

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

005 2 5 2002

CLERK *VMC*
U. S. DISTRICT COURT
MIDDLE DIST. OF ALA.

NASH J. COOLEY)
)
 Plaintiff,)
)
 v.)
)
 STERLING BANK,)
)
 Defendant.)

CASE NO.: 02-~~W~~^A-1069-N

**DEFENDANT, STERLING BANK'S
ANSWER TO PLAINTIFF'S COMPLAINT**

COMES NOW the Defendant, Sterling Bank, and responds to Plaintiff's Complaint as follows:

1. This Defendant denies the allegations contained in paragraph 1 of the Complaint and demands strict proof thereof.
2. This Defendant is without sufficient information to either admit or deny the allegations contained in paragraph 2 of the Complaint.
3. This Defendant admits the allegations contained in paragraph 3 of the Complaint.
4. This Defendant is without sufficient information to either admit or deny the allegations contained in paragraph 4 of the Complaint.

X

5. This Defendant is without sufficient information to either admit or deny the allegations contained in paragraph 5 of the Complaint.

6. This Defendant denies the allegations contained in paragraph 6 of the Complaint and demands strict proof thereof.

7. This Defendant denies the allegations contained in paragraph 7 of the Complaint and demands strict proof thereof.

8. This Defendant admits the allegations contained in paragraph 8 of the Complaint.

9. This Defendant denies the allegations contained in paragraph 9 of the Complaint and demands strict proof thereof.

10. This Defendant is without sufficient information to either admit or deny the allegations contained in paragraph 10 of the Complaint.

11. This Defendant admits the allegations contained in paragraph 11 of the Complaint.

12. This Defendant admits having knowledge of the correspondence referred to in paragraph 12 of the Complaint; however, this defendant denies that said correspondence was dated October 11, 2002. Rather, said correspondence was dated October 11, 2000.

13. This Defendant admits the allegations contained in paragraph 13 of the Complaint.

14. This Defendant denies the allegations contained in paragraph 14 of the Complaint and demands strict proof thereof.

15. This Defendant denies the allegations contained in paragraph 15 of the Complaint and demands strict proof thereof.

16. This Defendant denies the allegations contained in paragraph 16 of the Complaint and demands strict proof thereof.

17. This Defendant denies the allegations contained in paragraph 17 of the Complaint and demands strict proof thereof.

18. This Defendant denies the allegations contained in paragraph 18 of the Complaint and demands strict proof thereof.

19. Paragraph 19 of the Complaint does not appear to require a response by this Defendant. To the extent that any liability is alleged on the part of this defendant, these allegations are denied and strict proof thereof is demanded.

20. This Defendant denies the allegations contained in paragraph 20 of the Complaint and demands strict proof thereof.

21. This Defendant denies the allegations contained in paragraph 21 of the Complaint and demands strict proof thereof.

22. This Defendant denies the allegations contained in paragraph 22 of the Complaint and demands strict proof thereof.

23. Paragraph 23 of the Complaint does not appear to require a response by this Defendant. To the extent that any liability is alleged on the part of this defendant, these allegations are denied and strict proof thereof is demanded.

24. This Defendant denies the allegations contained in paragraph 24 of the Complaint and demands strict proof thereof.

25. This Defendant denies the allegations contained in paragraph 25 of the Complaint and demands strict proof thereof.

26. This Defendant denies the allegations contained in paragraph 26 of the Complaint and demands strict proof thereof.

27. Paragraph 27 of the Complaint does not appear to require a response by this Defendant. To the extent that any liability is alleged on the part of this defendant, these allegations are denied and strict proof thereof is demanded.

28. This Defendant denies the allegations contained in paragraph 28 of the Complaint and demands strict proof thereof.

29. This Defendant denies the allegations contained in paragraph 29 of the Complaint and demands strict proof thereof.

30. This Defendant denies the allegations contained in paragraph 30 of the Complaint and demands strict proof thereof.

FIRST AFFIRMATIVE DEFENSE

The Plaintiff has failed to satisfy the administrative and procedural requirements to filing suit.

SECOND AFFIRMATIVE DEFENSE

Sterling Bank's actions as they related to Plaintiff were based on legitimate, non-discriminatory factors.

THIRD AFFIRMATIVE DEFENSE

At all times relevant to this lawsuit, Sterling Bank acted in good faith with respect to Plaintiff, and it had reasonable grounds for believing that its actions were not in violation of any law.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of claim and/or issue preclusion.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, laches, and/or collateral estoppel.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff has failed to state a claim pursuant to 42 USC § 1981 and the Civil Rights Act of 1991 for which relief can be granted.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff has failed to state a claim pursuant to the Equal Credit Opportunity Act, 15 U.S.C.A. § 1691, for which relief can be granted.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiff has failed to state a claim pursuant to the Federal Fair Housing Act for which relief can be granted.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

TENTH AFFIRMATIVE DEFENSE

Defendant avers that the Complaint fails to state a claim upon which punitive damages may be awarded to Plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant avers that any award of punitive damages to Plaintiff in this case would be violative of the constitutional safeguards provided to Defendant under the Constitution of the State of Alabama.

