COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION 1

FIA Card Services, N.A. Plaintiff, vs. Valentina Kiselev Defendant	Case No.: 63642-1-I APPELLANT'S BRIEF KING COUNTY CASE #09-2-15667-1-SEA

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A. Assignments of error.

ASSIGNMENTS OF ERROR

1. The trial court erred in entering the order of May 12, 2009, that plaintiff have judgment pursuant to Arbitration Award against the defendant, Valentina Kiselev, as set forth in the Judgment Summary prepared by plaintiff.
2. The trial court erred in ignoring the defendant's Countermotion to Set Aside Arbitration award.
3. The trial court erred in denying the defendant meaningful access to the court.
4. The trial court erred in denying the defendant her constitutional right for due process by avoiding familiarization with documents and facts presented by defendant and "rubber-stamping" the pre-entered judgment.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

The plaintiff served Summons to defendant on March 21, 2009 without filing this Summons in Court at the time. In named Summons plaintiff makes allegations that defendant owes $37,026.87 (including arbitration and attorney fees) to FIA Card Services pursuant to Arbitration Award.

Defendant contacts King County Clerk's Office on March 29, 2009 to confirm that the Summons is not filed with Court at that time and that the only way for her to file a reply is with the plaintiff (which she does immediately).

However, after receiving a reply from defendant on Summons, plaintiff files named Summons in King County Superior Court on April 30, 2009 without notifying defendant of the taken action (pg. 19 of Clerk's papers), thus depriving her of her right to file a reply with Court as well. In her reply to Summons, defendant outlined why the alleged Award is invalid and unenforceable.

Yet, based on the absence of filing of the reply to this Summons with Court, (given explained above circumstances) plaintiff then files Motion for Judgment on Arbitration Award (pgs. 1-18 of Clerk's Papers).

Were not defendant's rights for due process and meaningful access to the court violated at that time? (Assignment of Errors 3 and 4)

Despite unspeakable violation of the process and defendant's rights, defendant was hopeful for justice. She filed a Response to FIA Card Services Motion for Judgment Award and Countermotion to Set Aside Arbitration Award along with attached documentation that clearly outlined her non-acceptance of Arbitration process and her non-participation in one, as well as multiple requests to validate alleged debt. (pgs. 20-32 of Clerk's Papers).

Named motion was duly served to plaintiff and filed with King County Superior Court as required by law on May 6, 2009.

Despite all precautionary steps taken by the defendant in order to assure compliance with the process and the law, on the date of the hearing, Court Commissioner, before who the matter was present, advised the defendant that she did not have chance to review filed documents. Defendant was notified by the Commissioner that "They don't know."- meaning the Clerk's Office who defendant filed the motion with attached

information with as required. (pgs. 2 and 3 of the Verbatim Report of Proceedings (VRP), lines 14 , 15, 25, 26 of pg.2 and lines 10, 11, 15 and 16 of pg.3)
Defendant was also pointed that her "day in court has come and gone" and it was "actually in the arbitration process" (lines 19, 20, pg. 4 of VRP) and that "by not going, by not appearing, ... he read your response and apparently did not find it to be credible."(lines 4, 5 of pg.8 of VRP). At the same time, plaintiff pointed to defendant as well as Honorable Court that arbitration hearing in this matter was done by "Honorable Robert Bibb, who was a retired Superior Court judge from Everett" (lines 25, 26 of pg. 4 of VRP). Does the retired Judge has an access to open court? Was not the right of the defendant for equal access to the court violated when she was told she had to "appear" at the documented hearing?
Commissioner at Court did not take any time to review defendant's motion or any of the documents that she provided. Wasn't the defendant's right for due process violated, yet again? (Assignment of Error 4)

Defendant simply was not given an opportunity to present her Countermotion to Put Aside Arbitration Award (pg.21 of Clerk's Papers), despite the fact that she filed it with King County Superior court in a timely fashion following the process and had it present at the hearing on May 12, 2009. This Countermotion was simply ignored and never was ruled on. (Assignment of Error 2)

Unfortunately, factual evidence presented by defendant in Court on May 12, 2009 sustaining that Arbitration Award was invalid and unenforceable (including letters to plaintiff well prior to Arbitration requesting to provide authenticated agreement for arbitration or merely service, defendant's written objection to the initial claim filed with National Arbitration Forum and Mann and Bracken, LLC on May 01, 2008 and June 10, 2008 (pgs. 25- 32 of Clerk's Papers)) were not considered by trial court.

Nor the defendant's verbal and written dispute that plaintiff failed to meet their prima facie burden by placing admissible evidence in the record to support its claims (pg. 20 and 21 – Response to Facts, of Clerk's Papers) were taken to consideration by Honorable Court. What legal and factual grounds did Trial court have to order the entry of judgment in question? (Assignment of Error 1)

B. Statement of the Case.

The case is ultimately quite easy. It involves the validity of an alleged arbitration agreement between Appellant (defendant) Valentina Kiselev and appellee FIA card, Services, N.A., also known as plaintiff. Trial. The merits of the case are simply whether there is an enforceable Arbitration Award present at hand that will allow entry of judgment appealed. All the facts submitted by both parties demonstrate either lack of the documents supporting plaintiff's claim that the Award is valid due to the fact that there is no authenticated agreement for arbitration between parties ever existed. Or, there are documents supporting clear objection of the defendant to participate in Arbitration or accept arbitration agreement well prior to arbitration in lieu of the defendant's genuine right for due process. Due process considerations embodied in a number of well-established principles, including constitutional defendant's rights, point clearly to an interpretation that favors the defendant. Moreover, the force of these "time-honored rules is all the more compelling when First Amendment rights are involved." Schwartz v. Romnes, 495 F.2d 844, 849 (2d Cir. 1974)

C. Summary of Argument

Judgment entered is solely based on Arbitration Award that is not valid, nor enforceable. Multiple defendants' rights were violated by the entry of such Judgment. Countermotion was ignored and not ruled on. Appellant argues that judgment is to be dismissed and decision to be reversed, while the countermotion should be granted based on factual evidence.

D. Argument

Review is not limited to the pleadings, but also focuses on the affidavits and other documents filed by the parties. Hisaw v. State Farm Mut. Auto Ins. Co., 353 Ark., 668 122 S.W.3d 1 (2003) Appellant have provided more than sufficient evidence to prove that there was never authenticated agreement for arbitration in question. At the same time, plaintiff did not meet their prima facie burden and did not provide any admissible evidence to support their claim that such an agreement existed or to validate their claim that the alleged debt ever existed.

After reviewing undisputed facts, summary judgment should be denied if, under the evidence, reasonable persons might reach different conclusions from those undisputed facts. Allen v. Allison, 356 Ark. 403, 155 S.W.3d 682 (2004)

The merits of the hearing on May 12, 2009 came only to determination of the validity of the Arbitration Award by National Arbitration Award Forum. Appellant Kiselev stated both in writing and verbally in her Motion and well Countermotion that she neither agreed to arbitrate the dispute nor participated in its subsequent arbitration. She also provided evidence in support of her claim. Thus the judgment in question is to be reversed. Helton v. MBNA America Bank, N.A. CA07-759 (2008)

The arbitration is invalid and unenforceable because no written authenticated agreement existed between parties. MCI Telecommunications Corp. v. Exalon Industries, Inc., 138 F.3d 426 (1st Cir. 1998)

"It is well established that arbitration is a creature of contract… It is designed to avoid litigation and secure prompt settlement of disputes…[A]person can be compelled to arbitrate a dispute only if, to the extent that, and in a manner which, he has agreed so to do… No one can be forced to arbitrate a contract dispute has not previously agreed to do so… Courts of law can enforce only such agreements as the parties actually make…Accordingly, because an arbitrator's

jurisdiction is rooted in the agreement of the parties…a party who contests the making of a contract containing an arbitration provision cannot be compelled to arbitrate the threshold issue of the EXISTENCE of an agreement to arbitrate." Nussbaum v. Kimberly Timbers, Ltd., 271 Conn 65 72-73, 856 A.2d 364 (2004)

Deference of whether a particular dispute is arbitrable need not be given to the arbitrator's decision. Welch Group, Inc. V. Creative Drywall, Inc., 215 Conn.464, 467, 576 A.2d153 (1990)

Section 2 of the FAA (Federal Arbitration Act) outlines definition of enforceable agreement. Walton v. Lewis, 337 Ark. 45, 49, 987 S.W.2d 262, 265 (1999) Plaintiff failed to provide solid evidence that agreement as it defined under this section of FAA ever existed between Kiselev and FIA card services. See also MBNA America Bank, N.A. v. Blanks, 100 Ark. App.8, __S.W. 3d __(2007)

Summary judgment should be granted only when it is clear that there are no genuine issues of material fact to be litigated and the moving party is entitled to judgment as a matter of law. O'Marra v. Mackool, 361 Ark.32, 204 S.W. 3d 49 (2005)

Because there is a genuine issue regarding whether Kiselev agreed to arbitrate and whether she participated in arbitration, summary judgment was improper.

All of the cases above are decided under the Federal Arbitration Act, 9 U.S.C. sections 1-16 (FAA), not state law. In none of the relevant cases did the cardholders admit that they participated in the arbitration proceedings in any form.

Arbitration is a matter contract between the parties; there is no general legal duty to arbitrate private contractual disputes. On the premise, the United States Supreme Court held that the question of whether party has agreed to arbitrate is subject to independent review by the courts. First Options of Chicago, inc. v. Kaplan, 514 U.S. 938, 943 (1995) The FAA merely provides a forum for the parties in which private disputes may be resolved where the parties have agreed to use such forum.

Kiselev had no intention to give up her constitutional rights for meaningful access to the court and due process. She more than clear stated it in her communications to plaintiff, arbitrator and in her motion as well as countermotion (see pgs. 20 -32 of Clerk's Papers).

