

FILED

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION**

2005 AUG 17 PM 2:27  
CLERK, U.S. DISTRICT COURT  
OCALA, FLORIDA

NEIL J. GILLESPIE,

Plaintiff,

v.

Case No. 5:05-cv-362-Q-109RJ

HSBC NORTH AMERICA HOLDINGS, INC.  
a Delaware corporation,

HSBC BANK NEVADA, N.A.,  
(f/k/a Household Bank (SB), N.A.),  
a National Bank,

Demand for Jury Trial

RISK MANAGEMENT ALTERNATIVES, INC.,  
a Delaware corporation,

Defendants.

\_\_\_\_\_/

TO: US Senator Richard Shelby, Chairman, United States Senate  
Committee on Banking, Housing, and Urban Affairs; and  
John C. Dugan, Comptroller of the Currency, OCC

Plaintiff requests the Clerk of the Court to mail a file stamped copy of the Complaint to US Senator Richard Shelby, Chairman, United States Senate Committee on Banking, Housing, and Urban Affairs, and a file stamped copy of the Complaint to John C. Dugan, Comptroller of the Currency, OCC. Plaintiff has provided pre-addressed stamped envelopes for that purpose.

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, NEIL J. GILLESPIE, sues Defendants HSBC NORTH AMERICAN HOLDINGS, INC, a Delaware corporation, HSBC BANK NEVADA, N.A., (f/n/a Household Bank (SB) N.A.), a National Bank, and RISK MANAGEMENT ALTERNATIVES, INC, a Delaware corporation, and alleges:

**Jurisdiction and Venue**

1. This action arises under 15 U.S.C. § 1640(e) and 15 U.S. C. § 1692k, and is brought pursuant to the federal *Consumer Credit Protection Act*, Chapter 41, 15 U.S.C. § 1601 et. seq.; Subchapter I, the *Truth In Lending Act* (“TILA”) 15 U.S.C. § 1601 et seq.; Regulation Z of the Federal Reserve Board, 12 CFR Part 226; Subchapter V, the federal *Fair Debt Collections Practices Act* (“FDCPA”) 15 USC § 1692 et seq.; and Florida law. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1337, and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.
2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c), and in this Division pursuant to Middle District of Florida Local Rule 1.02(c).

**Parties**

3. Plaintiff, NEIL J. GILLESPIE, resides in Ocala, Marion County, Florida. (Hereinafter called plaintiff or “GILLESPIE”).
4. Defendant HSBC NORTH AMERICA HOLDINGS, INC., is a Delaware corporation and the parent company of defendant HSBC BANK NEVADA, N.A.
5. Defendant HSBC BANK NEVADA, N.A. (f/k/a Household Bank (SB) N.A.) is a National Bank (Hereinafter called defendant or “HOUSEHOLD BANK” or “HSBC”), with corporate headquarters located at 1111 Town Center Drive, Las Vegas, NV 89144.
6. Defendant RISK MANAGEMENT ALTERNATIVES, INC., is a Delaware corporation, with headquarters located at 2675 Breckinridge Boulevard, Duluth, GA 30096. (Hereinafter called defendant or “RMA”).

**Introduction**

7. Plaintiff will prove that HOUSEHOLD BANK committed fraud to collect a \$50.00 credit line increase fee on his credit card, charged usurious rates of interest reaching 224% APR, violated Truth in Lending disclosures, and provided false account balance information by telephone, setting a trap of cascading of fees on a canceled account. Plaintiff will prove that RISK MANAGEMENT ALTERNATIVES, INC. violated Fair Debt Collection Practices, and renege on a settlement agreement.

**General Allegations**

8. GILLESPIE was a cardholder of a MasterCard, issued by HOUSEHOLD BANK (SB), N.A., account number 5488-9750-2119-2664. The initial credit line was \$300.00.

9. The account was opened February 27, 2003 via telemarketing. HOUSEHOLD BANK immediately charged GILLESPIE a \$59.00 annual fee on February 27, 2003.

10. HOUSEHOLD BANK did not fully disclose the account's terms and conditions to GILLESPIE at the time it was opened.

11. HOUSEHOLD BANK opened GILLESPIE's account knowing he did not have a telephone in his residence, only a wireless telephone, T-Mobile account (813) 810-6775.

12. GILLESPIE never signed an application or cardholder agreement.

13. HOUSEHOLD BANK mailed GILLESPIE monthly account statements, each providing a 24-hour automated account information telephone number, 1-503-293-4037.

14. GILLESPIE maintained his HOUSEHOLD BANK MasterCard account in good standing, receiving credit line increases to \$400.00, then \$500.00 and again to \$600.00.

15. GILLESPIE voluntarily closed his account intending to pay it off. HOUSEHOLD BANK mailed GILLESPIE a letter dated June 9, 2004 saying the account was closed.

