

HC

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

140002 10M1310 '05

LYNNE E. CARNEGIE, On Behalf Of Herself :
And All Others Similarly Situated, :

No. 98-C-2178

Plaintiff :


Honorable Elaine E. Bucklo

-against-

HOUSEHOLD INTERNATIONAL, INC., :
HOUSEHOLD BANK, f.s.b., successor in interest :
to BENEFICIAL NATIONAL BANK, :
HOUSEHOLD TAX MASTERS, INC., formerly :
known as BENEFICIAL TAX MASTERS, INC., :
BENEFICIAL FRANCHISE COMPANY, INC., :
H&R BLOCK, INC., H&R BLOCK SERVICES, :
INC., H&R BLOCK TAX SERVICES, INC., :
H&R BLOCK EASTERN TAX SERVICES, INC., :
BLOCK FINANCIAL CORP., and HRB :
ROYALTY, INC., :

Defendants. :

FILED

MAY 9 2005 

MICHAEL W. DOBBINS
CLERK, U. S. DISTRICT COURT

**MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT
AND FOR EXPEDITED HEARING ON THE MOTION**

NOW COMES Plaintiff, Lynne Carnegie, by her counsel, and files this Motion for preliminary approval of class action settlement and for an expedited hearing on this Motion. The grounds for this Motion are as follows:

1. The bases supporting the proposed class action settlement are recited in the Memorandum in Support of the Preliminary Approval of Class Action Settlement which is submitted with this Motion.
2. The basis for the expedited hearing on this Motion is as follows. The parties

reached agreement on substantially all the terms of a Settlement Agreement on May 5, 2005. The necessary documentation was completed during the morning of May 9, 2005 following extensive work over the preceding weekend. Pursuant to the Court's general scheduling of routine motions, this Motion could not be heard until May 20, 2005.

3. Counsel for Defendants do not oppose expediting the hearing on this Motion.

WHEREFORE, Plaintiffs respectfully prays that the Court grant the Motion for preliminary approval of a proposed class action settlement and grant an expedited hearing on the Motion.

Respectfully submitted,



One of Plaintiffs' Attorneys

Dated: May 9, 2005

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Counsel for Plaintiff Lynne Carnegie

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EXHIBIT A

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

LYNNE A. CARNEGIE, On Behalf of Herself	:	
And All Others Similarly Situated,	:	No. 98-C-2178
	:	
Plaintiff	:	Honorable Elaine E. Bucklo
	:	
-against-	:	
	:	
HOUSEHOLD INTERNATIONAL, INC.,	:	
HOUSEHOLD BANK, f.s.b, successor in interest	:	
to BENEFICIAL NATIONAL BANK,	:	
HOUSEHOLD TAX MASTERS, INC., formerly	:	
known as BENEFICIAL TAX MASTERS, INC.,	:	
BENEFICIAL FRANCHISE COMPANY, INC.,	:	
H&R BLOCK, INC., H&R BLOCK SERVICES,	:	
INC., H&R BLOCK TAX SERVICES, INC.,	:	
H&R BLOCK EASTERN TAX SERVICES, INC.,	:	
BLOCK FINANCIAL CORP., and HRB	:	
ROYALTY, INC.,	:	
	:	
Defendants.	:	

**ORDER OF PRELIMINARY APPROVAL WITH RESPECT TO
NOTICE, HEARING, AND ADMINISTRATION
OF SETTLEMENT OF CLASS ACTION**

WHEREAS, Plaintiff Lynne Carnegie, on behalf of the Settlement Class, as defined below ("Plaintiffs"), has entered into a settlement (the "Settlement") of the claims asserted in the above-captioned class action (the "Action") with Defendants H&R Block, Inc.; H&R Block Services, Inc.; H&R Block Tax Services, Inc.; Block Financial Corp.; HRB Royalty, Inc.; H&R Block Eastern Enterprise, Inc., successor to H&R Block Eastern Tax Services, Inc. (collectively, the "Block Defendants"); HSBC Finance Corporation, f/k/a Household International, Inc. (on behalf of itself, Household Finance Corp., Household Bank, f.s.b., and Beneficial National Bank); HSBC Taxpayer Financial Services, Inc. (f/k/a Household Tax Masters, Inc. and Beneficial Tax Masters, Inc.); and Beneficial Franchise Company, Inc. (collectively, the