One of the concerns of the Trial Court was that arbitrator did not find my response credible, nor he found something that carried the weight (VRP, pg. 8, lines 1-10). Appendix to this document provides information that can shed the light on what this arbitration process really is.

CONCLUSION

In this case, there is a fact issue as to whether arbitration agreement existed between Kiselev and FIA Card Services, N.A. Unless there is a written agreement to arbitrate, time limit imposed by FAA section 12 is not triggered. Plaintiff failed to submit any evidence that such AUTHENTICATED agreement ever existed between two, while defendant (appellant) provided multiple well documented evidence that she never entered such an agreement and on a contrary, was opposed to getting into one. Accordingly, we hold that Honorable Trial Court erred in granting summary judgment in favor of FIA Card Services and pray that decision is to be reversed. Appellant prays that Countermotion made by her in King County Superior Court (pages 20 -24 of the Clerk's Papers) is granted.

Respectfully submitted this the 30 day of November, 2009

Valentina Kiselev
609 109th Ave SE Bellevue WA 98004
206-679-0856

APPENDIX

DONOVAN SEARLES, LLC PHILADELPHIA, PA on behalf of The National Association of Consumer Advocates Before the HOUSE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW . Hearing on: the Federal Arbitration Act: Is the Credit Card Industry Using it to Quash Legal Claims? May 5, 2009:

"HOW THE CREDIT CARD COMPANIES USE FORCED ARBITRATION TO DEPRIVE CONSUMERS OF DUE PROCESS AND ACCESS TO THE COURTS

Many credit card companies and debt buyers are now using forced arbitration clauses to circumvent basic due process protections and to obtain default judgments against consumers in distant forums. These debt collectors typically use a Minnesota arbitration company, the National Arbitration Forum ("NAF"), to rubber stamp their unsubstantiated debt collection claims. As detailed in the attached materials, the NAF is a more than willing participant in these schemes because it has been paid millions in fees by the credit card companies and has even marketed its services as way to increase recoveries from allegedly defaulted debts.

Let me explain some of the real world problems from this feudal if not corrupt NAF system of debt collection by sham arbitration. With judicial debt collections there are well-established rules that assure proper service of process, notice, an opportunity to be heard, an opportunity to appeal and an opportunity to vacate clearly improper judgments. These requirements put the burden on attorney debt collectors to ensure that they have the right party, that process has been properly served and that evidence supporting the claim and the calculation of the debt owed has been assembled and will be presented to the court before judgment can be entered. These well-established systems and processes have engendered confidence in consumers and creditors alike, serving the country well for more than a century. With debt collection by forced arbitration, the rules – to the extent they exist – are unenforceable, biased and easily circumvented by repeat player debt buyers, debt collectors and their captive arbitration providers. Proof of service of process, for example, is not filed with a court; it is filed with the arbitration provider to whom the debt collector has just paid an arbitration fee. When the credit card debtor fails to respond to the alleged claim, the NAF simply enters a default award in favor of the credit card company, which is then enforceable in court without the consumer having any chance to defend. Under the Federal Arbitration Act, a court cannot reexamine this decision, even if the alleged debtor was a victim of identity theft who never received the original arbitration demand, never signed any arbitration agreement and never had any true connection to the alleged debt.

This very scenario has played out thousands of times throughout the country. For example, one credit card company obtained default judgments against dozens of consumers from the NAF that they attempted to have enforced by the Pennsylvania courts. The state courts found that the method of service for the arbitrations and the distant forum did not comply with basic due process rules, analogizing the arbitrations to long-outlawed confessions of judgment. The courts then proposed and adopted a rule requiring such collection matters to first be filed in court. Instead of complying with this rule, the credit card companies are now asking the federal courts to enforce their default arbitration awards. The credit card companies are even arguing that the Federal

Arbitration Act prohibits federal courts from examining whether NAF or the creditor claimants actually complied with due process. Other courts have concluded that the prohibition of class actions is unconscionable. In truth and in economic reality, few if any consumers can take on an allegedly deceptive credit card practice individually. The stakes are just not high enough for any one consumer, and the time commitment alone far outweighs any potential economic award. No lawyer can handle an individual consumer credit card complaint, because his or her factual investigation will nearly always exceed in time and money the amount that could be recovered for the individual consumer" .

DONOVAN SEARLES, LLC PHILADELPHIA, PA on behalf of The National Association of Consumer Advocates Before the HOUSE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW. Hearing on: the Federal Arbitration Act: Is the Credit Card Industry Using it to Quash Legal Claims? May 5, 2009:

"FORCED ARBITRATION IS, IN FACT, FAR MORE EXPENSIVE FOR THE CONSUMER CREDIT MARKET AND THE U.S. ECONOMY IN GENERAL.

Although card issuers and several courts have touted the purported speed, efficiencies and lower costs associated with forced arbitration, the truth is that it is far more expensive for consumers, the consumer credit market and the overall U.S. economy. Forced arbitration hides important information from the marketplace and unfairly exploits the lack of information consumers have or can obtain about their rights and obligations. Forced arbitration enables card issuers to implement and perpetuate unfair and deceptive card fee and collection practices without any risk of commensurate cost or punishment. For example, card issuers can and have implemented unlawful change of terms provisions, unauthorized or improper fees, and unsubstantiated arbitration awards against non-debtors. Having been implemented by computer program, the bad practices are by necessity widespread. Forced arbitration therefore allows bad issuers to keep the bad practices secret because few consumers

know how to challenge them, and those who do may be bought off individually during the secret arbitrations" .

COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION 1

FIA Card Services, N.A.	Case No. 636421
Respondents,	King County Superior Court No. 092156671
vs.	DECLARATION OF SERVICE
Valentina Kiselev	
Appellant	
KING COUNTY SUPERIOR COURT NO. 092156671	

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STATE OF WASHINGTON

The undersigned declares and states as follows:

I am a citizen of the United States of America, and of the State of Washington, over the age of eighteen years, party to the above entitled proceedings.

On November 30, 2009 I served a copy of the Appellant's Brief. Named document was hand delivered by me to Suttell and Associates at 1450-114 Ave SE, #240, Confiner Building, Bellevue, WA, 98004.

Declarant states the foregoing is true and correct to the best of her knowledge and belief, subject to the penalty of perjury under the laws of the State of Washington.

November 30, 2009

Dmitri Kiselev

609 109th Ave SE Bellevue, WA 98004

206-679-0851

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STATE OF WASHINGTON

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09 APR 30 AM 10: 06
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

FIA Card Services, N.A. Plaintiff, vs. Valentina Kiselev Defendant(s).	NO. 09-2-15667-1SEA MOTION FOR JUDGMENT ON ARBITRATION AWARD **(Appearance)** *s/a 186755.001*

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COMES NOW the plaintiff/petitioner by and through its attorney, Suttell & Associates, P.S. and respectfully moves the court for Judgment on Arbitration Award as follows.

RELIEF REQUESTED

Plaintiff requests entry of a judgment confirming the arbitration award.

FACTS

1. The plaintiff and the defendant entered into credit card arrangements which were subject to an Arbitration provision. A true and correct copy of the credit card agreement is attached hereto and by this reference is fully incorporated herein.

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SUTTELL & ASSOCIATES, P.S.
1450-114TH AVE SE, #240
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BELLEVUE, WA, 98004
425-455-8220/425-454-7884 FAX

2. Defendant defaulted on the obligation to pay on the credit card and the plaintiff initiated arbitration proceedings pursuant to the Federal Arbitration Act and in accordance with the credit card agreement.

3. The defendant was provided notice of the Arbitration proceedings as evidenced by the Proof of Service attached hereto.

4. An Arbitration Award was entered in favor of the plaintiff.

5. The plaintiff is entitled to entry of a Judgment confirming the Arbitration Award.

6. Plaintiff's counsel has received a communication on behalf of the defendant which counsel considers a Notice of Appearance and/or answer under State Rules and Case Law and therefore has given defendant notice of this Motion.

EVIDENCE RELIED UPON

1. The records and files herein and attached to this motion.

LEGAL AUTHORITY

Under the Federal Arbitration Act 9 USC the parties had entered into a contractual arrangement for private arbitration. See attached. The plaintiff properly instituted private arbitration proceedings and served the defendant with the Notice of Claim. See attached Proof of Service. The arbitrator entered an Arbitration Award. See attached.

Pursuant to the FAA 9 USC et. seq., plaintiff is entitled to a Judgment confirming the Arbitration Award against the defendant.

CONCLUSION

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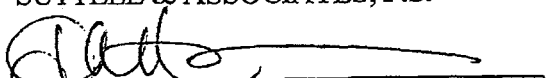
In conclusion, plaintiff has met all prerequisites to the entry of an Order Confirming the Arbitration Award and for Judgment on the Arbitration Award and respectfully requests that the Court enter Judgment.

RESPECTFULLY submitted April 20, 2009.

SUTTELL & ASSOCIATES, P.S.



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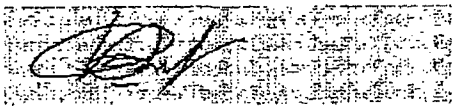

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NATIONAL ARBITRATION FORUM

FIA Card Services, N.A., formerly known as Bank of America Corporation
Mann Bracken, LLC
One Paces West, Suite 1400
2727 Paces Ferry Road
Atlanta, GA 30339

CLAIMANT(s),

AWARD

RE: FIA Card Services, N.A., formerly known as Bank of America Corporation v Valentina Kiselev
File Number: MX0805002081804
Claimant Account Number: xxxxxxxxxxx6685

Valentina Kiselev
609 109th Ave Se
Bellevue, WA 98004

RESPONDENT(s).

The undersigned Arbitrator in this case FINDS and CONCLUDES:

Case Summary

1. The Claimant has filed a Claim with the National Arbitration Forum.
2. After Proof of Service of the Claim was filed with the Forum, where no Response has been filed, the Forum mailed to Respondent a Second Notice of Arbitration.
3. The Respondent has filed a Response with the Forum and served it on the Claimant.
4. An arbitration hearing notice was duly delivered to the Parties as required by the Forum Rules.
5. The Arbitrator conducted a Hearing in this case in accord with the Forum Rules.
6. The Parties have had the opportunity to present all evidence and information to the Arbitrator.
7. The Arbitrator has reviewed all evidence submitted in this case.

