

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TODD L. BOWERS, INC.,)	
on behalf of itself and all other similarly)	
situated,)	
)	
Plaintiffs,)	
)	
v.)	No.
)	
RBS CITIZENS FINANCIAL GROUP, INC.,)	
RBS CITIZENS, N.A., and)	TRIAL BY JURY DEMANDED
CITIZENS BANK of PENNSYLVANIA,)	
)	
Defendants.)	

CLASS ACTION COMPLAINT

NOW COMES the Plaintiff, Todd L. Bowers, Inc., d/b/a Bowers Chiropractic Center (hereinafter “Plaintiff”), by and through its attorneys, The Thollander Law Firm, Ltd., and complains against the Defendant RBS Citizens Financial Group, Inc., (hereinafter “Defendant RBS), Defendant RBS Citizens Bank, N.A. (hereinafter “Defendant Citizens”) and Defendant Citizens Bank of Pennsylvania (hereinafter “Defendant Citizens Bank of Pennsylvania”), as follows:

NATURE OF ACTION

1. This is a civil action seeking monetary damages, restitution and declaratory relief from Defendant RBS, Defendant Citizens and Defendant Citizens Bank of Pennsylvania (hereinafter collectively referred to as “Citizens Bank”) arising from their unfair, unlawful and unconscionable conduct in diverting and retaining customer deposits when the customer inaccurately tabulates or calculates the amount they are depositing, noting a lesser amount being deposited than actually deposited into their account with Citizens Bank. Defendants, becoming

aware of the mathematical error, retain the balance of the deposit diverting said funds into, upon information and belief, at least two (2) general ledger accounts within Citizens Bank belonging to or otherwise maintained and controlled by Citizens Bank.

THE PARTIES

2. Plaintiff is a chiropractic center with its principal place of business located in Downers Grove, Illinois.

3. Defendant RBS is a commercial bank holding company organized under the laws of Delaware. Defendant RBS is a wholly owned subsidiary of the Royal Bank of Scotland Group. Defendant RBS maintains its American bank headquarters in Providence, Rhode Island.

4. Defendant Citizens is a national bank, subject to the National Bank Act, 12 U.S.C. § 1, et seq., and regulations promulgated by the Office of the Comptroller of the Currency. Upon information and belief, Defendant Citizens is organized under the laws of Delaware and is a wholly owned subsidiary of Defendant RBS.

5. Upon information and belief, Defendant Citizens Bank of Pennsylvania is a Delaware corporation and a wholly owned subsidiary of Defendant RBS.

6. Citizens Bank conducts substantial business in this District and in other locations within the states of Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Illinois, Michigan and Ohio.

JURISDICTION AND VENUE

7. The jurisdiction of this Court is conferred and invoked pursuant to 28 U.S.C. § 1332(d)(2) and (6) because it is brought as a putative class action in which the matter in controversy exceeds the sum or value of \$5,000,000.00, exclusive of interest, costs, and at least one member of the class of plaintiffs is a citizen of a state different than Citizens Bank.

8. Venue is proper in this judicial district under 28 § 1391(a), inasmuch as a substantial part of the unlawful practices are alleged to have been committed in this District and Citizens Bank has sufficient minimum contacts with this state and otherwise intentionally avail themselves to consumers in this state through the promotion, marketing, and sale of their financial services, such that the exercise of jurisdiction by this Court is permissible under traditional notions of fair play and substantial justice, and the named Plaintiff resides in this District.

CLASS ALLEGATIONS

9. Plaintiff brings this action on behalf of itself and all other similarly situated individuals, businesses, partnerships and corporations pursuant to Fed. R. Civ. P. 23. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of Rule 23.

10. The proposed class is defined as:

All customers of Citizens Bank in the United States who, within the applicable statute of limitations preceding the filing of this action to the date of class certification, had deposited funds diverted, retained, secreted, converted, or otherwise taken by Citizens Bank based upon the mathematical error performed by the customer in tabulating the amount of their deposit, depositing a greater amount but believing the amount on their deposit slip was accurate, whereupon said over-deposit was retained by Citizens Bank.

11. Plaintiff reserves the right to modify or amend the definition of the proposed class before the Court determines whether certification is appropriate.

12. Excluded from the class are Citizens Bank, its parents, subsidiaries, affiliates, officers, directors, and any entity in which Citizens Bank has a controlling interest, all customers who make a timely election to be excluded, as well as their immediate family members.

13. The members of the class are so numerous that joinder is impractical. The class consists of thousands of members, the identity of whom is within the knowledge of and can be ascertained only by resort to Citizens Bank's records.

