

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION

DISCOVER BANK

Plaintiff

v.

EVAN S GUTMAN

Defendant

CASE NUMBER:

50-2019-CA-013570-XXXX-MB

**DEFENDANT'S
ANSWER**

ANSWER

I, Evan Gutman, Answer the Complaint as follows:

1. Defendant lacks sufficient knowledge to Admit or Deny Paragraph (1) as it does not pertain to Defendant.
2. Defendant Admits Paragraph (2) in part and Denies Paragraph (2) in part. Defendant Admits this is an action. Defendant Admits Plaintiff seeks alleged damages exceeding \$ 15,000.00. Defendant Denies any liability for any alleged damages, based on Affirmative Defenses set forth herein, and therefore Denies characterization of such as "damages" without stating such are only "alleged."
3. Defendant lacks sufficient knowledge to Admit or Deny Paragraph (3).
4. Defendant lacks sufficient knowledge to Admit or Deny Paragraph (4)
5. Defendant lacks sufficient knowledge to Admit or Deny Paragraph (5).
6. Defendant Denies Paragraph (6) based upon Affirmative Defenses set forth below.
7. Defendant Denies Paragraph (7).
8. Defendant lacks sufficient knowledge to Admit or Deny Paragraph (8), and Denies any Waiver.

AFFIRMATIVE DEFENSES

1. As FIRST Affirmative Defense, Defendant asserts the alleged credit card agreement is an unenforceable contract of adhesion containing multiple provisions VOID as against public policy, which are so numerous and seriously egregious they can not fairly be severed from the alleged contract as a whole.
2. As SECOND Affirmative Defense, Defendant asserts Discover Bank has engaged in Unfair and Deceptive Acts and Practices, including but not limited to including within an unenforceable contract of adhesion multiple provisions VOID as against public policy, which are so numerous and seriously egregious they can not fairly be severed from the alleged contract as a whole.
3. As THIRD Affirmative Defense, Defendant asserts the law firm of Zwicker & Associates, P.C. in its' legal representation of Discover Bank, violated Florida State Bar Rule of Professional Conduct 4-1.3. Specifically, in the law firm's letter of July 16, 2019 (Exhibit 1 attached), **the law firm represented on law firm letterhead, that they were Attorneys at Law, retained as a law firm**, assisting their client to collect a debt asserted as legally owed, **as a debt collector law firm**. Defendant has circled and bracketed the appropriate sections of Zwicker's letter. However, the law firm then expressly stated as follows (emphasis added):

"As of this time, no attorney with this firm has personally reviewed the particular circumstances of your account."

Florida State Bar Rule of Professional Conduct 4-1.3 (See Exhibit 2) expressly requires that a lawyer "shall act with reasonable diligence," and **the letter of Zwicker & Associates openly asserts no attorney of the firm reviewed the matter before a legal letter was sent out and accordingly, such reasonable diligence as required by the Florida State Bar was not performed.**
4. As FOURTH Affirmative Defense, Defendant asserts in its' legal representation of Discover Bank, **the law firm of Zwicker & Associates, P.C. engaged in Unfair and Deceptive Acts and Practices by violating Florida State Bar Rule of Professional Conduct 4-1.3.** (See Exhibit 2)
5. As FIFTH Affirmative Defense, Defendant asserts Estoppel.
6. As SIXTH Affirmative Defense, Defendant asserts the Complaint fails to state a cause of action for reasons including but not limited to the fact it does not identify any Account Number at all, upon which alleged damages are asserted.
7. As SEVENTH Affirmative Defense, Defendant asserts Unclean Hands.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant requests
Dismissal With Prejudice.

Dated this 1st day of November, 2019.



