
NATIONAL
ARBITRATION
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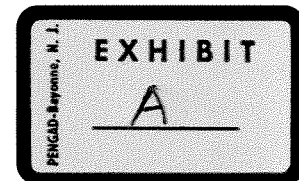
CLAIMANT(s),

AMENDED ORDER

**RE: Alex Karahanov v MBNA America Bank, N.A.
File Number: FA0407000294231**

MBNA America Bank, N.A.
1100 North King Street
Wilmington, DE 19801

RESPONDENT(s).



WRITTEN FINDINGS:

The Parties to this Arbitration have requested that written findings accompany the Award. Based on the evidence adduced before the Arbitrator and the testimony and exhibits offered and accepted at the Participatory Hearing of February 7, 2005, the undersigned Arbitrator in this case FINDS:

1. The Claimants traveled to Mexico in 2002, where they agreed to purchase a time-share interest in property at the "Sole Vacation Club" from persons named Elba Machado and Eduardo de la Vega who represented themselves to be affiliated with a Mexican corporation known as "Sole Real State S.A. de C.V."
2. On June 5, 2002, the Claimants executed a contract with that corporation, apparently signed on its behalf by de la Vega. The contract contained a paragraph, in which the Claimants testified that they had specifically negotiated certain terms, reading as follows:

"SEVENTH: The Purchaser shall have a maximum period of 10 working days counted from the working day following the date of signing of this Agreement in which to cancel it and he may obtain a refund of all amounts paid. The cancellation shall be done is [*sic*; probably should read "in"] writing in the domicile of the Supplier. The Supplier shall have a period of 15 working days following the cancellation date of this Agreement in which to fully reimburse the amounts paid by the Purchaser without any deduction being made."

3. The Claimants paid for the time-share interest in full at the time they signed the contract, placing part of the \$10,191.00 purchase price on a Citibank credit card and the remaining \$3,972.20 on the MBNA America Bank, N.A. credit card No. 5490 9931 9704 0498 which is at issue herein.
4. Upon returning to the United States, the Claimants consulted a lawyer and decided to cancel the contract. They sent a letter dated June 11, 2005, to "Sole Vacation Club," purporting to cancel the contract, and requesting the reimbursement of "any amounts paid by us, without deduction, to the address above" (their home address in St. Louis, Missouri). They attempted to send this letter both by fax and by Federal Express courier.

5. "Sole Vacation Club" initially refused to accept the letter and, when it did receive the letter on June 22, 2002, it refused to honor the attempted cancellation. It apparently took the position that the letter did not comply with the requirements that (a) the cancellation be "done ... in the domicile of the supplier" and (b) take place within "10 working days" of the date of signature, *i.e.*, by June 19, 2002.
6. The Claimants notified the Respondent on June 11, 2002, that they were attempting to cancel the \$3,972.20 charge. On June 24, 2002, they notified the Respondent that "Sole Vacation Club" was refusing to cancel the contract, and they disputed the merchant's action in refusing to cancel the contract and the charge to them.
7. The Respondent investigated the dispute and the Claimants' attempt to have the contract and \$3,972.20 charge cancelled. On July 16, 2002, the Respondent declined to resolve the dispute in favor of the Claimants and notified the Claimants, in pertinent part, that:

"We have thoroughly reviewed the details of your dispute and exhausted all avenues available to us through the formal dispute resolution process. Unfortunately, because we cannot intervene in situations involving a merchant's return, refund or cancellation policy we are unable to assist you. As a consumer, you are offered a certain level of protection against business practices from merchants that accept credit cards as a means of payment. Merchants have the ability to operate their businesses independently and to set return and refund policies that best suit their business needs. The consumer has the responsibility to inquire about the store's refund policy prior to making a purchase, to ensure that it will offer them the flexibility they need."