16. The 2004 Florida hurricane season forced GILLESPIE to evacuate several times.

The following is a schedule of the hurricanes:

- a. August 14, 2004 Hurricane Charley made landfall in Punta Gorda, FL;
  - b. September 5, 2004 Hurricane Frances made landfall in Sewall's Point, FL.
  - c. September 16, 2004 Hurricane Ivan made landfall in Gulf Shores, AL.
  - d. September 25, 2004 Hurricane Jeanne made landfall in Hutchinson Island, FL.
17. GILLESPIE reinstated his HOUSEHOLD BANK MasterCard to pay for hurricane related expenses. A \$29.00 reinstatement fee posted to GILLESPIE's account on September 6, 2004.
18. On or about September 2, 2004 GILLESPIE requested, by telephone, an increase in his credit line from HOUSEHOLD BANK. In reply HOUSEHOLD BANK agreed to raise GILLESPIE's credit line by \$200.00, from \$600.00 to \$800.00, providing that:
- a. GILLESPIE pay a \$50.00 *Automated Credit Line Increase* ("ACLI") fee, which HOUSEHOLD BANK told GILLESPIE would later be credited back to his account; and
  - b. HOUSEHOLD BANK instructed GILLESPIE to make his check payable to "ACLI".
19. HOUSEHOLD BANK demanded that GILLESPIE pay the \$50.00 "ACLI" fee in advance, in a letter to GILLESPIE dated September 6, 2004.
20. GILLESPIE mailed HOUSEHOLD BANK a \$50.00 United States postal money order on September 7, 2004, along with a confirmation letter. GILLESPIE's postal money order and letter were mailed via first class United States mail.
21. HOUSEHOLD BANK negotiated GILLESPIE's money order, but never credited the \$50.00 "ACLI" payment to GILLESPIE's MasterCard account.

22. In a slight-of-hand theft, HOUSEHOLD BANK charged GILLESPIE's MasterCard account a \$50.00 credit line increase finance charge on September 9, 2004, then reversed the fee the same day. The transactions canceled each other, creating the illusion that the fee was credited back to GILLESPIE's account. But in fact HOUSEHOLD BANK stole \$50.00 from GILLESPIE, because it never credited GILLESPIE's \$50.00 money order payment to GILLESPIE's account.

23. GILLESPIE evacuated Florida on September 11, 2004 as evidenced by charges to his HOUSEHOLD BANK MasterCard. The evidentiary charges are as follows:

- a. September 11, 2004, BP Oil, Arabi, Georgia, \$27.12;
- b. September 12, 2004, Herring National Bank, Chattanooga, TN, \$41.50;
- c. September 12, 2004, Bilo #335, Chattanooga, TN, \$6.35;
- d. September 12, 2004, Amoco Oil, Soddy-Daisy, TN, \$29.35;
- e. September 12, 2004, WM Supercenter, Hixson, TN, \$9.47;
- f. September 13, 2004, Exxon Mobil, Ooltewah, TN, \$19.99.

24. GILLESPIE relied upon HOUSEHOLD BANK'S 24-hour automated account information telephone line to keep his MasterCard balance within the credit limit.

25. HOUSEHOLD BANK provided GILLESPIE false and inaccurate account balance information via its 24-hour automated account information telephone line, and then penalized GILLESPIE with overlimit fees, thereby setting a "trap" and price gouging GILLESPIE during a hurricane evacuation.

26. HOUSEHOLD BANK, in its statement to GILLESPIE dated September 20, 2004, stated an overlimit amount of \$161.62. The bank fees alone were \$116.26, and include:

- a. September 4, 2004, Reinstatement Fee, \$29.00;
  - b. September 9, 2004, Credit Line Increase finance charge, \$50.00;
  - c. September 11, 2004, Cash Fee finance charge, \$4.26;
  - d. September 13, 2004, Cash Fee finance charge, \$4.00;
  - e. September 13, 2004, Overlimit Charge Assessment, \$29.00.
27. GILLESPIE's account overage appears to be only \$45.36, based upon the calculations set forth in the preceding paragraph. GILLESPIE also asserts the following:
- a. GILLESPIE's overage was caused by his reliance on false and inaccurate account balance information provided by HOUSEHOLD BANK's 24-hour automated account information telephone line; and
  - b. GILLESPIE did not receive credit for the \$50.00 "ACLI" payment mailed to HOUSEHOLD BANK on June 7, 2004. As such, GILLESPIE did not exceed his limit, but in fact had \$4.64 remaining in unused credit.
28. GILLESPIE notified HOUSEHOLD BANK of an account error by letter dated November 13, 2004, in which GILLESPIE closed his MasterCard account, physically cut the card in half and returned the pieces to HOUSEHOLD BANK, and said the following:
- a. GILLESPIE agreed to pay all legitimate charges, including those for purchases, cash advances and cash advance fees, and lawful interest;
  - b. GILLESPIE objected to paying overlimit fees and late fees resulting from inaccurate account balance information provided by HOUSEHOLD BANK;
  - c. GILLESPIE requested an updated statement within 30 days.
29. In reply HOUSEHOLD BANK mailed GILLESPIE a letter dated November 29,

2004 demanding a balance of \$1,121.27, and immediate payment of \$355.27.

GILLESPIE returned HOUSEHOLD BANK's letter with his comments to Brendan McDonagh, COO, HSBC Bank USA, NA, P.O. Box 2013, Buffalo, NY 14240.

30. In a mailing to GILLESPIE dated December 6, 2004, HOUSEHOLD BANK sent a Delinquent Account notice demanding \$1,150.27. GILLESPIE telephoned HOUSEHOLD BANK on December 20, 2004, spoke with Cathleen Loftis, and disputed the balance, but to no effect.

31. HOUSEHOLD BANK notified GILLESPIE by letter dated December 31, 2004 that his account was canceled on October 7, 2004. Nonetheless HOUSEHOLD BANK charged the canceled account a \$59.00 annual fee on March 20, 2005. HOUSEHOLD BANK also continued to charge GILLESPIE's canceled account a \$29.00 late fee and a \$29.00 overlimit fee every month, even though the account was canceled, without any available credit to accept additional charges, and of no benefit to GILLESPIE.

32. HOUSEHOLD BANK placed GILLESPIE's account for collection with RISK MANAGEMENT ALTERNATIVES, INC. (RMA) on or about December 31, 2004.

