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ElectronicTransfers for Two and a Half Years Denied Recovery

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It is a common scenario faced by financial institutions on a regular basis: a customer alleges that electronic transfers from his account were unauthorized and demands that the institution re-credit the amount to his account. Under the Electronic Funds Transfer Act ("EFTA") and Regulation E, financial institutions have a very little leeway with respect to such claims and are generally required to re-credit the account. This has become extremely frustrating (and costly) for financial institutions.

While there has been no change to the strict liability rules applicable to financial institutions regarding unauthorized electronic transfers (and no change is likely), a recent New York Supreme Court case shows that there are some limits to a customer's ability to hold institutions liable for such unauthorized transfers.

In *Schochet v. Bank of America*, a husband and wife sued Bank of America claiming that 1,156 electronic transactions from their account over a two-year period were unauthorized. These transactions totaled approximately $250,000. The couple sought reimbursement from the bank for the full amount of the unauthorized transactions, as well as statutory penalties in the amount of $2 million and unspecified punitive damages. The problem with the couple's claim, however, was that they did not report the unauthorized transfers *for two and a half years*.

In a strongly-worded opinion, the judge noted that the couple admitted (1) receiving all their monthly statements, (2) not reviewing the statements for the two-and-a-half-year period, and (3) that even a cursory review of the statements would have revealed the unauthorized transfers. Because Regulation E requires a customer to report unauthorized electronic transfers within 60 days after having been transmitted the written documentation containing the transfers, and the plaintiffs here exceeded that time frame for virtually all of the transfers at issue, the judge held that the Bank was not responsible for reimbursing the plaintiffs for any more funds. (The bank had previously re-credited the plaintiffs $185,000 based in part on the bank's ability to recover some of the funds from third parties.)

The opinion declared that the plaintiffs' claims for damages were not only "legally infirm," they amounted to "the height of chutzpah." The judge noted that the plaintiffs made no attempt to "justify their gross negligence," and instead tried to shift responsibility to the bank on the theory that the bank had constructive notice that these transfers were unauthorized. The judge found no basis for such a claim.

The only claim the plaintiffs prevailed on was a minor one for a technical violation of Regulation E's timing requirements for providing customers with a provisional credit. For this technical violation, the judge awarded the plaintiffs $100. That was their only recovery in the case.

If you have any questions regarding this case, the EFTA, or Regulation E, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com or Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com.

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