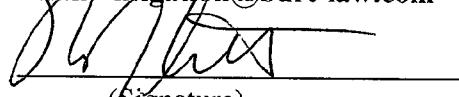
Filed on Behalf of:

CITIBANK (SOUTH DAKOTA), N.A.
(Plaintiff)

NAME, ADDRESS AND TELEPHONE OF:

X Counsel of Record
____ Individual, if pro se

Brit J. Suttell, Esquire
Burton Neil & Associates, P.C.
1060 Andrew Drive, Suite 170
West Chester, PA 19380
Telephone: 610-696-2120
email: litigation@burt-law.com


(Signature)

^s**FILED** *no cc*
JUN 15 2009
10:51 AM

William A. Shaw
Prothonotary/Clerk of Courts


CITIBANK (SOUTH DAKOTA), N.A. : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
v. : NO. 07-1798-CD

BEN OSHELL a/k/a
BENJAMIN OSHELL

Defendant : CIVIL ACTION - LAW

Order

AND NOW, this _____ day of _____, 2009, the Arbitration
Award entered by the National Arbitration Forum dismissing defendant's claim against plaintiff,
with prejudice, is hereby CONFIRMED;

AND, the stay previously stipulated to by the parties' counsel is REMOVED and the case
shall proceed.

BY THE COURT:

J.,

BURTON NEIL & ASSOCIATES, P.C.
Brit J. Sutell, Esquire, Id. no. 204140
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA), N.A.
Plaintiff

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
v.
: NO. 07-1798-CD

BEN OSHELL a/k/a
BENJAMIN OSHELL

Defendant : CIVIL ACTION - LAW

Plaintiff's Motion to Confirm Arbitration Award and Remove Stay

Now comes plaintiff, Citibank (South Dakota), N.A., by and through its undersigned counsel of record, Burton Neil & Associates, P.C., and files this motion to confirm an arbitration award under Pa. R. C. P. 1327 and in support thereof states as follows:

1. On or about November 5, 2007, plaintiff filed a complaint against defendant.
2. On or about December 3, 2007, defendant, through counsel, filed preliminary objections seeking to compel private arbitration.
3. On or about February 21, 2008, plaintiff's counsel and defendant's counsel filed a joint stipulation to withdraw defendant's preliminary objections and have the proceedings stayed

pursuant to Pa. R. C. P. 1329 so the parties could move to private arbitration.

4. On or about March 4, 2008, defendant filed a private arbitration claim against plaintiff in the National Arbitration Forum (“NAF”). A true and correct copy of defendant’s claim filed in private arbitration is attached hereto and incorporated herein as Exhibit A.

5. On or about April 21, 2008, plaintiff (respondent in the NAF proceedings) filed a response, including counterclaim and motion for dismissal, to defendant’s NAF claim.

6. On or about July 25, 2008, an Arbitration Award was entered by an NAF arbitrator ordering that defendant’s (claimant in the NAF proceedings) claim be dismissed with prejudice and the matter proceed strictly on plaintiff’s counterclaim. A true and correct copy of the NAF arbitration award is attached hereto and incorporated herein as Exhibit B.

7. On or before January 15, 2009, plaintiff sent a request to the NAF requesting a dismissal of their counterclaim, without prejudice.

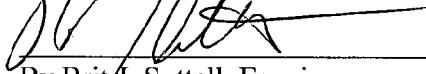
8. On or about January 15, 2009, plaintiff received from the NAF a letter stating that plaintiff’s counterclaim was dismissed without prejudice. A true and correct copy of the January 15, 2009, letter is attached hereto and incorporated herein as Exhibit C.

9. Pursuant to Pa. R. C. P. 1329(e)(1), plaintiff now files this motion to confirm the aforementioned arbitration award dismissing defendant’s arbitration claim with the NAF under Pa. R. C. P. 1327(2).

10. Plaintiff also seeks to remove the stay which was previously imposed on the case at bar since the parties have moved to and have an arbitration award from private arbitration.

11. Pursuant to Local Rule 208.2(d), plaintiff’s counsel sought concurrence in this motion from defendant’s counsel through a letter sent to defendant’s counsel on or about May 11, 2009, but received no response.

WHEREFORE, plaintiff moves this Honorable Court to confirm the NAF Arbitration Award and remove the stay allowing the case to proceed per the proposed order attached.

Burton Neil & Associates, P.C.


By Brit J. Suttell, Esquire
Attorney for Plaintiff

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



CLAIM

BENJAMIN OSHELL
 c/o Hess | Kennedy
 210 North University Drive, Suite 900
 Coral Springs, FL 33071,

RE:
 Forum File Number:
 Claimant File Number: 07-1798-CD

CLAIMANT,

CITIBANK (SOUTH DAKOTA), N.A.
 c/o Brit J. Suttel, Esq.
 Burton Neil & Associates
 1060 Andrew Drive, Suite 170
 West Chester, PA 19380,

RESPONDENT.