33. RMA contacted GILLESPIE by letter dated January 3, 2005 announcing that it was a debt collector for HOUSEHOLD BANK, and demanded \$1,174.74.

34. On January 3, 2005 GILLESPIE received a telephone call from Roger Harrison of RMA offering to settle his account for \$900.00. GILLESPIE immediately agreed to the settlement and promised to send \$135.00 by January 25, 2005, followed by the balance of \$765.00 in February, 2005, upon receipt of his disability check.

35. GILLESPIE paid RMA \$135.00 on January 15, 2005, 10 days ahead of schedule. GILLESPIE called RMA prior to sending the payment via *Western Union Express*

*Payment* and spoke with Holly Reynolds, who confirmed the terms of the settlement, and provided RMA's receiver code to accept the payment.

36. Although GILLESPIE immediately agreed to settle his account, RMA subsequently telephoned GILLESPIE twenty-one (21) times, phone calls that served no purpose other than to harass and threaten GILLESPIE.

37. GILLESPIE's T-Mobile Wireless telephone account documented the phone calls between GILLESPIE and RMA in the detailed billing section of his summary of charges. A call log also memorializes the telephone calls between RMA and GILLESPIE.

38. On January 24, 2005 RMA called GILLESPIE announcing that it would not honor the settlement agreement with him (after accepting GILLESPIE's first settlement payment of \$135.00) and demanded a balance of \$1,089.27 from GILLESPIE.

39. On January 25, 2005 RMA again called GILLESPIE demanding payment of \$1,089.27. When GILLESPIE reminded RMA of its prior agreement, RMA told GILLESPIE that he was refusing to pay, and that RMA would contact his family, and that RMA contacted GILLESPIE's uncle, and that GILLESPIE could expect a call from his uncle the following day. In fact GILLESPIE's uncle died recently and RMA's threat was not only deceitful and unlawful, but inflicted emotional distress upon GILLESPIE.

40. As a result of RMA's telephone harassment and threats, GILLESPIE was forced to change his telephone number to an unpublished number.

41. HOUSEHOLD BANK provided GILLESPIE an account statement dated January 20, 2005. The statement listed a payment of \$135.00, but failed to identify that the payment was made to RMA as part of a settlement agreement. HOUSEHOLD BANK demanded a balance of \$1,089.79 from GILLESPIE, when in fact the balance due was

only \$765.00. HOUSEHOLD BANK also charged GILLESPIE a \$29.00 overlimit fee, and a \$21.05 finance charge, when neither was owed under the terms of the settlement.

42. On January 31, 2005 GILLESPIE wrote HOUSEHOLD BANK's parent company, HSBC Bank USA, Martin Glynn, President and CEO and stated:

- a. GILLESPIE and his family were threatened by persons acting on behalf of HSBC Bank USA, specifically by RMA;
- b. RMA broke its settlement agreement with GILLESPIE, and therefore plaintiff cannot send additional payments;
- c. Any future settlement must be a formal written document.

43. In reply to GILLESPIE's letter, Jory Berdan of HOUSEHOLD BANK Credit Card Services wrote GILLESPIE on February 24, 2005 acknowledging RMA's breach and offered a settlement that was simultaneously contradicted by other HOUSEHOLD BANK correspondence.

44. HOUSEHOLD BANK continued to churn GILLESPIE's closed account, charging him an ongoing cascade of late fees, overlimit fees, annual fees, and interest, including:

- a. Statement dated February 20, 2005 demanding a balance of \$1,169.59
- b. Letter dated March 7, 2005 demanding a balance of \$1,198.59
- c. Statement dated March 20, 2005 demanding a balance of \$1,307.75
- d. Delinquent Account notice dated April 4, 2005 demanding \$1,336.75
- d. Statement dated April 20, 2005 demanding a balance of \$1,391.84
- e. Statement dated May 20, 2005 demanding a balance of \$1,476.68
- f. Statement dated June 20, 2005 demanding a balance of \$1,575.41

g. Statement dated July 20, 2005 demanding a balance of \$1,675.21

45. GILLESPIE received noticed that his credit card, formerly issued by HOUSEHOLD BANK (SB) N.A., is now issued by HSBC Bank Nevada, N.A., in a notice included in his June, 2005 statement.

**Count I: Fraud - Florida law**

(Against defendant HOUSEHOLD BANK/HSBC)

46. GILLESPIE realleges and incorporates by reference paragraphs 1 through 45.

47. On or about September 2, 2004, GILLESPIE requested, by telephone, an increase in his credit line from HOUSEHOLD BANK. In reply HOUSEHOLD BANK agreed to raise GILLESPIE's credit line by \$200.00, from \$600.00 to \$800.00, providing that:

- a. GILLESPIE pay a \$50.00 *Automated Credit Line Increase* ("ACLI") fee, which HOUSEHOLD BANK told GILLESPIE would later be credited back to his account; and
- b. HOUSEHOLD BANK instructed GILLESPIE to make his check payable to "ACLI".

48. HOUSEHOLD BANK demanded that GILLESPIE pay the \$50.00 "ACLI" fee in advance, in a letter to GILLESPIE dated September 6, 2004.

49. GILLESPIE mailed HOUSEHOLD BANK a \$50.00 United States postal money order on September 7, 2004, along with a confirmation letter. GILLESPIE's postal money order and letter were mailed via first class United States mail. (Exhibit 1).

50. HOUSEHOLD BANK negotiated GILLESPIE's money order but never credited the \$50.00 "ACLI" payment to GILLESPIE's MasterCard account.