Decision

1. The Arbitrator knows of no conflict of interests that exist.
2. This matter involves interstate commerce and the Federal Arbitration Act governs this arbitration.
3. The Claim was properly served on the Respondent by Claimant in accord with Rule 6, including a Notice of Arbitration.
4. *On or before May 14, 2008 the Parties entered into a written agreement to arbitrate their dispute.*
5. The Parties' Arbitration Agreement is valid and enforceable and governs all the issues in dispute.
6. This matter is arbitrable under the terms of the Parties' Arbitration Agreement and the law.
7. This matter has proceeded in accord with the applicable Code of Procedure Rules.
8. The evidence submitted supports the issuance of this Award.
9. The applicable substantive law supports the issuance of the Award.

Therefore, the Arbitrator ISSUES:
An Award in favor of the **Claimant**, for a total amount of **$37,026.87**.

Entered and Affirmed in the State of Washington

Honorable Robert C. Bibb
Arbitrator

Date: November 03, 2008

ACKNOWLEDGEMENT AND CERTIFICATE OF SERVICE

This Award was duly entered and the Forum hereby certifies that pursuant to the Parties' Arbitration Agreement, a copy of this Award was sent by first class mail postage prepaid to the Parties at the above referenced addresses, or their Representatives, on this date.

Honorable Harold Kalina, Ret.
Director
November 04, 2008

BEST AVAILABLE IMAGE POSSIBLE

Credit Card Agreement

General

In this Credit Card Agreement, the words "you" and "your" refer to each and all of the persons who accept a credit card issued by us or under an account we hold. This Credit Card Agreement (the "Agreement") consists of this document and the terms and conditions set forth in the Required Federal Disclosures section of the accompanying card carrier, which is incorporated herein and made a part hereof. The words, "we," "us," "our" and "MBNA America" mean MBNA America Bank, N.A.

When you accept or use the account, you agree to the terms in this Agreement. You should sign your card before you use it.

You consent to and authorize MBNA America, any of its affiliates, or its marketing associates to monitor and/or record any of your telephone conversations with our representatives or the representatives of any of those companies.

All capitalized terms not defined herein shall have the meaning as defined in the Required Federal Disclosures section of your card carrier.

Information Gathering and Sharing

From time to time, we may obtain updated information about you including, for example, credit information. We may share information about you with credit reporting agencies and others, including merchants, and among companies affiliated with us. You may request that information about you not be shared among our affiliates, other than information pertaining solely to transactions or experiences between you and us (or an MBNA America affiliate), by writing us at MBNA, Affiliate Information Sharing, P.O. Box 15342, Wilmington, DE 19850-5342. Please include your name, address, home phone number and all MBNA America account numbers.

If you believe that inaccurate or incomplete information about you or your account has been shared by us with a credit reporting agency, write to us at: MBNA, Credit Reporting Agencies, P.O. Box 17054, Wilmington, DE 19884-7054. Please include your name, address, home phone number, and account number, and explain which information you believe is inaccurate or incomplete.

How To Use Your Account

You may use your credit card to purchase or lease goods or services from persons who honor the card. You may also use your card to obtain Cash Advances. You may not use a Check Cash Advance, or any other Cash Advance, to make a payment on this or any other credit account with us. You may not use your account for business or commercial purposes.

Certain establishments may cash your personal checks upon presentment of your card. In the event we are required to pay the amount of a check cashed in this way because the check is not paid for any reason, we will charge your account for a Cash Advance in the amount of the check and any processing charge we actually incur.

If you permit any person to have access to your card or account number with the authorization to make a charge, you may be liable for all charges made by that person including charges for which you may not have intended to be liable.

The transaction date for Check Cash Advances and Balance Transfers is the date you or the person to whom the check is made payable first deposits or cashes the check. The transaction date for a returned payment (a Bank Cash Advance) is the date that the corresponding payment posted to your account.

You may request a stop payment on Check Cash Advances by providing us with the check number, dollar amount, and payee exactly as they appear on the Check Cash Advance. Oral and written stop payment requests on Check Cash Advances are effective for six months from the day that we place the stop payment on your account.

You may not use a postdated Check Cash Advance to obtain credit under your account. If you do postdate a Check Cash Advance, we may elect to honor it upon presentment or return it unpaid to the party which presented it to us for payment, without in either case awaiting the date shown on the Check Cash Advance. We are not liable to you for any loss or expense incurred by you arising out of the action we elect to take.

Repayment

You promise to pay us the amounts of all credit you obtain; this includes all purchases, cash advances, fees,

your account and Finance Charges.

You may pay the entire amount outstanding at any time. You must pay each month at least the minimum payment shown on your monthly statement. If you overpay or if a credit balance is otherwise created in your account, we will not pay interest on such amounts. Your payment will be allocated in a manner we determine. In most instances, we will allocate your payments to balances (including new transactions) with lower APRs before balances with higher APRs. This will result in new balances with a lower rate of interest being paid before any other existing balances. All payments will be credited to your account for the billing cycle in which each payment is received; however, your available credit may not be increased by the amount of the payment until your funds have cleared. Minimum monthly payments cannot be made in advance and payments made in any billing cycle which are greater than the minimum payment due will not affect your obligation to make subsequent minimum payments each month. We can reject payments not denominated in U.S. dollars or not drawn on a U.S. Bank. No payment shall operate as an accord and satisfaction without the prior written approval of a senior officer of MBNA America.

All persons who initially or subsequently request, accept or use the account are individually and together responsible for any outstanding balance. If two or more persons are responsible to pay any outstanding balance, we may refuse to release any of them from liability until all of the unexpired cards outstanding under the account have been returned to us and the balance is paid in full.

Reasons for Requiring Immediate Payment

You will be in default and we can require immediate payment of all amounts you owe if: (1) you fail to make any required payment by the Payment Due Date; (2) your New Balance Total exceeds your credit limit, or if we have established a separate Cash Advance credit limit for you, your outstanding Cash Advance balance exceeds your Cash Advance credit limit; or (3) you fail to abide by any other terms of this Agreement.

If you default, unless prohibited by applicable law, we

can also require you to pay the collection and court costs we incur in any collection proceeding, and a reasonable attorney's fee if we refer your account for collection to an attorney who is not our salaried employee.

Our failure to exercise any of our rights when you default does not mean that we are unable to exercise those rights upon later default.

Payment Holidays

We may allow you, from time to time, to omit a monthly payment. We will notify you when this option is available. If you omit a payment, Finance Charges and credit insurance premiums, if any, will accrue on your balance in accordance with this Agreement. The requirement that you make a minimum payment each month will resume following your payment holiday.

Charges Made In Foreign Currencies

If you incur a charge in a foreign currency, the charge will be converted by Visa International or MasterCard International, depending on which card you use, into a U.S. dollar amount in accordance with the operating regulations or conversion procedures in effect at the time that the transaction is processed. Currently, those regulations and procedures provide that the currency conversion rate to be used is either (1) a wholesale market rate or (2) a government-mandated rate in effect one day prior to the processing date, increased by one percent in each case. Visa or MasterCard retains this one percent as compensation for performing the currency conversion service. The currency conversion rate in effect on the processing date may differ from the rate in effect on the transaction date or the posting date.

Billing Cycle

A billing cycle begins on the day after the closing date shown on your account's preceding monthly statement and ends on the closing date that appears on your account's statement for the current month.

Account Fees and Charges

Account Fees: The following fees, which are set forth on your card carrier, are assessed as Purchases in the billing cycle in which such charges accrue: (1) a Late Fee; (2) if your account is overlimit (even if fees or

Finance Charges assessed by us cause your New Balance Total to exceed your credit limit) on the last day of a billing cycle, an Overlimit Fee is charged to your account as of the day in the billing cycle that your account went over the credit limit; (3) a Returned Payment Fee if a payment on your account is returned for insufficient funds or for any other reason, even if it is paid upon subsequent presentment; (4) a Returned Check Fee if we return a Check Cash Advance unpaid for any reason, even if the Check Cash Advance is paid upon subsequent presentment; (5) if your account is open or if you maintain an account balance, whether you have active charging privileges or not, an Annual Fee.

Abandoned Property Charges: Unless prohibited by applicable law, we will charge your account, as a Purchase, for any costs incurred by us associated with complying with state abandoned property laws.

Additional Account Fees and Charges: Please review the Required Federal Disclosures section of your card carrier for additional fees and charges that may apply to your account.

Benefits

You will be offered certain benefits which will be subject to the restrictions outlined in the benefits brochure provided to you by MBNA America. MBNA America reserves the right to adjust, add, or delete benefits and services at any time and without notice.

Refusal to Honor Your Card

We are not liable for any refusal to honor your card or any Cash Advance or for any retention of your card by us, any other bank, or any seller or lessor of goods or services.

Termination

We may suspend or terminate your right to obtain credit at any time for any reason. Your obligations under this Agreement continue even after your right to obtain credit has been suspended or terminated. You must return all credit cards to us on request.

Amendments

We may amend this Agreement at any time by adding,

deleting, or changing provisions in compliance with the applicable notification requirements of federal law and the laws of the State of Delaware. If an amendment gives you the opportunity to reject the change, and if you reject the change in the manner provided in such amendment, we may terminate your right to receive credit and may ask you to return all credit devices as a condition of your rejection. The amended Agreement (including any higher rate or other higher charges or fees) will apply to the entire unpaid balance, including the balance existing before the amendment became effective. We may replace your credit card with another card at any time.

Assignment

We may at any time, and without notice to you, assign your account, any sums due on your account, this Agreement or our rights or obligations under your account or this Agreement to any person or entity. The person or entity to whom we make any such assignment shall be entitled to all of our rights and/or obligations under this Agreement, to the extent assigned.