14. The claims of the representative Plaintiff is typical of the claims of the class in that the representative Plaintiff, like all class members, had portions of their deposits diverted and retained by Citizens Bank as a result of the pattern and practice of retaining customer funds where the customer deposited a greater amount but based upon the customer's mathematical error, believed their tabulation, which reflected a lesser amount, on the deposit slip was accurate. The representative Plaintiff, like all class members, has been damaged by Citizens Bank's misconduct in that their funds have been taken and otherwise diverted by Citizens Bank. Moreover, the factual basis of Citizens Bank's misconduct is common to all class members, and represents a common thread of unfair and unconscionable conduct resulting in injury to all members of the class.

15. There are numerous questions of law and fact common to the class and those questions predominate over any questions affecting only individual class members.

16. Among the questions of law and fact common to the class are whether Citizens Bank:

a. Implemented a policy or practice directing, precluding, inhibiting or otherwise encouraging branch tellers not to add or calculate the checks, coins and currency supporting the customer deposit;

b. Implemented a policy or practice to retain that portion of the customer deposits which were greater than the deposit slip tendered to the customer (hereinafter referred to as "Retention Policy");

c. Does not alert, notify or inform its customers that their deposit was in error, reflecting a lesser amount than actually deposited;

d. Fails to reimburse or credit customer accounts when Citizens Bank knows that the aggregate amount deposited was greater than the deposit slip tendered to the customer;

e. Utilizes the retained funds from customer deposits to offset its operating expenses;

f. Manipulates the customer statements so as to mask, hide or secret customer mathematical errors which would reveal the correct and actual amount having been deposited;

g. Fails to provide customers with accurate balance and account information;

h. Breaches its covenant of good faith and fair dealing with Plaintiff and other members of the class through its Retention Policy;

i. Converts monies belonging to Plaintiff and other members of the class through its Retention Policy;

j. Is unjustly enriched through its Retention Policy; and

k. Violates the consumer protection acts of certain states through its Retention Policy.

17. Other questions of law and fact common to the class include:

a. The proper method or methods by which to measure damages, and

b. The declaratory relief to which the class is entitled.

18. Plaintiff's claims are typical of the claims of other class members in that they arise out of the same underlying facts; namely, customer mathematical error in their adding the amounts contained on their deposit slip whereupon Citizens Bank issues and tenders a deposit slip confirming the amount the customer believed they deposited wherein the actual amount is

greater, the differential is retained by Citizens Bank. Plaintiff has suffered the harm alleged and has no interest antagonistic to the interests of other class members.

19. Plaintiff is similarly committed to the vigorous prosecution of this action and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the class.

20. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. It is believed that each class members claim will be small relative to the complexity of the litigation, and due to the financial resources of Citizens Bank, no class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the class members will continue to suffer losses and Citizens Bank's misconduct will proceed without remedy.

21. Assuming class members could financially afford such individual litigation, the court system would be inundated with the potential influx of thousands of new lawsuits over the same core facts increasing litigation costs, delays and expenses of the parties and to the Court. Individualized litigation would create the potential for inconsistent or contradictory rulings. By contrast, a class action presents fewer management difficulties, allows for claims to be heard which may otherwise go unheard because of the expense of individual claims, and provide the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

COMMON FACTUAL ALLEGATIONS

22. Defendant RBS is a \$148 billion commercial bank holding company. It is headquartered in Providence, Rhode Island, its two (2) bank subsidiaries are Defendant RBS Citizens and Defendant Citizens Bank of Pennsylvania. Together these banks operate a 12-state branch under the Citizens Bank brand in Connecticut, Delaware, Massachusetts, New

Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and the Charter One brand in Illinois, Michigan and Ohio.

23. Citizens Bank is in the business of providing its customers with a variety of banking services. One service offered by Citizens Bank is checking with check debiting card privileges with a variety of benefits dependent upon the amount deposited, average monthly balance. Citizens Bank offers its customers pre-printed deposits slips with the customers account information or generic deposit slips available at each branch facility.

24. Banking and regulatory practices require confirmation of daily deposits, which Citizens Bank performs at various locations within the states it maintains branch facilities. Daily deposits are checked and calculated for each customer by Citizens Bank's Proof Department.

25. Errors in customer deposits occur daily. Customers depositing currency, coins, and checks are required to complete a deposit slip detailing the amount of currency, coins, and individual checks. Customer calculations and tabulations frequently are in error, the customer inaccurately adds the items to be deposited noting a lesser amount to be deposited whereas the actual amount is greater.

