

Jailyah Muhammad  
c/o Schiffrin, Barroway, Topaz & Kessler, LLP  
Donna Siegel Moffa  
280 King of Prussia Road  
Radnor, PA 19087

**CLAIMANT(s),**

**ORDER**

**RE: Jailyah Muhammad v County Bank of Rehoboth Beach, DE,  
and Main Street Service Corporation  
File Number: FA0707001045136**

County Bank of Rehoboth Beach, DE  
4299 Highway One, Suite A-1  
Rehoboth Beach, DE 19971

Main Street Service Corporation  
401 City Line Avenue, Suite 209  
Bala Cynwyd, PA 19004

**RESPONDENT(s).**

---

---

The undersigned Arbitrator in this case FINDS and CONCLUDES:

**Case Summary**

This matter comes before Honorable Herman D. Michels, the Arbitrator in this matter, on the motion of Claimant Jailyah Muhammad (“Claimant”) for class certification in accordance with the National Arbitration Forum’s (“Forum”) Arbitration Class Procedures Parts A, B and C. Claimant also requests that she be designated Class Representative Claimant and that her counsel, the law firms of Williams Cuker Berezofsky of Cherry Hill, New Jersey, and Barroway, Topaz, Kessler, Meltzer & Check of Radnor, Pennsylvania, be designated Class Counsel. The Arbitrator having read and considered the submissions of Williams Cuker Berezofsky (Mark R Cuker, Esq., appearing) and Barroway, Topaz, Kessler Meltzer & Check (Donna Siegel Moffa Esq., appearing), attorneys for Claimant, and Weir & Partners (Susan Verbonitz, Esq. and Marc J. Zucker, Esq., appearing), attorneys for Respondent County Bank of Rehoboth Beach, DE (“County Bank”) and Mannatt, Phelps & Phillips (Claudia Callaway, Esq. and Michael White, Esq., appearing), attorneys for Respondent Main Street Service Corporation (“Main Street”), and good cause appearing, hereby renders this Order.

## I.

### **BACKGROUND AND PROCEDURAL HISTORY**

Claimant was a New Jersey college student who took out payday loans in 2002 in the amounts of \$100.00, \$200.00 and \$200.00 for school books by executing loan notes requiring repayments of \$130.00, \$260.00 and \$260.00 respectively within a three (3) week period. Payday loans are small-dollar, short-term unsecured loans that borrowers promise to repay out of their next paycheck or regular income payment. Payday loans are usually priced at a fixed dollar fee which represents the finance charge to the borrower.

Claimant contends that Respondent Main Street offered its payday loans over the Internet advertising that the loans are available even to consumers with poor credit history and involve a quick and easy loan process. As with most payday loans, Main Street loans are for small amounts due the next payday carrying interest rates in excess of 500 percent. Claimant contends that the percentage rate on her initial loan was for 644.1 percent and that she extended her loan at least twice, each time paying \$60.00 in interest with the extension, resulting in interest rates of 608.33 percent and 782.14 percent.

Claimant contends that she and other New Jersey residents like her are entitled to the protection and relief afforded by New Jersey's civil and criminal usury laws that limit the amounts of interest that can be charged on loans made to persons in the State of New Jersey to 16 percent and 30 percent, respectively. See N.J.S.A. 31:1-1(a) and N.J.S.A. 2(c):21-19(a). Claimant alleges that Respondents engaged in a conspiracy to circumvent the New Jersey law pursuant to which the true lender, Main Street, entered into a sham agreement with County Bank to create the appearance that County Bank was the lender so that the interest rate laws of Delaware would apply as a matter of law. Delaware law does not limit the interest that banks may charge on loans of this type. See 5 Del. Code § 963. Claimant concedes that "[s]hould the facts surrounding the relationship between the Respondents establish that

contrary to Claimant's allegations County Bank is the true lender and Delaware law allowing banks to lend at any interest rate would apply and Claimant Muhammad's claim for herself and the entire class would fail."

