

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF SUFFOLK

Index No. 061458/2013

AMERICAN EXPRESS BANK, FSB
16

APPENDIX 9, E-filed Doc # 17, cited in Paragraph

-v-
GENERALLY

REGARDING FIRM PHONE RECORDED EVIDENCE

DANIEL M ROSENBLUM
LIGHT OF

AS AN OPERATIONAL COST TO FIRM & LENDER IN
DILIGENT LEGAL PRACTICE

attorney of record Zwicker & Associates action commenced July 2013 Amex card
371339213796009

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK

Index No. 100156/2011

AMERICAN EXPRESS BANK, FSB
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REGARDING FIRM PHONE RECORDED EVIDENCE

DANIEL M ROSENBLUM
OF

AS AN OPERATIONAL COST TO FIRM & LENDER IN LIGHT
DILIGENT LEGAL PRACTICE

attorney of record Jaffe & Asher action commenced March 2011 Amex card 371339213796009

THE FOLLOWING NOTICE OF DISCOVERY IN THE ABOVE CAPTIONED MATTER(S) IS HEREBY PRESENTED
TO THE GENERAL PUBLIC AND NEW YORK STATE SUPREME COURT, SUFFOLK COUNTY & NY COUNTY....

....TO THE ABOVE CAPTIONED MATTERS, SUBMITTED BY DEFENDANT DANIEL M ROSENBLUM
("I", "ROSENBLUM" and "DMR" below.)

1. This filing is {DMR#11} Appendix 9 of 18 to DMRAMEX091513 ¶ 16 & ¶¶, ¶,¶ REGARDING AMEX FIRM PHONE RECORDED EVIDENCE & COMMUNICATIONS TECHNOLOGY GENERALLY; FIRM/&LENDER OPERATIONAL COST&POLICIES SACRIFICING DILIGENT LEGAL PRACTICE. Efiled Document #17
- 2.
3. Zwicker knew, or should have known, for a variety of reasons, that Amex had already filed suit against Rosenblum when Zwicker proceeded to file the same case against Rosenblum. Rosenblum has cause for a variety of counter claims as a result, and, Rosenblum's Tolling Motion should take precedence to the necessity to file such counter claims. Additionally, Rosenblum will oppose any termination of the current case unless Rosenblum stipulates otherwise. The instant discovery request is first and foremost concerned with recorded dialogue- recorded by Zwicker- in which Rosenblum notified Zwicker that such subject matter was in fact in litigation whilst Zwicker was calling Rosenblum continuously. Similarly, Zwicker client American Express should have been knowledgeable. Note that separately, additional communications and policy discovery shall be necessary for subject matter which is discussed variously in Rosenblum's Labor Day 2013 Efiling in Suffolk County in the instant Supreme Court Index # 061458/2013. Rosenblum hereby requests copies of, or the ability to copy audio recordings of all dialogue recorded in phone calls between Zwicker and Rosenblum. Additional information about such calls is below, and additional requests are made below, and, additional related discovery requests shall be made.
4. Below is a reference to a filing in a US District Court Case (the filing is a 'status report') in which a Senior Zwicker Corporate Officer and Supervising Attorney, Robert Thuotte, makes reference to "Call recording evidence" on page 3 of the 4 page status report filed on January 25th 2011, which means that the "call recording evidence" has been preserved at least as of January 25th 2011 in a matter which which began June 29th 2010. Presumably the recording was made prior to June 29th 2010, which means the recording was preserved presumably for more than six months. Rosenblum is unfamiliar, at this point in time, with the particulars of this specific call recording. It could have been made more than a year before 1/25/11, or, perhaps after June 29th 2010. But the filing by Zwicker is important to Rosenblum because of the reference to call recording evidence, and, the availability of a Zwicker Officer's email address on the court filing.
5. To begin, note that Rosenblum was called by Zwicker on a multitude of occasions presumably during 2012 and 2013 whilst the Jaffe litigation on behalf of American Express was ongoing. During such calls, Rosenblum repeatedly gave notice to Zwicker of the ongoing Jaffe litigation, stating succinctly that the account Zwicker was calling about was in litigation in NY and that Rosenblum therefore disbelieved that Zwicker could be calling on behalf of American Express because Rosenblum had answered in Court and the matter was being litigated. In every instance that

Zwicker called Rosenblum during such time period, Rosenblum was advised that the call was being recorded. As per the Thuotte filing below, Rosenblum is of the impression that such recordings are preserved and eligible to be used as evidence, which Rosenblum intends to do. Rosenblum therefore notifies and has notified Zwicker to preserve all calls to Rosenblum.

