

Certified Mail #: 7005 0390 0004 3361 8166

To: T. Mancuso, Manager  
Citi Cards  
701 East 60<sup>th</sup> Street, North  
P.O. Box 6077  
Sioux Falls, SD 57117-6077

cc: Mark Lindner  
Lindner & Associates, PC  
P.O. Box 920435  
Needham, MA 02492-0005

### **NOTICE OF DEFAULT**

Jointly, individually and personally,

Regarding Account Number: 5424 1806 7302 1520, the following statements are true:

On September 01, 2005, a First Copy Document Draft was sent by USPS certified mail to Citibank in order to pay off the above referenced account in the full amount stated by Citibank South Dakota, N.A. Citibank received it on September 06, 2005 and had 90 days from date of issue to present it -- but failed to do so.

In addition, on November 10, 2005 a Second Copy Check -- which replaces and, by legal custom, supercedes and nullifies the previously issued First Copy Document Draft -- was issued and sent to T. Mancuso, Manager, at Citi Cards by USPS certified mail and made out to Citi Cards, to again attempt to pay off the above referenced account in the same full amount stated by Citi Cards. Citi Cards received this Check on November 14, 2005, and had 21 days from date of issue to present it -- but again 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, Citibank South Dakota, N.A./Citi Cards 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 Citibank South Dakota N.A./Citi Cards shall report the instant account to all credit bureaus as "paid as agreed" and show the balance owed as zero (0);

-- It is hereby ordered that Lindner & Associates, PC, and Citibank South Dakota, N.A./Citi Cards 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, Mark T. Wenham, 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 13<sup>th</sup> day of December, 2005.

Mark T. Wenham

Mark T. Wenham  
P.O. Box 1909  
Duxbury, MA 02331

Signatory, Mark T. Wenham, personally appeared before me and is <sup>Proven</sup> ~~known~~ to me and did affix his signature to this document. In witness thereof I set my hand and seal:

Proof of identification: valid driver's license.

Carol M. Scott

Notary Public in and for the State of Massachusetts.

My commission expires: 9/18/09



CAROL M. SCOTT  
NOTARY PUBLIC  
COMMONWEALTH OF MASSACHUSETTS  
MY COMMISSION EXPIRES 09/18/2009

This document has been recorded at PeoplesRecorder.com for the world to see.

Record #: 321

Date: December 13, 2005

Prepared by:

Mark T. Wenham

Mark T. Wenham  
P.O. Box 1909  
Duxbury, MA 02331