For a Claim against Respondent, Claimant states:

1. Respondent CITIBANK, ("Respondent CB") at all material times hereto in the ordinary course of business extended open-end consumer credit pursuant to an electronic bookkeeping ledger account commonly referred to as a "credit card" account which Respondent CB assessed finance charges. It is accordingly a creditor as defined by the Truth in Lending Act.
2. Claimant BENJAMIN OSHELL ("Claimant") is a natural person who received an unsolicited credit account, namely a CITIBANK credit account for personal, family, and household purposes.
3. Beginning with the periodic statement with a closing date August 1, 2007, recent activity, finance charges, and daily periodic interest rates began appearing on the above mentioned credit card account statement transmitted to the Claimant by the Respondent CB.
4. The Claimant did not agree to those charges, and within 60 days after transmission of the statements, the Claimant sent a notice disputing the alleged sum certain and the other charges to Respondent CB at the address stated on the periodic statement in accordance with 15 U.S.C. §1666 and the cardholder agreement between Claimant and Respondent CB. See **Exhibit A**.

5. Subsequent to the above notice being sent, but prior to 30 days after receiving the Claimant's notice, attorneys for the Claimant sent the Respondent CB notice disputing the charges and requested certain information from the Claimant in an attempt to ascertain as to whether or not the Respondent CB could sustain a claim based upon the theories of: Breach of Contract; Money Lent; Open Account; Account Stated; or Unjust Enrichment; or in the alternative to determine as to whether or not the Respondent CB was in compliance with Federal law. See **Exhibit B**.

9. Respondent CB did not, within two complete billing cycles after receipt of the notice, either correct the error and transmit to Claimant, or Claimant's attorney, a notification of the corrections or investigate the error and send Claimant a written explanation.

10. Despite Respondent CB's receipt of Claimant's notice and notice from Claimant's attorneys, and before meeting the requirements of 15 U.S.C. §1666 to either correct the error or investigate and send an explanation of the charges, Respondent:

- (i) made or threatened to make an adverse credit report regarding Claimant;
- (ii) took action to collect the disputed amount by calling Claimant and sending the Claimant notices demanding payment of the disputed amount; and
- (iii) retained Burton Neil & Associates to take action to collect the disputed amount.

11. Claimant requests an Award against the Respondent CB in an amount equal to \$1000.00 statutory damages, actual damages for damage to Claimant's credit report in an amount equal to \$1500.00, plus all arbitration fees, incurred Service of Process fees, and Attorneys Fees of \$2500.00.

12. Attached to this Claim are the provisions of the Fair Credit Billing Act (as Part of the Truth in Lending Act) **Exhibit C**.

13. The Claimant requests a document hearing.

The undersigned counsel for the Claimant asserts, under penalty of perjury, that the information contained in this Claim and the supporting documents attached hereto are accurate to the best of the undersigned's knowledge, information and belief.

Dated: February 14, 2008

By: 

Lee Stein, Esq.
ADMITTED: (FL)
Counsel for the Claimant
210 North University Drive – Suite 900
Coral Springs, FL 33071
954-510-7840 Tel.
854-344-8438 Fax
NAF@hesskennedylaw.com

Benjamin Oshell
1391 Irvona Road
Irvona, PA 16656-8501

EXHIBIT
A

August 1, 2007

**Citibank
PO BOX 6500
Sioux Falls, SD 57117-6500**

Re: 5466-1601-5415-4403
Amount in Dispute: \$3,000.00

Dear Billing Dispute Representative:

I am writing this letter in order to place your organization on notice of what I believe to be a billing error found within my periodic statements for the previous 60 days as well as a clarification regarding the manner in which you calculate the Annual Percentage Rate and Daily Periodic Rate.

I have reviewed the advertising that you initially sent to my residence and the interest rate you are charging me is not the interest rate included in your advertisement. Even more alarming, the use of a calculator and the explanation on your statements do not produce the amount that you claim is due.

I demand the following information be sent to my attention: the original advertising, the signed credit card application, a clarification as to how you calculated the periodic rate applied to new and previous activity, the balance on which the finance charge is computed, the amount of the finance charge, as well as the agreed upon annual percentage rate.

I have retained an attorney in this matter. They will be contacting you as well. Please place my account into dispute status and do not contact me other than through the mails with the information I am requesting.

I am also submitting an address change request. My new address is: 210 North University Drive, #209, Coral Springs, FL 33071. My new telephone number is: 954-345-7848 and my new work telephone number is: 954-752-1950.

