

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 06-27336 CA-50

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE OF ARGENT
MORTGAGE SECURITIES, INC., etc.,

Plaintiff,

v.

KENNETH G. EDWARDS, DAVID
EDWARDS, etc., et al.,

Defendants.

THE ORIGINAL
FILED ON:
FEB 14 2011
IN THE OFFICE OF
CIRCUIT COURT DADE CO., FL

**COUNTERPLAINTIFF ANNIE EDWARDS' MOTION FOR
LEAVE TO ADD CLAIM FOR PUNITIVE DAMAGES**

Counterplaintiff ANNIE EDWARDS, by and through her undersigned counsel, moves for
leave to add her claim for punitive damages and as grounds therefor states as follows:

The Law

§ 768.72(2)(a) , Fla. Stat., provides in relevant part as follows:

A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. As used in this section, the term: (a) "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

On November 3, 2010, Annie Edwards served her Amended Counterclaim for Count I, Wrongful Foreclosure, Count II, Violation of FDCPA, Count III, Fraud in the Inducement, Count IV, Fraud in the Prosecution of the Foreclosure Process, Count V, Abuse of Process, Count VI, Interference with an Advantageous Business Opportunity, Count VII, Negligent and Intentional Infliction of Emotional Distress, Count VIII, Declaratory Relief determining that Annie Edwards' interest is superior and extinguishing Deutsche's mortgage and quieting title, and Count IX, Quiet Title. Most of the counts alleged by Annie Edwards involve the intentional misconduct of Counterdefendant. Further, in accordance with § 768.72(3), Fla. Stat., punitive damages may be imposed on the corporate Counterdefendant here because the acts alleged of its agents are wrongful misconduct as set forth in § 768.72(2)(a), Fla. Stat., and the Counterplaintiff alleges that the Counterdefendant "actively and knowingly participated in such conduct. . . ."

The trial court should allow amendment for punitive damages where the plaintiff proffers evidence giving the claim a reasonable basis for the punitive damages. *Strasser v. Yalamanchi*, 677 So.2d 22, 23 (Fla.4th DCA 1996). There is no need for an evidentiary hearing. *Id.* "[A] reasonable basis under the statute requires a legal determination by the trial court that the requirements of section 768.72(1) have been met." *Estate of Despain v. Avante Group, Inc.*, 900 So.2d 637, 644 (Fla. 5th DCA 2005)(citing *see Henn v. Sandler*, 589 So.2d 1334, 1335-36 (Fla. 4th DCA 1991). A reasonable basis "necessarily includes a legal determination that the kind of claim in suit is one which allows for punitive damages under our law ..." *Avante Group, Inc.*, 900 So.2d at 644(quoted *Henn*, 589 So.2d at 1335-36). Determining whether the plaintiff has made a reasonable showing under § 768.72, Fla. Stat., is similar to determining whether a complaint

states a cause of action, and all allegations are taken as true and are construed in the light most favorable to the plaintiff. *Holden v. Bober*, 39 So.3d 396, 400 -401 (Fla. 2d DCA 2010); *Holmes v. Bridgestone/Firestone, Inc.*, 891 So.2d 1188, 1191 (Fla. 4th DCA 2005); *Hosp. Constructors Ltd. ex rel. Lifemark Hosps. of Fla., Inc. v. Lefor*, 749 So.2d 546, 547 (Fla. 2d DCA 2000). Further, a fraud claim sufficient to state a cause of action for compensatory damages is sufficient to support a punitive damages claim. *Solis v. Calvo*, 689 So.2d 366, 369 n 3 (Fla. 3d DCA 1997)(citing *see Perlman v. Prudential Ins. Co. of America, Inc.*, 686 So.2d 1378, 1380-82 (Fla. 3d DCA 1997)(citing *Cruise v. Graham*, 622 So.2d 37 (Fla. 4th DCA 1993)). A false affidavit supports an award of punitive damages. *Gold v. Wolkowitz*, 430 So.2d 556, 557 (Fla. 3d DCA 1983)(An ownership affidavit reflecting no clouds on the title when the foreclosure judgment by which the owner took title was on appeal entitled the buyer to punitive damages).

