

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY,
FLORIDA

KARL MAKOVSKY, as Personal
Representative of the Estate of JEAN
IRENE MAKOVSKY, and as Agent for
KEITH MAKOVSKY, KURT MAKOVSKY,
and WILLIAM MAKOVSKY as Beneficiaries
of the Certificate of Deposit¹,

CASE NUMBER: 2013 CA 018966

Plaintiffs,

vs.

BANK OF AMERICA, N.A., a
Foreign Profit Corporation,

Defendant.

**PLAINTIFFS' SECOND AMENDED COMPLAINT²
AND DEMAND FOR JURY TRIAL**

Plaintiffs, Karl Makovsky, as Personal Representative of the Estate of Jean Irene Makovsky, and as Agent for Keith Makovsky, Kurt Makovsky, and William Makovsky, as Beneficiaries of the Certificate of Deposit, by and through undersigned counsel, hereby files this Second Amended Complaint and Demand for Jury Trial and sues Defendant, BANK OF

¹ With respect to Count I for Breach of Contract, Karl William Makovsky, Keith Anthony Makovsky, Kurt Howard Makovsky, and William Michael Makovsky, as the named beneficiaries of the Certificate of Deposit (collectively the "Beneficiaries"), authorize Karl Makovsky to act as the Beneficiaries' representative with the full power to litigate on their behalf.

² Plaintiffs originally filed Plaintiffs' Second Amended Complaint on June 24, 2016. Subsequently, Plaintiffs were notified by the Clerk of the Court that the Beneficiaries be named in the style of the case. Therefore, Plaintiffs are refiling the Second Amended Complaint in accordance with the Clerk of the Court's instruction.

AMERICA, N.A., a Foreign Profit Corporation³, (hereinafter “BANA” and/or “Defendant”), and alleges as follows:

1. This is an action seeking damages in excess of \$15,000, exclusive of interest, court costs, and attorneys' fees, and is therefore within the jurisdiction of this Honorable Court.
2. The acts complained of and giving rise to this action occurred in Palm Beach County, Florida.
3. At all times material hereto, performance was to be executed in Palm Beach County, Florida.
4. At all times material hereto, KARL MAKOVSKY is the duly appointed, qualified, and acting personal representative of the Estate of Jean Irene Makovsky (hereinafter “decedent”) and is otherwise *sui juris*.
5. At material times hereto, decedent was a resident of Palm Beach County, Florida.
6. At all times material hereto, KARL MAKOVSKY is authorized by Keith Anthony Makovsky, Kurt Howard Makovsky, and William Michael Makovsky to act as the agent for the Beneficiaries of the Certificate of Deposit with power to litigate, is a resident of Nevada, and *sui juris*.

³ The Complaint originally named BANK OF AMERICA CORPORATION (“BAC”) as Defendant. Subsequently, however, counsel for BAC, which also represents the now-named Defendant, BANK OF AMERICA, N.A. (“BANA”), advised, represented, and agreed to the undersigned that BANA is the correct party Defendant. Please refer to this Honorable Court’s “Agreed Order on Joint Stipulation for Substitution of Party with Directions to Clerk,” dated April 14, 2015.

7. At all times material hereto, Defendant, BANK OF AMERICA, N.A. (“BANA”), is a Foreign Profit Corporation.
8. The Complaint originally named BANK OF AMERICA CORPORATION as Defendant.
9. Counsel for BANK OF AMERICA CORPORATION (“BAC”), advised the undersigned that it also represents the now-named Defendant, BANA.
10. Counsel for BANA advised, represented, and agreed to the undersigned that BANA is the correct party Defendant.
11. Upon information and belief, in 1999, BANA (not BAC) acquired MBNA America Bank, N.A. (hereinafter “MBNA”) banking assets, liabilities, and obligations that had previously merged into and with NationsBank, N.A. in 1994. In 2014 BANA acquired all of MBNA America Bank, N.A.’s remaining assets, liabilities, and obligations after MBNA America Bank, N.A. was renamed FIA Card Services, N.A. in 2006 when it merged into and with FIA Card Services, N.A..
12. At all times material hereto, MBNA was a Member-FDIC Institution.
13. Counsel for BANA stipulated that BANA was the proper party Defendant.
14. On or about April 14, 2015, this Honorable Court entered an “Agreed Order on Joint Stipulation for Substitution of Party with Directions to Clerk.”
15. Venue is proper as the events giving rise to this action occurred in Palm Beach County, Florida.

