

Increasing the Odds in Credit Card Arbitrations

In an arbitration proceeding the deck is stacked in favor of the credit card company. Let's assume it is MBNA in this instance. Here are some tips on leveling the playing field if you are the defendant (person being sued in the arbitration). These apply whether you have an attorney in tow or not.

1. Arrival. Get to the arbitration 15 or 20 minutes early to have a chance to relax. Pass on the offer of coffee (decaf is fine), which will only make you jumpier. You normally will be in an office building. When you start, expect to be in a conference room with the arbitrator at the head of the table and your nemesis on the side opposite you.

2. The Arbitrator and his rules. Most often the arbitrator will be a lawyer or a judge. Regardless, address him as "Your Honor." Do lots of Your Honoring. In hearing the case, the Arbitrator can ignore the rules of evidence that attorneys have to follow in court. When he makes his ruling, it is virtually non-appealable. Even if he is absolutely mistaken about the law. Credit card companies love arbitration; they win 99% of the time. Maybe not this time, however. Or maybe not to the extent they would like.

3. Your Goal. Because the arbitrator makes whatever rules he wants, your objective is not to avoid paying anything. Rather, you will make some common sense arguments as to why you shouldn't have to pay all that MBNA is asking. If you have had the card for a long time, winning is a long shot, but still a possibility.

4. Your Hard Luck story. If you had plenty of money, you wouldn't be in arbitration. Spell out ahead of time in writing what caused you to fall behind in your bills. Don't blather on at length;

keep it short. A half page double-spaced should do it. Entitle it "An Explanation of My Financial Circumstance." As soon as you arrive at the Arbitrator's office, give it to his receptionist and ask if the arbitrator could review it before you start. Also give the MBNA attorney a copy to chew on.

5. The opening. The attorney for the company gets to put on his evidence first. Usually his pièce de resistance will be a written statement by someone with the company that says in so many words that the individual has checked the records carefully and can state with certainty that you owe MBNA a certain amount of money. This is called an "Account Stated." The theory is that if MBNA sends you a statement and you don't object to it, it is considered correct and you owe it.

6. The MBNA attorney questioning you. For that reason, the attorney will probably ask you if you got the statement and whether you protested it. If you have moved or have some legitimate reason not to have received the statement, say so. If you got it, say something like, "I'm not a lawyer. I didn't know I had to respond. Otherwise I would have given somebody an earful at MBNA because I think some of these charges are outlandish."

7. Don't put on a show. Do not roll your eyes, make gestures, act disgusted or otherwise put on any such display while the other attorney is talking.

8. Give the arbitrator what he wants. If the arbitrator asks you a question that takes a Yes or No, give him what he wants: "Yes, Your Honor." If it requires an explanation, ask "Can I explain." If he says, "No" believe him.

9. Make a good impression. The Arbitrator will be influenced by your appearance! Be neat and wear your best outfit. Even a tie if you own or can borrow one. Jeans may be fine for the boat dock, but in most cases you are going to be in front of a conservative, middle-class Arbitrator. Leave your flashy jewelry at home. Dress as if you were going to church, even if you never attend. You may

very well fall short of the Hugo Boss look, but make it apparent that you respect the occasion enough to give it your very best. If you are outside the norm with respect to rings that pierce body parts other than your ears, or wear your hair in highly unusual styles and/or colors, do your best to come back to mainstream America for a day.

10. Have your opening prepared. Let the MBNA attorney put his case forward. Make note of anything you disagree with. Wait until the arbitrator tells you to talk. Know exactly how you are going start off. First remind the arbitrator, "I believe you have the statement of my financial circumstances. I want to touch on a couple of points." (and remember; keep sprinkling in "Your Honor" every chance you get.)

You will be touching on the following points:

10a. What you have already paid.

If you have the back statements, or have been able to get copies from the attorney, add up the charges you incurred and the payments. Depending on how long you have had the card, you will undoubtedly find that you have paid 150% of what you charged. That is, if you rang up \$10,000 in charges, you have probably already paid \$15,000. Point this out. If you only have part of the statements, do the addition on what is there, then extrapolate: "This is only two years of statements showing that I charged \$3,212 but I paid over that time \$4,800. I've had the card for 14 years, so by extrapolation (yes, use the big word here), I have most likely charged \$22,484 and paid \$33,600.