Concealment of a negative report and presentation of a false favorable report is fraud. *Rubens v. Glinsky*, 473 So.2d 20, 20 (Fla. 3d DCA 1985)(“[T]he concealment of a negative roof inspection report and the presentation of a favorable one so as to represent that the roof was in good condition” were an adequate basis for fraudulent misrepresentation count).

The Proffer

Counterplaintiff’s proffer consists of the allegations in the Amended Counterclaim, documents from the Public Records as cited below, the affidavit of Kenneth G. Edwards, the deposition of Cynthia Stevens,¹ the corporate representative of both entities of Counterdefendant,

¹

The undersigned noticed the taking of the deposition of the Corporate Representative of Argent with the most knowledge of the Complaint and the Plaintiff’s Motion for Partial Summary Judgment and Corporate Representative of Deutsche with the most knowledge of the Complaint and the Plaintiff’s Motion for Partial Summary Judgment. (Depo Stevens, Exhibit 1 for I.D., Notice). In

and such other materials as the Counterplaintiff shall file with the Court. It is important to note that fraud is the gravamen of the entire Amended Counterclaim. In Count I, Annie Edwards sues for wrongful foreclosure due to the Counterdefendant's suit to foreclose a mortgage whose loan application, appraisal, and deeds leading up to the mortgage were fraudulent. In Count II, Annie Edwards sues for violation of the Federal Fair Debt Collection Practices Act based on false, deceptive and misleading representations regarding standing, debt status, personal knowledge of debt status, and invalid assignment. In Count III, Annie Edwards sues for fraud in the inducement since Counterdefendant induced unsuspecting borrowers into loans that they could not possibly repay. . In Count IV, Annie Edwards sues for fraud in the prosecution of the foreclosure process based on the lender's affidavits swearing to the personal knowledge of the debts and underlying instruments based on an assignment that has determined to be legally insufficient in a New York court order. . In Count V, Annie Edwards sues for an abuse of process because the lender made a fraudulent demand upon her for payment of the mortgage that does not even show her signature and which was based on false loan applications appraisals, forged deeds, and fictitious property inspection reports. Of course, all of these counts involve the Counterdefendant's intentional conduct. However, there are additional intentional misconduct counts that also support punitive damages. In Count VI, Annie Edwards sues for interference with advantageous business opportunity for the lender's interference during the pendency of the wrongful foreclosure with her opportunity to have Habitat for Humanity to rehabilitate her home. Although she sues for negligent infliction of emotional distress in Count VII, she does plead alternatively that the lender intentionally inflicted emotion distress on her by its

response to that notice Cynthia Stevens, the supervisor of the special assets department of American Home Mortgage Servicing, Incorporated, appeared and testified. (Depo Stevens, p 3-6 & 20).

use of false affidavits, invalid assignment and other artifice and tricks to steal her home. These intentional misconduct counts are factually based on the **following allegations in the Amended Counterclaim.**

FACTUAL ALLEGATIONS

A. THE PROPERTY

The Property subject to this foreclosure action is a dilapidated one-story wooden frame structure built in 1925 in what is commonly referred to as Liberty City. The Property contains a single bathroom, a tarpaulin cover on a leaky roof and a raised and crumbling floor under which sits approximately six cinder blocks strategically placed around the cracked wooden frame to prevent flooding. The Property appears today in substantially the same condition as it existed when built approximately 85 years ago. Prior to the recording of the instant fraudulent loan Annie owned and occupied the property - debt free (i.e., no mortgage).

B. The Scheme

During the years 2004 and 2005, the Lender, acting through various agents, appraisers, attorneys and mortgage brokers, solicited low income individuals to apply for highly inflated mortgage loans supported by falsified loan applications, false designations of the primary occupants, and phony appraisals - all for the purpose of "booking" otherwise appearing legitimate loans in order to, among other things, qualify for the U.S. Government backed Federal National Mortgage Association ("FNMA") insurance program. By so doing, the Lender's agents received hefty fees and closing costs, points and other expenses paid back to the Lender and its agents from the loan proceeds from these Government backed loans.

