

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FAYE R. COHEN, and	:	CIVIL ACTION
SANFORD H. COHEN,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
FEDERAL DEPOSIT INSURANCE	:	
CORPORATION, et al.	:	
Defendants.	:	No. 91-CV-3944

MEMORANDUM AND ORDER

Schiller, J. **May** , **2003**

Plaintiffs Faye R. and Sanford H. Cohen (“the Cohens”) commenced this action in February 1990, seeking damages for the alleged wrongful termination of their line of credit by Bell Savings Bank PaSA (“Bell Savings”). Beginning February 19, 2003, this matter was tried without a jury. I now enter the following Findings of Fact and Conclusions of Law as required by Rule 52(a) of the Federal Rules of Civil Procedure. Because Plaintiffs have failed to prove any cognizable damages, I enter judgment in favor of Defendant.

FINDINGS OF FACT

I. BACKGROUND

A. Parties

The Cohens are attorneys and real estate investors. Pursuant to 12 U.S.C. §1441a(m), Defendant Federal Deposit Insurance Corporation (“FDIC”) is the statutory successor in interest to

the Resolution Trust Corporation (“RTC”) as receiver of Bell Savings, which was declared insolvent by the Office of Thrift Supervision on March 19, 1991.¹ (Feb. 21, 2003 Tr. at 20; Exs. 82-86, 377.)²

B. Procedural History

On February 22, 1990, the Cohens commenced this action in the Court of Common Pleas of Philadelphia County. The matter was subsequently removed to the United States District Court for the District of Columbia, and transferred to the United States District Court for the Eastern District of Pennsylvania. On April 22, 1992 this case was placed in civil suspense after Ms. Cohen filed for bankruptcy. (Exs. 285-287.) When the RTC was terminated by statute on December 31, 1995, the FDIC succeeded the RTC as receiver of Bell Savings. *See* 12 U.S.C. § 1441a(m)(1)(2003). The Bankruptcy Court granted Ms. Cohen a discharge on January 20, 2000. (Ex. 281.) The case was reassigned to me on August 11, 2000, and, upon Ms. Cohen’s motion, I removed this case from civil suspense on August 16, 2000. After I denied the FDIC’s motion for summary judgment, this matter was tried without a jury for three consecutive days beginning February 19, 2003.

C. The Cohens’ Real Estate Investments and Relationship With Bell Savings

The Cohens moved to the Philadelphia, Pennsylvania area in the mid-1970’s. (Feb. 19, 2003 Tr. at 8.) They began their banking and business relationship with Bell Savings in or about September 1980 when Bell Savings agreed to finance the Cohens’ purchase of a multi-family apartment building located at 1433 Spruce Street in Philadelphia. (Exs. 470-475.) Although Mr.

¹ The Cohens also named two Bell Savings employees as Defendants. The Cohens reached a settlement with the individual Defendants, and those individuals were dismissed from this action on February 24, 2003.

² As used herein, “Ex.” refers to the parties’ joint trial exhibits, which are consecutively paginated.

Cohen had an interest in his family's real estate investments in Minneapolis, Minnesota, this property was the Cohens' first investment property purchased in Pennsylvania. (Exs. 101-107.) Thereafter, the Cohens purchased additional residential and investment properties in Pennsylvania and California. (Exs. 158, 438, 440-41, 443-44, 445, 446-49, 450, 451-58, 459-60, 461-69, 470-73, 476-79.) These purchases were financed by various banks or by private lenders after an application and evaluation process, which included credit applications, real estate appraisals, and other documentation as required by various lending institutions and sellers. (Exs. 461-69, 474-75, 480-85, 486-89, 491-92.) Several of the mortgages on the Cohens' real estate investment properties in Pennsylvania were held by Bell Savings. (Exs. 442, 445, 474-75.) The Cohens maintained various checking and savings accounts with Bell Savings and obtained certificates of deposit ("CDs") from Bell Savings worth in excess of \$200,000 in August 1989. (Exs. 189-191.)

