

Certified Mail No: 7004 0750 0001 7820 2384

To: Richard D. Fairbank  
Capital One Bank  
PO BOX 30285  
Salt Lake City, UT 84130-0285

## NOTICE OF DEFAULT

Jointly, individually and personally,

Regarding Account Number 5178052431612775, the following statements are true.

On September 28<sup>th</sup>, 2005 a Draft/Check was sent to Capital One Bank to pay off the above referenced account in the amount stated by Capital One Bank. Capital One Bank received it on September 29<sup>th</sup>, 2005. Capital One Bank had 90 days to present it but has failed to do so.

U.C.C. §3-603 Tender of payment.

(a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

Further, the United States Supreme Court has ruled:

"His tender, as we have already seen, was equivalent to payment, so far as concerns the legality of all subsequent steps by the collector to enforce payment by distraint of his property." *Poindexter v. Greenhow*, 114 U.S. 270 quoted in *AYERS. SCOTT. MCCABE.*, 8 S. Ct. 164, 123 U.S. 443 (U.S. 12/05/1887)

Further:

"Silence can only be equated with fraud when there is a legal or moral duty to speak, or when an inquiry left unanswered would be intentionally misleading... We cannot condone this shocking conduct... If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately"  
U.S. v. Tweel, 550 F2d 297, 299-300.

Based on the foregoing evidence Capital One Bank is hereby deemed to be in default.

### **DECISION**

Decision in favor of the CARDHOLDER is hereby granted:

It is determined that the agreement involving the above mentioned account has been lawfully surrendered and is void;

Pursuant to U.C.C. § 3-603 (b) it is determined that this alleged debt is hereby discharged;

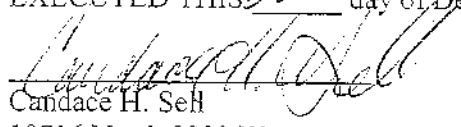
It is hereby ordered that Capital One Bank shall report the instant account to all credit bureaus as "paid as agreed" and show the balanced owed as zero (0);

It is hereby ordered that Capital One Bank will discontinue all collection efforts and harassment of CARDHOLDER regarding the instant account;

Failure to comply with this decision will result in the undersigned taking any and all action necessary under natural law to protect their rights, life, and property.

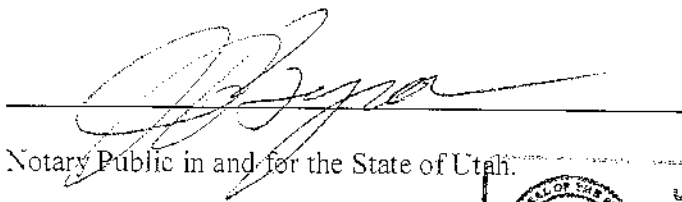
I, Candace Sell, knowing the penalty of bearing false witness, hereby affirm the foregoing to be true and correct to the best of my knowledge and belief and do affix my signature in testimony of the foregoing default judgment.

EXECUTED THIS 28 day of December, 2005



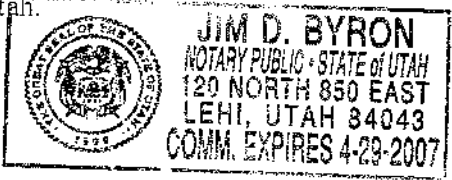
Candace H. Sell  
10716 North 8800 West  
Lehi, Utah 84043

Signatory, Candace H. Sell, personally appeared before me and is known to me and did affix his signature to this document. In witness thereof I set my hand and seal



Notary Public in and for the State of Utah.

My commission expires:



This document has been recorded at PeoplesRecorder.com:

Record # : derek\_sell

Date : 12/28/2005

Prepared by:



Derek Sell

10716 North 8800 West

Lehi, UT 84043