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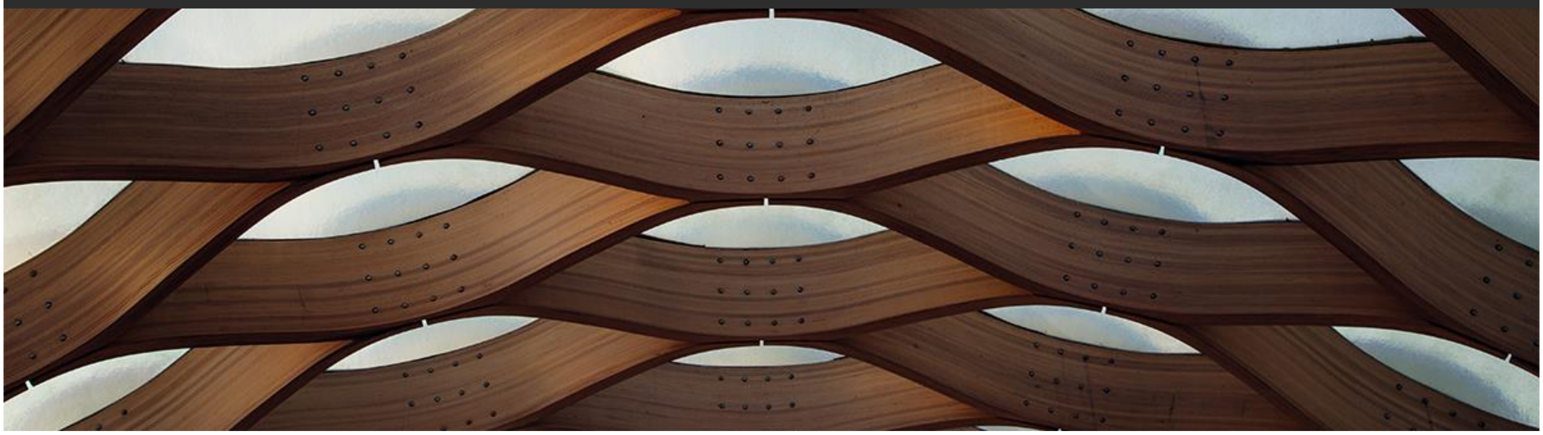

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Third Circuit Permits Consumer Challenge to Credit Card Charge Within 60 Days of Charge's Reinstatement

The Third Circuit held earlier this month that where a credit card issuer bills a consumer for an unauthorized credit card charge, withdraws the charge, and then later reinstates it, the consumer's dispute of the unauthorized charge under the Fair Credit Billing Act (FCBA) is timely if made within 60 days of the charge's reinstatement, not 60 days from the date the charge originally appeared.

FCBA, an amendment to the Truth In Lending Act (TILA), requires a creditor either to reverse a charge or to investigate upon timely written notice of the a disputed charge by a consumer. The consumer must submit that notice within 60 days after receiving the statement containing the disputed charge, failing which the creditor is not obligated to correct or investigate the charge. TILA itself permits a credit card issuer to hold a cardholder liable for unauthorized use of a card occurring before the issuer has notice of the unauthorized use, in an amount not to exceed $50. A consumer may sue to recover "actual damages" arising from a violation of these requirements, among other relief.

In this case, the consumer notified the creditor of an unauthorized $657 charge in July 2015, the same day he received a statement first reflecting it. The creditor removed the charge in August, but rebilled it on the September 2015 statement. The consumer disputed the rebilled charge in writing within 60 days of receiving the September 2015 statement, but more than 60 days after receiving the July 2015 statement. When the creditor did not reverse the rebilled charge, the consumer paid it and sued, alleging that the creditor violated (1) FCBA by failing to credit or investigate the rebilled charge, and (2) TILA by holding him liable for more than $50 of a charge the consumer asserted was unauthorized.

The district court granted the creditor's motion to dismiss, finding that under the implementing regulation known as Regulation Z issued by the Consumer Financial Protection Bureau, a consumer must give written notice within 60 days after the first periodic statement containing the disputed charge. In the district court's view, that statement was the July 2015 statement, thus rendering the consumer's objection untimely. The district court further reasoned that because TILA did not make a card issuer liable for all unauthorized charges, but rather capped a cardholder's liability for such charges, it did not give a cardholder a right to reimbursement.

The Third Circuit reversed, finding that Regulation Z provides that where an unauthorized charge goes unpaid and is "carried forward continuingly in successive periods," the 60-day period does not restart upon receipt of "each new periodic statement," but "rather runs from the receipt of the first of those statements." But that was different from this case, where the creditor made "an alleged billing error on one statement," "eliminate[d] that error on subsequent statements," and then "introduce[d] the error into a new series of statements at a later date." The court also reinstated the consumer's TILA claim because he sought "actual damages" recoverable under TILA, and not just "reimbursement of the $657 charge he paid under protest." In so holding, the Third Circuit rejected the creditor's argument that it did not hold the consumer "liable" for the unauthorized charges merely by demanding payment on a billing statement. A cardholder is "legally obligated to pay the charges that appear on his bill," the Third Circuit explained, and so it "would make no sense if 'liability' were viewed as not being 'impose[d]' until the issuer obtained a judgment in court."

This case requires a creditor that reinstates an alleged unauthorized charge to address a written notice disputing the charge submitted within 60 days of notice of the reinstatement. Under this holding, the charge's reinstatement "resets" the 60-day time period in which a consumer may trigger the creditor's FCBA obligations. Moreover, creditors should think carefully before billing (or rebilling) a consumer for a charge the creditor has reason to believe is unauthorized. A creditor that does so imposes "liability" on a cardholder and therefore must comply with the conditions for doing so under TILA, including the $50 cap on a cardholder's liability.

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