



Muckraker

Credit Card Arbitration

Gary Weiss 10.11.07, 10:00 AM ET

On Nov. 15, 2001, a New Hampshire man named Troy T. Cornock received a surprising letter from something called "National Arbitration Forum." Seems this organization claimed he owed money on an MBNA credit card. Only one problem: He didn't. His ex-wife had made the charges, and Cornock pointed out to the "Forum" that he had never signed a credit card agreement or made any charges on the account.

The credit card company could produce no proof Cornock had opened the account or made any charges. Not to worry. The National Arbitration Forum ruled against the customer anyway, and awarded MBNA \$9,446.85.

This monstrosity, overturned last March by a New Hampshire court, is just one of literally thousands of instances in which the credit card industry has flushed the Constitution—and the requirement for due process of law—down the commode.

In Pictures: How Credit Card Companies Pick Your Pocket

Mandatory arbitration clauses, which are widely criticized for preventing brokerage customers from having their day in court, have metastasized to ordinary credit card agreements. This has resulted in inequities and injustices that makes securities arbitration seem like a fairyland of justice by comparison.

A devastating report from Public Citizen, the Washington-based consumer group founded by Ralph Nader, provides a clear and detailed picture of the damage that has been wrought by mandatory arbitration clauses in credit card agreements. Public Citizen found that consumers are "railroaded into mandatory arbitration," an unfair and blatantly anti-consumer dispute-resolution mechanism, even if they are victims of identity theft.

In an eight-month inquiry into credit card arbitration, Public Citizen found it to be a "rigged game in which justice is dealt from a deck stacked against consumers." Public Citizen zeroed in on 34,000 arbitration cases filed in California, which releases some usually secret arbitration data, and its findings are shocking. It is nothing less than an indictment of the whole rotten system of mandatory arbitration of credit card disputes.

Now, it should be noted at the outset that there is nothing wrong with arbitration when freely agreed to by both parties. Arbitration is commonly chosen by businesses to resolve their disputes, because it is a swifter means of doing so than court litigation, which can result in massive legal fees and years consumed battling through pretrial motions.

But mandatory arbitration of consumer disputes is an entirely different kettle of fish. The problem with credit card arbitration, as it is for brokerage customers, is that the consumer has no choice if he or she wants to keep the credit card or brokerage account alive. It is buried in fine print or, worse, tacked on to credit card agreements, which most customers don't even bother to read. I certainly always throw away those things. After all, I pay my bills at the end of each month and I don't get into hassles with credit card companies.

But Troy Cornock paid his bills on time too, and that didn't help him one bit. The problem uncovered by Public Citizen is that credit card companies are using arbitration proceedings not to resolve disputes—only 0.4% of the cases surveyed were by consumers with a beef against the issuer—but as an extension of the credit card companies' attack-dog collection agencies.

Securities arbitration, at least, has an arguable case that it is fair to brokerage customers. I don't happen to buy it, but securities industry spokesmen have correctly pointed out over the years that over half of all cases result in some money going to the customer.

In criticizing the report, the American Bankers Association makes a remarkably similar argument, contending in a statement that "what their report doesn't say is that arbitration is one of the fairest, most efficient methods for resolving complex disputes between consumers and businesses of all kinds, including lenders. Consumers often prefer arbitration to going to court, because arbitration offers a faster, less costly alternative to complex and expensive litigation, most often resulting in similar settlements."

The ABA cites a study that found "more than half [55%] of the arbitrations examined in the study were resolved in the consumer's favor. Further, the majority of consumers [69%] report being satisfied or very satisfied with the arbitration process."

Public Citizen has a dramatically different take on the subject. The group has a whole slew of numbers on that point. Here's one that Public Citizen gleaned from the public record of a court case: Of 19,705 arbitration cases filed by First USA Bank, 99.6% went against the customer.

It's hard to see how 69% of the customers involved in these cases would be satisfied with the outcome. In fact, these numbers suggest that you'd have to go to the star chambers of merry old England to find a more one-sided method of meting out "justice."

One especially pernicious aspect of arbitration cases is that they are hard to overturn. To do so, a credit card holder must hire a lawyer and engage in a costly court appeal, which is what arbitration is supposed to avoid in the first place. Overturning any arbitration case means leaping a high legal hurdle, although in the case of Troy Cornock it was apparently not too high.

The problem with that aspect of the arbitration mess is that even if you find a sympathetic New Hampshire judge and win, you still lose. According to Public Citizen, even though the judgment against Cornock was overturned, his credit was still ruined.

That is just not acceptable. Aggressive debt collection tactics are bad enough, but throwing the Constitutional right to a court hearing down the drain is a step too far, even for the credit card industry.

This is one of those "there ought to be a law" situations, and it so happens that one is in the hopper. It is called the Arbitration Fairness Act of 2007, and it has been introduced by Sen. Russ Feingold, D-Wis., and Rep. Hank Johnson, D-Ga. The bill would void mandatory arbitration clauses in employment, consumer and franchise disputes.

I'd suggest that the bill be expanded to include brokerage disputes, but this bill has a scant enough chance of passing as it is. I would be surprised if it gets out of committee, much less passed into law. Consumers, unfortunately, can't afford the kind of high-priced lobbyists that serve the interests of the credit card industry—paid to snuff out just this exact kind of pro-consumer legislation. I am confident they will do their job well in this instance.

So keep that in mind next time you use your credit card. If your credit card company has a beef against you, justified or not, you're toast.

Gary Weiss has covered business for more than 20 years as an investigative reporter and author. His latest book is Wall Street Vs. America: The Rampant Greed and Dishonesty That Imperil Your Investments. He blogs regularly at garyweiss.blogspot.com.

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