26. Customer mathematical errors revealing a greater amount being deposited than noted in their deposit slip range from \$0.01 up to \$50.00 for each deposit. Customers are given confirming deposits slips from Citizens Bank reflecting the amount the customer believed it deposited which coincides with the customer's deposit slip. Upon information and belief, it is Citizens Bank's policy to discourage branch tellers from adding or calculation the currency, coins and checks to confirm the amount set forth by the customer on their deposit slip.

27. Deposits by customers into their Citizens Bank account are retrieved daily from each branch location and delivered to Citizens Bank's Proof Department which then adds or calculates the actual deposit, crediting the customer account accordingly. Citizens Bank's Proof

Department confirms the actual amount deposited based upon the currency, coin and checks submitted. When an error is discovered reflecting that the customer noted a lesser amount on their deposit slip than actually deposited, the differential is retained by Citizens Bank and diverted to, upon information and believe, two (2) different non-customer accounts maintained and controlled by Citizens Bank. These accounts are identified as account numbers 9344820186 and 9347820186. Upon information and belief, the number of deposits into the aforementioned accounts from customer deposit errors (greater amount having been deposited than the deposit slip tendered by Citizens Bank to the customer) represents hundreds or thousands of deposits over a yet to be identified period.

A. Citizens Bank's Relevant Customer Documents

28. Plaintiff and all members of the class maintain at least a checking account with Citizens Bank. The terms of Citizens Bank's checking accounts are contained in standardized account holder agreements, presented to its customers on a "take it or leave it" basis, drafted and imposed by Citizens Bank, which has vastly superior bargaining strength, and thus constitute agreements of adhesion. A representative copy of the Personal Deposit Account Agreement ("Deposit Agreement") consisting of 36 pages long, single-spaced and in small print, is attached hereto as Exhibit A.

29. Page 5 of the Deposit Agreement reflects that the customers are the owners of the account, not Citizens Bank. Page 19, paragraph 29 of the Deposit Agreement attempts to impose an obligation upon customers to verify the accuracy of the information contained in the statement and if no complaint is communicated to Citizens Bank within 30 calendar days after remittance of the statement, Citizens Bank considers the information contained in the account statement to be correct. Citizens Bank further attempts to preclude or bar any claims for account statement errors is not made in writing, remitted to Citizens Bank's Customer Service Center in

Providence, Rhode Island, within 30 calendar days after the account statement was sent or made available to the customer.

30. However, customers are never informed, advised, alerted or otherwise notified by Citizens Bank that their deposit slip contained a mathematical error, the deposit being less than the actual deposit submitted, received and accepted by Citizens Bank. Furthermore, the account statements remitted by Citizens Bank to each of the class members reveals and reflects the erroneous mathematical calculation performed by the customer, the disclosed deposited being that of what the customer believed and not the actual amount having been deposited and known to Citizens Bank within 24 hours of said deposit.

31. Citizens Bank affirmatively masks or hides the actual amount deposited and retains and diverts customer funds into at least two (2) accounts Citizens Bank maintains and controls.

32. The customer account statements and confirming deposits slips given to the customer by Citizens Bank are misleading, deceptive, and fraudulent in that Citizens Bank is aware of the customer error, retains the differential and diverts the sum away from the customers account and into an account maintained and controlled by Citizens Bank.

33. The customer account statements and confirming deposits slips given to the customer by Citizens Bank are further misleading, deceptive, and fraudulent in that Citizens Bank fails to disclose, advise, inform or otherwise make the customer aware that their funds have been diverted into an account maintained and controlled by Citizens Bank.

34. Citizens Bank's practice is violative of the covenant of good faith and fair dealing implied in the Deposit Agreement as well as the consumer protection laws of numerous states.

35. Citizens Bank developed a policy and employs a practice whereby customer funds are being diverted daily for the benefit and use by Citizens Bank without the knowledge, consent

or approval of the customer. Citizens Bank affirmatively refrains from any notification to the customers of their mathematical error and retains and diverts funds thereby enabling Citizens Bank to amass millions of dollars belonging to customers without accounting for or otherwise explaining the source of the revenue. Customers of Citizens Bank are unaware of their deposit slip error unless the customer photocopied each supporting deposit and recalculated same subsequent to the deposit. The foregoing virtually never occurs and if it does, the deposit may be off pennies, leading the customer not to pursue this issue further.