16. Venue in Palm Beach County is further appropriate as the Defendant does substantial business in Palm Beach County, Florida.
17. Any argument contradicting venue has been waived by virtue of Defendant answering the originally filed complaint.
18. All conditions precedent necessary to bring this action have been performed, have occurred, or have been waived.

COUNT I

Breach of Contract

(Karl Makovsky, as Agent for the Beneficiaries of the Certificate of Deposit v. BANA)

19. Plaintiff, KARL MAKOVSKY, as Agent for the Beneficiaries of the Certificate of Deposit (“Plaintiff”), reasserts and realleges paragraphs 1 through 18 above and incorporates same as if fully set forth herein.
20. On or about August 27, 1992, decedent, Jean Makovsky, purchased a Certificate of Deposit, certificate number 40-043129-6, (hereinafter “CD” or “contract”) from MBNA, a Member-FDIC Institution.
21. A true and correct copy of the CD is attached hereto and incorporated herein as **Exhibit “A.”**
22. Upon information and belief, the CD was issued by MBNA to decedent and provided that MBNA was indebted to decedent, or beneficiaries as listed, for the investment balance of Seventy Five Thousand Dollars (\$75,000.00) payable upon the CD’s maturity and in accordance therefor.

23. BANA acquired MBNA's banking assets, liabilities, and obligations that had previously merged into and with NationsBank, N.A.
24. BANA acquired all of MBNA's remaining assets, liabilities, and obligations after MBNA was renamed FIA Card Services, N.A. when MBNA merged into and with FIA Card Services, N.A.
25. BANA acquired the obligations relating to the CD.
26. Decedent gave Defendant the agreed to monies pursuant to the contract.
27. Plaintiff and decedent performed all obligations under the contract.
28. Plaintiff, as beneficiary of the CD, presented the original CD confirmation to Defendant for payment.
29. Defendant willfully and intentionally materially breached the contract in the following ways, which include, but are not limited to:
 - a. Defendant failed to tender payment as required by the contract;
 - b. Other acts or inactions not yet determined and to be determined through discovery and/or at trial.
30. Defendant materially breached the terms of the contract by denying tender as originally agreed upon.
31. Defendant has not tendered payment pursuant to its contractual obligation.
32. The CD was registered by the decedent "in trust for" Karl Makovsky, Keith Anthony Makovsky, Kurt Howard Makovsky, and William Michael Makovsky.

33. Pursuant to the terms of the CD/contract, upon Jean Makovsky's death, the rights under the CD directly passed to Karl Makovsky, Keith Anthony Makovsky, Kurt Howard Makovsky, and William Michael Makovsky.
34. As such, Plaintiff has the authority to enforce the contract.
35. Plaintiff is the proper party empowered to enforce the Defendant's obligation on behalf of all named beneficiaries on the CD. All beneficiaries on the CD are decedent's children:
 - a. Karl William Makovsky;
 - b. Keith Anthony Makovsky;
 - c. Kurt Howard Makovsky; and
 - d. William Michael Makovsky.
36. As a result of Defendant's material breach, Plaintiff suffered, and will continue to suffer, damages.
37. Plaintiff retained the undersigned counsel to bring this action and is obligated to pay counsel a reasonable fee, as well as to reimburse counsel for all costs, associated with this action.

WHEREFORE, Plaintiff, Karl Makovsky, as Agent for the Beneficiaries of the Certificate of Deposit, respectfully demands judgment against Defendant, BANK OF AMERICA, N.A., for damages, together with attorneys' fees, costs, and interest, and for any such other and further relief as this Honorable Court deems just and proper.

