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## **Louisiana Supreme Court Rules Debt Collector Can't Enforce Arbitration Award Against Consumer Who Did Not Agree to Arbitration**

In a 6-1 decision, the Louisiana Supreme Court ruled Tuesday that a court can't enforce an arbitration award against a consumer unless there is proof that the consumer agreed to arbitration.

The ruling reverses an earlier trial court decision in *FIA v. Weaver*.

Defendant William Weaver allegedly defaulted on his credit card payments to MBNA. The National Arbitration Forum then issued an arbitration award against Weaver for FIA Card Services, which claimed it had acquired the debt. FIA argued that because Weaver did not ask the court to vacate that award within 90 days, it was too late for the court to consider his argument that he never actually agreed to arbitration.

The winning party in arbitration has up to one year to go to court and "confirm" the arbitration award, turning it into an enforceable judgment. However, the losing side has only 90 days to seek to "vacate" or overturn the award.

"Many consumers aren't aware of the short time window to fight an arbitration award in court, and debt collectors know that," said attorney Leslie Bailey, Weaver's lead counsel. "If FIA had prevailed, it wouldn't matter whether a person never knew about the arbitration, never agreed to arbitration, or never even had a credit card—it would be tough luck. Fortunately, the Louisiana Supreme Court recognized that consumers in this predicament do have the right to be heard in court."

The trial court had confirmed the arbitration award against Mr. Weaver even though FIA had provided only generic copies of MBNA contracts—some of which did not even provide for arbitration—and no evidence linking that unsigned, undated document to Weaver or, for that matter, even itself.

The Court of Appeals for the First Circuit affirmed the decision, holding that the trial court could do nothing but rubber-stamp the award—even if the creditor failed to show that the consumer agreed to arbitration *and* the consumer specifically denies it.

The Louisiana Supreme Court held that those courts got it wrong. Rather, as Justice Knoll wrote for the court, federal law "requires a court faced with a petition to confirm [an award] to first ensure that there is an arbitration agreement between the parties. . . . Because FIA failed to meet its evidentiary burden to show there has ever been a valid arbitration agreement between itself

(or MBNA) and Weaver, its petition to confirm must be denied.” The court noted that banks and debt collectors often try to enforce arbitration awards without providing any admissible evidence of an agreement.

The case was heard before the Louisiana Supreme Court in January. Bailey, a staff attorney with Public Justice, argued on behalf of Mr. Weaver. Public Justice’s co-counsel were Garth Ridge of Baton Rouge, Steve Conley of Covington, and Bill Cherbonnier of Greta.

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