

Certified Mail No: 70050390000294537200

To: Don Berman, CEO  
MERRICK BANK  
P.O. Box 5721  
HICKSVILLE, NY 11804

**COPY**

**NOTICE OF DEFAULT**

Jointly, individually and personally regarding Account Number **4120613064003384**, the following statements are true.

On March 13, 2006 a Check was sent to **MERRICK BANK** to pay off the above referenced account in the amount stated by **MERRICK BANK**. **MERRICK BANK** received it on **March \_\_, 2006**. **MERRICK BANK** had **30** days to present it but has failed to do so.

**§1303.68. (UCC 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 **MERRICK BANK** is hereby deemed to be in default.

## **DECISION**

Decision in favor of the **LAWRENCE D FEHRENBACHER** is hereby granted:

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

Pursuant to **§1303.68. (UCC 3-603) (b)** it is determined that this alleged debt is hereby discharged;

It is hereby ordered that **MERRICK 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 **MERRICK BANK** will discontinue all collection efforts and harassment of **LAWRENCE D FEHRENBACHER** regarding the instant account;

Failure to comply with this decision will result in the undersigned taking any and all action