In 2006, when the Lender recorded the instant first mortgage loan on the Property for \$102,000.00, the Miami-Dade County Tax Assessor valued the Property at \$36,959.00. In 2006, Annie, divorced from her husband Kenneth G. Edwards since 1994, solely occupied the Property with her children and grandchildren as her homestead and head of household which she then owned free and clear of all encumbrances, having faithfully paid all annual real estate taxes and any prior mortgages. In 2006, after deducting her homestead exemption, Annie paid **\$692.51** as her annual Dade County real estate taxes. In 2007, after Lender's recordation of the instant fraudulent mortgage, Annie's tax bill skyrocketed to **\$6,430.84**.

Upon information and belief, Lender and/or its agents, aided and abetted its borrowers in the falsification of loan applications, the forging of deeds, and the procurement of phony appraisals.

Because the employment information of the primary borrower was false and the principal lent greatly exceeded the value of the Property/collateral, the Lender certainly knew or should have known that the loan would never be repaid and that default would occur within months after the loan was made. In this particular case, the questionable lending and foreclosure practices of Deutsche Bank are the subject of an ongoing investigative series by the Miami Herald. (www.miamiherald.com).

True to form, the default in the instant mortgage transaction was declared in August, 2006, yet the Lender acquired the loan by purported assignment on December 1, 2006, prompting several Judges around the United States to inquire why, "in the middle of our national sub-prime mortgage financial crisis, Deutsche Bank would purchase a non-performing loan from ..." The above described pattern of irresponsible and negligent lending practices characterizes the instant loan

transaction and occurred well before recessionary economic conditions devalued real estate in South Florida.

Unbeknownst to Annie, in 2005, the Lender, through its authorized agents, induced Annie's ex-husband, Kenneth G. Edwards, to sign a loan application for a \$102,000.00 mortgage loan where it was falsely represented among other things that he resided at the Property with his "wife" Annie Edwards. In fact, Kenneth Edwards in 2005, had not lived at the Property since 1994. In 2005, Kenneth Edwards was in declining health due to prostate cancer, virtually legally blind, unemployed and by his own account, functionally illiterate. In the processing of the instant fraudulent loan, the Lender induced and/or colluded with Kenneth G. Edwards to sign a loan application which falsely indicated that: (a) the loan applicants were "Kenneth G. Edwards and Annie L. Edwards, husband and wife"; (b) that the Property was Kenneth's primary residence; (c) that the purpose of the loan was a "refinance" although there was no mortgage on the Property; (d) that Kenneth was employed as a "Program Director" for the Independent Church of God for 12 years with an address and phone number for the Church; and (e) that the value of the Property was \$120,000.00 when the most recent Dade County tax bill appraised the Property at \$35,000.00. (See Lender's typewritten Loan Application attached as Exhibit "A" to the Amended Complaint).

PHONY APPRAISAL

In furtherance of the scheme, Lender commissioned a wholly fabricated appraisal of the Property by one "Mario Michel - State Cert. Res. Rea." indicating a value of \$120,000.00. The Florida Department of Professional Regulation ("DPR") suspended Mario Michel and revoked his license as an appraiser in 2006 which revocation was due to misconduct involving fraud, misrepresentation or concealment.

LENDER KNEW ANNIE'S JOINDER WAS REQUIRED

Annie was never advised by any person or the Lender of the existence of the loan or Lender's intention to place a first mortgage on her Property. Similarly, Annie never received any of the loan proceeds. Lender knew or should have known that Annie occupied the Property and that her joinder therefore in the loan documents was necessary in order for her to waive her homestead rights and Lender is estopped to contend otherwise as: (a) Lender's title attorney acknowledged Annie's homestead and/or dower rights by requiring Annie to sign the loan documents at closing; (b) Lender's underwriting/title file reflects that Annie was an intended borrower; and (c) the loan documents were prepared with "Annie Edwards" as the borrower on the cover page of the mortgage as well as the signature pages of the note and mortgage, all with her name XXXX-out at the time of closing.

ANNIE RECEIVED NOTICE OF DEFAULT AND THREAT OF FORECLOSURE AT HER HOMESTEAD

To be sure, immediately upon default of the loan (shortly after funding), Annie received from the Lender a "Notice of Intention to Foreclose" which was sent to her at the Property by Lender on August 8, 2006 (Exhibit "B" to Amended Counterclaim). Upon information and belief, in order to circumvent the necessity of Annie's joinder in the loan documents and within months before the making of the loan, the Lender, through its agents, participated in the preparation of fraudulent deed(s) whereby Annie's name was forged to falsely indicate that she had conveyed the Property.