"Beneficial Defendants") (the Block Defendants and Beneficial Defendants collectively are referred to as the "Defendants");

WHEREAS, the Court previously certified a settlement class of all borrowers (with a few exceptions) who received refund anticipation loans ("RALs") in or before 1999 and whose claims were not barred by the statute of limitations. The Court subsequently certified a class on the merits limited to prosecution of a RICO claim and one claim for breach of contract against the Beneficial Defendants involving the law of only one state. Also excluded from the merits class were persons who took out RALs after December 31, 1996, which had arbitration provisions. Defendants sought and obtained review of the merits certification decision pursuant to Fed. R. Civ. P. 23(f). The Seventh Circuit Court of Appeals affirmed the certification of that class. *Carnegie v. Household International Inc., et al.*, 376 F.3d 656 (7th Cir. 2004), *cert. denied*, 125 S. Ct. 877 (2005).

WHEREAS, the "Settlement Class," as defined in Section II, Paragraph 1 of the Agreement of Settlement between Plaintiffs and Defendants (the "Settlement Agreement"), consists of individuals who applied for and received a Refund Anticipation Loan between January 1, 1987 and April 29, 2005;

WHEREAS, the Parties have made an application, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an Order preliminarily approving the Settlement of this Action in accordance with the Settlement Agreement;

AND WHEREAS, the Court, having read and considered the Settlement Agreement and the Exhibits and Appendices annexed thereto and finding that substantial and sufficient grounds exist for entering this Order; IT IS HEREBY ORDERED:

DEFINITIONS

1. The Court, for purposes of this Order, adopts all definitions of terms set forth in the Settlement Agreement.

PRELIMINARY APPROVAL AND SETTLEMENT HEARING

2. The Court certifies a settlement class under Rule 23(b)(2) and (b)(3) consisting of:

All persons in the United States who, during the period January 1, 1987 through April 29, 2005 (the "Settlement Class Period"):

(i) applied for and obtained a refund anticipation loan ("RAL") through any medium, by any name, advertised, marketed, offered or made by or through Beneficial National Bank, Household Bank, f.s.b., HSBC Bank USA, N.A., any subsidiary or affiliate of Household International, Inc., now known as HSBC Finance Corporation or any other past or present Beneficial Defendant or Affiliate, or Imperial Capital Bank pursuant to its contract with HSBC Taxpayer Financial Services, Inc; or

(ii) applied for and obtained a RAL through any medium, by any name, advertised, marketed or offered or made by or through any other lender through any office operating under the trade name of "H&R Block" (including franchise or sub-franchise offices any HRB Defendant or Affiliate, as defined herein, or any H&R Block offices such as in Sears stores) (the "Settlement Class")

(iii) Excluded from the Settlement Class are current or former directors or officers of the Defendants and their counsel.

All persons other than those excluded in sub-paragraph (iii) of this Paragraph 2 are deemed to be Settlement Class Members for purposes of this Order.

3. The Court certifies that, for settlement purposes only, the requirements of Fed. R. Civ. P. 23(b)(2) and (b)(3) have been satisfied, and finds that for purposes of preliminary approval, the terms of the Settlement Agreement are within the range of reasonableness for a class settlement. The terms of the Settlement Agreement are, therefore, preliminarily approved, subject to further consideration at a hearing to be held consistent with the requirements of Fed. R. Civ. P. 23(e) (the "Final Approval Hearing"), which shall be held before this Court on

_____, 2005, at _____ a.m./p.m. in Room ____ of the United States District Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, 60604.

4. During the Final Approval Hearing, the Court will: (i) determine whether the proposed Settlement is fair, reasonable and adequate and whether final judgment should be entered dismissing the Action as to the Defendants, with prejudice, and without costs; (ii) consider the petition by Co-Lead Class Counsel for payment of a reasonable Fee and Expense Award to include attorneys' fees, costs and expenses, and class representative incentive fees together with accrued interest thereon.

NOTICE TO SETTLEMENT CLASS MEMBERS

5. Co-Lead Class Counsel shall cause notice of the pendency of the Action, the proposed Settlement, the Final Approval Hearing, and the petition by Co-Lead Class Counsel for payment of a reasonable Fee and Expense Award, as follows:

(a) Within forty five (45) days from the date hereof, a copy of the Notice and Claim Form substantially in the form attached as Exhibits C and E, respectively, to the Settlement Agreement shall be mailed by first class mail, postage prepaid, to all members of the Settlement Class for whom there is a last known valid address as shown on the Beneficial Defendants' reasonably accessible electronic records, as run through the NCOA system. Notice will not be sent to the Settlement Class members whose prior *Zawikowski v. Beneficial National Bank, No. 98 C 2178 (N.D. Ill.)* settlement notice was returned and whose new address does not appear in the Beneficial Defendants' electronic records.