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Diligence required in filing of actions.

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Zwicker offices have made informed, deliberate actions to circumvent requirements of Professional Conduct. Zwicker offices have devoted technology to record calls and monitor data on the collection side but have taken efforts to cut costs insofar as diligent filing by not applying the same technology and data analysis to filing diligently. The more sophisticated technologies of data analysis at Zwicker are devoted to non-legal facets of the firms' operations. Instead, the Zwicker firm has calculated that it is better off filings actions without diligence because of cost factors. However, diligence is not a cost factor which an attorney is entitled to minimize especially when such attorney has operations in place such as Zwicker. Zwicker claims to be recording calls and verifying identity etc thousands of times a day but is filing actions without the commensurate utilization of technology as with the collectors. In addition, whereas all dialogue with a collector is subject to verbal analysis, none on the attorney side is.

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Amex guilty of same thing. For example, Amex is in a positoin and has facilitated systems of data analysis whereby upon submission of social security number can analyze data from major credit reportig bureaus and extend credit or not instantaneously based on accurate information which comports with cost benefit analysis. But when it comes to required legal dilignece inn filing of actions, no such system to call upon or request information, utilied beofre a filing. Such diligence is a REQUIRED cost , , not to be shirked and not to be lawfully trimmed to increase profit margin. The instant Zwicker debt collectors speak to a target, all recorded and information towards Zwicker's end- profit; n such system to comply with law. Zwicker is a sly operation, does not deserve to use the attorney monicker in solicitations. Diligence in legal filings, specifically to commence actions against individuals, is not to be trimmed in cost cutting for an attorney operations.

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Here, specifically, Rosenblum notified Zwicker collectors on several occasions of the Index at 60 Centre Street, instances when told all info to collect a debt, attorney firm, all recorded. For months Rosenblum stated the same. Still, Zwicker commenced an action. If Zwicker had simply had in place a system for collectors to verify simultaneous actions, would not do so. If claim is that the exercise would make the business cost prohibitive, so be it- don't enter the business. Plenty of other areas for attorneys to operate as legitimate attorneys.

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The current case, and similar cases, are symptomatic of the current commercial data processing services offered by Financial Services Companies whose primary commercial service offerings are presumably loans, discounts, deposits, and trusts.

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Please see DMRs excerpt from the DMR BHC 4(c)(8) 'Mock-up' appendix 9/15/13 as to the productive, efficient, effective service which Financial Services Companies could engage in as a solution to the dilemma which dilemma is basically that Financial Services Companies are certainly understandably reluctant to give up the 68 billion dollar annual revenue stream from processing transactions which transactions should theoretically occur AFTER withdrawal of monies from the bank with no financial benefit to the Bank Holding Company for services which services should be performed for profit OUTSIDE the BHC's purview and benefit in traditional banking theory. The fact t hat it is digital commerce- not physical- plays a unique role in the conundrum which is economic, commercial , and legal in nature. The productive, efficient role for the BHC affiliate in commercial data processing , DMR suggests in his BHC 4(c)(8) application to the Federal Reserve Board (which oversees such applications) is a role as a Network Administrator on a Network structured for purposes of processing secure data (no matter whether the data is financial or not). The DMR application to the Federal Reserve Board goes into greater detail insofar as how the role for the BHC resolves the issues problematic in the current environment as it relates to Permissible Activities and Tying described variously by DMR in today's filing.

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Note that the American Express data processing model is identically problematic. A true data processsing buisess not a BHC would lserve its customers processing data which the customer- the general public- desired and was willing to pay for. The BHCs have cornered the market and stymying innovation. All costs cut to processor's advantage, with safety net of TARP and deposit insurance on lending of percentage on deposit plus tying of data processing service, a guaranteed revenue stream. This hurts the business of banking as engine of growth in capitalism.

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I have removed images of the case file from Catherine Nelson vs. Zwicker PC filed by Robert Thuotte of Zwicker in US District Court, District of Maryland, Northern Division on 1/25/11 Case:1:10-cv=01753-JKB which discusses Zwicker use of "Call recording evidence" for privacy concerns. However, please note that presently said filing is my reference on this webpage.

