

## Legal Alert

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### Unclaimed Property

**QUESTION: DOESN'T THE BANK HAVE TO PAY ME IF I PRESENT THIS OLD CERTIFICATE OF DEPOSIT PASSBOOK THAT I FOUND IN A SAFE DEPOSIT BOX?**

**ANSWER: EVEN IF YOU PRESENT THE UNCANCELLED PASSBOOK ON THE ACCOUNT, THE BANK DOESN'T HAVE TO PAY IF IT CAN SHOW THAT IT ALREADY PAID THE ACCOUNT.**

The Braffman family presented an interesting story to a Connecticut court. They had two uncanceled passbooks on old certificates of deposit and they wanted lots of money from Bank of America. *Braffman v. Bank of America Corp.*, 998 A.2d 1169 (Conn. 2010).

Gerald Braffman opened a certificate of deposit account in November, 1987, by depositing \$33,079.37 with Society for Savings Bank for the benefit of his minor daughter, Susannah. Elaine Braffman opened a second certificate of deposit account in November 1988 by depositing \$100,000 with Society for Savings Bank for the benefit of her minor son, David. Susannah's account would have matured in November, 1988 and David's account would have matured in November, 1991.

Gerald Braffman presented the passbooks for payment at Fleet Bank on January 5, 2004. (Fleet Bank was the successor of Society for Savings Bank and the predecessor of eventual defendant, Bank of America.) When Gerald Braffman demanded payment in January, 2004, Fleet Bank told him it had no record of either account. Fleet Bank said that the accounts had either been paid and closed, or the funds had escheated to the State of Connecticut.

The State of Connecticut was not holding escheated funds from the accounts, so Elaine Braffman and Gerald Braffman sued Bank of America. Bank of America denied that it was wrongfully withholding funds and asserted that either Society for Savings Bank or Fleet Bank had paid the amounts in full to the Braffmans.

At trial, the Braffmans claimed that their uncanceled passbooks proved that the bank accounts had not been closed. The Braffmans claimed that Bank of America or its predecessors had lost the account records, maybe due to all of the bank mergers. Since the Braffmans had the uncanceled passbooks, Bank of America should be required to prove that the accounts had been paid.

The banks destroyed their records after seven years as allowed by Connecticut regulations, so Bank of America contended that some time before January, 1997, the Braffman family had taken the money. They would have filed an affidavit claiming lost or misplaced passbooks and received payment of the principal and accrued interest, thus closing the accounts. Since the bank destroys records after seven years, the affidavit claiming the funds in the accounts would have been presented more than seven years before Gerald Braffman demanded payment on January 5, 2004.

Gerald Braffman testified that the passbooks had been in his safe deposit box. "Each passbook stated that interest would not be paid after the date of maturity, unless renewed or redeposited." Nevertheless, Gerald Braffman testified that he thought the certificates of deposit would continue to roll over and earn interest. Therefore, he did not pay any attention to them until January 2004.

Connecticut statutes provide presumptions that passbook accounts are abandoned three years after maturity. The funds would then escheat to the State of Connecticut. Therefore, Susannah Braffman's account would have been abandoned in November, 1992, and escheated to the State in 1993. David Braffman's account would have been considered abandoned in November, 1993, and would have escheated to the State in 1994. No escheatments had taken place, however.

The trial court noted that the Braffman family wasn't able to produce income tax returns for David or Susannah Braffman from 1988 through 1997 to show whether the banks had paid interest on the accounts. The Braffman family claimed that the tax records had been destroyed in a flood in the family residence.

The trial court also took judicial notice of the case of *Braffman v. Webster Bank* in another Connecticut court in November, 2007. In that case, Matthew Braffman, another child of Elaine and Gerald Braffman, asserted that Webster Bank refused to pay a certificate of deposit opened in 1989. Matthew Braffman demanded payment of \$29,850 on the account. "The claims made by Matthew Braffman in his separate action are substantially similar to the claims asserted in this case. This court finds it improbable that two banking institutions would lose three separate accounts held by members of the same family." The trial court ruled in favor of Bank of America. The Supreme Court of Connecticut agreed.

While there are many situations in which the presentation of documents creates a presumption that payment should be made, you shouldn't be able to take advantage of a records destruction policy to get paid twice. If you ever have any questions about proper presentment of documents for payments or about unclaimed accounts or funds, please call me.

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