(b) Along with the Notice and Claim Form shall be mailed freely transferable coupons, to be effective only after final approval of the Settlement, with a face value of \$6.00 for each RAL, up to a maximum of four (4) RALs (as may be adjusted consistent with the terms of the Settlement Agreement), during the Settlement Class Period. Coupons shall not be sent to

any Settlement Class Member who has previously released any of the Defendants in prior litigation or pursuant to settlement, and who has not obtained a RAL for any period after the effective date of that release.

(c) At or prior to the Final Approval Hearing, Co-Lead Class Counsel shall file proof, by affidavit, of such mailings.

(d) Notice is to be provided by publication notice of the Settlement Agreement through one summary notice to be published in *Parade*, in the form attached as Exhibit C to the Settlement Agreement. In addition, the Settlement Administrator will provide a link on its website to downloadable and printable copies of the Settlement Agreement and the Notice, including a copy of the Claim Form.

(e) Co-Lead Class Counsel shall retain a Settlement Administrator to assist in the Notice and Settlement claims administration process with the cost of same to be paid initially by the Defendants and later offset against the cash payment to be made pursuant to the Settlement as approved.

6. The Court approves the form of Notice, Summary Notice and Claim Form. The Court finds that the procedures established for Notice, mailing and distribution of such Notices as set forth in this Order, and publication of the Summary Notice meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, and due process. The Court further finds that these procedures are the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons and entities entitled thereto.

7. The Settlement Administrator shall be responsible for the receipt of all written communications from the Settlement Class and shall preserve same, and all other written communications from members of the Settlement Class, or any other person in response to the Notices.

REQUESTS FOR EXCLUSION FROM THE SETTLEMENT CLASS

8. To request exclusion from the Settlement Class, a Settlement Class Member must mail or otherwise deliver to the Settlement Administrator an appropriate written request for exclusion, which request must be actually received by the Settlement Administrator on or before 30 days after initial mailing of the Notice (the "Opt-Out Date") (_____, 2005) at the following address:

[Settlement Administrator's address]

The request for exclusion must include (a) the name, address, social security number and telephone number of the person requesting exclusion; (b) the title of this Action ; and (c) a statement requesting exclusion from the Settlement Class. The request must be personally signed by the Settlement Class Member requesting exclusion, and shall not be effective unless it is made in the manner and within the time set forth in this paragraph. Settlement Class Members who previously submitted a timely and valid request to be excluded from the settlement class previously certified by the Court under the caption *Zawikowski v Beneficial National Bank et al.*, and who want to be excluded from the Settlement Class covered by this Order, must submit a separate timely request for exclusion in accordance with the procedures described in this Order. No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may request exclusion of any other Settlement Class Member from the Settlement Class. The original requests for exclusion will be filed with the Court by the Settlement Administrator not later than 30 days before the Final Approval Hearing. Copies of requests for exclusion shall be provided by the Settlement Administrator to Co-Lead Class Counsel and counsel for the Defendants not later than 20 days before the Final Approval Hearing.

9. All Settlement Class Members (including those who have timely and properly requested exclusion in the manner set forth in Paragraph 8, to the limited extent provided by the

terms of the Settlement Agreement) shall be bound by the releases set forth in the Settlement Agreement and all proceedings, orders and judgments in this Action, even if those persons have previously initiated or subsequently initiate individual litigation or other proceedings against the Defendants (or any of them) relating to the claims released pursuant to the Settlement.

