

Case Study

Don't get burned by your electronic payment processing partner based on the terms of an overreaching electronic payment processing agreement!

Global Legal Law Firm, prominent electronic payment processing attorneys who litigate disputes nationwide, recently successfully defended a client that included an award for the client's attorneys' fees and costs. In an arbitration proceeding in New Jersey regarding an electronic payments reseller agreement, Global Legal's client, an electronic payment company with a convenience fee software solution, prevailed against its prospective ISO partner who brought claims for a breach of the reseller agreement and intentional business torts. After being forced to spend over \$100,000 to defend itself, the Arbitrator agreed with Global Legal's legal theories and arguments against the baseless allegations.



Global Legal's client "LP" thought it sourced an electronic payment processing partner in "PS" that could support its proprietary product offering in "PS" i.e., L.P.'s "No Cost To Biller" ("NCTB") convenience fee model marketed to account receivable management and debt collection industry ("ARM Industry"). PS initially claimed that it could support LP's NCTB electronic payments solution and the two companies executed a standard Independent Sales Organization agreement ("ISO Agreement"). Shortly thereafter, PS notified LP to relay that it mistakenly claimed it could support NCTB when in fact it did not have a processing partner that would process and settle a convenience fee model. As a result, LP asked that the ISO Agreement be canceled, and PS agreed. LP then sourced another processing partner who could support NCTB and continued to market and sell.

LP and PS did not have contact with each other for nearly a year, during which time LP continued to market and sell the NCTB electronic payments solution to ARM Industry merchants. A PS representative later contacted LP because PS's ARM Industry merchant clients were searching for a convenience fee solution like NCTB. PS claimed that it wanted to partner with LP to offer NCTB to its ARM Industry merchants until such time it had a payment processing relationship that would process and settle NCTB and the parties began negotiating the terms of a new business relationship. While the parties were negotiating that agreement, PS suddenly discovered the existence of the initial ISO Agreement and claimed that its restrictive covenants were still in effect as leverage in negotiations. Importantly, the initial ISO Agreement contained a non-solicitation provision that PS claimed meant that LP could not market and sell NCTB to any of PS's existing electronic payment processing clients, even though PS did not have its own similar convenience fee model or a processing partner willing to accept those transactions.

LP denied that the ISO Agreement was still in effect and asked for market value revenue share splits, at least commensurate to the revenue split LP had with its existing processing partner. During the protracted negotiations, PS discovered that several of its ARM Industry Merchants had received a demo of NCTB from LP and desired to use that solution. PS got increasingly agitated that it was losing customers to LP and demanded that LP stop soliciting PS's merchants for the NCTB solution, even though PS did not have a similar electronic payments solution of its own. PS adamantly declared it would never share its customer list with LP even if a partnership was formed. And PS claimed the initial ISO Agreement required LP to abandon all marketing efforts once it discovered that a prospective merchant was an existing PS customer, despite LP's arms-length efforts. The proposition was all the more ludicrous because PS did not have its own convenience fee model.



After PS became frustrated about losing electronic payments business to LP, it filed for arbitration as provided under the terms in the initial ISO Agreement. LP, then a fledgling start-up electronic payments business, was forced to spend over \$100,000 to defend itself against PS's claims. After conducting discovery, the parties submitted briefs to the Arbitrator, a retired New Jersey judge.

Using New Jersey law, Global Legal argued that not only was the ISO Agreement canceled, but several other affirmative defenses prevented PS from trying to enforce the non-solicitation provision. After reviewing LP's arbitration brief, the Arbitrator determined that PS was not entitled to recover from LP for any of its claims and that the ISO Agreement had, in fact, been canceled. The Arbitrator also awarded LP its attorneys' fees and costs in an important win for LP.

Please contact Global Legal Law Firm, specialists in the electronic payment processing industry, if you want to protect yourself, your company, and your reputation. Global Legal Law Firm has decades of experience drafting and litigating electronic payments agreements and ISO agreements, reserve disputes and reserve withholdings, chargeback disputes, residual payments that are withheld, underpaid, or cut off, electronic payment processing portfolio valuation and litigation, state and federal regulatory compliance, and other litigation related to the broader electronic payments industry. Let us show you how we can add value and help reduce risk.

Contact Global Today.

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