TWELFTH AFFIRMATIVE DEFENSE

Defendant avers that any award of punitive damages to the Plaintiff in this case will be violative of the constitutional safeguards provided to Defendant under the Constitution of the United States of America.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant avers that any award of punitive damages to Plaintiff in this case will be violative of the constitutional safeguards provided to Defendant under the constitution of the United States in that the determination of punitive damages under Alabama law is vague, is not based upon any objective standards, is in fact standardless, and is not rationally related to legitimate government interests.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendant avers that any award of punitive damages to Plaintiff in this case will be violative of Article I, Section 6 of the Constitution of the State of Alabama which provides that no person shall be deprived of life, liberty, or property except by due process of law, in that punitive damages are vague and are not rationally related to legitimate government interests.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant avers that any award of punitive damages to Plaintiff in this case will be violative of the Procedural Safeguards provided to Defendant under the Sixth Amendment to the Constitution of the United States in that punitive damages are penal in nature and consequently, Defendant is entitled to the same Procedural Safeguards accorded to criminal defendant.

SIXTEENTH AFFIRMATIVE DEFENSE

It is violative of the Self-Incrimination Clause of the Fifth Amendment to the Constitution of the United States of America to seek to impose against this Defendant punitive damages, which are penal in nature, yet to compel Defendant to disclose potential incriminating documents and evidence.

SEVENTEENTH AFFIRMATIVE DEFENSE

It is violative of the self-incrimination clause of Article I, Section 6 of the Constitution of the State of Alabama to impose against this Defendant punitive damages, which are penal in nature, yet compel this Defendant to disclose documents and evidence.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claim of punitive damages violates the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States, on the following grounds:

- (a) It is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiff's satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;
- (b) The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against defendant, which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- (c) The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- (d) The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts and, thus, violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; and
- (e) The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the Due Process Clause of

the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

(f) The procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing, which infringes the Due Process and Equal Protection clauses of the Fourteenth Amendment.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claim of punitive damages violates the Due Process Clause of Article

I, Section 6 of the Constitution of Alabama, on the following grounds:

(a) It is a violation of the due process clause to impose punitive damages, which are penal in nature, upon a civil defendant upon the plaintiff's satisfying a burden of proof less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

(b) The procedures pursuant to which punitive damages are awarded fail to provide a limit on the amount of the award against this defendant;

(c) The procedures pursuant to which punitive damages are awarded are unconstitutionally vague;

(d) The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages; and

(e) The award of punitive damages in this case would constitute a deprivation of property without due process of law;

(f) The procedures pursuant to which punitive damages are awarded fail to provide a limit on the amount of the award against this defendant.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's attempt to impose punitive or extracontractual damages on this Defendant, on the basis of vicarious liability for the conduct of others, violates, the Fifth, Eighth and Fourteenth Amendments of the United States Constitution.

TWENTY-FIRST AFFIRMATIVE DEFENSE

An award of punitive damages to the Plaintiff in this action would constitute a deprivation of property without due process of law required under the Fifth and Fourteenth Amendments of the United States Constitution.

TWENTY-SECOND AFFIRMATIVE DEFENSE

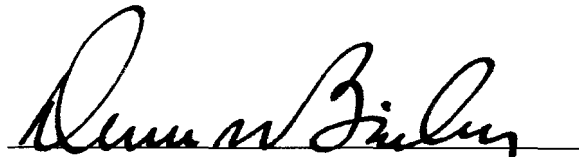
An award of punitive damages against the Defendant in this action would violate the prohibition against laws that impair the obligations of contracts in violation of Article I, Section 22 of the Constitution of Alabama.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The Complaint fails to state a claim for punitive damages under Alabama Code §§6-11-20 to 6-11-30 (1975) and is barred.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

It is violative of the self-incrimination clause of Article I, Section 6 of the Constitution of the State of Alabama to seek to impose against the Defendant punitive damages, which are penal in nature, yet compel Defendant to disclose evidence.


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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been duly served upon the below named counsel of record by placing a copy thereof in the United States Mail, postage prepaid and properly addressed this 23 day of October, 2002:

Daniel A. Hannan, Esq.
FRANKLIN & STEIN, P.C.
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OF COUNSEL