Credit Limit

Your credit limit is shown on your card carrier and generally on each monthly statement. We may change your credit limit or limits from time to time, and we will notify you if we do. The total amount of credit outstanding at any time must not be more than your credit limit. We may also establish a separate credit limit for Cash Advances. If we do, your outstanding Cash Advance balance may not exceed this Cash Advance limit.

Request for Credit Over Your Credit Limits

If you request credit in any form which, if granted, would result in either your total outstanding balance or your Cash Advance balance, including authorized transactions not yet posted to your account, being more than your credit limit or your Cash Advance credit limit, if we have established one for you, (whether or not such balances before the request were more than the respective credit limit), we may: (1) honor the request without permanently raising your credit limit; (2) honor the request and treat the amount which is more than your credit limit

as immediately due; or (3) refuse to honor the request. We may advise the person who made the request that it has been refused. If we refuse to honor a Check Cash Advance or Balance Transfer, we may do so by advising the person presenting the Check Cash Advance or Balance Transfer that credit has been refused, that there are insufficient funds to pay the Check Cash Advance or Balance Transfer, or in any other manner.

If we have previously honored requests for credit over your credit limit, it does not mean that we will honor further overlimit requests. If we decide to honor such a request, we may assess an Overlimit Fee as provided in this Agreement.

Unauthorized Use of Your Card

Please notify us immediately of the loss, theft, or possible unauthorized use of your account at 1-800-789-6701.

Governing Law

This Agreement is made in Delaware. It is governed by the laws of the State of Delaware, without regard to its conflict of laws principles, and by any applicable federal laws.

If any part of this Agreement is found to be invalid, the rest remains effective. Our failure or delay in exercising any of our rights under this Agreement does not mean that we are unable to exercise those rights later.

Litigation

The Arbitration provisions below apply to you unless you were given the opportunity to reject the Arbitration provisions and you did so reject them; in which case, you agree that any litigation brought by you against us regarding this account or this Agreement shall be brought in a court located in the State of Delaware.

Arbitration: Any claim or dispute ("Claim") by either you or us against the other, or against the employees, agents or assigns of the other, arising from or relating in any way to this Agreement or any prior Agreement or your account (whether under a statute, in contract, tort, or otherwise and whether for money damages, penalties or declaratory or equitable relief), including Claims regarding the applicability of this Arbitration Section or the validity of the entire

Agreement or any prior Agreement, shall be resolved by binding arbitration.

The arbitration shall be conducted by the National Arbitration Forum ("NAF"), under the Code of Procedure in effect at the time the Claim is filed. Rules and forms of the National Arbitration Forum may be obtained and Claims may be filed at any National Arbitration Forum office, www.arb-forum.com, or P.O. Box 50191, Minneapolis, Minnesota 55405, telephone 1-800-474-2371. If the NAF is unable or unwilling to act as arbitrator, we may substitute another nationally recognized, independent arbitration organization that uses a similar code of procedure. At your written request, we will advance any arbitration filing fee, administrative and hearing fees which you are required to pay to pursue a Claim in arbitration. The arbitrator will decide who will be ultimately responsible for paying those fees. In no event will you be required to reimburse us for any arbitration filing, administrative or hearing fees in an amount greater than what your court costs would have been if the Claim had been resolved in a state court with jurisdiction. Any arbitration hearing at which you appear will take place within the federal judicial district that includes your billing address at the time the Claim is filed. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"). Judgment upon any arbitration award may be entered in any court having jurisdiction. The arbitrator shall follow existing substantive law to the extent consistent with the FAA and applicable statutes of limitations and shall honor any claims or privilege recognized by law. If any party requests, the arbitrator shall write an opinion containing the reasons for the award.

No Claim submitted to arbitration is heard by a jury and no Claim may be brought as a class action or as a private attorney general. You do not have the right to act as a class representative or participate as a member of a class of claimants with respect to any Claim. This Arbitration Section applies to all Claims now in existence or that may arise in the future.

This Arbitration Section shall survive the termination of your account with us as well as any voluntary payment of the debt in full by you, any bankruptcy by you

or sale of the debt by us.

For the purposes of this Arbitration Section, "we" and "us" means MBNA America Bank, N.A., its parent, subsidiaries, affiliates, licensees, predecessors, successors, assigns, and any purchaser of your account, and all of their officers, directors, employees, agents and assigns or any and all of them. Additionally, "we" or "us" shall mean any third party providing benefits, services, or products in connection with the account (including but not limited to credit bureaus, merchants that accept any credit device issued under the account, rewards or enrollment services, credit insurance companies, debt collectors and all of their officers, directors, employees and agents) if, and only if, such a third party is named by you as a co-defendant in any Claim you assert against us. Also, for the purposes of this Arbitration Section, "you" or "yours" shall mean any person or entity approved by us to use the Account, including but not limited to all persons or entities contractually obligated on the Account and all authorized users of the account.

If any part of this Arbitration Section is found to be invalid or unenforceable under any law or statute consistent with the FAA, the remainder of this Arbitration Section shall be enforceable without regard to such invalidity or unenforceability.

THE RESULT OF THIS ARBITRATION AGREEMENT IS THAT, EXCEPT AS PROVIDED ABOVE, CLAIMS CANNOT BE LITIGATED IN COURT, INCLUDING SOME CLAIMS THAT COULD HAVE BEEN TRIED BEFORE A JURY, AS CLASS ACTIONS OR AS PRIVATE ATTORNEY GENERAL ACTIONS.

Platinum Plus Coverage Credit Insurance Benefits, Limitations, Costs & Exclusions

Platinum Plus Coverage pays your minimum monthly payment* up to your balance on the date of loss (not to exceed $15,000), until you return to work** if you are involuntarily unemployed, totally disabled, or if you or your spouse takes covered family leave. Platinum Plus Coverage also pays your insured outstanding balance up to the least of your outstanding balance, your credit limit, or $15,000 if you die.

Eligibility: One insured per account (insured must be the primary cardholder or a co-applicant, authorized users are not eligible), under age 66 (70 in AZ, NV & VA; 71 in FL, GA, MI, MO & OK; 72 in NM). Your coverage ends at these same ages (except family leave in AZ, FL & SD & unemployment unless in TX). When enrolled, certificates will be mailed explaining your coverage & effective date. In MN, unemployment coverage is effective 61 days from your certificate effective date. For unemployment or family leave benefits, you must be gainfully employed working at least 30 hrs/wk (not self-employed or an independent contractor) for 90 consecutive days before the date of loss (CO - before application date), (PA - on the date of loss), (TX - before coverage effective date for unemployment). Employees of professional corporations may be eligible.

Coverages & Benefits: *Platinum Plus* Coverage covers: your death; involuntary unemployment due to job loss, general strike, unionized labor dispute or lockout; total disability due to sickness or injury if you are unable to perform the material & substantial duties of your job (or any job after the first 18 mos. in CA, HI, NJ, TN & WI; 12 mos. in PA); your or your spouse's unpaid leave of absence from employment due to care of your newborn or newly adopted child or an incapacitated immediate family member (must be spouse, child, stepchild or parent in AK), mandatory recall to active military duty, jury duty (except in AK), or residence in a Federally declared disaster area. Loss (not death) must continue at least 30 days before benefits begin. In NY, for strikes, unionized labor disputes & lockouts, you must be unemployed for 7 consecutive weeks & qualify for state unemployment benefits before benefits begin. A daily benefit is paid for each day of loss over 30 days for unemployment in NY & PA, and disability in CA, CT, NY, MI, PA & SC. You may cancel this coverage at any time. If canceled within first 30 days of coverage, all premiums will be refunded.

Exclusions: Life: suicide in the first 6 months of coverage (not MD & MO). Involuntary Unemployment: retirement, resignation, voluntary forfeiture of income or job loss due to willful or criminal misconduct, disability, strikes in IL, military discharge in NY, normal seasonal unemployment in TX. Disability: normal pregnancy or childbirth (not CA, MA & NV), intentionally self-inflicted injuries (not MD) or a pre-existing medical condition

during first 6 months of coverage (not NJ). Family leave benefits are not paid if you are eligible for or receiving unemployment benefits or are disabled.

This is only a brief description of coverage, and coverages vary by state. Please refer to your certificates for a full explanation of coverage.

Costs per $100 per Month of Average Daily Balance: Costs apply to Life (L), Disability (D), Unemployment (U) & Family Leave (F): AL 49.8c; AK 78c; AZ 99c; AR 97.5c; CA 89.9c; CO 52.35c; CT 42.89c; DE 96.97c; DC 95.3c; FL 89c; GA 88c; HI 89.91c; ID 95.2c (L 8.6c, D 12.6c, U 54c, F 20c); IL 80c; IN 96c; IA 95.6c (L 7.2c, D 14.4c, U 54c, F 20c); KS 85.4c; KY 97.4c; LA 89.7c; MD 70.54c; MA 18.4c; MI 85.7c; MN 30.65c; MS 85.2c; MO 61.1c; MT 93.9c; NE 95.8c; NV 95.3c; NH 95c; NJ 97c; NM 58.9c; NY 52.5c (L 8.8c, D 26.8c, U 16.9c); NC 74.3c; ND 94.1c; OH 99c; OK 92.4c; OR 84.7c; PA 38.1c; PR 99c; RI 93.15c; SC 80c; SD 96.89c; TN 92.5c; TX 33.7c (L 5.7c, D 12c, U 16c); UT 91.88c; VT 28.4c (L 5.99c, D 6.41c, F 16c); VA 84c (L 6.1c, D 8.9c, U 49c, F 20c); WA 84c; WV 95.2c; WI 93.6c (L 5.7c, D 8.9c, U 59c, F 20c); WY 95.5c.

Availability: This coverage is not available in ME. Involuntary Unemployment is not available in MA or VT. Family Leave is not available in AL, CT, MA, MD, MN, NM, NY, PA, or TX.