COUNT II
Money Lent

(Karl Makovsky, as Personal Representative of the Estate of Jean Irene Makovsky, v. BANA)

38. Plaintiff, KARL MAKOVSKY, as Personal Representative of the Estate of Jean Irene Makovsky, ("Plaintiff"), reasserts and realleges paragraphs 1 through 18 above and incorporates same as if fully set forth herein.
39. On or about August 27, 1992, Plaintiff deposited/transferred a sum of money to MBNA pursuant to MBNA's unconditional promise to repay said loan, plus interest, upon maturity of the Certificate of Deposit ("CD").
40. Defendant owes Plaintiff Seventy Five Thousand Dollars (\$75,000.00) that is due with interest in accordance with the CD attached hereto as **Exhibit "A,"** for money lent by Plaintiff to Defendant on or about August 27, 1992.
41. Pursuant to the terms of the CD/contract, KARL MAKOVSKY, as personal representative of the decedent's estate, has the same authority as the decedent to enforce the contract.
42. To date, and despite demand, Defendant has failed and refused to remunerate Plaintiff for the money loaned.
43. Plaintiff retained the undersigned counsel to bring this action and is obligated to pay counsel a reasonable fee, as well as to reimburse counsel for all costs, associated with this action.

WHEREFORE, Plaintiff, Karl Makovsky, as Personal Representative of the Estate of Jean Irene Makovsky, respectfully demands judgment against Defendant, BANK OF AMERICA,

N.A., for damages, together with attorneys' fees, costs, and interest, and for any such other and further relief as this Honorable Court deems just and proper.

COUNT III:
Unjust Enrichment

(Karl Makovsky, as the Personal Representative of the Estate of Jean Irene Makovsky v. BANA)

44. Plaintiff, KARL MAKOVSKY, as Personal Representative of the Estate of Jean Irene Makovsky, ("Plaintiff"), reasserts and realleges paragraphs 1 through 18 above and incorporates same as if fully set forth herein.
45. Jean Irene Makovsky conferred a benefit upon Defendant by providing Defendant with monies valuing Seventy Five Thousand Dollars (\$75,000.00).
46. Defendant had knowledge of that benefit conferred upon it by Jean Irene Makovsky.
47. Defendant knowingly and voluntarily accepted the benefit conferred upon it by Jean Irene Makovsky.
48. Defendant's acceptance and retention of the benefit under the circumstances make it inequitable for it to retain said benefit without paying the value thereof to Plaintiff.
49. Defendant has retained Plaintiff's money without permission.
50. Defendant has benefitted from Plaintiff's payment.
51. There is no adequate remedy at law.
52. Plaintiff is entitled to damages as a result of Defendant's unjust enrichment, including the disgorgement of all monies unlawfully retained.

53. Plaintiff retained the undersigned counsel to bring this action and is obligated to pay counsel a reasonable fee, as well as to reimburse counsel for all costs, associated with this action.

WHEREFORE, Plaintiff, Karl Makovsky, as Personal Representative of the Estate of Jean Irene Makovsky, respectfully demands judgment against Defendant, BANK OF AMERICA, N.A., for damages, together with attorneys' fees, costs, and interest, and for any such other and further relief as this Honorable Court deems just and proper.

COUNT IV:
Conversion

(Karl Makovsky, as the Personal Representative of the Estate of Jean Irene Makovsky v. BANA)

54. Plaintiff, KARL MAKOVSKY, as Personal Representative of the Estate of Jean Irene Makovsky, ("Plaintiff"), reasserts and realleges paragraphs 1 through 18 above and incorporates same as if fully set forth herein.

55. Defendant converted to its own use monies of Jean Irene Makovsky of the value of Seventy Five Thousand Dollars (\$75,000.00).

56. Defendant converted the specific monies deposited by Jean Irene Makovsky; upon belief, Jean Irene Makovsky deposited those monies pursuant to the terms of a Certificate of Deposit ("CD"). *See Exhibit "A."*

57. Defendant converted to its own use Seventy Five Thousand Dollars (\$75,000.00) of Plaintiff's money that was then the property of Plaintiff.