Evan Gutman CPA, JD
1675 NW 4th Avenue, #511
Boca Raton, FL 33432
561-990-7440

NOT A CERTIFIED COPY

CERTIFICATE OF SERVICE

I Evan Gutman, hereby CERTIFY that a true copy of the foregoing was mailed via U.S. Certified Mail, Return Receipt Requested, on this 1st day of November, 2019 addressed as follows to :

Zwicker & Associates, P.C.
Attn: Zoran D. Jovanovich, Esq.
700 W. Hillsboro Blvd.
Building 2; Suite 201
Deerfield Beach, FL 33441


Evan Gutman CPA, JD
1675 NW 4th Avenue, #511
Boca Raton, FL 33432
561-990-7440

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EXHIBIT 1

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76738-16A 8***AUTO**MIXED AADC.350
Evan S Gutman
1675 NW 4th Ave
Apt 511
Boca Raton FL 33432-3505



THIS LAW FIRM
EMPLOYS ONE OR
MORE ATTORNEYS
ADMITTED TO
PRACTICE IN THE
FOLLOWING
STATES:

- ALASKA
- ARIZONA
- CALIFORNIA
- COLORADO
- CONNECTICUT
- FLORIDA
- GEORGIA
- IDAHO
- ILLINOIS
- INDIANA
- KENTUCKY
- MARYLAND
- MASSACHUSETTS
- MICHIGAN
- MINNESOTA
- NEW HAMPSHIRE
- NEW JERSEY
- NEW YORK
- NORTH CAROLINA
- OHIO
- OREGON
- PENNSYLVANIA
- RHODE ISLAND
- SOUTH CAROLINA
- TENNESSEE
- TEXAS
- VIRGINIA
- WASHINGTON
- WEST VIRGINIA
- DISTRICT OF COLUMBIA

Personal and Confidential

07/16/2019

File ID: 5511250

Creditor: Discover Bank

Account number ending in: [REDACTED]^{2,3,4}

Balance: \$16,618.87

Dear EVAN S GUTMAN:

This law firm has been retained by the above-named creditor to assist it in the collection of the funds you owe on the above-referenced account. Your balance is \$16,618.87.

As of this time, no attorney with this firm has personally reviewed the particular circumstances of your account. This letter is not a threat of suit and should not be construed to be a threat of suit.

Please note that unless you dispute said debt, or any portion thereof, within thirty (30) days after your receipt of this letter, this firm shall assume the validity of this debt. Upon your written notification within such thirty-day period that this debt, or any portion thereof, is disputed, this firm shall obtain verification of the debt or a copy of a judgment, if any, against you and mail you a copy of such verification or judgment. Furthermore, upon your written request within said thirty-day period, this firm shall provide you with the name and address of the original creditor, if different from the current creditor.

Please contact this firm to discuss repayment with one of our non-attorney account representatives.

Sincerely,

ZWICKER & ASSOCIATES, P.C.

¹ This firm is a debt collector.

² This firm is attempting to collect a debt and any information obtained will be used for that purpose.

³ Important notices appear on the back of this letter. Please read them as they may affect your rights.

⁴ Colorado residents: please read important notice on the back of this letter.

*****PLEASE SEND ALL PAYMENTS AND CORRESPONDENCE TO THE ADDRESS BELOW*****

Zwicker & Associates P.C. ♦ 80 Minuteman Rd ♦ Andover, Massachusetts 01810-1008

Tel. (877) 266-7965 ♦ Fax (978) 686-3538 ♦ TTY (877) 249-1916

FILED: PALM BEACH COUNTY, FL; SHARON R. BOCK, CLERK. 11/4/2019 12:15:00 PM

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IMPORTANT NOTICES

OFFICE HOURS: Monday through Thursday 8:00 AM – 9:00 PM, and Friday 8:00 AM – 7:00 PM. (All times are Eastern).

We are required under state law to notify consumers of the following rights. This list does not contain a complete list of the rights consumers have under state and federal law.