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: one of the clauses Rosenblum suggests and understands that but not for the behavior and actions of BHC data processors, and the misuse of the CPLR by attorneys representing such data processors, but not for such behavior, the marketplace would provide such fee based services as voice recording options, and digital notary services, and the ability to directly communicate with businesses electronically , the absence of such productivity enhancing fee base digital data processing highly supports if not proof that the relationship of financial data processing to other data processing is being stymied I the parlance of antitrust law, by the current relationship of financial data processors and banks. Note that many of the services alluded to are services which would tend to add certain costs to and diminish profits for the these behemoth entities. However, a proper utilization in sum would be better for the economy and more people. And in an analysis of GDP the sum of production value would increase with such fee based digital data processing as compared to an environment where BHCs are charging swipe fees and earning interest in the debit and credit card market for processing data

and those revenues are not associated with an entity or a marketplace providing the kinds of services that Rosenblum alludes to are problematic in this case and otherwise. In addition, please note, again, it is counter intuitive that BHCs four traditional banking products have a very strong incentive to preserve the model which affords them a continuous annual revenue stream of 68 billion by not putting capital into business models which compete with such revenue stream; that is, models which would perform such services more efficiently, effectively, and with added services. It is obviously y counter intuitive that such banks would lend or promote the success of a competing industry to that 68 b billion revenue stream which stays with them. In traditional banking theory, there should be no such services provided by the bank. The bank should be deriving the high percentage of revenues from the four traditional banking activities or there is an obstacle in the economy obstructing what should be the driving force of capitalism in the economy, especially at this level. Note as well please that the foregoing analysis bears directly as well on the decade following the dot com boom where the IPOs of companies like Facebook, Google, etc were highly successful and devoted billions and billions of dollars to companies which certainly are making use of internet technologies very successfully, but not in a fee based business model. The full model therein does not compete with the banking entities' 68 billion and growing revenues. Note that such IPOs necessitate underwriting by the self same BHC entities- lending additional support to the notion that there is a dangerous relationship between banking and data processing in the current environment. It is difficult to imagine, counter intuitive, that the behemoth banks would underwrite and promote an IPO of a business model which would take away from the revenue to a non banking entity. Banks would not underwrite or promote such IPOs even if such business model would promote and provide services in addition to the current basic fee based credit and debit transactions which are non-banking in nature.

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31. Telephone voicemail left for Robert Thutee in Andover requesting preservation of all telephone between Zwicker and Rosenblum on August 28 9:16 AM from my cell phone 917-741-5319 to Robert Thuotte at 866-367-9942 x 3122

32.

33. Zwicker and such plaintiffs have the benefit of technology such as "call recorded evidence" , which , generally speaking, no defendant has the benefit of, nor can they file the same electronically in a court of law. Here, also note that in today's business environment, many businesses, such as telecom and banking also will record calls, and also will use such verbal communication to make assurances and warranties to customers. Yet, customers, consumers, do not have recourse to such assurance b77 number. because consumers do not have the option to have access to such technology. Warranties

34.

35. 7/13 By the very nature of the setup of Zwickers telephone and receipt of calls that its difficult for any opposing party in any litigation to substantiate a record of calls to any individual officer at Zwicker because all calls go to 877 # and then extensions must be dialed . Therefore, any opposing party record shows only the 877 #

36.

Note that no caller from Zwicker carries or alerts the caller to an identifying number of the dialer. There is no license associated with being a debt collection agent. Calls made in harassing manner, requesting a plethora of identifying factors of call recipient, but no identifying factors for caller, non way to trace back and identify dialer. Wholly unfair tactic.

37.

No such recorded evidence should be allowed in a court of law if the defendant does not have access to records and identifying factors for the dialers and an ability to substantiate dialogue during the totality of calls. As t stands, it seems Zwicker has been in a position to utilize certain statements made by debtors when in fact those statements are made during perhaps 100 calls thereby the context is effected and the debtor does not have recourse to the statements made by the dialers throughout the 100 calls, nor, perhaps, to the dialogue of the lender before the beginning of collection activities.

38.

