JUDGE AFFIRMS ARBITRATION FOR AMERICAN EXPRESS RFPA CASES

from The Privacy Times

A federal judge in Washington has ruled that American Express (Amex) customerscould not sue for alleged violations of the Right to Financial Privacy Act (RFPA) because Amexâ€™s cardholder agreement includes a mandatory arbitration clause that takes away the right to go to court.

Judge Gladys Kessler ruled that under the Amex cardholder agreement, Utah law was controlling, and said that â€œa number of courts have found the Arbitration Provision to be valid and enforceable under Utah law.â€•

â€œPlaintiffs have neither distinguished this legal precedent nor otherwise argued that Utah law requires invalidating the Arbitration Provision involved in this case,â€• she wrote, concluding the Arbitration was valid and enforceable and thus trumped Americansâ€™ rights under the RFPA.

The plaintiffs sought to bring a class action over the outsourcing of Amex call center chores to overseas locations not subject to U.S. laws, where AmEx personnel have access to callersâ€™ financial records the â€œU.S. Government is free to intercept, search, and seize this data.â€•

They alleged the U.S. government had either seized their financial information or that such information was at risk of government seizure. They also charged that their financial information may have been seized by certain foreign governments, which regularly share such data with the United States.

Enacted in 1978, the RFPA prohibits financial institutions from providing U.S. agencies with data concerning a customerâ€™s financial records, unless the customer authorized the disclosure of the information or the Government obtained a valid warrant or subpoena.

â€œAs the Supreme Court has held, claims based on federal statutes are no exception to the general rule that arbitration agreements should be enforced according to their terms. Although all statutory claims â€˜may not be appropriate for arbitration, having made the bargain to arbitrate, the party should be held to it unless Congress itself has evinced an intention to preclude waiver of judicial remedies for the statutory rights at issue,â€™â€• she wrote.

â€œIf such Congressional intent exists, â€˜it will be discoverable in the text of the statute, its legislative history, or an â€˜inheren conflictâ€™ between arbitration and the statuteâ€™s underlying purpose,â€• Judge Kessler continued.

She noted that Plaintiffs could individually pursue RFPAâ€™s civil and injunctive remedies in arbitration proceedings. â€œMost significantly, they have failed to point to any language in RFPA, its legislative history, or case law suggesting that class-wide injunctive relief is mandated by or necessary to carry out RFPAâ€™s purpose. In short, Plaintiffs have presented no legal authority suggesting that RFPA precludes enforcement of the Arbitration Provision. In essence, Plaintiffs have presented a policy argument about the limits of arbitration and the prejudicial impact it has on their statutory claims. In passing the FAA, Congress established a â€˜liberal federal policy favoring arbitration agreements,â€™â€• Judge Kessler wrote, concluding, â€œTo invalidate the Arbitration Provision based upon Plaintiffsâ€™ policy arguments would undermine this firmly established Congressional policy choice.â€• (Charles Aneke v. American Express Travel Related Services, Inc., et al.: USDC-D.C. â€“ No. 11-1008(GK); January 31, 2012.

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