51. In a sleight-of-hand theft, HOUSEHOLD BANK charged GILLESPIE's MasterCard account a \$50.00 a credit line increase finance charge on September 9, 2004, then reversed the fee the same day. The transactions canceled each other, creating the

illusion that the fee was credited back to GILLESPIE's account. But in fact HOUSEHOLD BANK stole \$50.00 from GILLESPIE, because it never credited GILLESPIE's \$50.00 money order payment to GILLESPIE's account. (Exhibit 2).

52. HOUSEHOLD BANK's actions satisfies the essential elements of fraud under Florida law insofar that:

a) HOUSEHOLD BANK made a false statement of fact to GILLESPIE, specifically that GILLESPIE'S \$50.00 "ACLI" fee would be returned to him; and

b) HOUSEHOLD BANK knew at the time it made the statement to GILLESPIE that it was false, and that HOUSEHOLD BANK already had in place a scheme to defraud GILLESPIE (Specified in the preceding paragraph); and

c) The scheme included having GILLESPIE make a \$50.00 payment payable to "ACLI" instead of HOUSEHOLD BANK; and

d) HOUSEHOLD BANK made the false statement to GILLESPIE for the purpose of inducing GILLESPIE to act in reliance thereon; and

e) GILLESPIE relied upon the correctness of the representation, and mailed HOUSEHOLD BANK a \$50.00 money order payable to "ACLI"; and

f) GILLESPIE was damaged by HOUSEHOLD BANK's scheme by loosing his \$50.00 payment, and suffered further damage in the form of overlmit fees, late fees, interest payments and subsequent damage to his credit rating.

WHEREFORE plaintiff demands judgment for actual damages, punitive damages in the amount of three times his loss for fraud, together with interest, costs, expenses, and attorney's fees.

**Count II: Violation of the federal Truth in Lending Act (TILA)**

(Against defendant HOUSEHOLD BANK/HSBC)

53. GILLESPIE realleges and incorporates by reference paragraphs 1 through 52.

54. This claim is brought pursuant to the federal *Truth in Lending Act* (“TILA”), 15 U.S.C. § 1601 *et seq.* and Federal Reserve Board Regulation Z (“Regulation Z”), 12 C.F.R. § 226.1 *et seq.* GILLESPIE is entitled to relief in accordance with 15 U.S.C. §§ 1640(a)(1) and 1640(a)(2).

55. At all times relevant hereto, GILLESPIE was a “person” as defined by 15 U.S.C. § 1602(d), a “consumer” as defined by 15 U.S.C. § 1602(h), a “cardholder” as defined by 15 U.S.C. § 1602(m), and provided with a “credit card” as defined by 15 U.S.C. § 1602(k) by HOUSEHOLD BANK.

56. At all times relevant hereto, HOUSEHOLD BANK was a “creditor” as defined by 15 U.S.C. § 1602(f), a “person” as defined by 15 U.S.C. § 1602(d), an “organization” as defined by 15 U.S.C. § 1602(c), and a “card issuer” as defined by 15 U.S.C. § 1602(n).

57. At all times relevant hereto, HOUSEHOLD BANK was engaged in the extension of “credit” as that term is defined in 15 U.S.C. § 1602(e), and was engaged in the operation of an “open end credit plan” as defined by 15 U.S.C. § 1602(i).

58. HOUSEHOLD BANK opened GILLESPIE’s account on February 27, 2003 via telemarketing without making the disclosures required by 15 U.S.C. § 1637(c)(2) and in violation of Regulation Z, 12 CFR §§ 226.5(a), 226.5a. and 226.6.

59. HOUSEHOLD BANK immediately charged GILLESPIE’s account a \$59.00 annual fee before making the disclosures required by 15 U.S.C. § 1637(c)(2) and in violation of Regulation Z, 12 CFR 226.5(b)(1).

60. GILLESPIE mailed HOUSEHOLD BANK a \$50.00 United States postal money order on September 7, 2004. (Exhibit 1). HOUSEHOLD BANK negotiated GILLESPIE's \$50.00 money order, but did not credit \$50.00 to GILLESPIE's account in violation of 15 U.S.C. § 1666c, and in violation of Regulation Z, 12 CFR 226.10(a), due to the fraud described in Count I of this lawsuit.

61. HOUSEHOLD BANK's statement to GILLESPIE dated September 20, 2004 did not provide the correct outstanding balance in the account at the end of the period in violation of 15 U.S.C. § 1637(b)(8) and Regulation Z, 12 CFR 226.7(i), or the correct total amount credited to his account during the period in violation of 15 U.S.C. § 1637(b)(3) and Regulation Z, 12 CFR 226.7(c), or the correct finance charge or correct balance on which the finance charge was computed, in violation of 15 U.S.C. §§ 1637(b)(4) and (7) and Regulation Z, 12 CFR 226.7(e) and (f), or correctly identify and credit other charges in violation of Regulation Z, 12 CFR 226.7(h).

62. HOUSEHOLD BANK provided GILLESPIE false and inaccurate account balance information via its 24-hour automated account information telephone, on or about September 12, 2004, thereby setting a trap of cascading fees. Providing this false account information violates 15 U.S.C. § 1637(a) and Regulation Z, 12 CFR 226.6(a) and (b) because before opening his account HOUSEHOLD BANK failed to disclose that reliance upon this false and inaccurate information was a condition under which a finance charge may be imposed, and failed to disclose that reliance upon this false and inaccurate information would cause other charges to be imposed, such as over-the-limit fees.

63. HOUSEHOLD BANK failed to disclose that it would charge a \$59.00 annual fee on a closed or canceled account that was useless to GILLESPIE, in violation of 15 U.S.C.

