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8 MUNICIPAL COURT OF THE NEWHALL JUDICIAL DISTRICT
9 FOR THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA
(SMALL CLAIMS DIVISION)
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11 LARAIN K. ARKOW and) CASE NO. S/C 95S00592
12 ROBERT V. ARKOW)
13 Plaintiff,) STATEMENT OF DECISION
14 vs.)
15 BANK OF AMERICA, N.T.S.A.)
16 Defendants.)
17

18 This action is brought on behalf of Plaintiffs who allege total
19 damages of \$2,000.00 excluding court costs as follows:

- 20 \$500.00 for Breach of Contract;
- 21 \$500.00 Violation of Telephone Consumer Protection Act, (TCPA);
- 22 \$1,000.00 Punitive Damages.

23 On April 13, 1995, a telephone call was made by Bank of America
24 employee Jason Evans to plaintiffs. Plaintiffs telephone number and
25 name was made available to Mr. Evans by the bank. The purpose of the
26 contact was to advise the Arkows of other investments that would be
27 available to them. The Arkows were not available to receive the call
28 and a message was left by Mr. Evans stating substantially as follows:

"This is Jason calling from the Palmdale branch of Bank of
frm\pld\depo.ntc -1-

1 America. I need to talk to you about your savings account.

2 Please call me at (805) 378-7237."

3 The purpose of Mr. Evans call was to advise the Arkows of other
4 investments that were being offered by defendant and as such, the
5 telephone call was a telephone solicitation in that it was made for
6 the purpose of encouraging a purchase or rental or investment in
7 property, goods or services.

8 Telephone solicitation does not include a caller message to any
9 person with whom the caller has an established business relationship.

10 There is no dispute that a prior business relationship existed
11 between plaintiffs and defendants by virtue of a deposit account and a
12 loan. An established business relationship may be terminated by
13 indicating the consumer does not want to receive any more calls or
14 solicitations from the business. A Disclosure and Loan Agreement
15 dated February 5, 1994 includes a provision number 19, "Bank not to
16 telemarket customer." The original loan agreement contains this
17 paragraph. The loan was granted by the bank and no objection to the
18 provision was made.

19 On April 13, 1995 plaintiff Robert Arkow faxed Bank of America in
20 Lancaster a demand pursuant to 47 USC Section 227 for the banks "Do
21 Not Call Policy". The do not call policy was not delivered until
22 approximately five (5) weeks after demand was made and after the claim
23 of plaintiff was filed on May 1, 1995.

24 At the time of making a live solicitation, the bank is required
25 to provide the called party with the name of the individual caller,
26 the person or entity on whose behalf the call is made and a telephone
27 number or address at which the person or entity may be contacted.
28 Bank of America employee, Jason Evans was not completely identified in

1 that his last name was not given, nor was his correct location given.
2 Mr. Evans represented that he was from the Palmdale branch Bank of
3 America, however he was not. The telephone number given by Mr. Evans
4 for a return call is not for the Palmdale branch, but is some place in
5 Moorpark, California.

6 The Telephone Consumers Protection Act provides for a private
7 right of action that may be brought in State Court to recover actual
8 monetary loss from violation of the act or \$500.00 in damages for each
9 violation whichever is greater.

10 It is troubling in reviewing the Public Notice prepared by
11 Federal Communication Commission on January 11, 1993 and the T.C.P.A.
12 that neither contemplates or gives right to a cause of action based
13 upon one (1) Telephone Solicitation within a twelve month period. 47
14 USC Section 227 (c) (5) provides in part:

15 "a person who has received more than one telephone call within
16 any twelve month period by or on behalf of the same entity in
17 violation of the regulations prescribed under this sub section
18 may.....bring in an appropriate court of that state-

19 "(B) an action to recover for actual monetary loss from such a
20 violation, or to receive up to \$500.00 in damages for each such
21 violation, whichever is greater,...."

22 There being only one telephone call at issue, the court finds
23 that that single telephone did not constitute a violation of 47 USC,
24 Section 227.

25 Defendant, however, has violated FCC Rules with respect to
26 failure to provide the Do Not Call Policy upon demand. Senior Vice
27 President and District Manager, Ron Nemetz testified that the demand
28 for a copy of the policy waited on his desk for him review the policy

1 prior to it's release. I can find no authority for the delay of the
2 bank in turning over the policy in response to a demand.

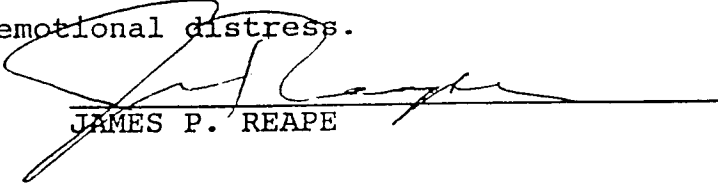
3 Furthermore, bank employee, Jason Evans failed to properly
4 identify himself at the time the telephone solicitation was made.

5 Damages in the sum of \$500.00 for each violation is awarded to
6 Plaintiff.

7 Plaintiff's final cause of action for punitive damages is based
8 upon, as plaintiff stated, a cause of action for intentional
9 infliction of emotional distress. No testimony was offered to show
10 that Bank of America intended to cause emotional distress to
11 plaintiff, or that defendant willfully or knowingly violated T.C.P.A
12 or FCC Regulations.

13 Judgment entered in favor of Defendant on Plaintiffs claim of
14 intentional infliction of emotional distress.

15 DATED: JUN 15 1995


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17 JAMES P. REAPE
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