Very truly yours,

Benjamin Oshell

HESS KENNEDY COMPANY
CHARTERED

September 1, 2007

EXHIBIT
B

Via First Class Mail

Supervising Attorney
Citibank (South Dakota) N.A.
PO BOX 6500
Sioux Falls, SD 57117-6500

Re: **Benjamin Oshell**
Citibank Account #5466-1601-5415-4403

Dear Supervising Attorney:

This firm has been retained by the above named consumer. The purpose of this letter is to determine the nature of the relationship between your company and our client. Prior to our client retaining this firm, our client sent your organization a billing dispute notice challenging various charges that have began appearing on the periodic statements generated by your firm.

As of today's date, our client informs us that you have failed to acknowledge the notice and have continued collection activity. We ask that you cease communications with our client and direct any and all communications to our firm.

In order to properly analyze the nature and character of the relationship between your firm and our client, we request that you allow our firm to review the documents establishing the alleged liability. We request the original advertising presented to our client prior to consummation of the transaction as well as the signed credit application. In addition, please forward the last 60 days worth of periodic statements that attempt to form the basis of an account stated. This information can be forwarded to any lawyer or Nonlawyer employed by our firm.

Finally, we request that you place the account into "disputed status" and comply with the provisions of the Fair Credit Billing Act in so far as they relate to collection activities, credit reporting, and the institution of legal action.

Very truly yours,

HESS KENNEDY CO. CHARTERED

HESS KENNEDY COMPANY • 210 NORTH UNIVERSITY DRIVE • 209 • CORAL SPRINGS • FL • 33071
PHONE 954.752.1950 TELECOPIER 954.727.8722

NEW YORK ILLINOIS NEW JERSEY LONDON CALIFORNIA CAYMAN ISLANDS SOUTH CAROLINA

15 U.S.C. § 1666. Correction of billing errors

(a) Written notice by obligor to creditor; time for and contents of notice; procedure upon receipt of notice by creditor

If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 1637 (b)(10) of this title a written notice (other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 1637 (a)(7) of this title) from the obligor in which the obligor—

(1) sets forth or otherwise enables the creditor to identify the name and account number (if any) of the obligor,

(2) indicates the obligor's belief that the statement contains a billing error and the amount of such billing error, and

(3) sets forth the reasons for the obligor's belief (to the extent applicable) that the statement contains a billing error,

the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct—

(A) not later than thirty days after the receipt of the notice, send a written acknowledgment thereof to the obligor, unless the action required in subparagraph (B) is taken within such thirty-day period, and

(B) not later than two complete billing cycles of the creditor (in no event later than ninety days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under paragraph (2) either—

(i) make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under paragraph (2) and, if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

(ii) send a written explanation or clarification to the obligor, after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with a statement of such determination.

After complying with the provisions of this subsection with respect to an alleged billing error, a creditor has no further responsibility under this section if the obligor continues to make substantially the same allegation with respect to such error.

(b) Billing error

For the purpose of this section, a "billing error" consists of any of the following:

(1) A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on such statement.

- (2) A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof.
- (3) A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction.
- (4) The creditor's failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor.
- (5) A computation error or similar error of an accounting nature of the creditor on a statement.
- (6) Failure to transmit the statement required under section 1637 (b) of this title to the last address of the obligor which has been disclosed to the creditor, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.
- (7) Any other error described in regulations of the Board.

(c) Action by creditor to collect amount or any part thereof regarded by obligor to be a billing error

For the purposes of this section, "action to collect the amount, or any part thereof, indicated by an obligor under paragraph (2)" does not include the sending of statements of account, which may include finance charges on amounts in dispute, to the obligor following written notice from the obligor as specified under subsection (a) of this section, if—

(1) the obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under paragraph (2) of subsection (a) of this section, and

(2) the creditor indicates the payment of such amount is not required pending the creditor's compliance with this section.

Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error.

(d) Restricting or closing by creditor of account regarded by obligor to contain a billing error

Pursuant to regulations of the Board, a creditor operating an open end consumer credit plan may not, prior to the sending of the written explanation or clarification required under paragraph (B)(ii), restrict or close an account with respect to which the obligor has indicated pursuant to subsection (a) of this section that he believes such account to contain a billing error solely because of the obligor's failure to pay the amount indicated to be in error. Nothing in this subsection shall be deemed to prohibit a creditor from applying against the credit limit on the obligor's account the amount indicated to be in error.

(e) Effect of noncompliance with requirements by creditor

Any creditor who fails to comply with the requirements of this section or section 1666a of this title forfeits any right to collect from the obligor the amount indicated by the obligor under paragraph (2) of subsection (a) of this section, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed \$50.