OBJECTIONS BY SETTLEMENT CLASS MEMBERS

10. Subject to the requirements set forth in Paragraphs 11 and 12 below, any Settlement Class Member who has not requested exclusion from the Settlement Class may appear at the Final Approval Hearing to show cause as to any of the following: (i) why the proposed Settlement should not be approved as fair, reasonable and adequate; (ii) why a judgment should not be entered thereon; (iii) why the plan for distribution of cash and coupons should not be approved; or (iv) why Co-Lead Class Counsel should or should not be awarded the attorneys' fees, costs, or reimbursement of expenses requested and Settlement Class Representative incentive fees. Any person within the Settlement Class who filed a timely written request for exclusion may object solely with respect to the prospective injunctive and other equitable relief provided herein. In accordance with the Settlement Agreement, any Settlement Class Member may so object either on their own or through an attorney hired at their own expense

11. In order to be heard to contest the approval of the Settlement Agreement, a Settlement Class Member must serve Co-Lead Counsel and counsel for Defendants (by hand or by facsimile transmission) and must file with the Court, no later than the date for exclusion ("Opt-Out Date") prior to the Final Approval Hearing, a written statement of objections, including any legal support the Settlement Class Member wishes to bring to the Court's attention and any evidence the Settlement Class Member wishes to introduce in support of the objection.

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Counsel for the Beneficial Defendants

12. Any Settlement Class Member who does not make an objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the proposed Settlement, the Order and Final Judgment to be entered approving the Settlement, the plan for distribution for cash and coupons in the Settlement Fund or the request for attorneys' fees, reimbursement of expenses and Settlement Class Representative incentive fees.

CLAIMS (CLAIMS PROCESS)

13. In order to be entitled to participate in the distribution of cash and remaining coupons in the Settlement Fund (as defined in the Notice), a Settlement Class Member who has not requested exclusion from the Settlement Class must submit a completed and signed Valid Claim Form to the address provided in the Notice. To be valid and accepted, the Valid Claim Form must be actually received by the Settlement Administrator on or before _____, 2005. Any Settlement Class Member who does not submit a Valid Claim Form shall not be entitled to share in the Settlement Fund beyond the coupons received by such Settlement Class Member with the Notice, but nonetheless shall be barred and enjoined from asserting any of the Released Claims.

TERMINATION

14. If the Settlement and the Settlement Agreement are not approved by the Court or do not receive final approval after review by any court of competent jurisdiction for any reason, or is terminated in accordance with its terms for any other reason, the parties will be returned to their status immediately prior to execution of the Settlement Agreement as if the Settlement Agreement had never been made, and (i) the order certifying the Settlement Class and all preliminary and/or final findings or stipulations regarding certification of the Settlement Class shall be automatically vacated; (ii) the Action will proceed with the merits class previously certified by the Court as of March 29, 2004, and as though the Settlement Class had never been certified and any related findings or stipulations had never been made; and (iii) the Defendants reserve all procedural or substantive rights as of the date of execution of the Agreement .

ADDITIONAL OBLIGATIONS OF CO-LEAD COUNSEL AND THEIR AGENTS

15. The Settlement Administrator under the supervision of Co-Lead Class Counsel shall be responsible for administrating the initial receipt of all responses to the Notices, responding to inquiries from Settlement Class Members, and preserving all correspondence in response to the Notices.

16. The Settlement Administrator under the supervision of Co-Lead Class Counsel shall cause to be filed with the Clerk of Court affidavit(s) or declaration(s) of the person or persons under whose general direction the mailing of the Notice shall have been made, showing that such mailing has been made in accordance with this Order by _____, 2005.

17. Co-Lead Class Counsel shall cause to be filed with the Clerk of Courts affidavit(s) or declaration(s) of the person or persons under whose general direction the publication of the Summary Notice shall have been made, showing that such publication has been made in accordance with this Order by _____, 2005.

18. Co-Lead Class Counsel shall submit to the Court and to counsel for Defendants any papers in support of the Settlement and application for attorneys' fees and reimbursement of expenses by _____.

19. Co-Lead Class Counsel and counsel for Defendants, if they choose, shall file with the Court and serve on opposing counsel any papers in reply to any objection received no later than three (3) days prior to the Final Approval Hearing.

POWERS AND JURISDICTION OF THE COURT

20. The Court expressly reserves its right to adjourn the Final Approval Hearing or any further adjournment thereof, and to approve the Settlement Agreement, including any modifications thereto which are acceptable to the parties, without further notice to Settlement Class Members.

21. The Court will have continuing jurisdiction over the Action for the purpose of implementing the Settlement until the Action and all related matters are fully resolved, and for enforcement of the Settlement, the Settlement Agreement and Final Order thereafter.

22. The parties to the Settlement Agreement are directed to carry out their obligations under the terms thereof.

APPROVED AND SO ORDERED:

DATED: _____

The Honorable Elaine E. Bucklo