D. Line of Credit

In April 1984, the Cohens applied for a \$100,000 line of credit with Bell Savings. (Exs. 116-118.) The line of credit was approved on May 7, 1984. (Ex. 120.) The line was renewed annually for the years 1985 through 1988. (Feb. 19, 2003 Tr. at 21.) In 1986, the line of credit was increased to \$500,000 (Ex. 145), and, the following year, the line of credit was increased to \$750,000 (Ex. 170).

In 1988, the Cohens' line of credit was again renewed. (Ex. 181.) On September 23, 1988, the Cohens executed a promissory note ("Note") payable to the order of Bell Savings in the original principal amount of up to \$750,000. (Exs. 183-84.) The Note provided that the Cohens "will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on August 1, 1989." (*Id.*) The Note evidenced a revolving line of credit in the amount of up to \$750,000, with

an initial interest rate of 11.250%. (*Id.*) The line of credit was unsecured and was not cross-collateralized with any other loan facility from Bell Savings to Plaintiffs. (*Id.*) In addition, the Note provided that “any advances in excess of \$500,000 will be secured by recorded mortgages on specific pieces of real estate.” (*Id.*) Under “General Provisions,” the Note states that “the Lender [Bell Savings] may renew, extend . . . or modify this loan, . . . and take any other action deemed necessary by Lender without the consent of or notice to anyone.” (*Id.*) The Note also provided for Bell Savings’ right to confess or enter judgment, with or without the filing of a complaint, in the event of default and for the right of setoff with respect to the Cohens’ accounts with Bell Savings. (*Id.*) The Cohens received a monthly statement regarding the line of credit, known as a Loan Account Statement, which included a record of activity on the line of credit and the amount of interest accrued. (Exs. 253-280.)

E. Parties’ Conduct in Connection with the Line of Credit Maturing in 1989

In or about February 1989, Charles W. McFadden became the Cohens’ assigned commercial loan officer, replacing Annette M. Melchiorre, who had been the Cohens’ loan officer since 1986. (Feb. 19, 2003 Tr. at 16-17.) Mr. McFadden also served as the Secretary of the Bell Savings Loan Review Committee. (Feb. 19, 2003 Tr. at 259.)

On or about August 22, 1989, Mr. McFadden prepared a Committee Action Worksheet for the purpose of presenting the Cohens’ \$750,000 line of credit to the Loan Review Committee for “reaffirmation.” (Exs. 192-193.) The Loan Review Committee met on August 29, 1989. (Feb. 19, 2003 Tr. at 259.) During the meeting, Mr. McFadden wrote the following on the Committee Action Worksheet: “[C]ollateral to be received acceptable to Bell Savings to secure draws over \$500,000. Collateral to be a second mortgage on any of three properties located on Spruce St., Phila. Pa.” (Feb.

19, 2003 Tr. at 268.) After the August 29, 1989 Loan Committee Meeting, Mr. McFadden contacted one or both of the Cohens to notify them that their line of credit had been reaffirmed. (Feb. 19, 2003 Tr. at 69, 269.) There is no record of a written agreement executed by the Cohens and Bell Savings extending, reaffirming, or renewing the line of credit that matured on August 1, 1989. (Feb. 20, 2003 Tr. at 166.) The Cohens did not execute a promissory note or confession of judgment in connection with the reaffirmation of the line of credit, and did not receive written notification that the line of credit had been reaffirmed. (Feb. 19, 2003 Tr. at 70; Feb. 20, 2003 Tr. at 282.) Between late August 1989 and December 1989, Plaintiffs received at least two Loan Account Statements from Bell Savings listing September 1, 1990 as the maturity date for the line of credit. (Exs. 267, 269.)