15 U.S.C. § 1640. Civil liability

(a) Individual or class action for damages; amount of award; factors determining amount of award

Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part, including any requirement under section 1635 of this title, or part D or E of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)

(A)

(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction,

(ii) in the case of an individual action relating to a consumer lease under part E of this subchapter, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than \$100 nor greater than \$1,000, or

(iii) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than \$200 or greater than \$2,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of \$500,000 or 1 per centum of the net worth of the creditor;

(3) in the case of any successful action to enforce the foregoing liability or in any action in which a person is determined to have a right of rescission under section 1635 of this title, the costs of the action, together with a reasonable attorney's fee as determined by the court; and

(4) in the case of a failure to comply with any requirement under section 1639 of this title, an amount equal to the sum of all finance charges and fees paid by the consumer, unless the creditor demonstrates that the failure to comply is not material.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional. In connection with the disclosures referred to in subsections (a) and (b) of section 1637 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title, section 1637 (a) of this title, or of paragraph (4), (5), (6), (7), (8), (9), or (10) of section 1637 (b) of this title or for failing to comply with disclosure requirements under State law for any term or item which the Board has determined to be substantially the same in meaning under section 1610 (a)(2) of this title as any of the terms or items referred to in section 1637 (a) of this title or any of those paragraphs of section 1637 (b) of this title. In connection with the disclosures referred to in subsection (c) or (d) of section 1637 of this title, a card issuer shall have a liability under this section only to a cardholder who pays a fee described in section 1637 (c)(1)(A)(ii)(I) or section 1637 (c)(4)(A)(i)

of this title or who uses the credit card or charge card. In connection with the disclosures referred to in section 1638 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title or of paragraph (2) (insofar as it requires a disclosure of the "amount financed"), (3), (4), (5), (6), or (9) of section 1638 (a) of this title, or for failing to comply with disclosure requirements under State law for any term which the Board has determined to be substantially the same in meaning under section 1610 (a)(2) of this title as any of the terms referred to in any of those paragraphs of section 1638 (a) of this title. With respect to any failure to make disclosures required under this part or part D or E of this subchapter, liability shall be imposed only upon the creditor required to make disclosure, except as provided in section 1641 of this title.

(b) Correction of errors

A creditor or assignee has no liability under this section or section 1607 of this title or section 1611 of this title for any failure to comply with any requirement imposed under this part or part E of this subchapter, if within sixty days after discovering an error, whether pursuant to a final written examination report or notice issued under section 1607 (e)(1) of this title or through the creditor's or assignee's own procedures, and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

(c) Unintentional violations; bona fide errors

A creditor or assignee may not be held liable in any action brought under this section or section 1635 of this title for a violation of this subchapter if the creditor or assignee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under this subchapter is not a bona fide error.

(d) Liability in transaction or lease involving multiple obligors

When there are multiple obligors in a consumer credit transaction or consumer lease, there shall be no more than one recovery of damages under subsection (a)(2) of this section for a violation of this subchapter.

(e) Jurisdiction of courts; limitations on actions; State attorney general enforcement

Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation. This subsection does not bar a person from asserting a violation of this subchapter in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law. An action to enforce a violation of section 1639 of this title may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. The State attorney general shall provide prior written notice of any such civil action to the Federal agency responsible for enforcement under section 1607 of this title and shall provide the agency with a copy of the complaint. If prior notice is not feasible, the State attorney general shall

provide notice to such agency immediately upon instituting the action. The Federal agency may—

- (1) intervene in the action;
- (2) upon intervening—

(A) remove the action to the appropriate United States district court, if it was not originally brought there; and

- (B) be heard on all matters arising in the action; and
- (3) file a petition for appeal.

(f) Good faith compliance with rule, regulation, or interpretation of Board or with interpretation or approval of duly authorized official or employee of Federal Reserve System

No provision of this section, section 1607 (b) of this title, section 1607 (c) of this title, section 1607 (e) of this title, or section 1611 of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) Recovery for multiple failures to disclose

The multiple failure to disclose to any person any information required under this part or part D or E of this subchapter to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan, consumer lease, or other extension of consumer credit, shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries. This subsection does not bar any remedy permitted by section 1635 of this title.

(h) Offset from amount owed to creditor or assignee; rights of defaulting consumer

A person may not take any action to offset any amount for which a creditor or assignee is potentially liable to such person under subsection (a)(2) of this section against any amount owed by such person, unless the amount of the creditor's or assignee's liability under this subchapter has been determined by judgment of a court of competent jurisdiction in an action of which such person was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this subchapter as an original action, or as a defense or counterclaim to an action to collect amounts owed by the consumer brought by a person liable under this subchapter.