58. Defendant's use of Plaintiff's monies has deprived and continues to deprive Plaintiff of the possession and use of Plaintiff's property.
59. Defendant's intentional interference and wrongful assertion of dominion and control over Plaintiff's property have caused damages to Plaintiff.
60. Plaintiff, as the Personal Representative of the Estate of Jean Irene Makovsky and beneficiary as stated on the CD, owns and has the right to possess money unlawfully retained by the Defendant.

WHEREFORE, Plaintiff, Karl Makovsky, as Personal Representative of the Estate of Jean Irene Makovsky, respectfully demands judgment against Defendant, BANK OF AMERICA, N.A., for damages, together with attorneys' fees, costs, and interest, and for any such other and further relief as this Honorable Court deems just and proper.

COUNT V:
Civil Theft

(Karl Makovsky, as the Personal Representative of the Estate of Jean Irene Makovsky v. BANA)

61. Plaintiff, KARL MAKOVSKY, as the Personal Representative of the Estate of Jean Irene Makovsky, ("Plaintiff"), reasserts and realleges paragraphs 1 through 18 above and incorporates same as if fully set forth herein.
62. Defendant knowingly obtained funds from Plaintiff with the intent to either temporarily or permanently deprive Plaintiff of the right to use said funds or a benefit therefrom or appropriated said funds for Defendant's own use or the use a person not entitled to said funds.

63. Defendant's actions and/or omissions violate Florida Statutes Section 812.014.
64. On January 15, 2015, Plaintiff, through counsel, sent a statutory letter pursuant to Section 722.11, Fla. Stat. demanding that Defendant pay the funds that Defendant stole from Plaintiff. *See* Demand Letter attached hereto as **Exhibit "B."**
65. That Demand Letter was served on BANA by serving BANA's counsel.
66. BANA was properly served with the Demand Letter.
67. Upon belief, at the time of sending the Demand Letter, the amount of Plaintiff's funds knowingly and unlawfully obtained by Defendant was Two Hundred Thirty Six Thousand Eight Hundred and Forty Five Dollars and Eighty-One Cents (\$ 236,845.81).
68. Plaintiff demanded, both orally and in writing, for Defendant to return Plaintiff's funds.
69. To date, Defendant has failed to tender and/or return Plaintiff's funds.
70. To date, Defendant has failed to advise why it has not returned Plaintiff's funds.
71. Defendant's conduct has caused Plaintiff to suffer damages.
72. Defendant's failure to tender and/or return Plaintiff's funds entitles Plaintiff to treble damages as well as reasonable attorneys' fees and court costs. *See* Florida Statutes Section 772.11 *et. seq.*
73. Plaintiff has complied with all conditions precedent to filing this cause of action and has complied with all statutory requirements.
74. Plaintiff has hired, and has agreed to pay, the undersigned counsel reasonable attorneys' fees and court costs in this action.

WHEREFORE, Plaintiff, Karl Makovsky, as the Personal Representative of the Estate of Jean Irene Makovsky, demands judgment against Defendant for compensatory damages (including interest owed), for treble damages of that amount, for attorneys' fees and costs as deemed appropriate and reasonable by this Honorable Court (pursuant to Section 772.11, Florida Statutes, and other applicable law), and for any such other and further relief as this Honorable Court deems just and proper.

Demand for Jury Trial

Plaintiffs, KARL MAKOVSKY, as Agent for the Beneficiaries of the Certificate of Deposit, and as Personal Representative of the Estate of Jean Irene Makovsky, hereby demand a trial by jury as to all issues so triable.

[Remainder of page intentionally left blank.]

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 1st day of July, 2016, a true and correct copy of the foregoing was furnished to the following:

LIEBLER, GONZALEZ & PORTUONDO

Attorneys for BANK OF AMERICA, N.A., et al.

Attn: MARC T. PARRINO

Attn: Joyce B. Rodriguez

Courthouse Tower - 25th Floor

44 West Flagler Street

Miami, FL 33130

(305) 379-0400

service@lgplaw.com; JBRodriguez@lgplaw.com; mtp@lgplaw.com

Respectfully submitted,

SHINER LAW GROUP, P.A.