Prior to September 1, 1989, Mr. McFadden's employment at Bell Savings ended. (Feb. 19, 2003 Tr. at 269.) After Mr. McFadden left Bell Savings, Dolores R. Shields became the Cohens' loan officer. (Feb. 20, 2003 Tr. at 27.) In October 1989, Ms. Shields noticed that the file kept in connection with the Cohens' line of credit was missing copies of the Cohens' income tax returns.³ (Feb. 20, 2003 Tr. at 39, 40.) In looking through the file, Ms. Shields also noticed that the Loan Review Committee minutes indicated that the reaffirmation of the line of credit had been approved, but there was no corresponding judgment note or promissory note. (Feb. 20, 2003 Tr. at 40.) Beginning in October 1989, Ms. Shields observed an unusually large number of overdrafts in the Cohens' accounts. (Feb. 20, 2003 Tr. at 29.) In a letter dated October 30, 1989, Ms. Shields informed the Cohens that overdrafts and checks drawn on uncollected funds would be "honored only if [the Cohens authorized] a simultaneous draw down under [the] Line of Credit. . . ." (Ex. 197.) On

³ It should also be noted that the testimony related to certain irregularities in the Cohens income tax returns are matters of concern to the Court.

November 24, 1989, the Cohens met with Ms. Shields and another Bell Savings employee, William Horan. (Feb. 20, 2003 Tr. at 33; Exs. 198-200.) At the November 24, 1989 meeting, the Cohens argued between themselves with respect to the use of the line of credit to cover overdrafts. (Feb. 20, 2003 Tr. at 106.)

F. “Restructuring” of Line of Credit

In a document prepared by Ms Shields dated December 12, 1989, the Bell Savings Loan Committee approved certain “modifications” to the Cohens’ line of credit.⁴ (Ex. 201.) The document called for the line of credit to be secured by second mortgage liens on three properties in Philadelphia. (Ex. 201.) In a commitment letter dated December 29, 1989,⁵ Bell Savings informed the Cohens that it had “approved a restructuring of [the Cohens’] \$750,000 revolving line of credit, subject to the terms and conditions contained herein. The basic change has been the taking of security in the form of various real estate properties. . . .” (Ex. 202.) There is, however, no evidence of a written communication from the Plaintiffs conveying their refusal to execute the commitment letter, making a counter-offer to Bell Savings, or otherwise responding to the December 29, 1989 commitment letter. In a letter dated January 23, 1990, Ms. Shields informed the Cohens that the “loan commitment [was] null and void” and any amounts owed under the line of credit were “immediately due and payable.”

⁴ The reasons underlying Bell Savings’ decision to restructure the line of credit are disputed. There is evidence that Ms. Shields was concerned by 1) the Cohens’ failure to provide current income tax returns (Feb. 20, 2003 Tr. at 59); 2) the considerable number of overdrafts (*id.* at 106); 3) disagreement between the Cohens (Feb. 19, 2003 Tr. at 100); and 4) Ms. Cohen’s suggestion in a letter that the Cohens’ financial situation was weakening. (Feb. 20, 2003 at 112-13.) Additionally, and, more importantly, the Office of Thrift Supervision was pressuring Bell Savings to have more of their loans secured. (Feb. 20, 2003 Tr. at 72.)

⁵ When this letter was mailed and whether receipt of the letter was delayed because of an arguably illegible address are matters of dispute.

(Ex. 206.) On February 1, 1990, Bell Savings placed a hold on the Cohens' accounts and CDs. (Feb. 20, 2003 Tr. at 287; Ex. 208-210.) In a meeting in February 1990, Gary Wilson, Executive Vice President at Bell Savings and Ms. Shields's superior, informed the Cohens that he had earlier directed the bank to place a hold on the Cohens' savings and operating accounts and CDs without informing them in advance that he was going to do so. (Exs. 1-3, 208-210.) The accounts remained on hold for no more than several days. (Feb. 20, 2003 Tr. at 294; Feb. 21, 2003 at 3; Ex. 216.)⁶

In February 1990, attorneys for the parties exchanged correspondence in an apparent attempt to resolve the parties' disagreements with respect to the Cohens' line of credit. (Exs. 1-12.) In a letter dated February 20, 1990, outside counsel for Bell Savings informed the Cohens that Bell Savings was making "a formal legal demand . . . for immediate repayment of the entire principal balance of the Line of Credit and all accrued and unpaid interest thereon." (Ex. 11.) Negotiations continued into March 1990. (Exs. 13-14.)