(i) Class action moratorium

(1) In general

During the period beginning on May 18, 1995, and ending on October 1, 1995, no court may enter any order certifying any class in any action under this subchapter—

(A) which is brought in connection with any credit transaction not under an open end credit plan which is secured by a first lien on real property or a dwelling and constitutes a refinancing or consolidation of an existing extension of credit; and

(B) which is based on the alleged failure of a creditor—

(i) to include a charge actually incurred (in connection with the transaction) in the finance charge disclosed pursuant to section 1638 of this title;

(ii) to properly make any other disclosure required under section 1638 of this title as a result of the failure described in clause (i); or

(iii) to provide proper notice of rescission rights under section 1635 (a) of this title due to the selection by the creditor of the incorrect form from among the model forms prescribed by the Board or from among forms based on such model forms.

(2) Exceptions for certain alleged violations

Paragraph (1) shall not apply with respect to any action—

(A) described in clause (i) or (ii) of paragraph (1)(B), if the amount disclosed as the finance charge results in an annual percentage rate that exceeds the tolerance provided in section 1606 (c) of this title; or

(B) described in paragraph (1)(B)(iii), if—

(i) no notice relating to rescission rights under section 1635 (a) of this title was provided in any form; or

(ii) proper notice was not provided for any reason other than the reason described in such paragraph.



Benjamin Oshell
Hess Kennedy
Lee Stein
210 North University Dr
Suite 900
Coral Springs, FL 33071

CLAIMANT(s),

ORDER

RE: Benjamin Oshell v Citibank (South Dakota), N.A.
File Number: MX0802002047553

Citibank (South Dakota), N.A.
701 NE 60th St
Sioux Falls, SD 57117

RESPONDENT(s).

The undersigned Arbitrator in this case FINDS and CONCLUDES:

Case Summary

1. On March 4, 2008, Claimant filed a claim with the National Arbitration Forum.
2. On April 21, 2008, Respondent filed a Response, and a Motion for Involuntary Dismissal, which Respondent Requested be heard on an expedited basis.
3. Claimant has not submitted an Objection to the Request for Involuntary Dismissal.
4. The Parties have had an opportunity to present all evidence and information to the Arbitrator related to the Request for an Expedited Preliminary Order.
5. The Arbitrator has reviewed all evidence and information submitted in this matter. That evidence consisted of approximately four inches of documents submitted by both Parties. In addition, the Arbitrator at the Hearing on this matter requested both Parties to submit a two page document outlining their position for review by the Arbitrator. The only document submitted was sent by Respondent. The documents were to be submitted by July 14, 2008 and the Arbitrator wanted an additional week for Claimant to submit its position, which at this time has not been received by the Arbitrator.

Decision

1. The Arbitrator knows of no conflict of interest.
2. This matter involves interstate commerce and the Federal Arbitration Act governs this arbitration.
3. The matter has proceeded in accord with the applicable Forum code of Procedure.
4. The information and evidence submitted supports the issuance of an Order as stated.

Therefore, the Arbitrator Orders:

That Respondent's Request for an Order dismissing Claimant's Claim is **GRANTED**. Claimant's Claim is hereby **Dismissed With Prejudice**. This matter will proceed to a Hearing on the Respondent's Counter Claim only.

Entered and Affirmed in the State of Pennsylvania

Daniel R. Lovette

Daniel R. Lovette, Esq.
Arbitrator

Date: July 25, 2008

**ACKNOWLEDGEMENT AND CERTIFICATE
OF SERVICE**

This Order was duly entered and the Forum hereby certifies that a copy of this Order was sent by first class mail postage prepaid to the Parties at the above referenced addresses, or their Representatives, on this date.

WITNESS

==



January 15, 2009

Hirsch & Westheimer PC
Eric Lipper
700 Louisiana
25th Floor
Houston, TX 77002-2772
VIA FAX

Benjamin Oshell
1391 Irvona Rd
Irvona, PA 16696

RE: Benjamin Oshell v Citibank (South Dakota), N.A.
File Number: MX0802002047553
Claimant Account Number: 4253330210132293

Dear Parties:

The Respondent has submitted written notification regarding the status of their Counter Claim.

The Respondent has requested their Counter Claim be Dismissed. Pursuant to Rule 40 of the Code of Procedure, the Forum has granted the Dismissal of the Respondent's Counter Claim without Prejudice.

This case is now closed with the National Arbitration Forum. All future inquiries regarding this case should be directed to the opposing party.

Sincerely,

A handwritten signature in black ink, appearing to read "Cathy P.".

Cathy P.
Case Coordinator
1-800-474-2371 x6533
Fax: 1-866-421-8424

EXHIBIT C

BURTON NEIL & ASSOCIATES, P.C.
Brit J. Sutell, Esquire, Id. no. 204140
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA), N.A.
Plaintiff

v.