California – The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

California/Utah - As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

Colorado - The following language is required by Colorado state law to be contained in the initial written communication sent to Colorado consumers:

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.COAG.GOV/CAR. A CONSUMER HAS THE RIGHT TO REQUEST IN WRITING THAT A DEBT COLLECTOR OR COLLECTION AGENCY CEASE FURTHER COMMUNICATION WITH THE CONSUMER. A WRITTEN REQUEST TO CEASE COMMUNICATION WILL NOT PROHIBIT THE DEBT COLLECTOR OR COLLECTION AGENCY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW TO COLLECT THE DEBT.

Colorado residents may contact our office by telephone at 800-370-2251 during the office hours stated above.

Massachusetts – Massachusetts residents may contact our office by telephone at 800-370-2251 during the office hours stated above. The business address is: 80 Minuteman Road, Andover, Massachusetts 01810-1008. Massachusetts Law requires that we inform you:

NOTICE OF IMPORTANT RIGHTS

YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE CREDITOR.

To all consumers: Federal law or other state laws may also provide you with similar or even greater rights.

Authorizing us by phone to set up payments on your account

If you and this firm agree that you can make a series of monthly payments on your account in specified amounts, you can authorize this firm by phone to initiate those payments electronically from your bank account. By (1) calling us at 800-370-2251 (NY City and Yonkers Residents-Only- Call-877-368-4531) or taking a call from us; (2) specifying the amounts and dates of payments which you would like to make; (3) identifying the bank account of yours which you wish to use to make the payments; and (4) electronically signing an Authorization, you authorize us to initiate payments from your account in the amounts and on the dates that you specify (and, if necessary, to electronically correct any erroneous debits or credits). You understand that your bank may charge you a fee for any unsuccessful payment and that we have no liability for any such fee. All ACH transactions that you authorize must comply with all applicable law and ACH network rules. **YOU ARE NOT REQUIRED TO ARRANGE FOR OR AUTHORIZE ANY PAYMENTS OF THIS TYPE.** If you choose to provide an authorization, you can cancel it by calling us toll free at 800-370-2251 (NY City and Yonkers Residents Only Call 877-368-4531) or sending written notice to us at Zwicker & Associates, P.C., 80 Minuteman Road, Andover, MA 01810. Any cancellation request should be received by us at least three business days before the date on which you want the cancellation to be effective. Your authorization in no way limits any right you may have under federal law to stop payment of a preauthorized electronic transfer by contacting your financial institution.

New York City Department of Consumer Affairs License No. 2045431-DCA: 80 Minuteman Road, Andover, MA 01810
New York City Department of Consumer Affairs License No. 2045486-DCA: 2300 Litton Lane, Suite 200, Hebron, KY 41048
New York City Department of Consumer Affairs License No. 2048466-DCA: 1225 West Washington St., Suite 110, Tempe, AZ 85281



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EXHIBIT 2

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aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See rule 4-1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation, or the like. See rule 4-4.1.

Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

Subdivision (d) applies whether or not the defrauded party is a party to the transaction. For example, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Subdivision (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last sentence of subdivision (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See rule 4-1.4(a)(5).

Rule 4-1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment

A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See rule 4-1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

A lawyer's workload must be controlled so that each matter can be handled competently.

Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer. A lawyer's duty to act with reasonable promptness, however,

does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

Unless the relationship is terminated as provided in rule 4-1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See rule 4-1.4(a)(2). Whether the lawyer is obligated to prosecute an appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See rule 4-1.2.

Rule 4-1.4. Communication

(a) Informing Client of Status of Representation. A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, defined in terminology, is required by these rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitations on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) Duty to Explain Matters to Client. A lawyer shall explain a matter to the extent reasonably necessary to enable the client to make informed decisions regarding the representation.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); 23, 2006, effective May 22, 2006 (933 So.2d 417).

Comment

Reasonable communication between the lawyer and the client is necessary for the client to effectively participate in the representation.

Communicating with client

If these rules require that a particular decision about the representation be made by the client, subdivision (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives an opposing counsel's offer of settlement in a civil case must promptly advise the client of the offer and discuss the offer with the client or a proffered plea bargain in a criminal case must promptly