

RECEIVED

MAR 27 2009

SEALE & RUSS

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TWENTY-FIRST JUDICIAL DISTRICT COURT

PARISH OF TANGIPAHOA

STATE OF LOUISIANA

NUMBER: *2009-0001040*

DIVISION:

JOSEPH MIER AND ASSOCIATES, INC.

VERSUS

CAPITAL ONE, N.A.

FILED: MAR 24 2009 DY CLERK S/BARBARA YERBY

2009 MAR 24 PM 1:41

PETITION FOR RESTORATION OF FUNDS AND DAMAGES

The petition of Joseph Mier and Associates, Inc., a Louisiana corporation authorized to do business in the State of Louisiana, having its principal place of business in the State of Louisiana in Tangipahoa Parish at 1000 C.M. Fagan Drive, Suite E, Hammond, Louisiana 70403, represents that:

1.

Made Defendant herein is Capital One Bank, N.A., a national banking corporation having its headquarters in McLean, Virginia, but having a business office or establishment at 1200 Southwest Railroad Avenue, Hammond, Louisiana, which business office or establishment had supervision over the matter in controversy.

2.

Defendant, is justly and truly indebted to Plaintiff in the amount of TWENTY-SEVEN THOUSAND SIX HUNDRED TWENTY DOLLARS (\$27,620.00), together with legal interest from judicial demand until paid, for damages to be determined at trial of this matter, for reasonable attorney's fees, and for all costs of these proceedings, for the following:

3.

Plaintiff is the owner of a checking account number 208-132-6234 held by Defendant. On or about February 25, 2009 four (4) unauthorized Automated Clearing House (ACH) withdrawals totaling TWENTY-SEVEN THOUSAND SIX HUNDRED TWENTY DOLLARS (\$27,620.00) were made from Plaintiff's checking account, as set forth in attached Exhibit "A". The parties

making the withdrawals were unknown to Plaintiff, and Plaintiff received no benefit from the unauthorized withdrawals.

4.

Upon discovery of the unauthorized withdrawals, Plaintiff timely notified Defendant of the withdrawals, but was told that Defendant would not restore the unauthorized withdrawals, claiming that the loss was the result of a security failure caused by Plaintiff's computer, and was not caused by a security failure at Defendant bank.

5.

Plaintiff engaged the services of a computer consultant to verify that no security breach had occurred involving Plaintiff, and the request for the restoration of funds was reiterated with Defendant, to no avail. Defendant has thus far failed to give a written explanation of its reasons for refusing to restore the funds.

6.

But for the fact that Defendant permitted unauthorized access to Plaintiff's checking account, the unauthorized withdrawals would not have occurred. Since the security breach of access to Plaintiff's checking account occurred while Plaintiff's account was under Defendant's exclusive control, Defendant is responsible unto Plaintiff for the restoration of the funds improperly withdrawn, as well as for damages caused by the unavailability of such funds from the time of loss until they are restored, for legal interest from judicial demand until paid, for reasonable attorney's fees for bringing this action, which said attorney's fees should be set at 33-1/3% of the amount of the unauthorized withdrawals plus damages and which are reasonable under the circumstances, and for all costs of these proceedings.


WHEREFORE, Plaintiff prays that there be judgment herein in favor of Plaintiff, Joseph Mier and Associates, Inc., and against Defendant, Capital One Bank, N.A., in the full and true sum of TWENTY-SEVEN THOUSAND SIX HUNDRED TWENTY DOLLARS (\$27,620.00), plus damages caused by the unavailability of such funds from the time of loss until they are restored, for legal interest from judicial demand until paid, and for reasonable attorney's fees for bringing this action, which said attorney's fees should be set at 33-1/3% of the unauthorized withdrawals plus damages and which are reasonable under the circumstances, for all costs of these proceedings, and

for such other further legal and equitable relief as the Court shall deem necessary and proper.

Respectfully submitted this 24th day of March, 2009.

Respectfully submitted,

SEALE & ROSS, P.L.C.


T. JAY SEALE III #11901
DOUGLAS C. DRIGGERS #26867
200 NORTH CATE STREET
P.O. DRAWER 699
HAMMOND, LA 70404
(985) 542-8500
FAX (985) 542-4111

PLEASE SERVE

Capital One Bank, N.A.

