EX-JUSTICE DESCRIBES ABUSE OF DEBTORS, ARBITRATION SYSTEM GAMED, NEELY TELLS BUSINESS MAGAZINE

Publication: THE SUNDAY GAZETTE-MAIL
Published: Sunday, June 15, 2008
Page: 1A
Byline: PAUL J. NYDEN

pjnyden@wvgazette.com

Former state Supreme Court Justice **Richard Neely** is featured in the June 16 issue of BusinessWeek, in an investigative report about the National Arbitration Forum, a for-profit company based in Minneapolis.

Neely said NAF tries to collect more than it should from people indebted to credit card companies, banks and other retailers.

"It's a system set up to squeeze small sums of money out of desperately poor people," Neely told the magazine.

Neely arbitrated several cases for the NAF in 2004 and 2005. Other arbitrators also told BusinessWeek that NAF's procedures are not neutral, favoring creditors rather than debtors.

For example, NAF routinely provides arbitrators with forms with the amounts sought by creditors already filled in.

In three cases Neely decided for NAF, he granted credit card companies the money they were owed along with interest. But he denied them $300 administrative fees for each case, stating those fees would not be given to creditors by any court in the country.

"NAF is nothing more than an arm of the collection industry hiding behind a veneer of impartiality," Neely said.

In 2006, Neely published an article in a legal journal, Class Action Litigation Report, that criticized the way banks and other companies insert "arbitration clauses" in consumer contracts. The contracts are often full of several pages of fine print that few people ever read.

Those contracts often require consumers to resolve any disputes they have with credit card companies out of court, before private arbitrators.

After that 2006 article was published, Neely stopped receiving any "assignments" from NAF.

NAF defended itself in a news release earlier this month, saying the BusinessWeek article ignored research showing that arbitration was better that court battles for consumers.

The company also attacked Neely, saying that the magazine's "heavy reliance on Neely demonstrates that special interests are the driving forces behind the article."

F. Paul Bland Jr., a staff attorney at the public-interest law firm Public Justice, said Neely is being vilified by NAF.

"Neely is a very brave man. Neely was one of the first arbitrators who was not afraid of being sued when he became a genuine whistleblower," Bland said.

"We get hundreds of telephone calls from consumers every month complaining about debt collections from the National Arbitration Forum," Bland said. "People who might owe $1,000 or $2,000 get hit with a bunch of junk fees and illegal interest fees and have to pay hugely inflated awards.

"One person owed $1,300 on a credit card. Then, long after the account was closed, it had run up a debt of $9,800. That is not uncommon," he said.

Today, NAF employs about 1,700 "freelance arbitrators" across the country, BusinessWeek reports. Most are lawyers or retired judges. They handle about 200,000 cases a year.

Consumers typically play minimal roles in those arbitrations and 93.7 percent of those cases are decided without the consumers ever responding, BusinessWeek reported.

Only three-tenths of 1 percent of all those consumers asked for a hearing.

NAF markets its arbitration services to a variety of huge companies, including the Bank of America and JP Morgan Chase.

And NAF pays its arbitrators well.

Anita Shapiro, a former superior court judge in Los Angeles, told BusinessWeek that NAF paid her $300 an hour.

Shapiro said she usually spent only "four to five minutes per arbitration" and that she routinely completed "10 to 12 an hour."

Bland said if consumer debt cases went to court, judges would require proof of all debts, interest and fees.

"An NAF arbitrator only spends a few minutes on cases where consumers default. And debt-buyers often buy cases from banks relating to people who legitimately owe $1,000, but suddenly owe many thousands of dollars."

Bland also criticized banks for making efforts "on a massive scale to send credit cards to college students, who have no income, and to developmentally disabled people.

"We have found an enormous number of consumers that never got any notice of arbitration awards against them," Bland added. "And we even found 20 consumers where documents established they had been victims of identity theft.

"But nonetheless, arbitrators entered judgments against them," Bland said. "Banks win inflated sums. And no one is keeping track."

To contact staff writer Paul J. Nyden, use e-mail or call 348-5164.