The Cohens' did not use the funds held in the CDs in the daily operation of their businesses. (Feb. 21, 2003 Tr. at 38-39.) Bell Savings utilized the funds held in the CDs to setoff the line of credit. (Feb. 21, 2003 Tr. at 38.)

G. Litigation in the Court of Common Pleas of Philadelphia County

⁶ The February 14, 1990 letter also mentions a default on a loan from a Minnesota bank. (Ex. 216.) The details surrounding this alleged default are unclear, and, in any event, no measure of damages has been provided for this particular incident.

On February 22, 1990, the Cohens filed a complaint in law and equity in the Court of Common Pleas of Philadelphia County against Bell Savings. On May 4, 1990, Judge Gafni issued an Order stating the following:

1. Bell Savings Bank shall allow the Cohens a credit line up to the amount of \$500,000 for a period ending September 1, 1990, consistent with the terms of the Promissory Note between the parties, due and payable on August 1, 1989.
2. Bell Savings Bank shall be enjoined from seizing or freezing bank accounts or any other assets in the possession of Bell, other than the Certificates of Deposit which may be retained, but not disposed of by Bell Savings Bank in lieu of bond.

The Order also directed the parties to appear before Judge Gafni several days later to “determine what further security, if any, should be required of the plaintiffs. . . .” On May 9, 1990, Judge Gafni modified and supplemented his May 4, 1990 Order by directing Bell Savings to obtain an appraisal of the Cohens’ property at 1433 Spruce Street at the Cohens’ expense (¶ 1); directing Plaintiffs to provide a second mortgage covering the 1433 Spruce Street property, with title insurance premiums, recording costs, and other expenses to be paid by the Cohens (¶ 2); permitting Plaintiffs to draw funds under the line of credit up to an aggregate of \$10,000 per week (¶ 3); and stating that “[u]nder no circumstances shall Bell be obligated to advance funds under the line of credit if such advance would cause the aggregate amount of principal outstanding thereunder, together with accrued and unpaid interest, to exceed the sum of \$500,000” (¶ 4). Although Bell Savings did not comply with the terms of the Order, the Cohens did not move for contempt and instead attempted to negotiate with the bank. (Feb. 20, 2003 Tr. at 290-91.) On March 4, 1991, the Court of Common Pleas entered a judgment of non pros against the Cohens, which was later vacated. (Feb. 21, 2003 Tr. at 18-19.) Bell Savings setoff the certificates of deposit against the outstanding balance on the line of credit on March 12,

1991. (Feb. 21, 2003 Tr. at 18-20.) That is, Bell Savings utilized the funds held in the CDs to reduce the amount owed on the line of credit. (Feb. 21, 2003 Tr. at 38; Exs. 260-264.)

H. Mortgage Defaults

On or about March 19, 1991, the Cohens fell into arrears on a mortgage held by the RTC as receiver for Bell Savings. (Ex. 86.) Subsequently, all of the commercial properties owned by the Cohens in 1989 were returned to their lenders or foreclosed upon due to the Cohens' difficulties in making payments on amounts owed on said properties. (Exs. 327-372.)

I. Facts Bearing on Cohens' Claims for Damages

1. Damages Allegedly Incurred Prior to September 1, 1990

The Cohens allege that prior to September 1, 1990 they were damaged by the setoff of their CDs, incurred expenses in connection with an appraisal and banking at institutions other than Bell Savings, and suffered harm to their credit ratings. With respect to the CDs, the Cohens did not use the funds held in the CDs in the daily operation of their businesses. (Feb. 21, 2003 Tr. at 38-39.) It is also significant that the rate at which interest accrued on the CDs (*e.g.*, Ex. 257) was lower than the rate at which interest accrued on the line of the credit (*e.g.*, Ex. 271). The Cohens have not shown any damages resulting from the relatively brief period of time when their accounts were placed on hold by Bell Savings.