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
: NO. 07-1798-CD

BEN OSHELL a/k/a
BENJAMIN OSHELL

Defendant : CIVIL ACTION - LAW

Plaintiff's Brief in Support of Motion to Confirm Arbitration Award and Remove the Stay

A. History of the Case

Plaintiff sued defendant to recover the past due balance owed it on a credit card account.

Defendant filed preliminary objections seeking to compel private arbitration. By joint stipulation filed on or about February 25, 2008, defendant withdrew his preliminary objections and the parties agreed to stay the case at bar and proceed to private arbitration.

Defendant then filed a claim with the National Arbitration Forum ("NAF") against the plaintiff. Plaintiff filed a response, including a counterclaim and motion for involuntary dismissal, with the NAF. After a hearing was conducted by an independent arbitrator of the

NAF, an award was entered dismissing defendant's claim against plaintiff, with prejudice.

After the arbitration award was entered in plaintiff's favor, plaintiff sought and received a dismissal of its counterclaim against defendant which dismissal was granted without prejudice. Plaintiff now seeks to confirm the private arbitration award and remove the stay previously imposed on the case at bar.

B. Issue

Whether the arbitration award entered by the NAF should be confirmed and the stay removed from the case at bar?

C. Argument

1. The arbitration award entered by the NAF should be confirmed pursuant to Pa. R. C. P. 1329.

Under Pa. R. C. P. 1329, the present proceedings were properly stayed so that the parties could proceed to private arbitration pursuant to the joint stipulation filed by the parties. Pursuant to Pa. R. C. P. 1327, "any party may file a motion to confirm an arbitration award." An arbitration award can be confirmed if the arbitration award was entered following a court order or a docket entry staying the proceedings pending arbitration as provided by Pa. R. C. P. 1329. See Pa. R. C. P. 1327(2).

In the present action, the parties filed a joint stipulation to stay the proceedings pending arbitration after defendant filed preliminary objections seeking the same. Pursuant to the joint stipulation, defendant withdrew his preliminary objections and the matter was to proceed to private arbitration. Defendant filed for the arbitration with the NAF seeking damages for alleged billing errors by plaintiff. Plaintiff filed a response, including a counterclaim for the underlying credit card debt (which is also the subject matter of this lawsuit), as well as an involuntary motion for dismissal of defendant's claim.

After a hearing was conducted by an independent and neutral arbitrator of the NAF, an arbitration award was entered dismissing defendant's claim, with prejudice, and allowing the case to proceed on plaintiff's counterclaim. Plaintiff then sought a voluntary dismissal of its counter claim, which was granted, without prejudice. Therefore, plaintiff's motion to confirm the arbitration award is properly before this Court and confirmation of such award is also proper.

2. The Court should remove the stay previously entered on this matter.

As mentioned above, the stay was entered into by the parties so they could move forward with private arbitration. As mentioned above, the parties did proceed to private arbitration after defendant filed a claim against plaintiff. Defendant's claim was dismissed with prejudice in the NAF, while plaintiff's counterclaim against defendant was dismissed without prejudice. Therefore, plaintiff's claim against defendant, which is the subject matter of this lawsuit, remains open and ripe for litigation. As such, the Court should remove the stay previously entered on the docket and allow the matter to proceed before this Court.

D. Conclusion

Based on the foregoing, plaintiff's motion to confirm the NAF arbitration award and remove the stay should be granted.

Burton Neil & Associates, P.C.



By Brit J. Suttell, Esquire
Attorney for Plaintiff

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

Burton Neil & Associates, P.C.
By: Brit J. Suttell, Esquire ID. NO. 204140
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA), N.A. : IN THE COURT OF COMMON PLEAS
Plaintiff
v. : CLEARFIELD COUNTY, PENNSYLVANIA
: NO. 07-1798-CD
BEN OSHELL a/k/a BENJAMIN OSHELL
Defendant : CIVIL ACTION - LAW

Certificate of Service

I, Brit J. Suttell, Esquire, do hereby certify that I served a true and correct copy of the within Plaintiff's Motion to Confirm Arbitration Award and Remove Stay, Brief in Support, Rule to Show Cause, proposed Order and Coversheet on defendant's counsel, Timothy D. McNair, Esquire, at his address of record via first class mail, postage prepaid on the date set forth below.

Burton Neil & Associates, P.C.