Through its agent for service of process:

Corporation Service Company (CSC)

320 Somerlos Street

Baton Rouge, LA 70802

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AFFIDAVIT OF CORRECTNESS OF PETITION

BEFORE ME, the undersigned authority, personally came and appeared: Joseph A. Mier, who did depose and say that he is the President of Joseph Mier and Associates, Inc. and is duly authorized to make this Affidavit, and is familiar with checking account number 208-1432-6234 belonging to Joseph Mier and Associates, Inc. at Capital One Bank, N.A. and that, as may be seen by pleadings and exhibits filed heretofore herein, Capital One Bank, N.A. is justly and truly indebted to Joseph Mier and Associates, Inc. for the restoration of unauthorized withdrawals totaling TWENTY-SEVEN THOUSAND SIX HUNDRED TWENTY DOLLARS (\$27,620.00), plus damages caused by the unavailability of such funds from the time of loss until they are restored, for legal interest from judicial demand until paid, and for reasonable attorney's fees for bringing this action, which said attorney's fees should be set at 33- $\frac{1}{3}$ % of the unauthorized withdrawals plus damages and which are reasonable under the circumstances, and for all costs of these proceedings, and that he has read the foregoing Petition, that all the allegations of fact made in the Petition are true, to the best of his knowledge and belief.



Joseph A. Mier, President

Sworn to and subscribed before me this 24th day of MARCH, 2009.

Charlotte De Ramus
NOTARY PUBLIC

Charlotte De Ramus, Notary Public
200 N. Cate St., Hammond, LA 70401
State of Louisiana, Notary# 39740
My commission expires at death



Joseph Mier & Associates

REAL ESTATE APPRAISERS
AND CONSULTANTS

1000 C.M. Fagan Dr. Ste F Hammond, LA 70403
Phone 985.230.0730 Fax 985.230.0504
joe@jmappraisers.com

www.jmappraisers.com

March 10, 2009

RE: ACH Withdraws

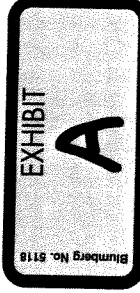
To whom it may concern:

These 4 ACH withdrawals were sent out in error or by fraud. In the following amounts:

\$8700.00	} 27,620.00
\$9720.00	
\$9200.00	
-\$8875.00	(ENTRY REVERSED)

Sincerely,

Joseph A. Mier
Joseph Mier & Associates
1000 CM Fagan Dr. Ste E
Hammond, LA 70403



35,885

35,895

Fraud Dept

RptBatchSumViewForm

Report Date: 03/12/2009
Report Time: 03:56:30 PM

TowerACH
MURPHY & MIER APPRAISAL SERVICE

Batch Summary Report by ID Number

02/25/2009
2

Effective Date:
Batch Sequence:

MURPHY&MIER APPR

Company Name:
Application Name:
Database Name:
Batch Status:

Payroll
payrollIMM
Submitted

Acct Type
C
C

Account #
2680292394
2680292394

Amount D/C BankID
\$9,200.00 C 091000019
\$0.00 PC 091000019

ID Number
108970
108970

Effective Date:
Batch Sequence:

Total Amount in Batch
Total Count in Batch
\$0.00 0
\$9,200.00 1
\$0.00 1

Wells Fargo
MINN Sota

MURPHY&MIER APPR

Effective Date: 02/26/2009
Batch Sequence: 1

Company Name:
Application Name:
Database Name:
Batch Status:

Payroll
payroll7
Submitted

Acct Type
C
C

Account #
750781999
750781999

Amount D/C BankID
\$9,720.00 C 071000013
\$0.00 PC 071000013

ID Number
226300
226300

Total Amount in Batch
Total Count in Batch
\$0.00 0
\$9,720.00 1
\$0.00 1

SP Morgan
Chase
Missisori

MURPHY&MIER APPR

Effective Date: 02/26/2009
Batch Sequence: 2

Company Name:
Application Name:
Database Name:
Batch Status:

Payroll
payroll00802
Submitted

Acct Type
C
C

Account #
021202337
021202337

Amount D/C BankID
\$8,700.00 C 021202337
\$0.00 PC 021202337

ID Number
876765
876765

Ulead
FLA

MAR-13-2009 FRI 11:22 AM

FAX NO. _____

P. 03

Page 2 of 2

xptBatchSum ViewForm

	Total Amount in Batch	Total Count in Batch
Debits	\$0.00	0
Credits	\$6,700.00	1
Prenotes	\$0.00	1

	Grand Total Amount	Grand Total Count
Debits	\$0.00	0
Credits	\$27,620.00	3
Prenotes	\$0.00	3