

1995

## Use of Standard Form Does Not Preclude TILA Violation

Jane Cady

Follow this and additional works at: <http://lawcommons.luc.edu/lclr>

 Part of the [Consumer Protection Law Commons](#)

---

### Recommended Citation

Jane Cady *Use of Standard Form Does Not Preclude TILA Violation*, 8 Loy. Consumer L. Rev. 17 (1995).

Available at: <http://lawcommons.luc.edu/lclr/vol8/iss1/7>

This Recent Case is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola Consumer Law Review by an authorized administrator of LAW eCommons. For more information, please contact [law-library@luc.edu](mailto:law-library@luc.edu).

---

diminution in market value of the house; or 2) the cost of repairs. If the prevailing party fails to choose among alternatives, the court should render the judgment affording the greatest recovery. Therefore, the court reduced the judgment for actual damages by \$100,000.

### **Court holds that anger and frustration are not compensable**

The Woodruffs appealed the deletion of the award for mental anguish, but they failed to present direct evidence at trial regarding the nature, duration,

and severity of this anguish. Thus, the court applied the traditional “no evidence” standard to decide whether the record supported a finding of a “high degree of mental pain and distress” which could be compensable. The supreme court found no direct evidence on the record establishing that the Woodruffs suffered mental anguish resulting from the flooding and therefore denied recovery. In affirming and modifying the court of appeals’ judgment, the court ruled that the Woodruffs’ anger and frustration did not rise to a level of compensable mental anguish and deleted damages for DTPA claims, the Woodruff’s attorneys’ fees, and double recovery.

## ***Use of standard form does not preclude TILA violation***

*by Jane Cady*

In *Shields v. Lefta*, 888 F.Supp. 894 (N.D. Ill. 1995), the United State District Court for the Northern District of Illinois ruled on a class action suit alleging violations of the Federal Truth In Lending Act (“TILA”). In ruling on the defendant’s motion to dismiss, the court held that the defendant’s use of the Federal Reserve Board’s model disclosure form did not preclude it from violating the TILA. Furthermore, the court held that the placement of the service contract price among nonnegotiable items did not violate the TILA or the Illinois Consumer Fraud and Deception Act (“CFA”). Therefore, the defendant’s motion to dismiss was denied in part and granted in part.

### **TILA requires creditors to disclose financial information**

The purpose of the TILA is to provide meaningful disclosure of credit terms so consumers may compare available credit terms; to avoid the uninformed use of credit; and to protect consumers against inaccurate and unfair credit billing. To achieve these goals, Congress granted the Federal Reserve Board authority to expand the legal framework governing commerce in credit by promulgating Regulation Z. Regulation Z requires a creditor to disclose certain information for each transaction conducted. A creditor must separately itemize the

amount a consumer finances for each transaction and also identify any other person it pays on behalf of the consumer.

In this case, each class member purchased a car from the defendant, Lefta, Inc., and financed the transaction through a motor vehicle installment sales contract. Each car buyer also purchased an extended warranty or service contract from the defendant. The plaintiffs claimed that the defendant inadequately revealed the costs included in the installment sales contract for two reasons. First, the defendant listed the entire amount charged to the plaintiffs for a purchased service contract under the category “Amount Paid to Others.” Second, the defendant placed the

service contract prices amid costs itemized as "License, Title and Taxes."

The plaintiffs objected to these practices for several reasons. First, not all the money listed under "Amount Paid to Others" actually went to others. The dealership retained a portion of the proceeds. Second, the plaintiffs alleged misrepresentation as to the specific amount paid to the dealership versus that rendered to others. Finally, the information placed under "License, Title and Taxes" appeared to be nonnegotiable because of its location on the form.

The defendants moved to dismiss the action based on its compliance with both the TILA and Regulation Z. The defendant reasoned that its use of model forms, provided by the Federal Reserve Board, precluded any fraud under the TILA. However, the court found that if information contained on these forms was false, the use of the form would not provide immunity. Thus, the court held that the

plaintiffs had stated a cause of action on this claim and denied the motion to dismiss.

The court did, however, dismiss the plaintiffs' claim of misrepresentation of the service contract price as nonnegotiable. After examining the form and regulations, it found no other place to put the charges on the form; and that the regulations expressly authorized the defendant to list the charges in that category. Therefore, the court granted the defendant's motion to dismiss this issue.

### **Illinois Consumer Fraud Act broader than the TILA**

The defendant also challenged the plaintiffs' claim under the CFA and alleged three grounds for dismissal: claiming that overcharging a consumer was not a violation of the CFA; defendant's compliance with TILA precluded a finding of a violation of CFA; and the plaintiffs' damage remedy was

too speculative to admit consideration.

The court found the defendant's first argument inviable because the plaintiff claimed deception, not excessive price. This constituted a cause of action since the full amount of the money earmarked for the service contract went to a third party. Second, the court determined that despite defendant's compliance with the TILA, the CFA may reach beyond the TILA. Although a creditor's compliance with Regulation Z automatically comports agreement with the TILA, this is not necessarily the case with the CFA. However, in this case, the plaintiffs' claim regarding misrepresentation of a nonnegotiable item did not state a claim, and therefore was dismissed. Finally, the defendant argued that damages claimed by the plaintiffs were too speculative to warrant consideration. However, the defendant did not follow up on this count and the court thereby dismissed it.

## ***Housing authority is a "person" under state's Consumer Fraud Act***

*by Dana Shannon*

In *Zorba Contractors, Inc. v. Housing Auth. of Newark*, 660 A.2d 550 (N.J. Super. Ct. App. Div. 1995), the appellate court of New Jersey held that a housing authority is a "person" as defined by the New Jersey Consumer Fraud Act ("CFA"), section 56:8-1 to 56:8-20 of the New Jersey Revised Statutes.

### **Housing authority seeks repair or replacement of faulty roofing**

The Housing Authority of the City of Newark ("Authority"), a defendant in a multi-party case, filed a third party action against three roofing