Underwriting Companies/Policy: Involuntary Unemployment: American Security/LOI (5/85), LOI NY(3/93), AS LOI TX (6/92), LOIC-IP-KS (2/96), and LOIC-IP; Standard Guaranty/SG LOI (5/85) (NH only). Life & Disability: Union Security Life/L-I-Z; Standard Guaranty Life (TX only)/L-I-Z (8/92)(3.53RA): First Fortis Life (NY Life only)/NYI.M00/3; and American Security (NY Disability only)/W-S-A. Family Leave: American Security/FLP (4/97), FLP-FL (12/97) in FL, FLP-NC (3/98) in NC, FLP-OK (4/97) in OK, FLP-VA (2/98) in VA, FL-IP (AZ)(7/98) in AZ. FL-IP (4/97) in IL & IN, FL-IP-KS (12/97) in KS, FL-IP-WY (4/97) in WY; Standard Guaranty/FLP (4/97) in NH; Union Security Life/FLP-VT (4/97) in VT. Soliciting agents for Mississippi and Florida are Charles M. Gordon and Pamela Curtis respectively.

This product is not an insured deposit account, is not FDIC insured, is not guaranteed by MBNA America Bank, N.A., and is not a condition of obtaining credit

*Less past due and over credit limit amounts. In MI, coverage pays 5% of the balance on your date of disability up to $750. In NY, coverage pays the minimum payment due on your date of loss.

**The number of monthly benefit payments will not exceed 9 for family leave; 12 for unemployment in AL, AK, CT, IL, MI, MN, MO, NM, NC, NY, PA, SC & TX; 12 for disability except in CA, HI, IN, KS, MI, NJ, NY, PA, TN, TX & WI.

NY, NJ & TX Residents Only: To purchase coverages separately, write to Assurant Group, P.O. Box 50355, Atlanta, GA 30302. Applications will be sent to you.

MBNA America Bank, N.A., is the exclusive issuer and administrator of this and other *Platinum Plus* credit card accounts

MBNA America® is a federally registered service mark of MBNA America Bank, N.A.

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NFXT90 (Revised 4/2000)

DISC-58

4/1/00 MBNAULOI (MBNA-L/D/Uncapped LOI/FL)

Department of Defense Manpower Data Center APR-20-2009 12:48:44

Military Status Report
Pursuant to the Servicemembers Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Service/Agency
KISELEV	VALENTINA	Based on the information you have furnished, the DMDC does not possess any information indicating that the individual is currently on active duty.		

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Military.

Mary M. Snavely-Dixon

Mary M. Snavely-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The Department of Defense strongly supports the enforcement of the Servicemembers Civil Relief Act [50 USCS Appx. §§ 501 et seq] (SCRA) (formerly the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's active duty status by contacting that person's Military Service via the "defenselink.mil" URL provided below. If you have evidence the person is on active-duty and you fail to obtain this additional Military Service verification, provisions of the SCRA may be invoked against you.

If you obtain further information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects current active duty status only. For historical information, please contact the Military Service SCRA points-of-contact.

See: http://www.defenselink.mil/faq/pis/PC09SLDR.html

WARNING: This certificate was provided based on a name and Social Security number (SSN) provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

Report ID: GXJQSECHWM

BEST AVAILABLE IMAGE POSSIBLE

FILED
09 MAY -4 PM 2:59
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

SUPERIOR COURT, IN AND FOR THE COUNTY OF KING, STATE OF WASHINGTON

FIA CARD SERVICES, N.A. Plaintiff / Petitioner	Cause #: 09-2-15667-1SEA
vs. VALENTINA KISELEV Defendant / Respondent	Declaration of Service of: SUMMONS; PETITION FOR JUDGMENT ON ARBITRATION AWARD; NOTICE TO SERVICE MEMBERS AND THEIR DEPENDANTS
	Hearing Date:

Declaration:

The undersigned hereby declares: That s(he) is now and at all times herein mentioned, a citizen of the United States and a resident of the State of Washington, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

On the date and time of Mar 21 2009 11:00AM at the address of 609 109TH AVE SE BELLEVUE, within the County of KING, State of WASHINGTON, the declarant duly served the above described documents upon VALENTINA KISELEV by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with DIMITRI KISELEV, HUSBAND/CO-RESIDENT, 36YRS C/M 6'2" 220LBS BLONDE HAIR, GLASSES, a person of suitable age and discretion residing at the defendant's/respondent's usual place of abode listed above.

No information was provided that indicates that the subjects served are members of the U.S. military.

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: April 30, 2009 at Seattle, WA

by _____ Service Fee Total: $ 69.50
K. VanDyke 0307390

ABC Legal Services, Inc.
206 521-9000
Tracking #: 5815805

ORIGINAL PROOF OF SERVICE

Page 1 of 1

186755.001
Suttell & Associates
1450 114th Ave SE, #240
Bellevue, WA 98004
425 455-8220

FILED

2009 MAY -6 AM 11:26

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

FIA Card Services, N.A., Plaintiff, vs. Valentina Kiselev, Defendant	Case No.: 09-2-15667-1SEA RESPONSE TO FIA CARD SERVICES MOTION FOR JUDGEMENT ON ARBITRATION AWARD AND COUNTERMOTION TO SET ASIDE ARBITRATION AWARD

Comes now, the defendant, Pro Se, have received copy of the Motion for Judgment on Arbitration Award Friday, May 1 of 2009. Following is the response to above mentioned motion and countermotion to set aside arbitration award.

RELIEF REQUESTED SHOULD BE DENIED

Plaintiff's request for judgment is flood and unsubstantiated based on the following.

RESPONSE TO FACTS

1. No authenticated agreement, either original or a certified copy, has been introduced to the record. The copy of attached agreement is not a signed copy or otherwise authenticated copy and cannot be considered as a valid and sufficient agreement. There is no evidence provided by the Plaintiff supporting their claim that such arrangement was ever in existence. Defendant has not received proof of proper validation of the claim which is the subject matter of this case.
2. There is no evidence provided for the record by the Plaintiff supporting their claim of the alleged credit card agreement obligation and/or the credit card

existence for that matter. Defendant has not agreed to any arbitration clause or arbitration procedure with Plaintiff.

3. Defendant objected to the initial claim filed with National Arbitration Forum twice as evidenced by the copies of two letters sent certified mail to Mann Bracken, LLC, then Plaintiff's representative first on May 01, 2008 and then on June 10, 2008.
4. Plaintiff was requested by Defendant to provide the original alleged agreement between Defendant and FIA Card Services (formerly Bank of America) bearing Defendant's signature which would entitle parties to MANDATORY arbitration.
5. The Plaintiff has failed to meet their prima facie burden by placing admissible evidence in the record to support its claims. The only admissible evidence, in the record, in this case, was submitted by Defendant.
6. Defendant received copy of the Motion Friday, May 01, 2009.

EVIDENCE RELIED UPON

1. The records and files herein and attached to this motion.

COUNTERMOTION TO SET ASIDE ARBITRATION AWARD

1. Defendant has not agreed to any arbitration clause or arbitration procedure with Plaintiff.
2. There is no evidence provided for the record by the Plaintiff supporting their claim of the alleged credit card agreement obligation and/or the credit card existence for that matter.
3. No authenticated agreement, either original or a certified copy, has been introduced to the record.
4. Defendant objected to the initial claim filed with National Arbitration Forum twice as evidenced by the copies of two letters sent certified mail to Mann Bracken, LLC, then Plaintiff's representative first on May 01, 2008 and then on June 10, 2008.

5. Defendant disputed arbitration award in question and objected to the existence of the alleged agreement for arbitration based on lack of evidence and requested detailed description of any and all evidence submitted by the claimant that supports the issuance of said Award, as evidenced in the Defendants record.
6. The only admissible evidence, in the record, in this case, was submitted by Defendant.
7. Defendant has not received proof of proper validation of the validity of the arbitration process and arbitration award which is the subject matter of this case.

LEGAL AUTHORITY

There is no valid record of any contractual arrangement for private arbitration. Plaintiff violated process of arbitration proceedings under the Federal Arbitration Act 9 USC. Thus arbitration award is unsubstantiated and invalid and should be set aside.

CONCLUSION

Plaintiff has failed to produce any admissible evidence on Judgment that would warrant the Court to enter Order Confirming Arbitration Award and for Judgment on the Arbitration Award. Therefore Plaintiff's Motion should be denied. Based upon the fact that Plaintiff hasn't come forward with any evidence, and has not come forward with any valid arbitration agreement, this case should be dismissed with prejudice. Defendant has provided all the evidence to support the countermotion and respectfully requests that the Court sets aside Arbitration Award.

RESPECTFULLY submitted May, 06 2009.

Valentina Kiselev

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

FIA Card Services, N.A. Plaintiff, vs. Valentina Kiselev Defendant	Case No.: 09-2-15667-1SEA PRO SE NOTICE OF APPEARANCE

The undersigned enters an appearance in this action, and demands notice of all further proceedings. The Clerk of Court and the opposing party will be informed of any changes in address. Any and all notices may be sent to: Service Address: 609 109 Ave SE, Bellevue, WA, 98004.

Dated this MAY,06 2009

_____

Valentina Kiselev

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

FIA Card Services, N.A. Plaintiff, vs. Valentina Kiselev Defendant	Case No.: 09-2-15667-1SEA DECLARATION OF SERVICE

The undersigned declares and states as follows:

I am a citizen of the United States of America, and of the State of Washington, over the age of eighteen years, not a party to the above entitled proceedings.

On May 06 2009 I served a copy of the Note for Response for FIA Card Services Motion for Judgment on Arbitration Award and Countermotion to Set Aside Arbitration Award; Declaration of Service; copies of two letters to Mann Bracken denying existence of any agreement for arbitration; copy of the dispute letter to National Arbitration Forum along with the copy of Award; Notice of Appearance. Named documents were served to Suttell and Associates at 1450-114th Ave SE, #240, Conifer Building, Bellevue, WA, 98004.

