

**Lender's claim based on HELOC loan to the debtor and his former spouse was partially disallowed to exclude charges to the HELOC made by debtor's former spouse after the Lender acknowledged the debtor's request to freeze the account and to allow charges to the account only on the signatures of both borrowers.**

***In re Rusnack*, 2015 Bankr. Lexis 3152 (Bankr. D. Md. September 18, 2015).**

Summary by Bradley J. Swallow, Funk & Bolton, P.A.

The Honorable S. Martin Teel, Jr. sustained an objection filed by Thomas W. Rusnack (the "Debtor") to a claim filed by Cardinal Bank, N.A. (the "Lender") based on a home equity line of credit loan (the "HELOC"). The Debtor and his former spouse obtained the HELOC prior to their separation but, upon their separation, the Debtor requested that the Lender freeze the HELOC account. The Lender complied with this request and confirmed in writing that any future charges to the HELOC would require the signatures of both borrowers. Thereafter, the Lender permitted the Debtor's former spouse unilaterally to make two \$10,000.00 charges on the HELOC. After discovering the unauthorized charges, the Debtor notified the Lender by telephone that the charges were improper and, within a month following the charges, the Lender sent a letter to the former spouse stating that the charges were not authorized. The Lender's proof of claim included these unauthorized charges.

On the basis of testimony by the Debtor, his former spouse and the Lender's representative, the Court concluded that the Lender honored the former spouse's charges by mistake and that the Debtor derived no benefit as a result of the charges. Relying on Virginia Code § 8.3A-403, the Court held that the charges were not authorized: "[Section § 8.3A-403] states that where the signature of more than one person is required to constitute the signature of an organization (which covers . . . 'two or more persons having a joint or common interest' under § 1-201(28) of the Virginia Code), and a required signature is lacking, the signature of the organization is unauthorized." *Rusnack*, at \*3. The Court rejected the Lender's contention that the Debtor failed timely to dispute in writing the unauthorized charges as required by Virginia Code § 8.4-406 (stating that a customer is precluded from asserting an unauthorized signature with respect to an item after one year from the time the item first appears on a statement issued to the customer), finding that § 8.4-406 contained no requirement that such notification be made in writing and, in any event, the Lender's correspondence to the former spouse regarding the unauthorized charges demonstrated that the Lender had received actual and timely notice. Lastly, the Court rejected the Lender's contention that, by virtue of a notice appearing on the Debtor's account statement, the Debtor was required to dispute the charges in writing under the Fair Credit Billing Act (15 U.S.C. § 1666), which imposes duties on a lender to investigate and verify charges within 60 days after receipt of a written complaint by an account holder. In so holding, the Court observed that the Fair Credit Billing Act expressly did not preempt other state law remedies available to an account holder and that the Act did not control in this instance because the Debtor was raising defenses to the Lender's claim rather than making affirmative claims against the Lender based on the unauthorized charges.