§ 1637(a), required disclosures by creditor before opening an account, in violation of 15 U.S.C. § 1637(c), required disclosures in credit and charge card applications and solicitations, and in violation of 15 U.S.C. § 1637(d) disclosures prior to renewal, and corresponding Regulation Z rules and regulations.

64. Household Bank failed to disclose that it would charge a \$29.00 overlimit fee on a closed or canceled account, an account not open to an extension of credit, on an account that was useless to GILLESPIE, in violation of 15 U.S.C. § 1637(a), required disclosures by creditor before opening an account, in violation of 15 U.S.C. § 1637(c), required disclosures in credit and charge card applications and solicitations, and in violation of 15 U.S.C. § 1637(d) disclosures prior to renewal, and Regulation Z rules and regulations.

65. Household bank failed to disclose that it would charge a \$29.00 late fee on a closed or canceled account, and that it would charge GILLESPIE repeated late fees for a single transgression, even on a closed account that was useless to GILLESPIE, in violation of 15 U.S.C. § 1637(a), required disclosures by creditor before opening an account, in violation of 15 U.S.C. § 1637(c), required disclosures in credit and charge card applications and solicitations, and in violation of 15 U.S.C. § 1637(d) disclosures prior to renewal, and corresponding Regulation Z rules and regulations.

66. Household Bank failed to disclose that it would churn GILLESPIE's closed or canceled account, charging ongoing late fees, overlimit fees, annual fees, in an ongoing cascade of never ending fees, in violation of 15 U.S.C. § 1637(a), required disclosures by creditor before opening an account, in violation of 15 U.S.C. § 1637(c), required disclosures in credit and charge card applications and solicitations, and in violation of 15 U.S.C. § 1637(d) disclosures prior to renewal, and Regulation Z rules and regulations.

67. HOUSEHOLD BANK provided GILLESPIE an account statement dated January 20, 2005. The statement listed a payment of \$135.00, but failed to identify that the payment was made to RMA as part of a settlement agreement. HOUSEHOLD BANK demanded a balance of \$1,089.79 from GILLESPIE, when in fact the balance due was only \$765.00. HOUSEHOLD BANK also charged GILLESPIE a \$29.00 overlimit fee, and a \$21.05 finance charge, when neither was owed under the terms of the settlement. As such, HOUSEHOLD BANK did not provide the correct outstanding balance in the account at the end of the period in violation of 15 U.S.C. § 1637(b)(8) and Regulation Z, 12 CFR 226.7(i), or the correct total amount credited to his account during the period in violation of 15 U.S.C. § 1637(b)(3) and Regulation Z, 12 CFR 226.7(c), or the correct finance charge or correct balance on which the finance charge was computed, in violation of 15 U.S.C. §§ 1637(b)(4) and (7) and Regulation Z, 12 CFR 226.7(e) and (f), or correctly identify and credit other charges in violation of Regulation Z, 12 CFR 226.7(h).

68. On January 31, 2005 GILLESPIE wrote HOUSEHOLD BANK's parent company, HSBC Bank USA, Martin Glynn, President and CEO and stated:

- a. GILLESPIE and his family were threatened by persons acting on behalf of HSBC Bank USA, specifically by RMA;
- b. RMA broke its settlement agreement with GILLESPIE, and therefore plaintiff cannot send additional payments;
- c. Any future settlement must be a formal written document.

69. In reply to GILLESPIE's letter, Jory Berdan of HOUSEHOLD BANK wrote GILLESPIE on February 24, 2005 admitting RMA's breach and offered a settlement that was simultaneously contradicted by other HOUSEHOLD BANK correspondence.

70. The terms and conditions offered by Jory Berdan of HOUSEHOLD BANK were not included in any of GILLESPIE's subsequent statements. As such, HOUSEHOLD BANK did not provide the correct outstanding balance in the account at the end of the period in violation of 15 U.S.C. § 1637(b)(8) and Regulation Z, 12 CFR 226.7(i), or the correct finance charge or correct balance on which the finance charge was computed, in violation of 15 U.S.C. §§ 1637(b)(4) and (7) and Regulation Z, 12 CFR 226.7(e) and (f), or correctly identify and credit other charges in violation of Regulation Z, 12 CFR 226.7(h), regarding the following statements:

- a. Statement dated February 20, 2005 demanding a balance of \$1,169.59
- b. Statement dated March 20, 2005 demanding a balance of \$1,307.75
- c. Statement dated April 20, 2005 demanding a balance of \$1,391.84
- d. Statement dated May 20, 2005 demanding a balance of \$1,476.68
- e. Statement dated June 20, 2005 demanding a balance of \$1,575.41
- f. Statement dated July 20, 2005 demanding a balance of \$1,675.21.

71. GILLESPIE has notified HOUSEHOLD BANK numerous times of billing errors and mistakes to his account in accord with 15 U.S.C. § 1666 et seq., and HOUSEHOLD BANK has failed to comply with the requirements of 15 U.S.C. § 1666 et seq. and with Regulation Z, 12 CFR 226.13, including:

- a. GILLESPIE's letter to HOUSEHOLD BANK dated November 13, 2004;
- b. GILLESPIE's written rebuttal to HOUSEHOLD BANK's letter dated November 29, 2004, returned to Brendan McDonagh/HSBC Bank;
- c. GILLESPIE's telephone call to HOUSEHOLD BANK December 20, 2004;

- d. GILLESPIE's letter to HSBC Bank USA, Martin Glynn, January 31, 2005;
- e. GILLESPIE's letter to Jory Berdan of HOUSEHOLD BANK, April 16, 2005;

WHEREFORE, plaintiff seeks damages as provided by 15 U.S.C. § 1640(a), attorney's fees, and costs of suit, and such other or further relief as is appropriate.