Date: June 11, 2009

By:


Brit J. Suttell, Esquire
Attorney for Plaintiff

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

C-12757

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

CITIBANK (SOUTH DAKOTA), N.A. : IN THE COURT OF COMMON PLEAS
Plaintiff

v. : NO. 07-1798-CD

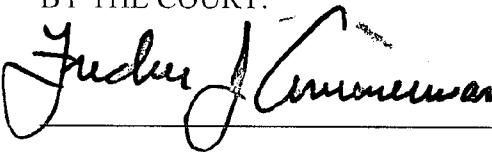
BEN OSHELL a/k/a BENJAMIN OSHELL
Defendant : CIVIL ACTION - LAW

ORDER

AND NOW, this 16th day of June, 2009, upon consideration of the foregoing motion, it is hereby **ORDERED** that:

- (1) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested;
- (2) the respondent shall file an answer to the motion within ____ days of this date;
- (3) the motion shall be decided under Pa. R.C.P. No. 206.7;
- (4) depositions and all other discovery shall be completed within ____ days of this date;
- (5) an evidentiary hearing on disputed issues of material fact shall be held on _____ in the Clearfield County Courthouse, Clearfield, Pennsylvania, in Courtroom No. _____;
- (6) argument shall be held on August 28, 2009, in Courtroom No. 1 of the Clearfield County Courthouse; and 10:00 A.M.
- (7) notice of the entry of this Order shall be provided to all parties by the moving party.

BY THE COURT:


J. Commonwealth

FILED ^{ics}
JUN 17 2009 Atty Sutell
S. William A. Shaw
Prothonotary/Clerk of Courts

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William A. Shaw
Prothonotary/Clerk of Courts
CEN + to ANN

Burton Neil & Associates, P.C.
By: Edward J. O'Brien, Esquire ID. NO. 32985
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120

Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA), N.A. : IN THE COURT OF COMMON PLEAS
Plaintiff

v. : CLEARFIELD COUNTY, PENNSYLVANIA

: NO. 07-1798-CD
BEN OSHELL a/k/a BENJAMIN OSHELL
Defendant : CIVIL ACTION - LAW

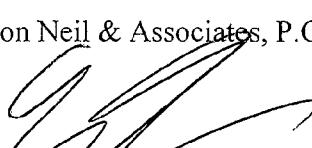
Certificate of Service

I, Edward J. O'Brien, Esquire, do hereby certify that I served a true and correct copy of the
within Court's June 16, 2009 Order on defendant's counsel, Timothy D. McNair, Esquire, at his
address of record via first class mail, postage prepaid on the date set forth below.

Burton Neil & Associates, P.C.

Date: 6/29/09

By:


Edward J. O'Brien, Esquire
Attorney for Plaintiff

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

C-12757

C-12757
Any Date

**IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW**

CITIBANK (SOUTH DAKOTA), N.A. : IN THE COURT OF COMMON PLEAS
Plaintiff

v. : NO. 07-1798-CD

BEN OSHELL a/k/a BENJAMIN OSHELL
Defendant : CIVIL ACTION - LAW

ORDER

AND NOW, this 16th day of June, 2009, upon consideration of the foregoing motion, it is hereby **ORDERED** that:

- (1) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested;
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- (3) the motion shall be decided under Pa. R.C.P. No. 206.7;
- (4) depositions and all other discovery shall be completed within ____ days of this date;
- (5) an evidentiary hearing on disputed issues of material fact shall be held on _____ in the Clearfield County Courthouse, Clearfield, Pennsylvania, in Courtroom No. _____;
- (6) argument shall be held on August 28, 2009, in Courtroom No. 1 of the Clearfield County Courthouse, and @ 10:00 A.M.
- (7) notice of the entry of this Order shall be provided to all parties by the moving party.

BY THE COURT:

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

/S/ Fredric J Ammerman

J.

JUN 17 2009

Attest.

William H. Ammerman
Prothonotary/
Clerk of Courts

COPY

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

CITIBANK (SOUTH DAKOTA) N.A.

Plaintiff

vs.

BEN OSHELL a/k/a BENJAMIN OSHELL

Defendant

* No. 07-1798-CD

*

*

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ORDER

FILED

JUL 02 2009

07/11/09/CW

William A. Shaw

Prothonotary/Clerk of Courts

cc'd to ATTY'S

SUTTLE

J. MCNAUL

NOW, this 1st day of July, 2009, due to a scheduling conflict, it is
the ORDER of this Court that the Argument on Plaintiff's Motion to Confirm Arbitration
Award and Remove Stay be and is hereby rescheduled from the 28th day of August,
2009, at 10:00 a.m. to the 3rd day of September, 2009 at 10:00 a.m. in Courtroom
No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

Special Instructions:
 Defendant(s) Plaintiff(s) Attorney Other
 Plaintiff(s) Plaintiff(s) Attorney Other
 The Prothonotary's Office has provided service to the following parties:
 You are responsible for serving all appropriate parties.
DATE: 7-2-09

