

Forged checks result in sizable 93A verdict



By Correy E. Stephenson

How does a claim for \$12,770 turn into an award of almost \$100,000?

In the case of *Mullen v. RBS Citizens Bank*, it took

27 fraudulent checks, two trials, one appellate court decision, the death of the original plaintiff and almost six years.

After a handyman stole checks from her home and forged her signature, Sharon Mullen immediately went to her local branch of Citizens Bank to report the fraud. Although she hesitated to file criminal charges, she remained in contact with the bank while attempting to get repayment from the forger. When her efforts failed, Mullen went to the police and sought reimbursement from the bank.

None came.

The bank argued that Mullen had failed to follow the proper procedures and therefore any recovery was time-barred. Even her lawsuit — including a 93A claim — didn't sway the defendant, said her attorney, Zaheer A. Samee of Frisoli Associates in Cambridge.

"It was shocking the way the bank treated this lady," he said. "The bank wouldn't budge even though she couldn't do something they didn't tell her to do."

What was initially a small case ballooned into a much bigger matter, said Samee.

"The bank strung this woman along for two and a half months where she thought

everything was hunky dory and she was getting her money back," then pulled the rug out from under her, he said. "This was clearly knowing and willful behavior."

A trial court initially granted the bank summary judgment on the 93A claim, but that decision was reversed on appeal. After a second trial, Judge Severin B. Singleton III found for the plaintiff and ordered treble damages for the bank's "willful, knowing and calculated to mislead" behavior.

With attorney's fees and interest, the total award in the case is \$98,503.

David M. Belcher, who represented the bank along with partner Christine R. Fitzgerald of Belcher Fitzgerald in Boston, did not respond to a call requesting comment.

Treble damages

The verdict "reinforces the policy in Massachusetts that knowing and willful conduct in violation of 93A can be punished severely," including treble damages, said David W. White of Breakstone, White & Gluck in Boston, who was not involved in the case.

The facts of the case, including a consumer who checked her statement promptly and immediately contacted her bank when she found forged checks, makes the bank's behavior even more egregious, White said.

"The bank should have bent over backwards to help her," he said. "Instead, it tried to take advantage of the situation and was appropriately punished."

Ralph J. Rivkind of Rubin & Rudman in Boston, who was not involved in the case,

said large banks can suffer from arrogance that leads them to ignore "the little people" — i.e., their customers.

Rivkind was recently involved in a 93A claim against a bank where the original \$40,000 claim resulted in a final judgment of \$311,000.

Bank employees think, "We're a big bank, we can afford the fight" against an individual, he said.

But "when the judges see that arrogance, it results in the multiple damage awards," Rivkind said. Instead of viewing the case as simply an employee making an error in good faith, "I think the judges see [treble damage awards] as the only way to punish them."

Unfair and deceptive

When a storm damaged a skylight in Mullen's home, she reached out to William Taylor, a local man she had known for years who performed odd jobs for her.

While Taylor was working, Mullen left to run some errands. Weeks later, in May 2006, Mullen received her checking account statement in the mail and discovered 27 unauthorized checks paid to Taylor and his girlfriend. The total amount paid out on the forged checks was \$12,770.

Mullen immediately went to the bank, reported the fraud and closed her account. But she hesitated about contacting the police because she had known Taylor for a long time, knew he had small children and wanted to give him the chance to reimburse her. Mullen apprised Citizens of her plans and remained in contact with the

bank over the next two months while she attempted to work with Taylor.

When it became clear he was not going to repay her, Mullen filed a police report in July 2006. The same day, she gave a copy of the report and an affidavit to the bank.

But Citizens denied Mullen's claims for reimbursement, relying upon a clause in her banking agreement that mandates the bank be notified in writing within 30 days if a "discrepancy, alteration or forgery" occurs.

Mullen sued, alleging improper payment of forged checks, breach of contract and violation of Chapter 93A. Prior to trial, Cambridge District Court Judge Michele B. Hogan granted summary judgment to the bank on the 93A claim and Mullen passed away, resulting in the substitution of her brother as the plaintiff in the case.

In June 2009, Hogan ruled that Citizens was negligent in paying the forged checks and entered a judgment of \$17,069.57 (the original claim of \$12,770 plus interest).

The plaintiff then appealed the summa-

ry judgment ruling on the 93A claim, which the Appellate Division reversed.

The court concluded that material issues of fact remained as to whether the bank "plainly disclosed a purported thirty-day deadline in time for Mullen to file properly her claim against the bank; and whether Mullen knew or should have known, or Citizens so informed her, that she needed to file signed affidavits and the police report within thirty days as part of such a claim."

A second trial in 2011 resulted in a verdict for the plaintiff.

Singleton ruled that the banking agreement relied upon by Citizens was not applicable because Mullen didn't see it until 2006. He looked instead to state law, which requires that a customer "exercise reasonable promptness" and notify a bank within 30 days if she "detects an unauthorized signature or alteration ... paid in good faith by the bank."

"Mullen complied with all aspects of the statute," Singleton concluded. She notified

the bank of the forgeries within 30 days and fully cooperated with all of Citizens' requests, he wrote.

"Citizens' failure to clearly disclose its procedures for Mullen's claim was willful, knowing and calculated to mislead," the judge said. "These actions caused Mullen to delay longer than she would if informed of the procedure thereby extinguishing her claim and depriving her of her funds. Mullen reasonably believed that her initial meeting with [the bank manager] where she filled out paperwork to close her account and gave the forged checks to [the manager] was sufficient notice of her claim. Insisting that Mullen follow a procedure that it did not disclose to her was unfair and deceptive."

Singleton awarded treble damages on the 93A claim of \$51,208.71 (subtracting the \$17,069.57 already paid from the first judgment).

With attorney's fees, costs and interest, the total award reached \$98,503, Samee said.