

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BEVERLY DEVORE, on behalf of herself and all other similarly situated, Plaintiff, v. DOLLAR BANK FSB, Defendant.	CIVIL DIVISION Case No.: _____ CLASS ACTION COMPLAINT CLASS ACTION
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**TRIAL BY JURY DEMANDED AS
TO ALL COUNTS SO TRIABLE**

Counsel of Record for the Plaintiff and class:

**KENNETH J. GRUNFELD, ESQUIRE
GOLOMB, SPIRT & GRUNFELD, P.C.**
Identification No. 84121
1835 Market Street, Suite 2900
Philadelphia, PA 19103
Telephone: (215) 985-9177
Email: kgrunfeld@GolombLegal.com

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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CLASS ACTION COMPLAINT

Plaintiff Beverly Devore (“Plaintiff”), on behalf of herself and all persons similarly situated, alleges the following based on personal knowledge as to allegations regarding herself and on information and belief as to others.

NATURE OF THE ACTION

1. Plaintiff brings this action on behalf of herself and a class of all others similarly situated against Defendant Dollar Bank, Federal Savings Bank (“Dollar”) over the improper assessment and collection of Overdraft Fees on accounts that were never actually overdrawn, in breach of Dollar’s contracts and its duty of good faith and fair dealing and Pennsylvania statutory law. In the alternative, the practice has unjustly enriched Dollar.

2. Dollar charges accountholders \$36 per Overdraft Fee on accounts that were never actually overdrawn.

3. Through the imposition of these fees, Dollar has made millions of dollars, turning its customers’ financial struggles into revenue. Plaintiff, like thousands of others, has fallen victim to Dollar’s Overdraft Fee revenue maximization scheme.

PARTIES, JURISDICTION, & VENUE

4. Plaintiff Beverly Devore is a citizen and resident of Apollo, Armstrong County, Pennsylvania.

5. Defendant Dollar is a federal bank and maintains its principal place of business in Pittsburgh, Allegheny County, Pennsylvania.

6. This Court has subject matter jurisdiction over this action pursuant to 42 Pa. Cons. Stat. § 931.

7. The Court has personal jurisdiction over Defendant pursuant to 42 Pa. Cons. Stat. § 5301, because Defendant is incorporated and headquartered in Pennsylvania, and conducts a significant portion of its general business within Pennsylvania.

8. Venue is proper in this Court under Pennsylvania Rules of Civil Procedure 1006 and 2176(b) because the insured property is located in Allegheny County, a substantial part of the events, acts, and omissions giving rise to Plaintiff and the Class members' claims occurred here, and Defendant regularly conducts business in Allegheny County.

FACTS

I. DOLLAR ASSESSES OVERDRAFT FEES ON ACCOUNTS THAT ARE NOT OVERDRAWN.

9. Plaintiff has a checking account with Dollar and is enrolled in Dollar's Overdraft Protection Program.

10. Dollar issues debit cards to its checking account customers, including Plaintiff, which allows customers to have electronic access to their checking accounts for purchases, payments, withdrawals, and other electronic debit transactions.

11. Pursuant to Dollar's Deposit Agreement (the "Account Agreement"), **Exhibit A**, and related documents (collectively the "Account Documents"), Dollar charges Overdraft Fees (currently in the amount of \$36) for transactions that overdraw an account.

12. Plaintiff's checking account with Dollar was at all relevant times governed by Dollar's Account Documents, which are standardized form contracts for deposit accounts, the material terms of which are drafted by Dollar, amended by Dollar from time to time at its convenience and complete discretion, and imposed by Dollar on all of its deposit account customers.

13. Dollar's Account Documents discussing Overdraft Fees promised that Dollar will only assess Overdraft Fees when a transaction overdraws the account balance.