Declarant states the foregoing is true and correct to the best of his knowledge and belief, subject to the penalty of perjury under the laws of the State of Washington.

Dated this May 06, 2009 in Bellevue, WA

Dmitri Kiselev

Valentina Kiselev
c/o 609 109th AVE SE
Bellevue, WA. 98004

FIA Card Services, N.A. FKA Bank of America
Mann Bracken, LLC

2727 Paces Ferry Road
Atlanta, GA, 30339

NOTICE TO FIA Card Services, N.A. FKA Bank of America
DISPUTE OF ALLEGED AWARD

Date: 02/20/09

Re: Your recent letter concerning an Arbitration Award
The alleged FIA Card Services, N.A. FKA Bank of America; Account Number: 374631999026685

I, Valentina Kiselev, (hereinafter the Respondent), recently received a letter from the National Arbitration Forum that issued an Award in favor of the Claimant, FIA Card Services, N.A. FKA Bank of America Mann Bracken, LLC. The Respondent is sending this letter to dispute the validity of the Award granted by the National Arbitration Forum in favor of the Claimant, FIA Card Services, N.A. FKA Bank of America Mann Bracken, LLC

The respondent objects to the National Arbitration Forum Award based upon the following findings submitted by,, in the Award letter sent 12/15/08 in reference to File Number: MX085002081804

The Arbitrator states the following (*captured in italics*)

1. *That no known conflict of interest exists (see exhibit A)*

   However the respondent states in the "Written Response to Arbitration Claim" that there was no contractual relationship or Card member Agreement of any kind with FIA Card Services, N.A. FKA Bank of America Mann Bracken, LLC or any other representative therein regarding MBNA Account enlisted as 374631999026685 with the balance of $37,026.87 bearing the Respondent's name and signature.

2. *That on or before 12/15/08 the Parties entered into an agreement providing that this matter shall be resolved through binding arbitration in accordance with the Forum Code of Procedure. (see exhibit A)*

   However the respondent states in the "Written Response to Arbitration Claim" that an application entitled "AGREEMENT TO ARBITRATE EXISTING DISPUTE" from the National Arbitration Forum was never received by the Respondent. Nor did the Respondent agree to submit to binding arbitration in accordance with the Forum Code Procedure.

   The Respondent has never ***submitted*** an application entitled "AGREEMENT TO ARBITRATE EXISTING DISPUTE" to the National Arbitration Forum. Nor has there been an application completed or submitted to the National Arbitration Forum bearing the Respondent's signature.

The Arbitrator also states that the information and evidence submitted by the Claimant, FIA Card Services, N.A. FKA Bank of America Mann Bracken, LLC supports the issuance of an Award stated.

The Respondent requests a **detailed description of any and all evidence** submitted by the Claimant that supports the issuance of said Award. The Respondent also request(s) that the Arbitrator **provide a written explanation** as to why he/she feels that the information based upon the evidence submitted by the Claimant warrants the award stated.

Furthermore, the Respondent requests a copy of the following documents.

- The National Arbitration Forum application entitled: "AGREEMENT TO ARBITRATE EXISTING DISPUTE" ***bearing the Respondent's signature*** and agreement to arbitrate.
- Any and all evidence submitted by the Claimant, FIA Card Services, N.A. FKA Bank of America Mann Bracken, LLC for File Number MX085002081804
- The binding contract or Card Agreement referred to in the original claim between with the Claimant, FIA Card Services, N.A. FKA Bank of America Mann Bracken, LLC and the Respondent, Valentina Kiselev regarding MBNA Account Number 374631999026685 with the balance of $37,026.87 bearing the Respondent's signature.

In conclusion, please submit all requested documents to the address listed below within 20 days of receipt of this letter. If the Claimant, FIA Card Services, N.A. FKA Bank of America Mann Bracken, LLC does not submit all requested documentation to the Respondent within the time frame noted above, the Respondent, Valentina Kiselev, can only conclude that the Award issued by the National Arbitration Forum in favor of the Claimant, FIA Card Services, N.A. FKA Bank of America Mann Bracken, LLC regarding MBNA Account Number 374631999026685 reference to File Number: MX085002081804 is unfounded and deemed to be invalid.

_____

Valentina Kiselev

I certify that a true copy of the foregoing Objection to Arbitration was placed in the U.S. Mails, Certified Mail, Signature Required, Return Receipt Requested, to:

Served Upon:	**Copy Sent To:**
FIA Card Services, N.A. FKA Bank of America Mann Bracken, LLC 2727 Paces Ferry Road Atlanta, GA, 30339	National Arbitration Forum Post Office Box 50191 Minneapolis USA 55405-0191 Phone: (651) 631-1105 or (800) 474-2371 Fax: (651) 631 0802 www.arbitration-forum.com

_____
Date

_____
Valentina Kiselev
609 109th AVE SE
Bellevue, WA. 98004

Exhibit A

FIA Card Services, N.A., formerly known as Bank of America Corporation
Mann Bracken, LLC
One Paces West, Suite 1400
2727 Paces Ferry Road
Atlanta, GA 30339

CLAIMANT(s),

AWARD

RE: FIA Card Services, N.A., formerly known as Bank of America Corporation v Valentina Kiselev
File Number: MX0805002081804
Claimant Account Number: xxxxxxxxxxx6685

Valentina Kiselev
609 109th Ave Se
Bellevue, WA 98004

RESPONDENT(s).

The undersigned Arbitrator in this case FINDS and CONCLUDES:

Case Summary

1. The Claimant has filed a Claim with the National Arbitration Forum.
2. After Proof of Service of the Claim was filed with the Forum, where no Response has been filed, the Forum mailed to Respondent a Second Notice of Arbitration.
3. The Respondent has filed a Response with the Forum and served it on the Claimant.
4. An arbitration hearing notice was duly delivered to the Parties as required by the Forum Rules.
5. The Arbitrator conducted a Hearing in this case in accord with the Forum Rules.
6. The Parties have had the opportunity to present all evidence and information to the Arbitrator.
7. The Arbitrator has reviewed all evidence submitted in this case.

Decision

1. The Arbitrator knows of no conflict of interests that exist.
2. This matter involves interstate commerce and the Federal Arbitration Act governs this arbitration.
3. The Claim was properly served on the Respondent by Claimant in accord with Rule 6. including a Notice of Arbitration.
4. On or before May 14, 2008 the Parties entered into a written agreement to arbitrate their dispute.
5. The Parties' Arbitration Agreement is valid and enforceable and governs all the issues in dispute.
6. This matter is arbitrable under the terms of the Parties' Arbitration Agreement and the law.
7. This matter has proceeded in accord with the applicable Code of Procedure Rules.
8. The evidence submitted supports the issuance of this Award.
9. The applicable substantive law supports the issuance of the Award.

Therefore, the Arbitrator ISSUES:
An Award in favor of the Claimant. for a total amount of $37,026.87.

Entered and Affirmed in the State of Washington

Honorable Robert C. Bibb
Arbitrator

Date: November 03, 2008

ACKNOWLEDGEMENT AND CERTIFICATE OF SERVICE

This Award was duly entered and the Forum hereby certifies that pursuant to the Parties' Arbitration Agreement, a copy of this Award was sent by first class mail postage prepaid to the Parties at the above referenced addresses, or their Representatives, on this date.

Honorable Harold Kalina, Ret.
Director
November 04, 2008

05/01/2008

To:
Mann Bracken, LLC
One Paces West
2727 Paces Ferry Rd SE, Ste. 1400
Atlanta, GA 30339

Certified Mail #7006 2150 0002 2853
Return Receipt Requested

From:
Valentina Kiselev
609 109th Ave SE
Bellevue, WA 98004

RE: DEMAND FOR VALIDATION OF CAPCITY TO COLLECT ON BEHALF OF NAMED CREDITOR/FIA CARD SERVICES

Alleged Credit Card Account #: 374631999026685
Alleged Amount Due: $31,701.76
Mann Bracken #: 8755740

Dear Gentlemen,

I'm in receipt of your recent correspondence dated 04/03/2008 wherein you referenced an account agreement that I entered into with FIA Card Services, and based on that "agreement," you were giving notification of your intention to evaluate taking this matter into binding arbitration.

I do not recognize, nor have record of entering into any contract or agreement with FIA Card Services, neither can I ascertain any liability to you based on the limited information your firm has submitted thus far. Mann Bracken, LLC is a known "debt collector" in accordance with the F.D.C.P.A., and as such, the following title applies:

> Title 15 USC 1692l (b)
> § 811. Legal actions by debt collectors
>
> (b) Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

Regarding the arbitration that you mentioned possibly entering as a resolution to the disputed debt, even though that option may be a provision allowed by FIA Card Services, I know that my written consent is required. I also know that, lacking an agreement to arbitrate, any arbitration award that may be entered against me through the National Arbitration Forum is void.

Consider this formal notification that I do not consent to give up my due process rights and arbitrate any matter with FIA Card Services or Mann Bracken, LLC. Nor, do I give the NAF the authority to conduct an arbitration of disputes between myself and the aforementioned parties.

Based on the above referenced information, I have found your claims of jurisdiction in this matter to be erroneous. Notice is hereby given that your claims are insufficient and are hereby refused for cause without dishonor, due to the fact that you have presented NO EVIDENCE OF YOUR CAPACITY as either 1) A bona fide party to any contract in which I am also a party; or 2) An agent of a bona fide party to any contract in which I am also a party; or 3) A holder in due course of any debt to which I am obligated. Absent any evidence of capacity, I have no obligation to either confirm or deny any contractual relationship with the alleged creditor mentioned in your 04/03/2008 correspondence. Accordingly, you are hereby given notice that you are in a condition of estoppel with regard to your claims. Upon receipt of reasonable evidence of sufficient capacity, I will give this matter timely attention.

