

Consumers Blindsided by Arbitration Clauses in Credit Card Contracts

Tens of thousands of consumers are being forced into one-sided arbitration proceedings to settle disputes with their credit card companies.

According to a new report by NCLC and Trial Lawyers for Public Justice, certain corporate lenders, most prominently MBNA and First

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USA Bank, are blindsiding consumers by fast-tracking disputes over credit card debt into arbitration with the National Arbitration Forum.

The practice, as disclosed by industry data from several lawsuits, is designed to allow creditors to pursue large numbers of claims against consumers in an industry-friendly process. According to the NAF's own documents, in cases involving First USA, the consumer prevailed in just 87 (.44 percent) of 19,705 arbitrations NAF steered to an outcome.

"Only a tiny percentage of

consumers read the terms of credit card agreements, which are typically sent out as bill stuffers (statements stuffed in with monthly bills), printed in tiny font and filled with dense legal jargon that's often incomprehensible even to highly-educated consumers," said Paul Bland, an attorney with Trial Lawyers for Public Justice. "And very few consumers understand that they've supposedly given up their constitutional rights and agreed that the NAF is the sole forum for any legal claims they may have involving their bank. So when consumers receive notices from or about the NAF, they often believe these are junk mail or some mistake and throw them away," said Bland.

By pushing consumers into arbitration, victims of credit-card fraud are being forced to pay debts they clearly don't owe. By definition, arbitration says a consumer can't go to court to have his or her story heard, even if the alleged "debt" is a result of someone else's criminal fraud and in no way a result of the dunned consumer's actions.

The experience of Patricia Meisse illustrates how even the most sophisticated consumer is

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Fast Track to Arbitration

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vulnerable to this practice. Meisse, a Maryland resident and physicist at the Nuclear Regulatory Commission, was forced to submit to arbitration and abide by the resulting default judgment even though she was a victim of identity theft and had nothing to do with the charges that fraudulently were run up in her name. Despite having disputed the \$40,000 bills from the start, MBNA was able to obtain three default arbitration awards against her without ever proving that she had opened the accounts. The company then filed separate claims in Maryland district court to

enforce the awards.

“In essence, what the credit card companies are trying - so far successfully - to achieve is access to the full power of the judicial system without any meaningful due process rights for the consumer,” says Steve Tripoli, an NCLC consumer advocate. “They’re using the arbitration process to get uncontested decisions awarding the credit card company the amount of the alleged outstanding debt, plus fees, costs, and more. It’s a neat pathway to turbo-charged profits for both the card issuer and the arbitrator.”