

Arbitration

What is it and how does it apply to my situation?

Arbitration is a means of coming to an agreement over a disputed matter without involving the courts. An arbitrator hears both sides and then makes a decision based on the information.

There are rules for arbitration, including:

- Both parties must agree to do the arbitration
- Both parties must agree on the arbitrator
- In most cases, both parties must be present

Banks will sometimes add an arbitration clause in their contracts. If you have received a notice of arbitration, either the bank already had it in the account contract or they notified you later and sent you a notice with an opt-out provision. So because of your billing dispute, the banks are trying to force you into arbitration to resolve the dispute.

The problem with arbitration is that banks and the arbitration forum have a vested interest in helping each other. Arbitrations are done in bulk and often end in the same results (bank gets the award). Arbitration is rarely fair, and in most cases the bank/attorneys do not follow the rules of arbitration correctly. First, they are basically forcing you to arbitrate which is a violation of the first point listed above (both parties must agree...). Next, it denies your right to due process. You should always have the right to have a judge hear your case, and not just some third party who has a vested interest.

If you receive an arbitration notice from your bank that gives you the opt-out option, you should do so. This requires you to write up a little letter to the bank saying that you wish to opt out of arbitration, and it should be sent with proof of service and the USPS certificate of mailing or by certified mail. However, if you do this, in most cases, they will close your account.

If you get an arbitration notice from the bank, you will want to file a motion to dismiss the arbitration based on a number of reasons, which likely will be denied. After that, the bank will still force the arbitration and you may see requests for more information, or notices, or even a settlement offer. At this point, you no longer send in anything, because you do not want it to appear as though you are participating willingly in the arbitration. Your motion to dismiss should have already covered all the legal reasons you declined to participate in arbitration.

Eventually you will receive a notice from the arbitration forum that they have given an "Award" to the bank and you now owe the full balance and then you should get some sort of collection letter, which you must respond to. Now the collection game begins again, and you pick up where you left off.

Tidbits:

- Arbitration adds anywhere from 60-90 more days on to your termination process for that particular card

- The bank has 12 months to enforce the arbitration award. That means, they must submit to the courts (much like a lawsuit) and get the judge to approve it, and then you must be served with a notice. This rarely occurs. Usually, they just keep sending you collection notices and the year goes by and then they go away.
- Remember, an “Award” means nothing unless the bank can take it to the courts, get it turned in to a judgment, and then try and find assets to collect from you. You would know all of this WELL in advance, and it would be a long process. So there are no surprises here.

Below are some citations for you to research and would be cited in your opposition to the arbitration.

Title 5 Sec. 575. - Authorization of arbitration

(a)

(1) Arbitration may be used as an alternative means of dispute resolution whenever all parties consent. Consent may be obtained either before or after an issue in controversy has arisen. A party may agree to -

(A)

submit only certain issues in controversy to arbitration; or

(B)

arbitration on the condition that the award must be within a range of possible outcomes.

(2) The arbitration agreement that sets forth the subject matter submitted to the arbitrator shall be in writing. Each such arbitration agreement shall specify a maximum award that may be issued by the arbitrator and may specify other conditions limiting the range of possible outcomes.

(3) An agency may not require any person to consent to arbitration as a condition of entering into a contract or obtaining a benefit.

"The arbitration agreement in a credit cardholder agreement is unconscionable and unenforceable, to the extent it prohibits class treatment of small individual claims, where presented as a 'take it or leave it' clause with no opportunity for negotiation" *Szetela v. Discover Bank*, No. G029323 (Cal. 4th App. Dist. April 22, 2002)

The arbitration forum chosen by the claimant is too closely aligned with the consumer finance industry. The purported arbitration clause fails to establish that the arbitration service chosen by claimant is neutral, inexpensive or an efficient forum for resolving this particular claim or dispute. *Baron v. Best Buy Co., Inc. et al.*, 75 F.Supp.2d 1368 (S.D. Fla. 1999)

The purported arbitration clause is not enforceable because it unconscionably requires the respondent to arbitrate in a distant state under an organization and rules designed to favor the purported lender. *Patterson v ITT Consumer Financial Corp.*, 14 Cal. App. 4th 1659, 18 Cal Rptr 2d 563 (Cal App. 1993).