The record establishes that in order to receive the loan Claimant had to complete and sign standard form contracts. The loan application form contained an arbitration agreement which included a provision that provided that all disputes "shall be resolved by binding individual [and not class] arbitration." under procedures of Forum. Above the signature page, the loan application also stated: "By signing below, you also agree to the agreement to arbitrate all disputes and agreements not to bring, join or participate in class actions."

Claimant also signed a loan note and disclosure form which contain sections titled "Agreement to Arbitrate All Disputes" and "Agreements Not to Bring, Join or Participate in Class Actions." The loan note and the disclosure form also provided that all disputes "shall be resolved by binding individual [and not joint] arbitrations under the procedures of the Forum. Directly above the signature line, the loan note and disclosure stated: "BY SIGNING BELOW, YOU AGREE TO ALL OF THE TERMS OF THIS NOTE, INCLUDING THE AGREEMENT TO ARBITRATE ALL DISPUTES AND AGREEMENTS NOT TO BRING, JOIN OR PARTICIPATE IN CLASS ACTIONS."

In February 2004, Claimant filed a putative class action suit against County Bank and Main Street in the Superior Court of New Jersey, Law Division, alleging a violation of the New Jersey Consumer Fraud Act, the Civil Usury Statute and the New Jersey RICO Statute by charging and conspiring to charge illegal rates of interest, among other things. Claimant argued that the arbitration agreement was unconscionable based on the Class-Action Waiver. The Law Division disagreed and granted the County Bank's motion to compel arbitration pursuant to the Federal Arbitration Act. The New Jersey Superior Court Appellate Division affirmed. The New Jersey Supreme Court granted

Claimant leave to appeal. The Supreme Court held that the provision in the consumer loan contract that forbids class-wide arbitration was unconscionable and unenforceable and that the appropriate remedy was to sever the unconscionable provision and enforce the remaining valid portions of the Arbitration Agreement. Muhammad v. County Bank of Rehoboth Beach, 189 N.J. 1, 10, 11 (2006). In reaching this result, the Supreme Court stated:

[\*\*\*40] We hold, therefore, that the presence of the class-arbitration waiver in Muhammad's consumer arbitration agreement renders that agreement unconscionable. As a matter of generally applicable state contract law, it was unconscionable for defendants to deprive Muhammad of the mechanism of a class-wide action, whether in arbitration or in court litigation. The public interest at stake in her ability and the ability of her fellow consumers effectively to pursue their statutory rights under this State's consumer protection laws overrides the defendants' right to seek enforcement of the class-arbitration bar in their agreement.

\* \* \*

Finally, although we find that the class-arbitration waivers in Muhammad's arbitration agreements are unconscionable and unenforceable, we find that the waivers are severable. Once the waivers are removed, the remainder of the arbitration agreement is enforceable....

Thereafter, this matter proceeded before the Forum, and on May 28, 2008, a Scheduling Order was issued which stated:

Please note that at this time the Arbitrator will only be deciding the preliminary issue of whether a Class Action Motion can be entertained under Rule 19 of the Code of Procedure, **the Parties Arbitration Agreement and the Court Order**. If the Arbitrator finds that a class action motion can be brought, the Parties will be given time to file additional submissions, and then the matter will proceed to an Arbitrator for a second time, **to determine whether Claimant has met the criteria for certifying a class**.

By Rule 18 Order dated August 29, 2008, the Arbitrator ruled as follows:

IT IS ORDERED that Claimant's Rule 18 Request for an Order allowing Claimant to file a Motion for Class Action Certification is hereby GRANTED. Claimant may bring a Motion for Class Action Certification within sixty (60) days of this Order. Respondents will then have thirty (30) days to file an objection to the Motion. Finally, Claimant will have ten (10) days to file a reply to any objection filed by Respondent(s)

IT IS FURTHER ORDERED that DELAWARE law applies to this arbitration proceeding.