I will deem the following to be sufficient evidence:

1. A copy of any and all contracts, which affect Mann Bracken, LLC's relationship with the alleged creditor FIA Card Services as they apply to your claim. Said contracts must be certified, true, and correct and complete by affidavit signed under penalty of perjury under the laws of Washinton in the State of Washington, by a principle officer of FIA Card Services in a position to know all the details of your firm's relationship with the principle in his or her personal capacity. The affidavit must also either completely describe any additional verbal constructive or implied contracts you have with the alleged principal affecting this matter, or else certify that no additional contracts exist.

2. A copy of any and all contracts, which affect the relationship between myself, Valentina Kiselev, and the alleged creditor FIA Card Services as they apply to your claim. Said contracts must be certified, true, and correct and complete by affidavit signed under penalty of perjury under the laws of Washington in the State of Washington, by a principle officer of FIA Card Services in a position to know all the details of my relationship with the principle in his or her personal capacity. The affidavit must also either completely describe any additional verbal constructive or implied contracts I have with the alleged principal affecting this matter, or else certify that no additional contracts exist.

I cannot ascertain any liability to you based on the limited information your firm has submitted thus far.

If you believe that any part of this response is unreasonable, present me with your reasonable objections in writing within 30 days of your receipt of this notice and demand. If I do not receive a written response from you within 30 days, I will consider the matter closed.

If your firm pursues litigation without first submitting competent admissible evidence of your capacity, consider this official notice that I will subpoena your firm for the above referenced evidence. In doing so, if you are unable to support your allegations you will be charged with malicious prosecution and I will motion the court for sanctions.

Please be advised that I am keeping a written record of all correspondence in this matter, and therefore will not consent to discuss this matter over the phone.

Govern yourselves accordingly,

Valentina Kiselev

06/10/2008

To:
Mann Bracken, LLC
One Paces West
2727 Paces Ferry Rd SE, Ste. 1400
Atlanta, GA 30339

Certified Mail #7006 2150 0002 3886 2921
Return Receipt Requested

From:
Valentina Kiselev
609 109th Ave SE
Bellevue, WA 98004

RE: DEMAND FOR VALIDATION OF CAPCITY TO COLLECT ON BEHALF OF NAMED CREDITOR/FIA CARD SERVICES

Alleged Credit Card Account #: 374631999026685
Alleged Amount Due: $31,701.76
Mann Bracken #: 8755740

Dear Gentlemen,

I'm in receipt of your recent correspondence dated 06/06/2008 (originally dated 05/28/2008) wherein you have submitted paperwork to begin arbitration proceedings.

As I have already stated in my correspondence dated 5/01/2008, I do not recognize, nor have record of entering into any contract or agreement with FIA Card Services. You have been unwilling or unable to provide me with any the legally binding contract or legitimate documentation, which would validate the debt as true and correct; as well as show that it was incurred by me.

Nothing that you have submitted thus far has met the criteria for proving that there was ever a binding legal contract. Nor have you provided any admissible evidence of either the existence of a contract, or any damages that the creditor may have suffered as a result of a breach, despite my requests. No evidence exists in the record to establish or even suggest that I ever entered into an agreement with the creditor and/or was issued any type credit or a loan. Therefore, because your firm has been unwilling or unable to submit any competent admissible evidence to substantiate its claim and has yet to satisfy its prima facie burden, I continue to dispute the validity of the debt.

As stated in my correspondence dated 5/01/2008, at no time have I knowingly consented to waive my due process rights in order to arbitrate any matter with any party, including but not limited to, FIA Card Services or Mann Bracken, LLC. Nor, do I give the National Arbitration Forum the authority to conduct arbitration on my behalf or represent me in any manner. If you attempt to arbitrate this matter with full knowledge of my objections I will consider these proceedings fraudulent and any arbitration award that is issued in this matter would also be considered void.

If Mann Bracken, LLC proceeds to take legal action, through arbitration, I will consider it blatant abuse of arbitration proceedings and a violation of the Federal Arbitration Act. I will further report it as such, to the Colorado and Maryland Bar Associations, as well as the Attorney Generals and Judicial Disciplinary

Committees. Additionally, I will state my objections in writing to any arbitrator who is enlisted to govern over any alleged proceedings through the NAF.

Please be advised that I am keeping a written record of all correspondence in this matter, and therefore will not consent to discuss this matter over the phone.

Govern yourselves accordingly,

Valentina Kiselev

Cc: National Arbitration Forum

FILED

09 MAY 12 PM 3:47

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

EEXPO1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

FIA Card Services, N.A. Plaintiff, vs. Valentina Kiselev Defendant(s).	NO. 09-2-15667-1SEA JUDGMENT *s/a 186755.001*

JUDGMENT SUMMARY

1.	Judgment Creditor:	FIA Card Services, N.A.
2.	Judgment Debtor:	Valentina Kiselev
3.	Principal:	$37026.86
4.	Costs:	$269.50
6.	Total Judgment:	$37296.36
8.	Attorneys for Plaintiff:	SUTTELL & ASSOCIATES, P.S.
9.	Interest Rate:	12%

THIS MATTER having come on regularly before the undersigned Judge of the above entitled Court upon the plaintiff's Motion for Judgment on Arbitration Award and the plaintiff being represented by its attorney, Suttell & Associates, P.S., and the defendants having been provided notice and the Court being otherwise fully advised in the premises, NOW, THEREFORE, it is hereby

SUTTELL & ASSOCIATES, P.S.
1450-114TH AVE SE, #240
CONIFER BUILDING
BELLEVUE, WA, 98004
425-455-8220/425-454-7884 FAX

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff shall have judgment pursuant to Arbitration Award against the defendant, Valentina Kiselev, as set forth in the Judgment Summary above..

ENTERED this 12 day of May, 2009.

Nancy Roadhouse Johnson
~~Judge~~/Court Commissioner

Presented by:

SUTTELL & ASSOCIATES, P.S.

( ) William G. Suttell, WSBA #12424
(✓) Patrick J. Layman, WSBA #5707
( ) Karen L. Hammer, WSBA #35608
( ) Isaac Hammer, WSBA #36101
( ) Tyler J. Moore, WSBA #39598
( ) Mark T. Case, WSBA #38589
Attorneys for Plaintiff
s/a 186755.001

SUTTELL & ASSOCIATES, P.S.
1450-114TH AVE SE, #240
CONIFER BUILDING
BELLEVUE, WA, 98004
425-455-8220/425-454-7884 FAX

ORIGINAL COURT MINUTES

EXPO 1

** PREPARED **
05-07-09412:57

EX PARTE MOTIONS CALENDAR
TUESDAY, MAY 12, 2009

COMMISSIONER: Nancy Bradburn-Johnson
COURT CLERK: Mica Rabchuk-Wylie
DR 325-3 START TIME: 24340
END TIME: 25555

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4. 09-2-15667-1 SEA
FIA CARD SERVICES VS KISELEV, VALENTINA - Present
CASE, MARK THOMAS
Patrick Lehman-Present
JDGT ON ARB AWARD

Judgment on Arbitration Award Signed

FILED
09 JUN 10 PM 3:06
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

RECEIVED
JUN 10 2009
SUTTELL & ASSOCIATES

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

FIA Card Service, N.A. Plaintiff, vs. Valentina Kiselev Defendant	Case No.: 09-2-15667-1SEA CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of WASHINGTON that, on the date stated below, I did the following:

On the day of JUNE,10 2009, I served in person a true copy of the Notice of Appeal to Karen L. Hammer, at the offices of Suttell and Associates, P.S. at the following address: 1450-114 Ave SE, #240 Confiner bldg., Bellevue, WA 98004.

FILED
2009 DEC -1 AM 10:54
STATE OF WASHINGTON

Dated this June 10, 2009

Valentina Kiselev
609 109th Ave SE
Bellevue, WA 98004

FILED

KING CO SUPERIOR CT
BARBARA MINER
DIRECTOR & SUP CRT CLERK
SEATTLE WA

09-2-15667-1

Rcpt. Date	Acct. Date	Time
06/10/2009	06/10/2009	03:14 PM

Receipt/Item #	Tran-Code	Docket-Code
2009-14-07149/01	1116	$AFF

Cashier: JMM

Paid By: Kiselev, Valentina
Transaction Amount: $250.00

FILED

09 JUN 10 PM 3:05

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

COPY SENT TO COURT INDICATED HEREIN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

FIA Card Services, N.A. Plaintiff, vs. Valentina Kiselev Defendant	Case No.: 09-2-15667-1SEA PRO SE NOTICE OF APPEAL to COURT OF APPEALS

The undersigned, Valentina Kiselev, Defendant, seeks review by the designated appellate court of the Judgment, entered on May 12, 2009.

A copy of the decision attached to this notice.

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2009 DEC -1 AM 10:54

Dated this June 9, 2009

Valentina Kiselev

609 109th Ave SE
Bellevue, WA 98004
206-679-0856

FILED

09 MAY 12 PM 3:47

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

COPY

EEXP01

PHOTOCOPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

FIA Card Services, N.A. Plaintiff, vs. Valentina Kiselev Defendant(s).	NO. 09-2-15667-1SEA JUDGMENT *s/a 186755.001*

JUDGMENT SUMMARY

1.	Judgment Creditor:	FIA Card Services, N.A.
2.	Judgment Debtor:	Valentina Kiselev
3.	Principal:	$37026.86
4.	Costs:	$269.50
6.	Total Judgment:	$37296.36
8.	Attorneys for Plaintiff:	SUTTELL & ASSOCIATES, P.S.
9.	Interest Rate:	12%

THIS MATTER having come on regularly before the undersigned Judge of the above entitled Court upon the plaintiff's Motion for Judgment on Arbitration Award and the plaintiff being represented by its attorney, Suttell & Associates, P.S., and the defendants having been provided notice and the Court being otherwise fully advised in the premises, NOW, THEREFORE, it is hereby

2009 DEC -1 AM 10:53

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STATE OF WASHINGTON

SUTTELL & ASSOCIATES, P.S.
1450-114TH AVE SE, #240
CONIFER BUILDING
BELLEVUE, WA, 98004
425-455-8220/425-454-7884 FAX

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff shall have judgment pursuant to Arbitration Award against the defendant, Valentina Kiselev, as set forth in the Judgment Summary above..