LENDER IGNORES ANNIE'S INQUIRY

Immediately upon receiving the Notice of Intention to Foreclose (Exhibit "B" to the Amended Counterclaim), Annie advised the Lender of the fraudulent nature of the loan, that she was unaware of the mortgage and even filed a police report with the City of Miami Police Department to that effect. Although a minimal amount of inquiry, investigation or due diligence by the Lender would have easily uncovered the clear falsities of the loan application, the appraisal or the deed, the Lender chose not to do so.

Instead, the Lender turned a deaf ear to Annie's charges and sought to fast track the foreclosure action by quickly moving for summary judgment against Annie. In the process, Lender has filed at least two (2) Affidavits that were improperly executed by persons acting as agents or employees of the Lender, whose signatures were improperly notarized, and who attested to "personal knowledge" of the facts contained therein and the authenticity of documents, when such person had no personal knowledge of such facts. The submission of these false Affidavits has been the common practice of the Lender and constitutes an abuse of process against Annie and other similarly situated homeowners. While Annie's retention of counsel derailed Lender's attempts to gain an early summary judgment, Lender has doggedly and steadfastly proceeded in this action with "blindness" to dispossess Annie from the Property and has generated fictitious property inspection reports falsely portraying the Property as a "1 story stucco structure," in fair-condition and valued at \$180,000.00. (See inspection reports generated by Lender's agents which variously report the condition of the property as "good" and a value of \$180,000.00 and \$190,000.00 attached as Composite Exhibit "A").

LENDER BURIES ITS HEAD IN THE SAND

During this horrific four-year nightmare the Lender's conduct has had the following damaging consequences to Annie and her Property. In the year immediately following the reporting of the fraudulent mortgage, the Dade County Property Appraiser has "reassessed" the Property such that it now has an assessed value on the tax rolls of **\$234,581.00** which resulted in an increase in Annie's real estate taxes from the rather constant \$600.00 per annum to the 2007 annual amount of \$6,430.00. Due to the dilapidated condition of the Property representatives of Habitat for Humanity have advised Annie on two (2) separate occasions that the Property has been approved for rebuild and rehabilitation through the charitable foundation but that no such efforts could proceed while the instant foreclosure action remains pending. Despite pleas from Annie's counsel to the Lender to allow Habitat for Humanity to rebuild the Property, the Lender has failed and refused to dismiss the instant action.

The conduct of the Lender in this process in inducing the fraudulent loan, seeking to foreclose the fraudulent loan, with the knowledge of the forged deeds have severely prejudiced the rights of Annie and her family, have unfairly targeted her in this wrongful foreclosure action and has proximately caused her damages. The actions of the Lender have been intentional, wanton, willful and in reckless disregard of Annie's rights such that Annie's plight has now been chronicled in two investigative stories by the Miami Herald (<http://www.miamiherald.com/2010/10/13/1872540/states-launch-an-inquiry-into.html> and <http://www.miamiherald.com/2010/10/18/1879950/house-homeowner-caught-in-a-mortgage.html>)

Most recently, on September 28, 2010 , Lender's corporate representative with the "most" knowledge of this loan, has no knowledge. Cynthia Stevens, the supervisor of the special assets department of American Home Mortgage Servicing, Incorporated, and the representative with the most knowledge, testified at deposition . (Depo Stevens, p 3-6 & 20). She has been employed with American Home Mortgage Servicing, Incorporated, February 2009. (Depo Stevens, p 5, L 23-25). Although Ms. Stevens is the person for Plaintiff with the most knowledge of the allegations in the lawsuit, she has no knowledge of the making of the loan. (Depo Stevens, p6, L 1-7). Ms. Stevens' first review of the loan file from the imagining system was a day or so before the deposition. (Depo Stevens, p 1-7). Ms. Stevens' only knowledge of the matter is from her review of the documents. (Depo Stevens, p 8).