The Supreme Court ruling in Muhammad v. County Bank of Rehoboth Beach, *supra*, decided the issue as to the binding effect of the validity of the class action waiver in this matter and bars the relitigation of that issue by the doctrine of collateral estoppel. This preclusion doctrine holds that when an issue of ultimate fact has been decided by a valid and final judgment, the issue cannot be relitigated between the same parties in any future matter. The issue of whether Respondents can enforce a class action waiver as it applies to Claimant's claim in this matter was specifically addressed and decided by the Supreme Court in the Muhammad case. Respondents are therefore barred from relitigating that issue in this arbitration matter now.

Furthermore, the law-of-the-case doctrine mandates that decisions of law made in a case should be respected by all other lower or equal courts during the pendency of that case. See Cowgill v. Raymark Industries, Inc., 832 F.2d 798, 802 (3d Cir. 1987). There, the Third Circuit held that collateral estoppel and law-of-the-case principles serve the same function and compel the same result, stating:

When the estoppel is operative in proceedings in the same case on remand, courts frequently speak in terms of the law of the mandate or law of the case rather than collateral estoppel but the underlying principal is the same. The judicial system's interest in finality and in efficient administration dictates that, absent extraordinary circumstances, litigants should not be permitted to relitigate issues that they have already had a fair opportunity to contest.

The fact that this case is now in arbitration does not bar the application of the preclusion doctrine to prevent relitigating an issue already decided by the New Jersey Supreme Court. See John Hancock Mut. Life Ins. Co. v. Olick, 151 F.3d 132, 138 (3<sup>rd</sup> Cir. 1998); see also Kelly v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 985 F.2d 1067, 1069 (11<sup>th</sup> Cir. 1993); Employers Ins. of Wausau v. First State Ins. Group, 324 F.Supp. 2d, 333-337(d) (Mass. 2004). Thus, in light of the New Jersey Supreme Court's holding in the Muhammad case that it was unconscionable for Respondents to deprive Claimant of the mechanism of a class-wide action, whether in arbitration or in court litigation, Respondents are barred from relitigating this issue in this arbitration.

## II.

### DISCUSSION

The Arbitrator turns to the issue as to whether or not Claimant satisfies the Forum's requirements for class arbitration. The Forum's requirements for class certification, in part, provide:

#### A. Requirements of Class Arbitration

One or more members of a class may arbitrate as representative parties on behalf of a class only if:

1. The class is so numerous that joinder of all members is impracticable; and
2. There are questions of law or fact common to the class; and
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
4. The representative parties will fairly and adequately protect the interests of the class; and
5. The arbitrator finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class arbitration is superior to other available methods for the fair and efficient adjudication of the dispute. Matters pertinent to these findings include:
  - a. The interest of members of the class in individually controlling the prosecution or defense of separate actions; and
  - b. The extent and nature of any actions concerning the dispute already commenced by or against members of the class; and
  - c. The desirability or undesirability of concentrating the resolution of the claims in the particular proceeding; and
  - d. The difficulties likely to be encountered in the management and administration of a class arbitration.

Applying these requirements, the Arbitrator rules as follows:

1. The Class is so Numerous That the Joinder of All Members is Impractical.

Neither County Bank nor Main Street have contested the numerosity issue in the Objections filed to Claimant's Rule 18 Motion for a Discovery Order. Therefore, this requirement is satisfied.

2. The Questions of Law and of Fact Common to the Class.

Claimant seeks to represent all New Jersey consumers who were charged interest rates that are usurious under New Jersey law. The legal and factual issues as to liability are common to all consumers fitting within this class. Those issues include, among others, (a) whether the payday loans are unlawful, (b) the relationship between the Respondents, (c) whether or not Main Street was the true lender, (d) whether or not County Bank is properly identified as the true lender on the payday loans at issue, (e) the location and owner of the entity that funded and disbursed funds for the payday loan, (e) whether the services such as Main Street may be considered de facto lenders based upon their participation in the loans or other factors, and (f) whether the federal law pre-empts the application of state usury laws to the payday loan transactions is applicable. These issues of fact and law appear common to the class. Thus, the requirement of commonality is satisfied in this matter.