ENTERED this 12 day of May, 2009.

Nancy Roadhouse Johnson
~~Judge~~/Court Commissioner

Presented by:

SUTTELL & ASSOCIATES, P.S.

( ) William G. Suttell, WSBA #12424
(✓) Patrick J. Layman, WSBA #5707
( ) Karen L. Hammer, WSBA #35608
( ) Isaac Hammer, WSBA #36101
( ) Tyler J. Moore, WSBA #39598
( ) Mark T. Case, WSBA #38589
Attorneys for Plaintiff
s/c186755.001

SUTTELL & ASSOCIATES, P.S.
1450-114TH AVE SE, #240
CONIFER BUILDING
BELLEVUE, WA, 98004
425-455-8220/425-454-7884 FAX

SUPERIOR COURT, STATE OF WASHINGTON, KING COUNTY

FIA Card Services, Plaintiff, v. Valentina Kiselev, Defendants.	)	No: 09-2-15667-1 SEA TRANSCRIPT OF HEARING ON MAY 12, 2009 BEFORE COURT COMMISSIONER NANCY JONES

FILED
STATE OF WASHINGTON
2009 DEC -1 AM 10: 55

Judge: *FIA Card Services v. Valentina Kiselev*. I probably mispronounced her name.

Kiselev: Is it okay if I set aside my purse?

Judge: Oh, yes, please. Counsel, would you start by stating your name?

Layman: Yes, I am Patrick Layman. I represent FIA Card Services who is the company now that Bank of America and MBNA does their credit card operation through. This is a motion to confirm the private arbitration award pursuant to a credit card agreement. The arbitration award has been entered, more than ninety days has elapsed since it was sent to the defendant and no action to vacate the judgment has been entered. We are asking that a judgment confirming the award be entered today.

Judge: Okay, ma'am, would you state your name please?

Kiselev: My name is Valentina Kiselev.

Judge: And what would you like to say? I didn't receive anything in writing from you.

Kiselev: You didn't?

Judge: No.

Kiselev: Because I filed, I actually did file, I filed it with their office and I do have confirmation that I filed it

Judge: You may have filed it with the office or with the clerk's office upstairs but we need a working copy.

Kiselev: upstairs.

Judge: Have you seen this counsel?

Layman: No.

Kiselev: And I have a paper signed by the, Suttell & Associates that they received it.

Judge: The problem is that we don't, you didn't send a working copy for us, so I haven't had a chance to read anything.

Kiselev: I apologize. I checked with the office and I told her

Judge: They don't know. If you don't tell them, they don't know, they won't do it. So, so what

Kiselev: If I may, briefly, I have sent, first of all this _____ was represented by _____ law firm and they were the firm that filed for arbitration. They have received two letters from me that I attached several documents objecting to arbitration process because I have never entered into any binding agreement with FIA Card Services whatsoever. I have a, upon receiving of course, I was not, I did not pursue with this arbitration and upon receipt of the arbitration award, I did object and I send a copy of the letter to _____ in a timely manner within ninety days, as well as to arbitration, the National Arbitration Forum as well. I have sent it once and then I

have sent it for the second time, this time certified, when I have received summons that wasn't filed by the way with the court from Suttell & Associates. I have sent _____ summons, a copy of this arbitration, of my objection to arbitration, it was also attached to the set of documents, outlining all the reasons why I found this unsubstantiated and flawed and so there was no, this arbitration actually took place without my consent and without any proof, I requested a number of documentation from _____ and then Suttell & Associates to confirm that this arbitration is actually illegal, and I have never received any response from them or any kind of, or anything on the record that would prove that this agreement, whatever they have attached is simply a, you know, just a credit card agreement that doesn't outline anything and it is simply not substantiated by any other records to prove that this arbitration was legal, could have taken place, and I never entered into any agreement with FIA Card Services.

Judge: What is your response, counsel?

Layman: Well first of all. Her day in court has come and gone. Her day in court was actually in the arbitration process that she admits she was served with. _____ Brackin is a firm that handles all of FIA, Bank of America and MBNA arbitrations pursuant to their credit card agreements. She was served with the Notice of Claim, I believe that there is actually attached in our packet, there is a copy of the service documents that were, where the claim was served on her. The Honorable Robert Bibb, who was a retired Superior Court judge from Everett was the arbitrator in this case. He made findings. He said that the claim was properly

served on the respondent, after proof of service of the claim they mailed a second one to the defendant, the Court found that on or before May 14th, 2008, the parties entered into a written agreement to arbitrate their dispute. The parties' arbitration agreement is valid and enforceable and governs all disputes and he issued the award on November 3, 2008. It was mailed to her on November 4, 2008, based on the affidavit of service. She admits that she got the arbitration award and she sent a couple letters. Well, that from her point of view, may have been sufficient, but it is not what the federal law requires. The federal law requires that you actually have to file a formal motion in court, it doesn't have to be federal court because federal court doesn't have jurisdiction unless there is enough of a balance or you get into diversity jurisdiction. In this case she could have come into the Superior Court, ask that the court vacate the judgment for whatever grounds she felt was appropriate. When she didn't do that, once that ninety days runs, it is the statute of limitations and she is barred from going behind that and trying to retry the case, which is exactly what she is doing here. My comment about the documents that she has attached, it is the gobbilty goop that we see coming off the internet, and we have seen these sorts of forms about people challenging the arbitration award. They use the credit card, in this case they ran up a balance of probably over $30,000 and now when they have defaulted and it has gone to arbitration to dispute, they want to go back and redo the whole process. She had her day in court in the arbitration and she lost and we are here to confirm it, and we are entitled to a judgment for the award of the arbitration of what the arbitrator awarded as well as the filing fee as provided for by statute.

Kiselev: May I reply, Your Honor?

Judge: Go ahead.

Kiselev: Thank you. Well, all that would be true and correct if we would have written agreement. I have requested a number of times, I've been receiving some alleged, you know, some, different letters about this alleged account, I have requested records that I have never received, neither from FIA Card Services nor from _____. I have not agreed and I did not enter into any agreement with FIA Card Services that would entitled me to this arbitration award. That would be all true and correct if I would have this written agreement and if I would have, if there would be a record that this agreement is legitimate and that I am entitled, that there is an order arbitration, then that would be all true and correct, but considering that it was done without my agreement and considering that I have immediately reacted to this letters and you know this so-called arbitration award that I have replied to every finding in this award as well because these are not findings, these are unsubstantiated, excuse me, claims, sorry, I have a cold and my mouth is dry, so these are unsubstantiated claims that have never been proven by the other party. I have requested that they do provide me with the records to prove it and unfortunately it had never happened. So, once again, I will repeat it, based on all that, you know, anybody can go to arbitration and request them, send me an application, sue me for the amount the letters that I have been receiving from this organization were all for different amounts. I have a stack of them ranging anywhere from $20,000 to $40,000, just about $40,000

Judge: Why didn't you go to the arbitration then and tell the arbitrator this?

Kiselev: Well, first of all arbitration was in a different state.

Layman: No, it wasn't in a different state. Let me clarify that.

Kiselev: Okay, well my letter was

Layman: The administrative office is in Minneapolis. Don't dispute that. But the arbitration rules say that the arbitration has to be held in the federal district where she resides. That is why Judge Bibb was appointed the arbitrator and on the face of the award it says it was entered and affirmed in the State of Washington.

Kiselev: _____ rule, Your Honor, I cannot spend my time on just going to anybody who files a claim against me based on no record at all and that my main argument, there is no record of this alleged account, of this alleged credit card. I have requested this information. If I would have the information to dispute, then I would go to an arbitration. But I did not have anything to deal with.

Judge: Anything else counsel?

Layman: No.

Judge: The problem is this though, by not going to the arbitation, the arbitration award itself says that they did receive a response and it was provided to the claimant, it says that the arbitrator reviewed all of the evidence and then they make their decision. The problem is that by not going, by not appearing, you basically, he read your response and apparently didn't find it to be credible. He entered the arbitration award. You may have had a claim, I don't know. He used, I mean I have looked briefly at what you have written here so he obviously read it and didn't find it, that it was something that carried the weight. So he entered the arbitration award. Well, the way the laws are written, if you don't do anything with that, if you don't do the motion, if you don't file the motion, not just a letter, you have to actually take a formal step, then the award gets affirmed. And so that is, unfortunately, that is where we are today, so

Kiselev: Can I _____ or?

Judge: Well, actually, I have just made my ruling. So the ruling is that unfortunately you didn't follow procedure so you

Kiselev: But I would follow it if it was a mandatory arbitration. It wasn't. How can I, anybody can take me to arbitration, why would I, without any documentation

Judge: Because

Kiselev: without anything, why would I have to act on it?

Judge: Because you were given notice that they were going to take it to arbitration and if you don't act it is like defaulting. And you did file a response, so they, you know

Kiselev: Not recognizing that I, that there shouldn't be an arbitration about anything.

Judge: Well that was one of the preliminary issues. You needed to go to the arbitration to argue it. And by not going, I mean I don't know that you would have won anyway, I don't know, but they had your response and that was part of your response and the arbitrator didn't find it to be something that, I don't know if he didn't find that there was substantial evidence in your favor, so bottom line is that counsel here, because of the timeframe basically gets, gets his award. You might want to talk to an attorney about what to do from here.

CERTIFICATION

I hereby certify that this is a true and correct record of the proceedings. I do further certify I am in no way related to or employed by any party in this matter, nor to any counsel, nor do I have any interest in this matter. I certify that the transcription of this CD is true and complete to the best of my ability given the quality of the CD itself.

SIGNED at Seattle, Washington, this 10th day of June, 2009.

Teresa L. DiTommaso

Teresa L. DiTommaso