Attorneys for Plaintiff

95 South Federal Highway, Suite 200

Boca Raton, Florida 33432

Telephone: (561) 368-3363

Facsimile: (561) 368-3364

Litigation@InCourt.com

By: /s/ Ronnie M. Gotti

DAVID I. SHINER

Florida Bar No.: 572721

David@InCourt.com

RONNIE M. GOTTI

Florida Bar No.: 109471

Ronnie@InCourt.com

EXHIBIT "A"

CERTIFICATE OF DEPOSIT

THANK YOU FOR INVESTING WITH MBNA AMERICA BANK, N.A. YOUR CERTIFICATE OF DEPOSIT HAS BEEN ESTABLISHED AS DESCRIBED BELOW. THIS CONFIRMATION IS NON-NEGOTIABLE AND NON-TRANSFERABLE, AND NEED NOT BE PRESENTED FOR THE WITHDRAWAL OF FUNDS. WE WILL CONTACT YOU PRIOR TO RENEWAL FOR REINVESTMENT INSTRUCTIONS.

CERTIFICATE NUMBER: 40-043129-6

INVESTMENT BALANCE: \$75,000.00

TERM: 30 MONTHS

ANNUAL INTEREST RATE: 5.00%

ISSUE DATE: 08/27/95

EFFECTIVE ANNUAL YIELD: 5.13%

RENEWAL DATE: 02/27/95

COMPOUNDING METHOD: DAILY

INTEREST DISPOSITION: MONTHLY CHECK

TAXPAYER ID: 123225149

INVESTOR SERVICES IS AVAILABLE MONDAY THROUGH FRIDAY FROM
8:00 A.M. TO 8:00 P.M. AND SATURDAY FROM 8:00 A.M. TO 5:00 P.M.
PLEASE CALL 1-800-345-0397 IF YOU HAVE ANY QUESTIONS.

ACCOUNT REGISTRATION:

JEAN IRENE MAKOVSKY
ITF KEITH ANTHONY CARL WILLIAM KURT
HOWARD AND WILLIAM MICHAEL MAKOVSKY
103 PRINCESS COURT
ROYAL PALM BEACH, FL 33411

MEMBER-FDIC

Depositors Insured to \$100,000

MBNA AMERICA BANK, N.A. CERTIFICATE OF DEPOSIT TERMS AND CONDITIONS

The person or persons (the "Depositor" or "you" or "your", whether one or more) establishing a Certificate of Deposit Account (the "Account") with MBNA America Bank, N.A., a national banking association, (the "Bank" or "we" or "us") acknowledges receipt of a copy of these Deposit Terms and Conditions. By maintaining the Account with the Bank after receipt of these Deposit Terms and Conditions, Depositor hereby agrees to the provisions herein.

- 1. MINIMUM OPENING BALANCE.** — The initial deposit shall be in an amount at least equal to a minimum established by the Bank from time to time.
- 2. INTEREST.** — Interest shall accrue on the funds from the day of deposit (provided funds are subsequently collected) and up to, but not including, the day of withdrawal. Interest is compounded daily. The interest rate is guaranteed for the stated term of the Certificate of Deposit ("your rate").
- 3. TERM.** — The term of the Account shall be such period as is set forth on the Account application, or such period as is subsequently authorized by the Depositor to be effective for any renewal term. A penalty will be assessed for early withdrawal as outlined in Section eight (8).
- 4. TAXPAYER IDENTIFICATION NUMBER ("TIN").** — A TIN is a taxpayer identification number. For an individual it is the Social Security number and for a business it is the Employer Identification number.

A "Certified TIN" is a TIN supplied by the Depositor where the Depositor signs under penalty of perjury that the Depositor has supplied the correct TIN and is not subject to backup withholding. The Bank will supply you with the proper form to certify your TIN.

This Bank will not open an Account without a TIN whether the Account is opened in person, by mail or by wire. The Bank will not open an Account without a Certified TIN when the Account is opened in person. If the initial opening deposit is by mail or wire, the Bank must receive a Certified TIN within thirty (30) days of Account opening. During the thirty (30) day period, any withdrawals are subject to 20% backup withholding of reportable interest. If the TIN is not certified within thirty (30) days of opening, 20% backup withholding of interest paid will begin on day thirty-one (31) and continue until the TIN is certified. For Retirement Savings Accounts for which MBNA America Bank is the Custodian ("Retirement Savings Account"), a TIN is required to open the Account; however, a Certified TIN is not required and backup withholding is not applicable.