14. According to the "Rules Governing Deposit Accounts":

Insufficient Funds and Overdrafts. The Bank has no obligation to pay any item that is presented for payment against insufficient available funds. The Bank may determine whether or not your account contains sufficient available funds to pay an item at any time between the time the item is presented and the Bank's return deadline, and only one determination of the account balance is required. If that determination reveals insufficient available funds to pay the item, the Bank is not required to pay the item and may return it unpaid. Alternatively, the Bank may pay the item and create an overdraft in your account. Whether or not the Bank decides to pay the item and create an overdraft is in the sole discretion of the Bank and will depend on various factors, including your history with the Bank. Moreover, the honoring of one or more items drawn against insufficient available funds does not obligate the Bank to honor any other such items, either in the future or during the same day's processing, and you should not rely on the Bank to honor any particular items drawn against insufficient available funds. In all cases, the Bank is not required to give you prior notice that an item will be returned for insufficient available funds.

An insufficient balance or overdraft in your account and each item presented for payment against insufficient available funds in your account (whether paid, denied, or returned) are each subject to an Overdraft Penalty as provided in the Bank's then-current Account Information Schedule. You agree that if your account becomes overdrawn for any reason, you must immediately deposit sufficient funds to cover the overdraft and any penalties assessed upon notice of the overdraft. Moreover, you agree to reimburse the Bank for any costs it incurs in collecting the overdraft from you including, but not limited to, reasonable attorney's fees, and the costs of litigation, arbitration or other dispute resolution, to the extent permitted by law.

Pursuant to Regulation E, the Bank will not assess an Overdraft Penalty against consumer accounts if certain items (generally ATM and debit card transactions) are presented for payment against insufficient available funds unless you have opted-in and agreed to permit the Bank to pay these items and assess the applicable Overdraft Penalty as required by Regulation E. You may revoke the opt-in and the authorization to pay these items and assess the penalty

at any time by calling 1-877-893-4230, completing the required information at dollarbank.com/options or stopping by a Bank branch. If you do not opt-in and authorize the Bank to pay these items, the Bank may pay or deny these items at its sole discretion.

Ex, A at ¶ 8.

15. According to the Fee Schedule, attached hereto as **Exhibit B**:

Overdraft or NSF Fee

Assessed when the available balance in your account is insufficient to cover an item (check, fee, returned check, ATM/POS authorization, Online Banking, other electronic debit, etc.) of \$5.00 or greater that is presented for payment. An Overdraft Fee is assessed when such items are paid. An NSF Fee is assessed when the item is returned unpaid. Items may not be processed in the order they occur, which can affect overdraft fees. See the section on withdrawals in the Deposit Agreement for details. Fee limited to five (5) charges per day.

Ex. B at 3.

16. According to the “What You Need to Know about Overdrafts and Overdraft Fees” document, **Exhibit C** (emphasis omitted):

An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway.

We can cover your overdrafts in two different ways:

1. We have standard overdraft practices that come with your account and are detailed below.
2. We also offer overdraft protection plans, such as a link to a savings account, which may be less expensive than our standard overdraft practices. A Dollar Bank Representative can tell you more about these plans.

...

What are the standard overdraft practices that come with my account?

We do authorize and pay overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments, including those made using your debit card or ATM card

We do not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below).

- Everyday debit card transactions (one-time purchases or payment transactions made using your Dollar Bank Debit or ATM Card)

We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

What fees will I be charged if Dollar Bank pays my overdraft?

Under our standard overdraft practices:

- We will charge you a fee of \$36 each time we pay an overdraft, with a limit of five charges per day
- A fee of \$9.00 is assessed each day after your account remains negative for a period of 4 or more consecutive calendar days, up to a maximum of \$99. As a courtesy, the fees assessed for the 4th through the 6th consecutive day your account is negative will be waived if your account is no longer negative before the end of the 7th consecutive day. This fee is in addition to any Overdraft Item or NSF Fees assessed.

Ex. C.