The Cohens seek damages for expenses incurred in connection with the appraisal by Richard Cohen of the Cohens' properties at 2206-08 Walnut Street. (Exs. 47-58.) This appraisal is dated January 17, 1991. (Ex. 47.) The Cohens cite a letter from Sears, Roebuck and Company indicating the company was terminating the Cohens' line of credit as evidence that the Cohens "had lost [their]

credit by August 1990.” (Feb. 20, 2003 Tr. at 299.) The letter is dated November 3, 1990 and refers to no events occurring before September 1, 1990. (Ex. 299.)

The Cohens indicated that they incurred additional “operating expenses” as a result of banking with banks in New Jersey and Delaware instead of Bell Savings. (Feb. 20, 2003 Tr. at 299.) The Cohens, however, failed to present any evidence about the amount of these operating expenses.⁷ (Feb. 20, 2003 Tr. at 299.)

In June 1990, the Cohens sold a commercial property in California. (Ex. 438.) The Cohens allege that this property was sold “prematurely” because of their problems with Bell Savings. (Feb. 21, 2003 Tr. at 5). The Cohens have not provided any measure of damages based upon the sale of this particular property.

Ms. Cohen testified that sometime after February 1, 1990 the Cohens attempted to secure a line of credit in addition to – or as an alternative to – the Bell Savings line of credit. (Feb. 21, 2003 Tr. at 13.) There is no documentation of these attempts, or of any corresponding expenses incurred.⁸

2. Involvement of I.W. Levin and Company

In the Fall of 1989, the Cohens’ retained I.W. Levin and Company (“I.W. Levin”) as their management agent for their commercial properties in Philadelphia. (Feb. 21, 2003 Tr. at 37.; Exs. 199-200.) In general, I.W. Levin’s performance on behalf the Cohens was poor. (Feb. 19, 2003 Tr.

⁷ On more than one occasion the Court pressed the issue of whether the Cohens could present evidence showing any damages incurred prior to September 1, 1990. (Feb. 19, 2003 Tr. at 297; Feb. 20, 2003 Tr. at 297, 304)

⁸ The Cohens also seek reimbursement for attorneys’ fees expended. With one de minimis exception for a charge for a meeting that occurred on July 20, 1990, all of the documentation related to attorneys’ fees shows bills for fees incurred after September 1, 1990. (Exs. 233-44.)

at 80.) I.W. Levin allowed leases to automatically renew, preventing the Cohens' from increasing the amount of rent paid by certain tenants. (Feb. 19, 2003 Tr. at 226-27.) Under I.W. Levin, there was "quite a bit of vacancies . . . [that] weren't being filled" in the Cohens' apartment buildings (Feb. 19, 2003 Tr. at 221). Between 1989 and 1990, the Cohens' rental income dropped by an amount greater than \$100,000. (Feb. 21, 2003 Tr. at 31-32.)

3. Fires in Apartment Buildings

Charles Robbin began working for the Cohens in the Spring of 1990, taking over the management services that previously had been performed by I.W. Levin. (Feb. 19, 2003 Tr. at 225, 230.) Around the time that Mr. Robbin worked for the Cohens, there were two fires in the Cohens' properties. (Feb. 19, 2003 Tr. at 237.) After one of the fires, the Cohens had difficulties obtaining payments from their insurer for lost rental income and repairs to the building. (Feb. 19, 2003 Tr. at 237; Ex. 200.) The rental income the Cohens received from their properties decreased "substantially" because of the fires. (Feb. 21, 2003 Tr. at 4.)

4. Center City, Philadelphia Real Estate Market

In 1990, the real estate market in Center City Philadelphia was weak. (Feb. 19, 2003 Tr. at 227.) As a real estate broker and appraiser who inspected and appraised the Cohens' properties at 2206-08 Walnut Street in January 1991 noted, "[t]he market in Center City Philadelphia, at the present time, has become a negative factor. There are many buildings for sale with very few buyers." (Ex. 55.)

