

In the Court of Common Pleas of Lackawanna County, Pennsylvania  
Civil Action-Law

MBNA America : No.05-xxxx

v. :

poor debtor  
:

[deleted text to protect privacy]

Cross Motion to Vacate Arbitration Award

1. If defendant received notice as to the arbitration procedures, the said notice was in a form of a bill “drop-in” with a complicated opt-out provision.

2. Credit card companies routinely stuff envelopes with fliers and ads for various items that they and other companies hope to sell to customers. The usual bill contains at least 3 or 4 miscellaneous and unrelated papers, including offers for credit insurance and blank checks which customers can use to take cash advances at a premium price..

3. The defendant received many such “important notice” from plaintiff, almost all of which were advertisements disguised to appear important.

4. The defendant, like almost every other person, separates the actual bill from the “drop-ins,” and discards them.

5. The defendant in this case does not recall such a “drop-in.”

6. Even if the notice was not in the form of a “drop-in” it was written in such a manner that was incomprehensible to a person without a legal background.

7. Defendant, no matter how it was delivered to him, did not comprehend the notice and was not aware of the magnitude of the rights he was waiving.

8. It is inherently unfair to impose such strict restrictions upon a person’s right of access to the court system by virtue of his lack of response to a cryptic notice.

9. Plaintiff should have requested the defendant sign the said notice to indicate that he at least read it.

10. It is doubtful that defendant, like most people, ever do read such notices.

11. Had the defendant known about the arbitration clause, he would have most certainly opted-out.

12. The implementation of the arbitration provisions in this case, is accomplished through surreptitious means and concealed through misdirection. Plaintiff knew that most persons are not aware of the meaning of arbitration, and not being in a controversy at the time, would not be inclined to even investigate the meaning of such arbitration provisions.

13. The arbitration provisions should in all fairness, be representative of a meeting of the minds, and not something that is “slipped by” a customer of a credit card company.

14. Defendant did not participate in the arbitration and was never ordered by any court to participate pursuant to 42 Pa.C.S. §7304(a).

15. Rule 36(e) of the National Arbitration Forum states: “No Award or Order shall be issued against a Party solely because that Party failed to respond, appear or defend.”

16. A court may only enter a judgment based on an award only if the record can support a finding that the arbitrator had jurisdiction over the defendant.

17. Plaintiff, before the defendant would be required to submit to an arbitration, must prove that a binding arbitration agreement exists pursuant to 42 Pa.C.S. §7304(a).

18. The determination that defendant agreed to submit to the arbitration was made solely by the arbitrator in his award. Under Pennsylvania law, no arbitrator has authority to decide questions of jurisdiction.

19. There is no requirement in the law for a cardholder to participate in an arbitration in the absence of a court order finding that a credit card issuer is raising a claim governed by an arbitration clause.

20. Since an arbitrator cannot require a respondent to litigate before the arbitrator the issue of the authority of the arbitrator to hear a claim filed by a party alleging that the claim is governed by an arbitration clause, a respondent cannot be penalized for his or her failure to participate.

21. Defendant was not afforded the same protection against defaults that he would

have under Pennsylvania law.

22. Since the arbitration award is a nullity without an agreement to arbitrate, a judge would need to determine whether the record shows the existence of an agreement to arbitrate.

23. In the absence of a court order compelling the respondent to proceed with arbitration, the arbitrator does not have any jurisdiction over a respondent who never participated in or otherwise acknowledged the arbitration proceeding.

24. Since 42 Pa.C.S. §§ 7304(a), 7313 and 7342(b) are part of a statutory scheme for enforcing arbitration agreements, a court shall confirm an arbitration award under section 7313 or section 7342(b) only if the respondent either was ordered to proceed with arbitration pursuant to section 7304(a) or voluntarily participated in the arbitration proceeding.

25. The arbitration award should be stricken in this case.

WHEREFORE, defendant requests this court to:

- A. Deny confirmation of the arbitration award; and
- B. Strike the award.

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