8. After giving notification to the Claimants of its decision and receiving additional inquiries from them on July 26 and 29, 2002, the Respondent reinvestigated the matter and reached the same conclusion.
9. Subsequent to the Respondent's investigation and reinvestigation of the dispute and denial of the Claimants' request, the Respondent continued to consider the \$3,972.20 charge as valid.
10. Thereafter, the Claimants did not pay any portion of the charge.
11. The Respondent subsequently reported the charge to the three major national credit reporting agencies as past due, before eventually writing it off as a bad debt.
12. The reporting of the Claimants' past due item and bad debt apparently caused or contributed to cause two other merchants, Best Buy and Circuit City, to deny credit to the Claimants when they applied for such credit in connection with purchases of consumer goods. It did not appear to result in any other losses of existing or potential credit for the Claimants. The Claimants were able to refinance their home at a lower rate than under their previous mortgage, although it is possible, as a matter of speculation, that the reporting of their past due item and bad debt may have resulted in a higher rate of interest for them than they might otherwise have obtained when they refinanced their home.
13. The \$3,972.20 charge is not now pending against the Claimants by the Respondent. The credit reporting agencies have apparently agreed to remove their references to it on the Claimants' credit history, by way of settlement of a lawsuit or claims against them by the Claimants.
14. The Claimants have sought to impose liability for "actual, statutory and punitive damages" upon the Respondent for (a) "willful noncompliance," (b) "negligent noncompliance," and (c) failure to conduct a reasonable investigation of a "billing error," in violation of the Fair Credit Reporting Act, Fair Credit Billing Act, and Truth in Lending Act, under 15 U.S.C. §§ 1681i (which does not apply to the Respondent, since the

Respondent is not a "credit reporting agency"), 1681n, 1681s-2 (as to which there appears to be no private cause of action, unless a furnisher of credit information has received information of a dispute from a credit reporting agency rather than the consumers themselves), 1602(f), 1640(a) and 1666, and FRB Regulation Z, §§ 226.2(a)(17) and 226.13; and (d) tortious interference with an expectancy of credit, under Missouri common law.

15. Even if the Claimants' attempt to cancel their purchase of the time-share interest was interpreted to constitute non-acceptance of property or services; and even if the merchant's refusal to permit cancellation of the charge on the credit card was interpreted to constitute a "billing error" within the meaning of the Federal statutes and regulation--both of which propositions are at best questionable and probably incorrect--the Respondent's investigation and reinvestigation of the dispute were prompt, sufficiently thorough to understand the nature and factual background of the Claimants' and the merchant's positions, and therefore reasonable. The Respondent ascertained that the merchant had a legally and factually colorable, if not necessarily conclusive or ethical, reason to disallow the cancellation under the terms of the contract. While conceivably the Respondent could have reached a different result, and chosen to charge back the \$3,972.20 to the merchant, rather than permitting the charge to stand against the Claimants--as Citibank apparently did with regard to the merchant's charge against the Claimants on their Citibank card--the Respondent was not legally required to do so.

16. Inasmuch as the Respondent's investigation and reinvestigation were reasonable, the Respondent did not violate the Fair Credit Billing Act, Fair Credit Reporting Act, Truth in Lending Act, or any requirement of Regulation Z.

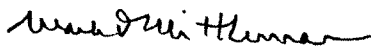
17. The Respondents' Missouri common-law tortious interference claims require them affirmatively to prove the absence of justification for the Respondent's acts. They have not done so in this case because the Respondent acted justifiably to protect its economic interest without using any legally improper means, in compliance with the requirements of the applicable Federal laws.

18. Inasmuch as the Respondent has no liability to the Claimants, it is not necessary to determine whether they had any losses which might qualify as a foundation for actual, statutory or punitive damages.

Therefore based on the foregoing findings, the Arbitrator Orders:

IT IS ORDERED that the above case be **Dismissed With Prejudice** and that no costs of these proceedings shall be awarded to the Claimants.

Entered in the State of Missouri



Mark D. Mittleman, Esq.
Arbitrator

**ACKNOWLEDGEMENT AND CERTIFICATE
OF SERVICE**

This Order was duly entered and the Forum hereby certifies that a copy of this Order was sent by first class mail postage prepaid to the Parties at the above referenced addresses, or their Representatives, on this date.

Date: April 13, 2005