CONCLUSIONS OF LAW

I. COHENS HAVE NOT ESTABLISHED COMPENSATORY DAMAGES

Plaintiffs allege that Bell Savings' conduct amounts to breach of contract, tortious interference with contractual relations, defamation of character, negligent misrepresentation, conversion, fraud, negligence, breach of fiduciary duty, and breach of Pennsylvania's Truth in Lending Act, entitling Plaintiffs to compensatory and punitive damages. It is unnecessary to determine whether the Cohens have succeeded on any of these claims because, even if such liability has been proven, the Cohens are unable establish any damages. Simply put, at trial, there was a complete lack of proof regarding damages. The Cohens' case for their entitlement to damages rests upon mere allegations, supported at most by vague, speculative, sporadic, and conclusory testimony.

A. Speculative Damages are not Recoverable

Under Pennsylvania law, damages may not be awarded on the basis of speculation or conjecture. *See Martin v. Johns-Manville Corp.*, 494 A.2d 1088, 1094 n.5 (Pa. 1985). “[D]amages are speculative if the uncertainty concerns the fact of damages not the amount.” *Carroll v. Phila. Hous. Auth.*, 650 A.2d 1097, 1100 (Pa. Comm. Ct. 1994). Damages are not considered speculative merely because they are not capable of exact calculation, and, rather, Pennsylvania law requires that plaintiffs present a reasonable quantity of information from which the fact finder can fairly estimate the damages. *See Ashcraft v. C.G. Hussey & Co.*, 58 A.2d 170, 172-73 (Pa. 1948); *see also Molag, Inc. v. Climax Molybdenum Co.*, 637 A.2d 322, 324 (Pa. Super. 1993) (holding that Pennsylvania law requires damages to be proven with reasonable certainty so that intelligent estimate may be reached without conjecture).

B. Damages Allegedly Incurred Prior to September 1, 1990

The Cohens' claims rest on their assertion that their line of credit was reaffirmed in August 1989 for an additional year. Thus, at the latest, Bell Savings' legal obligations to the Cohens ended on September 1, 1990.⁹ Furthermore, at that time, Bell Savings had the right to repayment of all outstanding principal plus all accrued interest. For the reasons set forth in the findings of fact, for this time period the Cohens have not shown any quantity of information from which a damages award could be based, and have specifically failed to prove damages with respect to: 1) the freezing of the CDs; 2) the incurrence of additional operating expenses; 3) damage to credit rating(s) or financial relationships; or 4) the incurrence of additional expenses in seeking additional extensions of credit.

C. Damages Allegedly Incurred After September 1, 1990

The Cohens' overarching argument with respect to damages is that Bell Savings' actions resulted in losses to the Cohens in the approximate amount of \$10 million. This argument is untenable because it fails to prove damages during the relevant time period, i.e., before September 1, 1990. Even putting aside this defect, this figure is far too speculative to serve as the basis for an award of damages.

In support of their contention that they are entitled to \$10 million in damages, the Cohens have submitted the report of an economist, Andrew C. Verzilli. Mr. Verzilli calculates the Cohens' damages as "over \$10 million" based on several categories of damages.¹⁰ One category of damages

⁹ All of the relevant evidence in this case – including Bell Savings' December 29, 1989 commitment letter, the loan activity statements cited by Plaintiffs, and Judge Gafni's May 4, 1990 Order – support September 1, 1990 as the latest date on which any obligation by Bell Savings to the Cohens terminated.

¹⁰ Like the Cohens, Mr. Verzilli fails to focus his report on any damages occurred prior to September 1, 1990.

relates to the Cohens' CDs. Based on the value of the CDs in March 1991, Mr. Verzilli calculates the CDs' present value as approximately \$400,000. (Exs. 600-02.) As discussed above, this calculation does not recognize that the funds held in the CDs were used to setoff amounts owed to Bell Savings, and, therefore, does not establish damages. (Verzilli Feb. 6, 2003 Report at 1.)

