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Banco Popular must face challenge to overdraft policies - judge

Karen Freifeld

(Reuters) - A New York judge has refused to dismiss a class action lawsuit accusing Banco Popular North America of charging improper overdraft fees.

In a decision signed Thursday, Justice Anil Singh of New York state court in Manhattan said the bank must face claims that customers overdrew on their account because of the bank's allegedly deceptive practices.

The case is one of more than 80 lawsuits filed nationwide against banks for overdraft policies, which have come under criticism by consumer advocates who say they hurt mostly low-income consumers.

In the case at hand, as in many others, customers accused the bank of re-ordering debits to prioritize the highest charges, increasing the likelihood of overdrafts. They also say the bank provided inaccurate account information and failed to disclose, before it was complete, that an ATM or debit card transaction would result in an overdraft.

The practices, the complaint claims, made it difficult or impossible for customers to track their account balances.

"Ultimately, whether or not plaintiffs overdrew their account due to BPNA's allegedly deceptive practices, raises an issue of fact not properly decided by the court on the instant motion to dismiss," Singh wrote in his 14-page decision.

The judge also said he couldn't tell on a motion to dismiss whether the bank could provide real-time notice of a potential overdraft.

The bank claimed a New York banking regulation gave banks discretion to process transactions in any order, so long as they disclosed it. But the judge said, the bank had "not established that reordering of ATM transactions is sanctioned by New York banking regulations."

Banco Popular North America, a division of Puerto Rican financial services conglomerate Popular Inc, is a New York-chartered bank with more than 30 branches.

The decision follows an August 2014 ruling in which Singh largely granted Banco Popular's motion to dismiss the first amended complaint in the case, leaving only one narrow claim involving the breach of implied covenant of good faith and fair dealing.

The plaintiffs withdrew that claim from their second amended complaint in December, but continued to pursue a claim for deceptive practices under New York's general business law, which they were allowed to add in July.

Attorney Rachael Trummel, who represents the bank, declined to comment on the decision.

Joseph Tusa, who represents the plaintiffs, did not return requests for comment.

The lawsuit was originally filed in 2012 on behalf of Bronx senior citizen Josefina Valle, her son, Wilfredo, and others similarly situated.

Over a period of six years, the bank had imposed 182 overdraft charges totaling \$1,445 on the Valles.

The case is Josefina Valle and Wilfredo Valle et al v. Popular Community Bank, f/k/a Banco Popular North America, New York state Supreme Court, New York County, No. 653936-2012.

For the plaintiffs: Joseph Tusa of Tusa and Joseph Guglielmo of Scott & Scott

For Banco Popular: Jonathan Lupkin of Lupkin & Associates and Rachael Trummel of Barack Ferrazzano Kirschbaum & Nagelberg

(Additional reporting by Dena Aubin)

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