**Count III:**

**Violation of the federal Fair Debt Collections Practices Act (FDCPA)**

(Against defendant RISK MANAGEMENT ALTERNATIVES, INC., "RMA")

- 72. GILLESPIE realleges and incorporates by reference paragraphs 1 through 71.
- 73. This claim is brought pursuant to the federal Fair Debt Collections Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq.
- 74. At all times relevant hereto, GILLESPIE was a "consumer" within the meaning of 15 U.S.C. § 1692(a)(3) and is entitled to relief in accordance with 15 U.S.C. § 1692k.
- 75. At all times relevant hereto, RISK MANAGEMENT ALTERNATIVES, INC., (RMA) was a "debt collector" as defined by 15 U.S.C. § 1692(a)(6).
- 76. HOUSEHOLD BANK placed GILLESPIE's account for collection with RMA on or about December 31, 2004.
- 77. RMA contacted GILLESPIE by letter dated January 3, 2005 announcing that it was a debt collector for HOUSEHOLD BANK, and demanded \$1,174.74.
- 78. On January 3, 2005 GILLESPIE received a telephone call (Exhibit 3) from Roger Harrison of RMA offering to settle his account for \$900.00. GILLESPIE immediately agreed to the settlement and promised to send \$135.00 by January 25, 2005, followed by the balance of \$765.00 in February, 2005, upon receipt of plaintiff's disability check.

79. GILLESPIE paid RMA \$135.00 on January 15, 2005, 10 days ahead of schedule. (Exhibit 4). GILLESPIE called RMA prior to sending the payment via *Western Union Express Payment* and spoke with Holly Reynolds, who confirmed the terms of the settlement, and provided RMA's receiver code to accept the payment. (Exhibit 3).

80. Although GILLESPIE immediately agreed to settle his account, RMA subsequently telephoned GILLESPIE twenty-one (21) times, phone calls that served no purpose other than to harass and threaten Plaintiff in violation of 15 U.S.C. § 1692d(5), the FDCPA prohibition on harassment and abuse.

81. GILLESPIE's T-Mobile Wireless telephone account documented the phone calls between GILLESPIE and RMA in the detailed billing section of his summary of charges.

82. GILLESPIE prepared a call log memorializing the telephone calls between RMA and GILLESPIE. (Exhibit 3).

83. On January 24, 2005 RMA called GILLESPIE announcing that it would not honor the settlement agreement with him (after accepting GILLESPIE's first settlement payment of \$135.00) and demanded a balance of \$1,089.27, in violation of 15 U.S.C. § 1692e(2)(A), the FDCPA prohibition of false and misleading representations.

84. On January 25, 2005 RMA again called GILLESPIE demanding payment of \$1,089.27. When GILLESPIE reminded RMA of its prior agreement, RMA told GILLESPIE that he was refusing to pay, and that RMA would contact his family, and that RMA contacted GILLESPIE's uncle, and that GILLESPIE could expect a call from his uncle the following day, in violation of 15 U.S.C. § 1692c(b), the FDCPA prohibition on communication with third parties. In fact GILLESPIE's uncle died recently and RMA's threat was not only deceitful and unlawful, but inflicted emotional distress upon

GILLESPIE, in violation of 15 U.S.C. § 1692e(10), the FDCPA prohibition on using any false representation or deceptive means to collect to attempt to collect any debt.

85. As a result of RMA's telephone harassment and threats, GILLESPIE was forced to change his telephone number to an unpublished number.

86. GILLESPIE notified HOUSEHOLD BANK of RMA's unlawful tactics by letter to Martin Glynn, Pres./CEO, HSBC Bank USA, Household Bank's parent company.

87. HOUSEHOLD BANK acknowledged and apologized for RMA's unlawful behavior in a letter to GILLESPIE dated February 24, 2005.

WHEREFORE, plaintiff seeks damages as provided by 15 U.S.C. § 1692k for actual damages, statutory damages, attorney's fees, and costs of suit, and such other or further relief as is appropriate.

**Count IV: Usury -Florida law**

(Against defendant HOUSEHOLD BANK/HSBC NEVADA)

88. GILLESPIE realleges and incorporates by reference paragraphs 1 through 87.

89. This claim is brought pursuant to sections 687.02, 687.03, and 687.04 of the Florida Statutes.

90. At all times relevant hereto, HOUSEHOLD BANK made loans in amounts less than \$500,000.00 to GILLESPIE and imposed and collected loan charges, fees, and interest.

91. HOUSEHOLD BANK charged GILLESPIE nominal interest rates of 18.9% Annual Percentage Rate (APR) and 22.9% APR, and periodic interest rates as high as 224.00% APR.

92. HOUSEHOLD BANK charged and collected interest from GILLESPIE under its open-ended credit plan that exceeded the 18% usury limit allowed under Florida law.

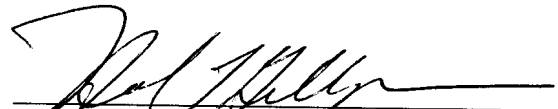
93. For the purpose of assessing damages in this count, GILLESPIE's late fees, cash advance fees, and overlimit fees are considered interest.

WHEREFORE, plaintiff seeks damages in the sum of double the amount of interest reserved, taken or exacted, forfeiture of all unpaid interest, and costs of this action, and attorneys fees.

**Demand for Jury Trial**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiff demands trial by jury of all issues so triable.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of August, 2005.