5. ACCOUNT OWNERSHIP. — The ownership of the Account is set forth on the Account application. The Bank is authorized to rely on any one of the signatures on the Account application for the transaction of any business in or to the Account. Any authorized Depositor may withdraw, transfer, dispose of or instruct Bank as to the handling of funds in the Account without liability to the Bank for the use which may be made of such funds. If this Account is owned by more than one Depositor ("joint account"), each Depositor owns the Account both individually and jointly. All deposits to the Account belong equally to all joint Depositors. If a Depositor dies, his or her ownership of Account passes to the surviving Depositor, who will continue to own the entire Account.

Any trustee named on the Account shall have the same authority as a Depositor; any co-trustee shall have the same authority as a co-Depositor.

The Depositor represents and warrants to the Bank that (a) if a voluntary trust Account is indicated on the Account application or otherwise, the funds in the Account have been voluntarily placed in trust by the Depositor and no other writing has been or will be executed by Depositor in respect of such trust; and (b) if a custodian Account under the Uniform Gift to Minors Act is indicated on the Account application or otherwise, each deposit represents funds for which Depositor is such a custodian.

Retirement Savings Accounts will be opened for our Depositor only.

6. DECEDENT ACCOUNTS. — Upon the death of a Depositor, a certified copy of the death certificate must be provided by the surviving Depositor or Executor of estate. For Retirement Savings Accounts, a certified copy of the death certificate must be provided by the beneficiary or beneficiaries as designated by the Account application, or the Executor of the estate.

7. NOTICE OF WITHDRAWAL. — As required by Federal law, the Bank reserves the right to require seven (7) calendar days notice of Depositor's intent to withdraw funds from the Account.

8. WITHDRAWAL PENALTY. — Federal regulations require that an interest penalty be assessed against the Account if funds (other than interest) are withdrawn prior to maturity.

(a) The Bank shall impose the following withdrawal penalties for each early withdrawal of funds: for a Certificate of Deposit with an original maturity or required notice period of one (1) year or less withdrawal in whole or in part before maturity, an amount equal to three (3) months' daily compounded interest on the amount withdrawn calculated at your rate; for a Certificate of Deposit with an original maturity or required notice period of greater than one (1) year withdrawal in whole or in part before maturity, an amount equal to six (6) months' daily compounded interest on the amount withdrawn calculated at your rate.

(b) No interest penalty shall be imposed with respect to any withdrawal (i) from an Account upon the death of any owner of the Certificate of Deposit funds; or (ii) from an Account when the owner of the Certificate of Deposit is determined to be legally incompetent by a court or other administrative body of competent jurisdiction; or (iii) from an Account where a Certificate of Deposit is withdrawn within ten (10) days after a

specified maturity date even though these Terms and Conditions provided for automatic renewal at the maturity date; or (iv) from a Retirement Savings Account after the Depositor attains the age of 59½ and the reason for withdrawal is normal distribution.

9. MATURITY RENEWAL. — At maturity, all or any of the balance (including accrued interest) may be withdrawn from the Account. If the funds are not then withdrawn, or instructions have not been given to the Bank as to the disposition thereof, the Account will be renewed for a term equal to the original term. The interest rate during any renewal term shall be the interest rate paid by the Bank at the commencement date of the renewal term. For Certificates of Deposit for an amount equivalent to the Account's funds. Upon the renewal of the Account, the Bank may adjust any of the Terms and Conditions of the Account (including, but not limited to, the rate paid, the withdrawal penalty, and the Bank's method of calculating and paying interest on the Account).

10. STATEMENT. — Bank will mail Depositor a quarterly statement of the Account. Depositor agrees to examine the statement immediately for errors. The Bank may deem the statement correct if you do not notify us of a problem within sixty (60) days after the statement was mailed to you. To report an error on your statement, write to us at MBNA America Bank, N.A., P.O. Box 19103, Wilmington, DE 19839-0103. For Retirement Savings Accounts, the Bank will mail Depositor a periodic statement of the Account. Bank reserves the right to assess a fee for photostatics of statements.