Conclusion

Pursuant to case law and the punitive damages statute, Annie Edwards has stated a claim for punitive damages where she alleges "the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage." § 768.72(2)(a) , Fla. Stat. Based on the case law, if Annie Edwards has sufficiently stated a cause of action for fraud or intentional wrongdoing , she has stated a claim for punitive damages. Very simply, she has. As was its practice at the time, the Lender solicited low income individuals, the co-defendants here, to apply for a highly inflated mortgage loan supported by falsified loan applications, false designations of the primary occupants, and phony appraisals - all for the purpose of "booking" otherwise appearing legitimate loans in order to, among other things,

qualify for the U.S. Government backed Federal National Mortgage Association ("FNMA") insurance program. On the front end, the Lender's agents received hefty fees and closing costs, and points and other expenses were paid back to the Lender and its agents from the loan proceeds from these Government backed loans. When no one paid the loan as had been orchestrated by the Lender, the Lender foreclosed to enjoy the back end reward for its fraud, the \$100,000 in insurance from FNMA.

WHEREFORE, Counterplaintiff, Annie Edwards, prays this Court grants her leave to amend to add a claim for punitive damages.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was furnished to Myriam K. Louis, Esq., Carlos Lerman, Esq., Smoler, Lerman, Bente & Whitebook, P.A., 2611 Hollywood Boulevard, Hollywood, Florida 33020; and Brian W. Klingel, Esq., Florida Foreclosure Attorneys, PLLC, 601 Cleveland Street, Suite 690, Clearwater, Florida 33755 by U.S. Mail on February 11, 2011.

HELLER AND CHAMES, P.A.
261 N.E. First Street
Sixth Floor
Miami, Florida 33132
(305) 372-5000 Telephone
(305) 372-0052 Facsimile
Florida Bar No. 340881

By


JONATHAN A. HELLER

Occupancy	Occupied
Electric On	Yes
Gas On	Unknown
Water On	Yes

Unit 01:
Gas Unknown Because: NO ACCESS

GRASS IS PRESENT AT THE PROPERTY
THE GRASS IS 12 INCHES HIGH

This IS A High Vandalism Area

*** SEE BELOW FOR OPEN/ON HOLD ORDERS AND PENDING BIDS ***

*** NO MAINTENANCE RECOMMENDED AT THIS TIME ***

INVOICED TO DATE :Inspections/Interviews 31.50

Sent Date: 11/17/2006
Message Type: Text to Client

Order #: 27797203
Order Status: Billed
WORK ORDERED: VERIFY IF OCCUPIED, VACANT

Order Date: 11/15/2006
Completed Date: 11/16/2006

ORDERED BY: PROP PRES

INSPECTION DATE: 11/16/06
OCCUPANCY: OCCUPIED BY UNKNOWN PER: VISUAL
EXTERIOR CONDITION: FAIR
BECAUSE: HURRICANE DAMAGE
DETAIL: HURRICANE
AREA: DECLINING
VALUE: \$170,000
NO FOR SALE SIGN POSTED.
TYPE: ONE FAMILY WHITE FRAME ONE STORY HOUSE
Garage: NO GARAGE

Utility Information Is Listed In The Unit Detail

Occupancy	Occupied
Electric On	Yes
Gas On	Yes
Water On	Yes

GRASS IS PRESENT AT THE PROPERTY
THE GRASS IS 8 INCHES HIGH

This IS A High Vandalism Area

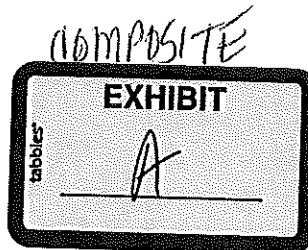
*** SEE BELOW FOR OPEN/ON HOLD ORDERS AND PENDING BIDS ***

*** NO MAINTENANCE RECOMMENDED AT THIS TIME ***
PHOTOS TAKEN: 1

INVOICED TO DATE :Inspections/Interviews 15.00

COMMENTS: Has roof damage-tarp was covering roof.

PHOTOS ARE AVAILABLE FOR VIEWING ON OUR WEB SITE.