Neil J. Gillespie, Plaintiff pro se  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481  
Telephone: (813) 810-0151

## **Exhibits**

### **Gillespie v. HSBC, et al.**

**Exhibit 1** US Postal Service, copy of negotiated \$50.00 money order

**Exhibit 2** Gillespie's credit card statement dated September 20, 2004

**Exhibit 3** Gillespie's call log for Risk Management Alternatives

**Exhibit 4** Gillespie's \$135.00 payment to Risk Management Alternatives



RECEIPT SECTION

June 10, 2005



NEIL GILLESPIE

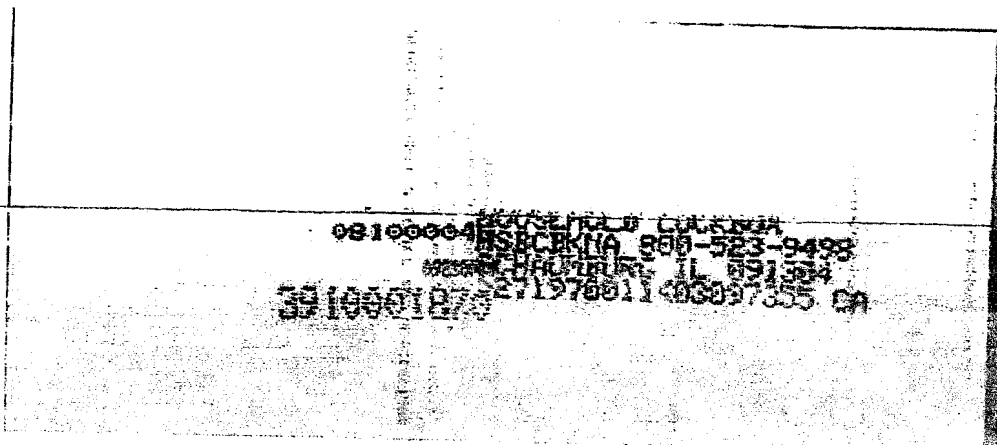
8092 SW 115TH LOOP  
OCALA, FL 34481-3567

ILN: H4267390001870

Dear Postal Customer:

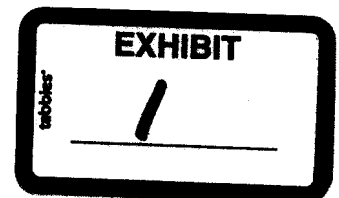
A copy of the money order per your PS Form 6401 Money Order Inquiry is below.

POSTAL MONEY ORDER			
06708289386	2004-09-07	336221	50.00
FIFTY DOLLARS & 00/100			
Pay to the order of <i>AcLi - Howard Corp</i>		Pay to the order of <i>Neil Gillespie</i>	
<i>P.O. Box 19360</i>		<i>8092 SW 115th Loop</i>	
<i>Portland, OR 97208</i>		<i>OCALA, FL 34481</i>	
<i>5488 - 9750 - 2119 - 2647</i>		<i>FL 33666</i>	
00000600	06708289386	0000005000	



If you have any additional concerns or questions, write to us at the address indicated below and enclose a copy of your customer receipt and this letter.

ATTN IMAGING SERVICES  
ACCOUNTING SERVICE CENTER  
MONEY ORDER BRANCH  
PO BOX 82428  
ST. LOUIS, MO 63182-2428  
1-866-974-2733



# Household Bank®

NEIL J GILLESPIE - Valued Cardmember Since 2003

ACCOUNT SUMMARY		PAYMENT SUMMARY		BALANCE SUMMARY	
ACCOUNT NUMBER	5488-9750-2119-2664	OVERLIMIT AMOUNT	\$161.62	PREVIOUS BALANCE	\$494.86
CASH CREDIT LIMIT†	\$800	MINIMUM PAYMENT*	\$29.00	PAYMENTS/CREDITS	- \$65.00
CASH LIMIT AVAILABLE	\$0	CURRENT PAYMENT DUE*	\$190.62	PURCHASES/DEBITS	+ \$462.79
TOTAL CREDIT LIMIT	\$800	PAYMENT DUE DATE	10/15/04	LATE PAYMENT CHARGE	+ \$0.00
TOTAL CREDIT LIMIT AVAILABLE	\$0	PAST DUE AMOUNT	\$0.00	MISC. FINANCE CHARGE	+ \$56.26
STATEMENT DATE	09/20/04	* See reverse side for an explanation of these amounts.		FINANCE CHARGE	+ \$10.72
				NEW BALANCE	= \$961.62

