

MEDIA BACKGROUNDER  
*FIA Card Services v. William Weaver*

**January 20, 2011 at 9:30 A.M., Louisiana Supreme Court, 400 Royal St., New Orleans**

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**HOW IT STARTED**

When a New Hampshire man was informed that he owed money to a credit card company, he was confused. He'd never even had an account with MBNA America Bank. Or so he thought: In fact, his ex-wife had opened an account without his knowledge.

But MBNA still attempted to collect the award the National Arbitration Forum (NAF) had issued against the man, even though he'd never used the account or made a payment on it.

A state court in New Hampshire refused to confirm the NAF's award, however. The judge explained that doing so would allow any credit card company to force victims of identity theft into arbitration simply because that person's name appeared on the account.

Now, in a similar case in Louisiana, FIA Card Services is arguing that it is entitled to collect an alleged debt from William Weaver despite the same lack of proof. As in the MBNA case in New Hampshire, the NAF entered an award for FIA in the full amount sought—over \$32,000 against Mr. Weaver. When FIA sought to confirm the award in court, FIA provided only a copy of the arbitration award from the NAF and copies of undated, unsigned, unauthenticated, barely legible MBNA credit card contracts that contained no mention of either FIA or Mr. Weaver. One of the contracts did not even authorize arbitration.

As part of his defense, Mr. Weaver submitted a sworn affidavit denying that the sample contract put forward by FIA had anything to do with him. His affidavit also stated that he had never agreed to arbitration.

**THE CASE GOES TO THE LOUISIANA SUPREME COURT**

Nonetheless, the trial court confirmed the arbitration award for FIA. Louisiana's First Circuit Court of Appeal affirmed, holding that if a creditor seeks confirmation of an arbitration award and the award is not challenged within ninety days, the trial court can do nothing but approve—even if the creditor fails to show that the consumer ever agreed to arbitration.

To be sure, many courts around the country have ruled that the ninety-day limit does not matter unless there is a valid arbitration agreement. After all, without an agreement an arbitrator has no authority to enter an award. The supreme courts of Arkansas, Montana, Kansas and Idaho have reversed NAF awards for precisely this reason.

Now the *FIA* case is going before the Louisiana Supreme Court.

**ARBITRATION IS A MATTER OF CONTRACT AND CONSENT**

This case is particularly problematic—and its import nationally significant—due to NAF involvement. In July 2009, the Minneapolis-based, for-profit NAF was forced to abandon the consumer arbitration business in the wake of a conflict-of-interest scandal: Investigations by the Minnesota Attorney General revealed that a New York City hedge fund owned both a governing interest in the NAF and the assets of the three largest collectors of consumer credit card debt. The NAF was known to side with creditors nearly all the time: A *BusinessWeek* story reported that NAF arbitration awards were pre-printed with the amount to be awarded to the creditor already filled in.

But if the rule adopted by the Louisiana Court of Appeal becomes the law of Louisiana, it will not matter if the consumer never agreed to arbitration, or, like the New Hampshire man, never even opened a credit card account—he or she will still have to pay whatever the NAF awards to the creditor.

In its defense of Mr. Weaver, Public Justice, a national public interest law firm working with local Louisiana consumer rights attorneys, argues that enforcement of an arbitration agreement requires proof of that agreement, not a generic photocopy. This proof is even more imperative for consumers when the award was granted by the shamed and discredited NAF.