17. In breach of these promises, Dollar assesses Overdraft Fees on transactions that do *not* overdraw the account.

A. Dollar Imposed Overdraft Fees on Transactions That Did Not Overdraw Plaintiff's Account

18. On November 17, 2019, Plaintiff was assessed a \$36 Overdraft Fee on a debit transaction when her account balance, as demonstrated by the statement provided by Dollar, was not even negative after that transaction. Therefore, the transaction did not overdraw Plaintiff's account, yet Dollar improperly assessed Plaintiff an Overdraft Fee for that transaction, in breach of Dollar's Account Documents.

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action on behalf of herself individually and all others similarly situated under Pa. R. Civ. P. 1701, *et. seq.*. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements.

20. The proposed Class is defined as:

All citizens of Pennsylvania who have checking accounts with Dollar Bank and who, during the applicable statute of limitations, were charged Overdraft Fees on transactions that did not overdraw an account.

21. Plaintiff reserves the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

22. Specifically excluded from the Class are Dollar and any entities which Dollar has a controlling interest in, or which have a controlling interest in Dollar, Dollar's legal representatives, assigns, and successors, any Judge to whom this action is assigned, and any member of such Judge's staff and immediate family.

23. The members of the Class are so numerous that joinder is impractical. The Class consist of thousands of members, the identities of whom are within the exclusive knowledge of Dollar and can be readily ascertained only by resort to Dollar's records.

24. The claim of Plaintiff is typical of the claims of the Class in that Plaintiff, like all members of the Class, was charged Overdraft Fees on transactions that did not actually overdraw

her account. Plaintiff, like all members of the Class, has been damaged by Dollar's misconduct in that they have been assessed unfair and unconscionable Overdraft Fees. Furthermore, the factual basis of Dollar's misconduct is common to all members of the Class and represents a common thread of unfair and unconscionable conduct resulting in injury to all members of the Class. Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests of any other members of the Class.

25. There are numerous questions of law and fact common to the Class and those common questions predominate over any questions affecting only individual members of the Class.

26. Among the questions of law and fact common to the Class include:

- a. Whether Dollar violated contract provisions by charging Overdraft Fees on transactions that did not overdraw an account;
- b. Whether Dollar breached its covenant of good faith and fair dealing with Plaintiff and other members of the Class through its Overdraft Fee policies and practices;
- c. The proper method or methods by which to measure damages; and
- d. The declaratory and injunctive relief to which the Class are entitled.

27. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions, particularly on behalf of consumers and against financial institutions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

28. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, no Class member could afford to seek legal

redress individually for the claims alleged herein. Therefore, absent a class action, the members of the Class will continue to suffer losses and Dollar's misconduct will proceed without remedy.

29. Even if Class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows for the consideration of claims which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

30. Plaintiff suffers a substantial risk of repeated injury in the future. Plaintiff, like all members of the Class, is at risk of additional Overdraft Fees on transactions that did not overdraw an account. Plaintiff and the members of the Class are entitled to injunctive and declaratory relief as a result of the conduct complained of herein. Money damages alone could not afford adequate and complete relief, and injunctive relief is necessary to restrain Dollar from continuing to commit its unfair and illegal actions.

FIRST CAUSE OF ACTION

**Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing
(On Behalf of the Class)**

31. Plaintiff realleges and incorporates by reference all the foregoing allegations as if they were fully set forth herein.

32. Plaintiff and Dollar have contracted for bank account services, as embodied in Dollar's Account Documents.

33. Dollar's Account Documents state that a customer will only be assessed an OD Fee when an account is overdrawn on the account balance. Dollar regularly violates this contractual promise.

34. Under Pennsylvania law, parties to a contract are required not only to adhere to the express conditions in the contract, but also to act in good faith when they are invested with a discretionary power over the other party. In such circumstances, the party with discretion is required to exercise that power and discretion in good faith. This creates an implied promise to act in accordance with the parties' reasonable expectations. That means that Dollar is prohibited from exercising its discretion to enrich itself and gouge its customers. Indeed, Dollar has a duty to honor transaction requests in a manner that is fair to Plaintiff and is prohibited from exercising its discretion to pile on ever greater penalties. Here—in the form agreements Dollar foisted on Plaintiff—Dollar has provided itself numerous discretionary powers affecting Plaintiff's account.