†Cash Credit Limit is a portion of the Total Credit Limit

## TRANSACTION SUMMARY

TRAN DATE	POST DATE	TRANSACTION DESCRIPTION	REFERENCE NUMBER	AMOUNT	
				CHARGES	CREDITS
09/09	09/09	PAYMENT - THANK YOU			
09/09	09/10	REV CREDIT LINE INCREASE FEE	3090804N000000202456201		\$15.00
09/04	09/06	KASH N KARRY #1726 S9T TAMPA FL	09999999800000046014		\$50.00
09/04	09/06	KASH N KARRY #1726 S9T TAMPA FL	MT04250004000010045153	\$48.53	
09/07	09/09	DENNY'S # 6844 TAMPA FL	MT04250004000010045154	\$11.43	
09/07	09/09	KASH N KARRY #1789 S9T TAMPA FL	MT042530035000010118360	\$11.35	
09/09	09/10	AMOCO OIL 06817423 TAMPA FL	MT042530042000010049584	\$1.79	
09/10	09/11	SUNTRUST TAMPA FL	MT042540034000010108736	\$11.86	
09/10	09/13	RACETRAC113 00001Q02 TAMPA FL	MT042550036000010111387	\$142.00	
09/10	09/13	SUNOCO TAMPA FL	MT042570034000010319385	\$23.91	
09/11	09/13	BP OIL 42691345 ARABI GA	MT042570034000010360836	\$20.14	
09/12	09/13	HERRING NATIONAL BAN CHATTANOOGA TN	MT042570034000010318794	\$27.12	
09/12	09/13	BILO #335 SJ6 CHATTANOOGA TN	MT042570034000010337317	\$41.50	
09/12	09/14	AMOCO OIL 07897725 SODDY-DAISY TN	MT042570036000010107635	\$6.35	
09/12	09/14	WM SUPERCENTER SE2 HIXSON TN	MT042580036000010110035	\$29.35	
09/13	09/15	EXXONMOBIL75 04236584 OOLTEWAH TN	MT042580036000010129679	\$9.47	
09/04	09/06	RE-INSTATEMENT FEE	MT042580034000010138341	\$19.99	
09/09	09/10	CREDIT LINE INCREASE FINANCE CHARGE	0857-06SEP04 (01-01)	\$29.00	
09/11	09/12	CASH FEE FINANCE CHARGE	09999999800000046006	\$50.00	
09/13	09/13	CASH FEE FINANCE CHARGE	10000005080000998447830	\$4.26	
09/13	09/13	OVERLIMIT CHARGE ASSESSMENT	10000005080000998383130	\$4.00	
			1999999980000998383140	\$29.00	

YOUR BALANCE IS CURRENTLY OVER YOUR CREDIT LIMIT. PLEASE SEND YOUR PAYMENT IMMEDIATELY.

✓ MAIL PAYMENTS TO:  
HOUSEHOLD CREDIT SERVICES  
PO BOX 5222  
CAROL STREAM IL 60197-5222

❓ QUESTIONS?  
24-HOUR AUTOMATED ACCOUNT INFORMATION  
ENGLISH 1-503-293-4037  
ESPAÑOL 1-503-283-4834

✉ MAIL INQUIRIES TO:  
HOUSEHOLD CREDIT SERVICES  
PO BOX 80084  
SALINAS CA 93912-0084

Manage your account online at:  
[www.householdbank.com](http://www.householdbank.com)

110246 20 G STMT08 D E 00026471 HDS1 007019  
PLEASE DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT: To Assure Proper Credit Please Write Your Account Number On Your Check

<b>Account Number</b>		<b>5488-9750-2119-2664</b>	
New Balance	\$961.62	Current Payment Due	\$190.62
Payment Due Date	10/15/04		

Make checks payable to HOUSEHOLD CREDIT SERVICES. Please write your account number on your check. Do not fold, staple or clip. Do not send cash. Please send your payment 7 to 10 days prior to the payment due date to ensure timely delivery.

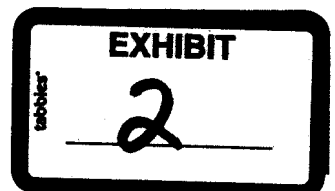
Amount Enclosed \$

#BWNHYTS  
#333021192666#

NEIL J GILLESPIE  
301 W PLATT ST # 155  
TAMPA FL 33606-2292

S007019 | 10045008

HOUSEHOLD CREDIT SERVICES  
PO BOX 5222  
CAROL STREAM IL 60197-5222



**Gillespie v. HSBC, et al.**

Call log for Risk Management Alternatives, Inc. (RMA) with Neil Gillespie

	<u>date:</u>	<u>time:</u>	<u>type:</u>	<u>number:</u>	<u>company:</u>
1.	Jan-03-04	8:29pm	██████████	888-788-8011	RMA (13 minutes)
2.	Jan-04-04	10:28am	██████████	888-788-8011	RMA (1 minute)
3.	Jan-06-05	11:51am	██████████	888-788-8011	RMA (1 minute)
4.	Jan-08-05	10:11am	██████████	888-788-8011	RMA (1 minute)
5.	Jan-10-05	2:09pm	██████████	888-788-8011	RMA (7minutes)
6.	Jan-12-05	12:58pm	██████████	888-788-8011	RMA (2 minutes)
7.	Jan-12-05	4:22pm	██████████	888-788-8011	RMA (1 minute)
8.	Jan-12-05	5:17pm	██████████	888-788-8011	RMA (3 minutes)
9.	Jan-13-05	4:18pm	██████████	888-788-8011	RMA (1 minute)
10.	Jan-14-05	3:29pm	██████████	888-788-8011	RMA (2 minutes)
11.	Jan-15-05	12:29pm	██████████	888-788-7033	RMA (6 minutes)
12.	Jan-15-05	1:05pm	██████████	888-788-7033	RMA (2 minutes)
13.	Jan-20-05	12:42pm	missed call	888-788-8011	RMA
14.	Jan-21-04	11:25pm	missed call	888-788-8011	RMA
15.	Jan-22-04	12:04pm	missed call	888-788-8011	RMA
16.	Jan-24-05	2:05pm	██████████	888-788-8011	RMA (2 minutes)
17.	Jan-24-05	3:17pm	missed call	888-788-8011	RMA
18.	Jan-24-05	4:25pm	missed call	888-788-8011	RMA
19.	Jan-24-05	5:56pm	missed call	888-788-8011	RMA
21.	Jan-24-05	7:13pm	missed call	888-788-8011	RMA
22.	Jan-24-05	7:13pm	██████████	888-788-8011	RMA (5 minutes)
23.	Jan-24-05	8:23pm	missed call	888-788-8011	RMA
24.	Jan-25-05	9:29am	██████████	888-788-8011	RMA (2 minutes)