3. The Claims or Defenses of the Representative Parties are Typical of the Claims and Defenses of the Class.

Claimant's charges under the New Jersey Consumer Fraud Act, as well as her claim for civil conspiracy and County Bank's role in aiding and abetting Main Street's alleges violation of usury laws under the statutes and under the New Jersey RICO Act all raise issues of fact and law that are common to all members of the class, rendering this matter suited for class treatment. In reaching this result, the Arbitrator has not considered or decided whether any of the New Jersey causes of action, statutory claims or usury laws asserted by Claimant are applicable to Claimant's claims in this matter.

4. The Representative Parties Will Fairly and Adequately Protect the Interests of the Class.

The claims or defenses of Claimant are typical of the claims or defenses of the class. Claimant's entering into one or more loans is typical of the class of New Jersey consumers that she seeks to represent. The fact that Claimant may have taken several loans does not undermine the typicality

requirement for class certification. The theory of liability for conduct, if found to be unlawful, is the same for all members of the class and, therefore, this requirement for class certification is also satisfied.

5. A Class Action is Superior to Other Available Methods.

A class action mechanism provides the only realistic mechanism for New Jersey consumers to pursue their rights in a case of this kind. A lack of individually-controlled claims ensures no conflict. A lack of individual action demonstrates that an individual claim procedure is not an effective mechanism pursuing these small claims. In terms of time, resources and opportunity, the class mechanism is clearly superior for addressing the claims asserted here.

Decision

1. The Arbitrator knows of no conflict of interest.
2. This matter involves interstate commerce and the Federal Arbitration Act governs this arbitration.
3. The matter has proceeded in accord with the applicable Code of Procedure Rules.
4. The information and evidence submitted and the applicable substantive law supports the issuance of a Decision and Interim Order as stated.

**Therefore, the Arbitrator Orders:**

1. Claimant's motion for certifying this arbitration as a class arbitration is GRANTED.
2. The class members shall consist of all residents of New Jersey who, within the last six (6) years prior to February 2, 2004, have entered into small "payday" loans of \$100.00 and/or \$200.00 with County Bank and/or Main Street, and executed loan notes requiring payment of the principal amount and finance charges at high interest rates in excess of New Jersey usury laws.
3. The class claims seek damages, including treble damages, against County Bank and Main Street based on alleged violations of the New Jersey Usury Statutes, New Jersey Consumer Fraud Act, and the New Jersey RICO Act. The class claims also seek counsel fees, costs and injunctive relief.



4. The class claims and defenses involve the following issues, among others: (a) whether payday loans are unlawful and usurious; (b) the relationship between Respondents; (c) whether County Bank was the lender of the payday loans at issues; (d) the location and owner of the entity that funded and disbursed the funds for the payday loans; (e) whether the servicers, such as Main Street, may be considered de facto lenders, (f) whether federal law pre-empts the application of state usury laws to the payday loan transactions involved; (g) whether the interest rate charged for the payday loans violated Delaware usury laws; (h) whether the New Jersey Consumer Fraud Act applies to this matter; (i) whether New Jersey Usury Laws apply to the payday loans involved; (j) whether the New Jersey RICO Act applies to this matter; (k) whether Claimant is entitled to injunctive relief; (l) whether County Bank and/or Main Street complied with the applicable Federal Truth-in-Lending Act, Federal Reserve Board Regulations and Delaware law, and (m) whether any member of the class sustained an injury cognizable under Delaware law.

5. Williams Cuker Berezofsky and Barroway, Topaz, Kessler, Meltzer & Check are designated Class Counsel.

Entered and Affirmed in the State of New Jersey



Honorable Herman D. Michels  
Arbitrator

Date: October 9, 2009

**ACKNOWLEDGEMENT AND CERTIFICATE OF SERVICE**

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