Before you come to the arbitration, make a chart with those figures; skip the pennies, just round off to even dollars. Make it look like this:

Month	Charged	Payments
Nov. 2004	\$165	\$110
Oct, 2004	\$ 13	\$110
Sept.	\$ 45	\$110
Totals	\$223	\$330

Do this for every month you have a statement.

10b. Late Charges. Add up all the late charge that MBNA levied. Show that on the same page and refer to it. Tell the arbitrator, "I'm disappointed that nobody from MBNA is here, because I would have liked an explanation why this late charge is so high. My understanding from an attorney I talked to is that the actual cost to any credit card company when a payment is late is \$1.50." (true!)

Also, if you were charged late charges for months in which you just didn't make a payment, "As for these months when I didn't make a payment, a late charge makes no sense at all. When I do send in a payment, someone has to deliver my check to the right person, who has to open the envelope, take the check out, post it to the right account, and send it to someone else to stamp and deposit. Yet if I don't make a payment at all, none of that work is necessary. Yet MBNA charges me \$35 because they don't have to do any work. That simply isn't fair."

Add up the late charges and put the amount on the chart above at the bottom.

10c. Over-the-Limit charges. You go over your limit for one of two reasons. Either you charge too much, or late charges or interest push you over. Neither is a valid reason for charging you. If MBNA is truly concerned about your balance they can automatically refuse attempts to use the card when the limit is reached. So that is not a valid reason for charging you. If on the other hand their own late charges and interest push you over the limit, that is not your fault. As far as you (and I) can see, the only

reason for that charge is for MBNA to make extra money from you.

Look at your statements. You could very well find that your limit was lowered at some point. If so, make copies of the statements and highlight the limit changes. Show those to the arbitrator. It is common for credit card companies to suddenly drop the limits; the only warning you get is some small type on your statement telling you what the limit is for that month. Point out that you never even noticed that. If MBNA really wanted to bring that to your attention, they could have put a sticker on your statement, sent a letter, or whatever. Where they obviously did not do that, they did their best to conceal it from you.

Add up the OTL amounts and put it on the chart above.

10d. Interest increases. Show statements where MBNA increased your interest rate. If you called and asked, they would have told you, "Our risk increased." In short, they are saying that because it seemed to them that there was a higher chance that you would default in payments, they had to get a higher rate of interest. That makes no sense. By raising the interest rate, it only increased the chance that you would default. Which is exactly what happened. Again, tell the arbitrator that isn't fair either.

11. Finishing up. Finish by coming back to your financial situation. If you tried to explain it to MBNA, but it fell on deaf ears, tell the arbitrator just that. Give him the exact words of whomever you talked to at MBNA (remember, evidence rules go out the window, so "hearsay" like this is perfectly permissible). Sum up by saying, "over the years I have had this card, I paid MBNA every penny that I charged, and (whatever the extra amount is that you paid). Yet now they are suing me for an additional \$(whatever the amount is they are suing you for). If they got nothing out of this arbitration, they would still have a very nice profit. And I was hoping that there would be somebody here today from MBNA to explain these questions I have about late fees and over the limit charges. It just isn't fair that I should have to pay those. I'm doing my very best to avoid bankruptcy, but I'm a single mother . .

. (and recap your had luck story briefly). A few tears won't hurt whether you are male or female.

12. After you finish, stop talking. When you finish presenting your side of the story, PUT A SOCK IN IT. Don't babble on. The arbitrator may ask the MBNA attorney some questions. When he is finished, he may ask for your input. If he doesn't, and you want to counter whatever the attorney has said, ask "May I comment on that, Your Honor?" If he says "No," believe him again.

13. This isn't the Comedy Store. Nothing should be funny. Even if the arbitrator cracks a joke, only give the barest smile.

14. The Arbitrator's Ruling. Usually feelings in an arbitration run high, and there is no bailiff, sheriff, or marshal present to sort things out if feelings explode. For that reason, the arbitrator will tell you that he will take everything under submission and let you know in a week or so. Thank him, nod to the MBNA attorney and go wherever you normally go after an arbitration.

15. The Arbitrator's letter. You will get a letter. If you win, MBNA has no practical appeal. But don't count on that. Hopefully, you will not have to pay all that MBNA asked for. If you have to pay something, it will be spelled out as an Arbitration Award. This is not the same as a judgment. In fact it is worthless until MBNA goes to court in a separate suit and asks the court to "confirm" the award. In other words, turn it into a judgment. So you still have some wiggle room to negotiate. Call the attorney and see what you can work out. Good luck.