39. Note that variously throughout this filing DMR has alluded to the 21st Century Digital Analysis/Critique and suggested variously that but not for the actions of the attorney firms in the instant matter and but not for the 21st Century Digital Critique on the Marketplace for digital services as it pertains to Permissible Activities and Tying, such services would be offered in the marketplace not only when it comes to banking (not only credit and debit but banking) but also to telecom and other industries where presently very big businesses are in the practice of recording calls "for training purposes" and giving assurances and purported warranties to consumers only to renege on such assurances warranting call after call after call from consumers to try to reconcile matters. If consumers had the ability as well to record calls with businesses, it would be a more productive efficient environment. In the present environment, firms like Zwicker have made the operational decision to pay call centers from scarce resources full time salaries to dial and dial and dial when there is no purpose to such calls except to harass and take recorded statements out of context.

40.

41. Part of parcel of the logic of this filing is that there is a lack of economic benefits which accrue to the consumer from the use of internet related technologies commercially at this stage in the development of internet related technologies. Certainly there conveniences to a consumer, but t here is a great imbalance in 2013 as to the economic benefits which accrue to business vs. accrual to consumers. Given the very nature of business, all business look t minimize costs and increase profits. Here, however, we are looking at Permissible Activities for Banks, Tying in the financial services industry, and specifically here, economic benefits using digital technologies by a law firm representing a processor of digital data for fees that also is lending whilst there is a huge imbalance in real economic benefits of the use of internet related technologies to businesses as compared to consumers. Specifically, in the marketplace, looking at fee based processing of digital data such as recorded telephone calls, and use of the dialogue in such calls for legal purposes either by the consumer or business, and, ability to process documents to and from businesses electronically whilst such businesses are using all facets of technology in house whilst consumers generally have little recourse to communicate directly electronically with big businesses with a record of such communications . Rosenblum also puts forth the notion that but for the antitrust elements of the marketplace in question, such services would be available, and, profit producing, and of benefit to the economy as a whole when measuring such things as GDP or GNP as compared to presently when the 68 billion dollar revenue stream accruing to Financial Services Companies for the service of the very limited processing activity of processing a monetary transaction which should take place following withdrawal of funds from the BHC's purview and with no economic benefit to the BHC UNLESS with very defined conditions relating to the

Industry are in place .

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44. And, as with lack of accrual of economic benefits to consumer, similarly, a corollary proposition is that there is also a lack of services with warranties available to consumers given stymieing of the industry given the items articulated in the 21st Century Digital critique of data processing as it relates to services performed for fees by banking entities engaged in the proper business of loans, discounts, deposits, and trusts.

45.

46. Prior to Rosenblum's 9/15/2013 filing in this case, the document list on NYSCEF shows one document on September 1, as if its a valid discontinuance of the action and as if the Plaintiff and Plaintiffs attorney is not subject to the courts purview in the action; yet Rosenblum has attended to the subject matter over the course of 8 months to date and at the inception of that 8 months on several occasions Rosenblum notified Zwicker of the NY index and disbelieved that the firm was operating at the request of American Express. Zwicker's operations are calculated such that the call center operation investment is covered by the profits resultant the likelihood of default judgment s resultant the calculated misuse of the CPLR at commencement and discontinuance of related actions as described by Rosenblum. It's a simple equation- there's likelihood of default judgment by debtors given the manner in which Zwicker practices law, not in conformance with CPLR nor NY Model Rules but rather the operational decision has been made by Zwicker corporate officers to function as such, allocating resources as such, and supervising in such manner minimizing resources allocated to diligent practice of law in manners not compatible with the profession, using those same resources for call centers and call center technologies rather than policies which would tend to effectuate diligent practice of law, which policies and technologies are absent insofar as diligent practice of law but instead are devoted to salaries for callers at call centers and dial machines and phone tree systems recording calls and verbal disclaimers and supervisors in such centers when instead Zwicker could have a functioning program to comply with the law, such as a system which records whether lower level attorneys may or may not file a 3317 Discontinuance, and whether such instruments were filed following the time period such attorneys were eligible to do so. Such a system should have operationally taken precedence over call centers for a law firm where there is such blatant abuse of the CPLR. If attorney Supervisors are unaware of the abuse, they themselves are failing at their primary chore of supervision in a law firm. Again, given a calculation on the likelihood of default judgment and the profits associated therewith.

Affirmed and signed, (certificate of signature in Efile)

Daniel M Rosenblum September 15, 2013