Sent Date: 10/10/2006
Message Type: Text to Client

Order #: 27230357
Order Status: Billed
WORK ORDERED: INITIAL FIELD INSPECTION

Order Date: 10/04/2006
Completed Date: 10/06/2006

ORDERED BY: QDPPU

Sent Date: 05/23/2008
 MessageType: Text to Client

Order #: 37464110
 Order Status: Billed
 WORK ORDERED: VERIFY IF OCCUPIED, VACANT

Order Date: 05/20/2008
 Completed Date: 05/22/2008

ORDERED BY: PROP PRES

INSPECTION DATE: 05/22/08
 OCCUPANCY: OCCUPIED BY UNKNOWN PER: NEIGHBOR AT: 2120 nw 82 st
 EXTERIOR CONDITION: GOOD
 AREA: STABLE
 VALUE: \$160,000
 NO FOR SALE SIGN POSTED.
 TYPE: ONE FAMILY GRAY wood ONE STORY HOUSE
 Garage: NO GARAGE

Utility Information Is Listed In The Unit Detail

Occupancy		
Electric On	Occupied	
Gas On	Yes	
Water On	Unknown	
	Yes	

GRASS IS PRESENT AT THE PROPERTY
 THE GRASS IS 9 INCHES HIGH

*** SEE BELOW FOR OPEN/ON HOLD ORDERS AND PENDING BIDS ***

*** NO MAINTENANCE RECOMMENDED AT THIS TIME ***
 PHOTOS TAKEN: 1

INVOICED TO DATE :Inspections/Interviews 74.00

PHOTOS ARE AVAILABLE FOR VIEWING ON OUR WEB SITE.

Sent Date: 04/27/2008
 MessageType: Text to Client

Order #: 36673562
 Order Status: Billed
 WORK ORDERED: INITIAL FIELD INSPECTION

Order Date: 04/18/2008
 Completed Date: 04/27/2008

ORDERED BY: PROP PRES

INSPECTION DATE: 04/27/08
 OCCUPANCY: OCCUPIED BY UNKNOWN PER: VISUAL
 EXTERIOR CONDITION: GOOD
 AREA: STABLE
 VALUE: \$190,000
 NO FOR SALE SIGN POSTED.
 TYPE: ONE FAMILY WHITE WOOD ONE STORY HOUSE
 Garage: NO GARAGE

Utility Information Is Listed In The Unit Detail

Occupancy		
Electric On	Occupied	
Gas On	Yes	
Water On	Unknown	
	Yes	

GRASS IS PRESENT AT THE PROPERTY
 THE GRASS IS 8 INCHES HIGH

*** SEE BELOW FOR OPEN/ON HOLD ORDERS AND PENDING BIDS ***

*** NO MAINTENANCE RECOMMENDED AT THIS TIME ***
 PHOTOS TAKEN: 1

Bad Address ?	NO	Access Denied?NO
Bad Address Reason:		Access Denied By:
Bad Address Other Reason:		Access Denied By Other:
Resources Used to Locate:		
Out of Rep Area:		
Out of Rep Area Reason:		
Neighborhood Is:	STABLE	
Property Shows Damage By:	Other Damage;	Construction Type:STUCCO Construction Type Other:
Estimate of Damages:	\$2,000.00	
Property Shows Damage By Other:		
Damage Comments:	Mobile Home Park ? blue tsarp Park Phone No.:	
Garage Type:	NONE	
Exterior Condition:	POOR	VIN# / HUD #:
Property Type:	SINGLE FAMILY	On Foundation ? Size:
Property Type Other:		If property not secure, items that are not secure:
Occupancy Is:	OCCUPIED - BY NAME UNKNOWN	
# Units Vacant:	0	
Unkown Occ. Due To:		
Verified By:	VISUAL	
Verified Visual:	Car/Boat;	Posted Violation ?NO
Verified By Other:		Posted Violation Reason: Agency Phone No.:
First Inspection Date:	09/26/2010	For Sale:NOT FOR SALE Name of Broker:
Additional Inspection Date:		Phone No.:
Left Door Card?	YES	
Spoke With:		
Name:		
Address:		
Phone Number:		
Name of Occupant:		
Attitude:		
Correct Primary Phone:	(000) 000-0000	
Corrected Property Address:		