
From: JHealy6952@aol.com [mailto:JHealy6952@aol.com]
Sent: Monday, August 23, 2010 10:01 PM
To: Overdraft Comments
Subject: Overdraft fee rule comment

I just fell victim this week to my bank. [*Name of Financial Institution*] in New Jersey, charging me a \$35. overdraft fee for making a \$3.32 payment for copying. I had checked my bank balance on a Sunday (when presumably no new checks would come in) and discovered that I had \$64.00 available.

What I did not know was that the same day they received an automatic draft (2 days late) for \$169.00 which they then paid first. I was also charged for overdrafts of \$40.00 and \$20.00 despite that I had a positive balance on my account at the time of making the withdrawals. This enabled them to charge me for 3 overdrafts rather than the one I incurred from the automatic draft which I had falsely and inaccurately assumed had already been paid.

I know the banks will argue that they need to recover their costs somehow, and why not from negligent depositors, but it is also a general principal of contract law (see Hadley v. Baxendale in any contracts textbook) that there shall be no fines for breach of contract, only charges to recover the actual damages from the breach. A bank cannot be out \$35. for paying a charge of less than one-tenth of that amount (which it clearly could have refused to pay anyway as it was the one that authorized the payout). The lack of fairness in an economic system can cost more social harm than the mere economic inefficiency. Finally, it creates uncertainty in the depositor's mind concerning the exact state of his deposited assets., leading to lack of confidence in banking and ultimately lack of confidence in the banking system which is the trigger to runs on the banking system. Courts have also ruled that it is misuse of accounts deposited in trust with the bank.

I appreciate your attention,

John David Healy, Esq.
84 Center Ave.
Little Falls, NJ