36. Citizens Bank embraces an unconscionable policy of retaining and diverting customer funds resulting from a deposit slip error thereby profiting Citizens Bank to the detriment of its customers and their respective accounts.

B. Citizens Bank's Cloaking of Accurate Balance Information

37. Citizens Bank actively promotes the convenience of account balance information through the use of ATM's, internet, and wireless communication devices. Citizens Bank provides inaccurate balance information to its customer through its electronic network. Customer balance information does not disclose or reveal the actual deposited amount while failing to disclose the amount of the customer funds diverted and the account or recipient of the customer funds. Aside from the diversion of customer monies, the customer is further harmed when, and if, their account lacks sufficient amounts to cover checks, debit card transactions and ATM withdrawals. Overdraft fees and other charges are assessed by Citizens Bank when the account would, or may, have sufficient sums had Citizens Bank accurately and honestly credited the customer for its actual deposit and not the inaccurate amount as set forth in the customer deposit.

C. Citizens Bank's Unconscionable Policies

38. Citizens Bank's policies and practices of retaining customer funds based upon the customer's knowingly inaccurate computation on their deposit slip are unconscionable in the following respects, among others:

- a. Citizens Bank does not disclose the customer error;
- b. Citizens Bank does not credit the customer's account for the actual amount deposited.
- c. Citizens Bank diverts customer deposits into an account maintained and controlled by Citizens Bank;
- d. Citizens Bank utilized customer funds for its own benefit and to the detriment of its customers.
- e. Citizens Bank knowingly and consciously remits false, misleading and inaccurate account statements;

D. Citizens Bank's Retention of Customer Funds Harmed Plaintiff

39. Citizens Bank's wrongful policy and practice described above has harmed Plaintiff and members of the class. Citizens Bank knowingly and deliberately accepted a deposit slip and issued a confirming deposit slip when Citizens Bank became aware within 24 hours or the next business day that the deposit was more than noted in the confirming deposit slip tendered to Plaintiff. In particular and as an example of one of likely thousands of transactions, on November 24, 2010, Plaintiff deposited currency and checks into its Citizens Bank account noting what it believed to be a deposit of \$1,448.57. Plaintiff erred in its calculation; the actual deposit was \$1,475.07. However, Citizens Bank credited Plaintiff \$1,448.57 and credited account number 9344820186 with \$26.50. Account 9344820186 is not Plaintiff's account. Citizens Bank retained these funds, diverted same into the aforesaid account.

40. The retention and diversion of monies belonging to customers is representative of, upon information and belief, millions of dollars that Citizens Bank wrongfully took and retained from customer accounts. These wrongful takings are especially egregious considering Citizens Bank knew that its customer erred in their calculation of the deposit but nevertheless refrained from properly crediting or depositing these amounts into the customer account while retaining same.

41. Citizens Bank has improperly deprived Plaintiff and the class of significant funds, causing ascertainable monetary losses and damages.

42. Citizens Bank has wrongfully deprived Plaintiff and the class of funds to which it had no legitimate right or claim.

COUNT I
Conversion

1-42. Plaintiff repleads and reasserts paragraphs 1-42 above as paragraphs 1 through 42 of Count I as if fully set forth herein.

43. Citizens Bank had and continues to have a duty to maintain and preserve its customer accounts, to accurately and honestly credit and deposit customer deposits for the full amount of the deposit, and to prevent the accounts diminishment through Citizens Bank's own wrongful acts.

44. Citizens Bank wrongfully retained and diverted monies belonging to Plaintiff and members of the class, and has taken specific and readily identifiable funds from their accounts without any justification or authority.

45. Citizens Bank has, without proper authorization, assumed and exercised the right of ownership over Plaintiff's deposited funds and those of class members, in hostility to the rights of Plaintiff and the members of the class, without legal justification.

46. Citizens Bank continues to retain these funds unlawfully without the consent or Plaintiff and members of the class.

47. Citizens Bank intends to permanently deprive Plaintiff and members of the class of their deposited funds.

48. These funds are properly owned by Plaintiff and members of the class, not Citizens Bank, which has claimed ownership by way of its actions, contrary to the rights of Plaintiff and members of the class.

49. Plaintiff and members of the class are entitled to the immediate possession of their deposited funds.

50. Citizens Bank has wrongfully converted these specific and readily identifiable funds.

51. Citizens Bank's wrongful conduct is continuing.

52. As a direct and proximate result of this wrongful conversion, Plaintiff and other members of the class have suffered and continue to suffer damages.

