

SOCIAL SECURITY AND OTHER GOVERNMENT BENEFITS DEPOSITED NOT SAFE FROM BANK SEIZURE FOR OVERDRAFT CHARGES



The California Supreme Court in June, 2009 held that Banks can deduct from deposits, including direct deposits of Social Security, disability and other government benefit checks, fees for overdraft and related charges on their customer accounts. While the law remains that they cannot offset for debts owed to them from such deposits, charges can be deducted. Big win for the Banks.

SUMMARY:

The California Supreme Court affirmed on June 1, 2009 a decision of the court of appeal that held that a bank could lawfully use direct deposits, including direct deposits of government benefits, to cover customer checking account overdrafts.

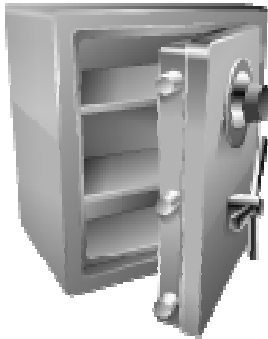
THE CASE:

Bank of America was sued ten years ago by Paul Miller, a disabled depositor who accused the institution of fraud for collecting overdraft fees and penalties as high as thirty two dollars per transactions out of its customers' Social Security, disability pay and other public benefits, even if directly deposited into their accounts. The Bank claimed that automatically deducting such charges was a "time honored" tradition conducted by all banks.

Years after the suit was filed, a San Francisco Superior Court certified it as a class action comprised of all California residents whose public benefit payments had been deposited with the Bank after August of 1994. The class was over one million people.

After trial, the Judge awarded the class two hundred and eighty four million dollars in damages and restitution for violations of the Consumer Legal Remedies Act, the Unfair

Competition Law and the False Advertising Act. With statutory damages and ten years of interest, the total awarded would have been about two billion dollars. The Bank appealed.



THE LAW:

The California Supreme Court rejected the trial court's finding that the bank's practice for collecting insufficient fund fees violated the Supreme's Court's earlier ruling in Kruger v Wells Fargo Bank, 11 Cal 3d 352 (1974.) That earlier opinion held that financial institutions can not take government benefit money ("exempted funds") out of accounts to cover credit card debts.

But the Supreme Court differentiated between such "self help" collection of debts (banker's set off) in which banks collect a debt unrelated to the underlying bank account, and overdraft fees, which was only balancing debts against deposits in a single account. "Here, unlike in Kruger, the bank is not setting off independent past debt," the court wrote. "Instead, the transaction occurs within a single account and is triggered by a customer's overdraft, causing the bank to recoup those funds from a subsequent deposit and charge a non sufficient fund fee. We do not agree...that there is no meaningful difference between satisfying a debt external to an account and recouping an overdraft of an account from funds later deposited into the same account."

In short, the Bank cannot unilaterally offset against governmental benefit payments sums owed to the Bank by the debtor unless it is related to charges connected to the account itself. That's the law.



THE LESSON:

Banks are powerful institutions with plenty of money to counter efforts to legislate controls. Even during the worst mortgage crisis in sixty years, with the government pouring billions into the banking system to save it, the Banks were able to kill legislation allowing bankruptcy courts to lower mortgage debt. Whether rightly or wrongly, the law concerning Banks is likely to favor their economic interest most of the time and the depositor who relies on governmental protection rather than reading the small print and making one's own careful decision is taking a tremendous risk.

However, in an effort to assuage the public, many Banks, including the Bank in the instant case, often forgive such charges if a protest is made. But one now has law that government checks sent to the most needy will have over draft charges applied automatically by the Bank despite the fact that said charges have been proven in half a dozen studies to bear no relation to any real loss suffered by the Bank. Credit cards, with onerous terms that a Mafioso would blush to impose have long been the bane of the users...and are being slightly modified during this period of recession. But one can assume that the Banks will find other ways to make good money from those needing their services who are not sophisticated enough to learn the rules of the game or fall onto hard times.

Banks may serve a vital purpose but they are not friendly institutions and are there to make money from you. Keep that lesson in mind and ignore the friendly ads or the imposing buildings. Your house was not your ATM and the credit card is a dangerous tool to be used carefully and never to be used to go deep into debt to buy luxuries.

Banks should have labels similar to those found on most useful but dangerous tools: "Be Careful, Read the Instructions, and Use At Your Own Risk."