Additionally, Mr. Verzilli estimates that during the years 1992 to 1995 Ms. Cohen was unable to practice law due to her financial difficulties, causing her approximately \$200,000 in lost earnings. (Verzilli Feb. 6, 2003 Report at 1.) There is no proof of any earnings from Ms. Cohen's law practice for the years 1989, 1990, or 1991, and, except for one year in which Ms. Cohen had a net income of approximately \$3,000, there is no proof of any earnings from the law practice in any year prior to 1992. (Feb. 21, 2003 Tr. at 65-66.) Looking to the increase in the Cohens' net worth from July 1983 to December 1990, and assuming that the rate of increase would have continued, Mr. Verzilli also estimates that the Cohens' present worth would exceed \$10 million. (*Id.* at 2.) These estimates fail to show damages because they fail to account for evidence that shows that the Cohens' financial difficulties resulted from a variety of factors. That is, the weakening of the real estate market, the poor management of the Cohens' properties by I.W. Levin, and fires at the Cohens' properties all had an effect on the Cohens' financial situation. As such, the Cohens have not shown any basis for awarding compensatory damages.

II. PUNITIVE DAMAGES

The Cohens also seek an award of punitive damages. Assuming, *arguendo*, that the Cohens have proven that Bell Savings' conduct is sufficient to trigger such an award, the Cohens would not be entitled to such an award from the FDIC.

Punitive damages may not be awarded against an agency or instrumentality of the United States absent congressional authorization. *See Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 266-71 (1981) (holding that municipalities are immune from imposition of punitive damages on public policy grounds absent Congressional authorization); *Bolden v. SEPTA*, 953 F.2d 807 (3d Cir. 1991) (punitive damages may not be assessed against regional transit authority created by Commonwealth of Pennsylvania). With respect to the FDIC acting as a receiver, Congress has disallowed awards of punitive or exemplary damages. *See DPJ Co. Ltd. P'ship v. FDIC*, 30 F.3d 247, 249 (1st Cir.1994) (citing 12 U.S.C. § 1821(e)(3)(B)(i)). Furthermore, punitive damages are not properly recoverable from the FDIC because their application has no deterrent effect and instead serves to punish the innocent creditors of the receivership estate by diminishing available assets. *See, e.g., Crone v. FDIC*, 62 F.3d 1169, 1175 (9th Cir. 1995) (finding that case law suggests that claims that are punitive in nature cannot be asserted against FDIC because the deterrent effect is minimal and other innocent creditors would be punished by diminishing available assets); *FDIC v. Claycomb*, 945 F.2d 853, 861 (5th Cir. 1991) (“[I]nasmuch as the FDIC was created to serve the public interest, the usury claim which is punitive . . . cannot be asserted against the FDIC as such application could have no deterrent effect, and would only serve to punish innocent creditors of the failed institution by diminishing available assets”); *Tuxedo Beach Club Corp. v. City Fed. Sav. Bank*, 749 F. Supp. 635, 649 (D.N.J. 1990) (“Punitive damages are imposed to punish wrongdoer and deter others; these considerations have little weight, however, where the wrongful party is in receivership and the fine would ultimately be paid by innocent creditors.”).

III. CONCLUSION

For the foregoing reasons, I will enter judgment in favor of the FDIC and against the Cohens.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FAYE R. COHEN, and	:	CIVIL ACTION
SANFORD H. COHEN,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
FEDERAL DEPOSIT INSURANCE	:	
CORPORATION, et al.	:	
Defendants.	:	No. 91-CV-3944

ORDER

AND NOW, this day of **May, 2003**, upon consideration of the parties' Revised Proposed Findings of Fact and Conclusions of Law and Memoranda of Law in support thereof, for the foregoing reasons, and following a trial on the merits, it is hereby **ORDERED** that:

1. Judgment is entered against Plaintiffs Faye R. Cohen and Sanford H. Cohen and in favor of Defendant Federal Deposit Insurance Corporation.
2. It appearing that all other Defendants have previously been dismissed from this action, the Clerk of Court is directed to close this case for statistical purposes.

BY THE COURT:

Berle M. Schiller, J.