35. Instead of exercising that discretion in good faith and consistent with Plaintiff's reasonable expectations, Dollar abuses that discretion to take money out of Plaintiff's account without her permission and contrary to her reasonable expectations that she will not be charged Overdraft Fees on transactions that do not overdraw her account.

36. By exercising its discretion to enrich itself by gouging its consumers, Dollar consciously and deliberately frustrates the agreed common purposes of the contract and disappoints the reasonable expectations of Plaintiff and members of the Class, thereby depriving them of the benefit of their bargain.

37. Plaintiff and members of the Class have performed all, or substantially all, of the obligations imposed on them under the Account Documents.

38. Plaintiff and members of the Class have sustained damages as a result of Dollar's breaches of the Account Documents.

SECOND CAUSE OF ACTION
Violations of Pennsylvania Unfair Trade Practices and Consumer Protection Law
(On behalf of Plaintiff and the Class)

39. Plaintiff realleges and incorporates by reference all the foregoing allegations as if they were fully set forth herein.

40. This claim is asserted on behalf of the Class of Dollar customers who are Pennsylvania citizens and enjoy the protections of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.*

41. Dollar engages in unfair business practices relating to the imposition of overdraft fees on consumers, in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.* In particular, the wrongful conduct described herein violated 73 P.S. § 201-2(4)(v) (representing that goods or services have characteristics, uses, or benefits that they do not have), § 201-2(4)(xiv) (failing to comply with the terms of any written guarantee or warranty given to a buyer), and § 201-2(4)(xxi) (engaging in any other deceptive conduct which creates a likelihood of confusion or misunderstanding).

42. As redress for Dollar's repeated and ongoing violations of these consumer protection statutes, Plaintiff and the Subclass are entitled to, *inter alia*, damages and declaratory relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the members of the Class, respectfully requests the Court to enter an Order:

- a. certifying the proposed Class, appointing Plaintiff as Class Representative, and appointing Plaintiff's counsel as Class counsel;

- b. declaring Dollar's Overdraft Fee policies and practices alleged in this Complaint to be wrongful, unfair and unconscionable;
- c. enjoining Dollar from engaging in the practices outlined herein;
- d. awarding all improperly assessed Overdraft Fees paid to Dollar by Plaintiff and the Class, as a result of the wrongs alleged herein, in an amount to be determined at trial;
- e. granting disgorgement of the ill-gotten gains derived by Dollar from its misconduct;
- f. awarding actual damages in an amount according to proof;
- g. statutory damages as allowed by law;
- h. awarding pre-judgment and post-judgment interest at the maximum rate permitted by applicable law;
- i. awarding costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
- j. awarding such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues in this complaint that are so triable as a matter of right.

Dated: July 29, 2021

GOLOMB, SPIRT & GRUNFELD, P.C.

By: /s/ Kenneth J. Grunfeld
KENNETH J. GRUNFELD, ESQUIRE
Identification No. 84121
1835 Market Street, Suite 2900
Philadelphia, PA 19103
Telephone: (215) 985-9177
Email: kgrunfeld@GolombLegal.com

Jeffrey D. Kaliel (*pro hac vice* to be filed)
Sophia G. Gold (*pro hac vice* to be filed)
KalielGold PLLC
1100 15th Street NW, 4th Floor
Washington, D.C. 20005
(202) 350-4783
jkaliel@kaliellpc.com
sgold@kaliellpc.com

David Berger (*pro hac vice* to be filed)
Tayler Walters (*pro hac vice* to be filed)
GIBBS LAW GROUP LLP
501 14th Street, Suite 1110
Oakland, CA 94612
Telephone: (510) 350-9700
Facsimile: (510) 350-9701
dmb@classlawgroup.com
tlw@classlawgroup.com

*Counsel for Plaintiff and the Proposed
Class*

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Dollar Bank Hit with Lawsuit in Pennsylvania Over Allegedly Unlawful Overdraft Fees](#)