11. POSTING OF DEPOSITS. — The Bank may treat all deposits received after 2:00 p.m. E.S.T. as received on the next business day. All deposits made in U.S. funds are credited subject to collection. All deposits not made in U.S. funds will not be credited to the Account until they have been collected in U.S. funds. For claims made against the Bank for recovery of any part of a collected item (including any item cashed for Depositor) after final payments on the basis that such item was altered, bore a forged or unauthorized endorsement or was not properly payable, the Bank may withhold or withdraw the amount of such claim from the Account. The Bank may, at any time, and at its discretion, refuse any deposit, limit the amount which may be deposited, or maintained in the Account, return all or any part of any deposit, or close the Account.

12. LOST/STOLEN WITHDRAWAL CHECK. — If you believe your withdrawal of funds check issued by the Bank has been lost or stolen, you agree to notify us immediately at (800) 345-0397. You also agree to furnish us with an affidavit or other appropriate documentation as proof of loss or theft.

13. WIRE TRANSFERS. — To effect a wire transfer of funds from the Account, Bank must have on file written wire instructions signed by all Depositors. We reserve the right to establish a cutoff time for same-day wires. A fee will be assessed for outgoing wires. This fee is subject to change from time to time. Unless required by Delaware or Federal law, changes may occur without notice.

14. ACCOUNT CHANGES. — You are responsible for notifying us promptly of any changes in such items as your mailing address, your name or the authorized signers on your Account. Notification to us must be in writing.

15. GOVERNING LAW. — This Agreement is made in Delaware and the Account is governed by Delaware and Federal law.

16. RESCUE. — This Account will be considered "abandoned" after the period of inactivity established by the laws of your state of residence or the Bank's books. Account will be transferred to the proper state agency unless the Depositor has exercised some aspect of ownership (e.g., made a deposit or withdrawal) during that period.

17. RIGHT OF OFFSET. — Without notice to Depositor, Bank may at any time deduct from Depositor's Account (a) amounts deposited in the Account by mistake, and (b) amounts owed to Bank in connection with Depositor's default on debts owed to Bank, except any liability arising under a consumer credit card plan. However, in no event shall the right of offset be applicable except for part (a).

18. ASSIGNMENT AND TERMINATION. — No assignment of Depositor's Account is effective without Bank's written consent. No assignment is allowed on Retirement Savings Accounts. Bank may close this Account at any time, without liability for damages resulting from the dishonor of any presented item, if the Bank closes or requires the Depositor to close the Account, the Bank will pay interest only up to, but not including, the day on which the Bank notifies you of such closing or requirement to close.

19. SECURED CARD CERTIFICATES. — This section applies only to Secured Card Certificates of Deposit; Retirement Savings Accounts cannot be Secured Card Certificates of Deposit. This Certificate of Deposit is security for an MBNA America credit card account. MBNA America has the right to condition any disbursement of funds from the Certificate of Deposit upon the satisfaction of any MBNA America credit card account and upon the return of all MBNA America credit cards and other access devices issued under the credit card agreement. If Depositor defaults on this or other MBNA America credit card obligations, MBNA America may withdraw and apply such funds from this Certificate of Deposit as is necessary to satisfy Depositor's debt with MBNA America.

20. PARTIAL INVALIDITY. — If any provision(s) of these Terms and Conditions is found to be invalid, all other provisions will remain in full force and effect.

21. NONWAIVER. — The Bank's failure to exercise any of its rights under these Terms and Conditions does not mean that we are unable to exercise those rights later.

22. RETIREMENT PLANS. — If this investment is within a retirement plan, refer to the retirement plan document for additional disclosures.

EXHIBIT "B"



January 15, 2015

Time Sensitive Communication

CRRR: 7014 2120 0001 1828 0300;
& Email Service: service@lgplaw.com, mtp@lgplaw.com

LIEBLER, GONZALEZ & PORTUONDO

Aftn: Marc T. Parrinio, Esq.