Prothonotary/Clerk of Courts
William A Shaw

JUL 02 2009

FILED

Timothy D. McNair, Esquire
Pa. I.D. #34304
821 State Street
Erie, PA 16501
(814) 452-0700
Attorney for Defendant

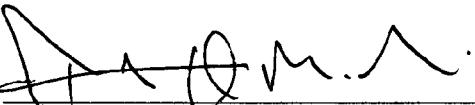
CITIBANK (SOUTH DAKOTA), N.A. : IN THE COURT OF COMMON PLEAS
701 East 60th Street N :
Sioux Falls, SD 57117 : CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff :
: NO. 07-1798-CD
BEN OSHELL aka BENJAMIN OSHELL :
1391 Irvona Road : CIVIL ACTION - LAW
Irvona, PA 16656-8501 :
Defendant :
:

SUGGESTION OF DEATH

NOW COMES Timothy D. McNair, counsel for Benjamin J. Oshell, and respectfully represents that Mr. Oshell passed away on June 2, 2009. To counsel's knowledge, no administrator has yet been appointed.

Respectfully submitted,

LAW OFFICES OF TIMOTHY D. McNAIR

By: 

Timothy D. McNair, Esquire
821 State Street
Erie, PA 16501
(814) 452-0700

August 17, 2009

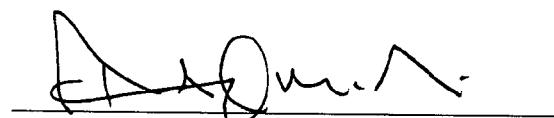
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AUG 20 2009
S (Col)
William A. Shaw
Prothonotary/Clerk of Courts

CITIBANK (SOUTH DAKOTA), N.A.	:	IN THE COURT OF COMMON PLEAS
701 East 60 th Street N	:	
Sioux Falls, SD 57117	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	NO. 07-1798-CD
BEN OSHELL aka BENJAMIN OSHELL:	:	
1391 Irvona Road	:	CIVIL ACTION - LAW
Irvona, PA 16656-8501	:	
Defendant	:	

CERTIFICATE OF SERVICE

On this 17th day of August, 2009, the undersigned does depose and say that he served a true and correct copy of Suggestion of Death upon the following by first class, United States mail:

Brit J. Suttell, Esquire
Burton Neil & Associates, P.C.
1060 Andrew Drive, Suite 170
West Chester, PA 19380



Timothy D. McNair, Esquire
Attorney for Defendant

CLEARFIELD County, Pennsylvania
Department of Court Records
Civil Division

COVER SHEET

Plaintiff(s)

CITIBANK (SOUTH DAKOTA), N.A.
701 East 60th Street N
Sioux Falls, SD 57117

Case Number:
07-1798-CD

FILED ICC & Cmt
m 112.28cm to ATT O'Brien
AUG 27 2009
William A. Shaw
Prothonotary/Clerk of Courts
Copy to CJA

Type of Pleading:
Praeclipe

Code and Classification:

Filed on Behalf of:

Plaintiff
CITIBANK (SOUTH DAKOTA), N.A.

Vs.

(Name of the filing party)

Defendant(s)

BEN OSHELL a/k/a BENJAMIN OSHELL
1391 Irvona Road
Irvona Pa 16656-8501

Counsel of Record
 Individual, if pro se

Name, Address and Telephone Number:

Edward J. O'Brien, Esquire
Burton Neil & Associates, P.C.
1060 Andrew Drive, Suite 170
West Chester, PA 19380
Telephone: 610-696-2120
email: litigation@burt-law.com

Attorney's State ID:
32985

Attorney's Firm ID:

(Signature)

Burton Neil & Associates, P.C.
By: Edward J. O'Brien, Esquire ID. NO. 32985
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120
Attorney for Plaintiff

CITIBANK (SOUTH DAKOTA), N.A.
Plaintiff
v.

BEN OSHELL
a/k/a BENJAMIN OSHELL
Defendant

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
: NO. 07-1798-CD
: CIVIL ACTION - LAW

Praecipe to Discontinue

To the Prothonotary:

Kindly discontinue the above-captioned action without prejudice.

Burton Neil & Associates, P.C.

By:

Edward J. O'Brien, Esquire
Attorney for Plaintiff

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

C-12757

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Citibank (South Dakota), N.A.

Vs.
Ben O'Shell

No. 2007-01798-CD

CERTIFICATE OF DISCONTINUATION

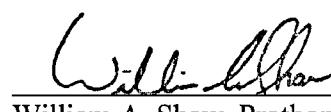
Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on August 27, 2009, marked:

Discontinued without prejudice

Record costs in the sum of \$85.00 have been paid in full by Brit J. Suttell Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 27th day of August A.D. 2009.



William A. Shaw, Prothonotary