53. By reason of the foregoing, Plaintiff and members of the class are entitled to recover from Citizens Bank all damages and costs permitted by law, including all amounts that Citizens Bank has wrongfully converted.

54. Plaintiff demands a trial by jury.

COUNT II

Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing

1-42. Plaintiff repleads and reasserts paragraphs 1-42 of Count I as paragraphs 1 through 42 of Count II as if fully set forth herein.

43. Plaintiff and Citizens Bank have contracted for bank account deposit, checking and other services as embodied in the Deposit Agreement and related documentation.

44. Under the laws of the states where Citizens Bank does business, good faith is an element of every contract pertaining to account deposits. Whether by common law or statute, all such contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit – not merely the letter – of the bargain. In other words, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitutes examples of bad faith in the performance of contracts.

45. Employing subterfuge and evasion violate the obligation of good faith in the performance even when an actor believes his conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty.

46. Citizens Bank has breached the covenant of good faith and fair dealing in the Deposit Agreement and its obligations to Plaintiff and the class as set forth herein.

47. Plaintiff and the members of the class have performed all, or substantially all, of the obligations imposed upon them under the Deposit Agreement.

48. Plaintiff and members of the class have sustained damages as a result of Citizens Bank's breach of the covenant of good faith and fair dealing.

49. Plaintiff demands a trial by jury.

COUNT III Unjust Enrichment

1-42. Plaintiff repleads and reasserts paragraphs 1-42 of Count I as paragraphs 1 through 42 of Count III as if fully set forth herein.

43. Plaintiff, on its behalf and on behalf of the class, asserts a common law claim for unjust enrichment.

44. By means of Citizens Bank's wrongful conduct alleged herein, Citizens Bank knowingly provides banking services to Plaintiff and members of the class that are unfair, unlawful, unconscionable and oppressive.

45. Citizens Bank knowingly received, retained and diverted deposited funds from Plaintiff and members of the class. In so doing, Citizens Bank acted with conscious disregard to the rights of Plaintiff and members of the class.

46. As a result of Citizens Bank's wrongful conduct as alleged herein, Citizens Bank has been unjustly enriched at the expense of, and to the detriment of Plaintiff and members of the class.

47. Citizens Bank's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

48. Under the common law doctrine of unjust enrichment, it is inequitable for Citizens Bank to be permitted to retain the benefits it received, and is still receiving, without justification, from the deposited funds diverted, retained, secreted, converted or otherwise taken by Citizens Bank from the members of the class is unfair, unconscionable, and oppressive. Citizens Bank's retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

49. The financial benefits derived by Citizens Bank rightfully belong to Plaintiff and members of the class. Citizens Bank should be compelled to disgorge in a common fund for the benefit of Plaintiff and its members of the class all wrongful or inequitable proceeds received by them. A constructive trust should be imposed upon all wrongful or inequitable sums received by Citizens Bank traceable to Plaintiff and the members of the class.

50. Plaintiff and members of the class have no adequate remedy at all.

COUNT IV
Violations of State Unfair Trade Practice Laws
(On Behalf of the State Subclasses)

1-42. Plaintiff repleads and reasserts paragraphs 1-42 of Count I as paragraphs 1 through 42 of Count IV as if fully set forth herein and is asserted on behalf of the members of each State Subclass under their respective consumer protection statutes.

43. Citizens Bank's business practices relating to the retention of miscalculated deposited funds of consumers violate the Illinois Deceptive Practices Act 815 ILCS 505/1 *et seq.* and other state consumer protection statutes that are in all material respects similar to same.

44. As redress for Citizens Bank's repeated and ongoing violation of these consumer protection statutes, Plaintiff and the class are entitled to, *inter alia*, damages and declaratory relief.

45. Plaintiff demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the class demand a jury trial on all claims so triable and judgment as follows:

A. Declaring Citizens Bank's retention of miscalculated deposited funds of consumers to be wrongful, unfair and unconscionable;

B. Restitution of all retained funds as a result consumers' miscalculated deposited funds, as a result of the wrongs alleged herein in an amount to be determined at trial;

C. Disgorgement of the ill-gotten gains derived by Citizens Bank from its misconduct;

D. Actual damages in an amount according to proof;

E. Punitive and exemplary damages;

F. Pre-judgment interest at the maximum rate permitted by applicable law;

G. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorney's fees pursuant to applicable law; and

H. Such other relief as this Court deems just and proper.

Respectfully submitted,

Todd L. Bowers, Inc.,
on behalf of itself and all other similarly
situated class members

By: /s/ David C. Thollander
One of its attorneys

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