Courthouse Tower - 25th Floor

44 West Flagler Street

Miami, FL 33130

RE: KARL MAKOVSKY, Personal Representative of the Estate of Jean Irene Makovsky vs. BANK OF AMERICA, N.A.

Dear Marc:

This letter shall serve as formal notice to the Defendant of Plaintiff's potential claims pursuant to Florida Statutes Section 772.11, et seq.

That said, Plaintiff has claim(s) against you¹ for your unlawful taking and/or refusing to release Plaintiff's monies; according to the Plaintiff's calculations, Defendant currently owes the Plaintiff the amount of \$ 236,845.81 (which does not include applicable attorneys' fees and associated costs); the claim arises from the fact that you obtained or used the said funds with the intent of either temporarily or permanently depriving Plaintiff of a right to use said funds or a benefit therefrom, or appropriated said funds to your own use or to the use of a person not entitled to it.

To date, said monies have not been returned to Plaintiff, after demand has been made. **The Defendant actions constitute a conversion of a substantial sum of monies, which belong to Plaintiff, used for the personal consumption and profit of you personally and otherwise.**

¹ As used herein, "you" and/or "your" shall refer to the Defendant, BANK OF AMERICA, N.A.

In order to bring this matter to an amicable resolution, Plaintiff has instructed my office to make a demand - pursuant to Florida Statutes - in the amount of 236,845.81 dollars.

Specifically, please be aware that, pursuant to Florida Statutes § 772.11, Florida law provides a civil remedy for theft that allows Plaintiff to make a claim against you for triple the amount of damages, *to wit*: the sum of \$710,537.43 (three times the amount of \$ 236,845.81).

This letter shall serve as a formal demand for the payment of monies owed to Plaintiff from you, in the amount of \$236,845.81, the current amount owed to the Plaintiff under the terms of the instrument. **Your failure to tender the above-stated amount of monies owed to Plaintiff is construed as misappropriation and conversion, with the intent to permanently deprive Plaintiff of its property/funds.**

Pursuant to Florida Statutes, you have thirty (30) days to make payment in order to avoid a civil action from being filed against the Defendant for theft. **Accordingly, under Florida law, Plaintiff is entitled to treble damages in the amount of \$710,537.43, in the event that payment is not made within thirty (30) days from the date of this demand.** In addition, Florida Statutes also provides that in the event a lawsuit is filed to enforce this demand, Plaintiff's reasonable attorneys' fees and court costs may be recovered from you in addition to treble damages.

The failure to tender payment within the next thirty (30) days will result in Plaintiff moving to amend the above-referenced lawsuit to add a cause of action as outlined herein, not including any other damages such as attorneys' fees and costs, which may be recovered by Plaintiff.

In light of the seriousness of this demand and the consequences that you will face if you ignore this demand, we urge you to immediately comply with this demand, and return the amount of \$236,845.81, in certified funds, payable to SHINER LAW GROUP, P.A., TRUST ACCOUNT, 95 South Federal Highway, Second Floor, Boca Raton, Florida 33432. Please contact our office to discuss this matter in greater detail and to facilitate payment arrangements.

The thirty (30) day Florida Statutory deadline shall expire on or about Friday, February 13, 2015.

In addition, this office is obligated to inform you personally that pursuant to Florida Statutes § 772.17, the State of Florida may bring a criminal or civil action

against you personally for the conduct described herein. If such an event occurs, Plaintiff's claims will be suspended until the state's action concludes. Furthermore, please understand that attorneys' fees and court costs may be awarded to a successful plaintiff. See Florida Statutes § 772.11.

As you know, Plaintiff already maintains several causes of action against the Defendant in the above-referenced action. Nevertheless, please note that there are additional civil remedies, as set forth in Florida Statutes § 812.035, which could be pursued against you. These remedies include injunctions, divestiture, restrictions on future activities or investments, dissolution or reorganization of any enterprise, suspension or revocation of any licenses, permits, or approvals issued by state agencies or departments, and revocation of corporate charters.

Thank you in advance for your anticipated consideration and cooperation with regard to this matter and please GOVERN YOURSELF ACCORDINGLY.

Very truly yours,



David Shiner

c: Client