

“FRAUD ALERT!: SHEDDING LIGHT ON ZELLE FRAUD”

STATEMENT OF STEPHANIE R. TATAR BEFORE THE SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS MAY 21, 2024

Chairman Blumenthal, Ranking Member Johnson, and esteemed members of this subcommittee, I am honored by your invitation to testify before you about Zelle fraud. As a consumer rights litigation attorney representing victims of Zelle fraud, I have witnessed firsthand the devastating financial and emotional toll this fraud inflicts on consumers across all demographics. The banking industry's insufficient investigative processes, lack of transparency, and dismissive attitude toward fraud victims allow this criminal activity to persist unabated. Urgent reforms are needed to hold financial institutions accountable and restore consumer protections eroded by modern payment platforms like Zelle. It is my sincere hope that the information I present will underscore the urgency of this matter, compelling decisive action from this august body.

My name is Stephanie Tatar and I am a consumer rights litigation attorney who has represented consumers since 2002. My areas of practice focus on credit reporting errors, identity theft, and unauthorized transactions, including those conducted through payment platforms such as Zelle. I am also on the Board of Directors of the National Association of Consumer Advocates, a membership organization of private and public sector attorneys dedicated to the protection and representation of all consumers.

Zelle Fraud Victims: A Cross-Section of Society Suffering Devastating Consequences

My colleagues and I receive daily calls from consumers who detail their experiences with fraudulently induced and unauthorized Zelle transactions. Victims of these crimes are not limited to any particular demographic. Even the smartest, most technologically adept individuals are defrauded and lose money through fraudulent Zelle transactions. These victims come from all walks of life - students pursuing education, parents working to support their families, clergy serving their communities, doctors dedicated to healing, and farmers sustaining our nation's agriculture. They represent the diverse fabric of our society, cutting across every vocation and background imaginable. These are honest, hardworking individuals who have fallen prey to sophisticated fraud schemes through no fault of their own. Their losses transcend mere financial figures, impacting their ability to make ends meet, achieve their dreams, and maintain their livelihoods.

Of all the suffering I see, the most heart-wrenching cases involve older Americans, who suffer devastating monetary losses that they may never recover from. For many in this vulnerable population, the ability to re-enter the workforce and replenish their financial reserves is simply not

an option. This fraud strips them of their hard-earned savings and financial security, leaving them to face an uncertain future without the means to support themselves or their loved ones. It is a catastrophic blow that can shatter their golden years and undermine the dignity they deserve after a lifetime of contributions to society.

The financial losses created by Zelle fraud are quantifiable, but let us not discount the losses that are slightly more difficult to quantify – the incredible emotional toll on defrauded consumers. Consumers that lose hundreds or thousands of dollars from fraudulent Zelle transactions must live in fear every day wondering – “will this money ever be returned? How safe is the rest of my money?” Consumers rely on the funds they have in their bank accounts to pay for rent, transportation, groceries and utilities. When funds are stolen, most consumers, particularly those consumers on fixed incomes, are left without options to pay these bills, let alone unexpected medical bills. My clients also endure severe psychological distress, depression, and debilitating anxiety. They experience profound feelings of embarrassment, hopelessness, and fear which take an immense toll on their mental well-being. The repercussions extend to the physical realm as well, inducing insomnia, substance abuse as a form of self-medication, somatic symptoms such as gastric distress, and strains on their interpersonal relationships. The emotional and psychological toll of Zelle fraud is often compounded by the very tactics employed by fraudsters to dupe unsuspecting victims.

Types of Zelle Fraud

1. Fraudulent Zelle Transactions Through Imposter Bank Communications

Many fraudulently induced Zelle transactions occur when a consumer receives a call or text from a bad actor who spoofs the phone number of the consumer’s bank. These criminals call or text consumers claiming that suspicious activity has been detected on their account. Consumers believe these calls come from their bank because the caller id shows their bank’s name or the text or emails contain the logo of the bank. Furthermore, these criminals are already in possession of sensitive information about the consumer to make it convincing that the communications really are from the bank.¹ The criminals obviously know where the consumer banks and their phone number, but they also often have the consumer’s account number and account balance information, as well as other personal identifying information. The criminal then deceives and manipulates the consumer by claiming that the only way to protect their funds from the suspicious activity is to transfer the funds into the consumer’s newly created account by clicking a link provided by the “bank”. When the consumer transfers money to that account, believing that the account is his/her new account, the recipient is actually the criminal, and the consumer is left with virtually no recourse.

¹ “The FTC received 5.7 million total fraud and identity theft reports, 1.4 million of which were identity theft cases.” <https://identitytheft.org/statistics/>; Identitytheft.org also reports that identity theft happens every 22 seconds.

2. Fraudulent Zelle Transactions Through Data Breaches

Account hacks and data breaches result in unauthorized Zelle transfers, leaving consumers with drained bank accounts. In these situations, perpetrators gain access to bank information, sometimes adding new devices to the consumer's bank account and changing passwords, addresses, and email addresses. They initiate Zelle transfers without a consumer's authority or knowledge, profiting from their fraudulent activities by the thousands.

The Harsh Reality of Fraudulently Induced Zelle Payments: Instantaneous Losses and Institutional Inaction

Zelle offers near instantaneous movement of money and once the transfer is initiated, the money is immediately removed from the consumer's bank and placed into the recipient's bank where it is available within minutes.^{2 3 4} Even if the consumer immediately realizes that the transfer was fraudulent, the consumer cannot cancel the transaction if the recipient is enrolled with Zelle.⁵ There is little to nothing consumers can do to get their money back if the financial institution receiving the fraudulently induced payment refuses to cooperate, despite the clearly fraudulent nature of the transaction, and even when the transfer is suspicious, sent to a bank account that is not the consumer's, and has every other indicator of fraud. In fraudulently induced Zelle transactions, the position taken by bank employees and bank attorneys is that because the consumer was involved in the transfer and authorized a payment, there is no remedy for the consumer under the Electronic Funds Transfer Act ("EFTA"), and no duty by the bank to credit the consumer's account.^{6 7} The banking industry's "you snooze, you lose" response frustrates consumers and their advocates because these banks maintain enormous amounts of data related to the account activities of their consumers, claim to have sophisticated security systems, and invest millions in digital security and advanced software solutions to detect and scrutinize suspicious banking activity.^{8 9} If these systems are so sophisticated, how can they allow this fraud to continue?

Frustratingly, consumers who have been harmed by fraudulently induced Zelle transfers are offered little to no protection under current laws. Despite bringing the fraudulent transaction

² <https://www.chase.com/business/support/banking/online-banking/Zelle>;

³ <https://promotions.bankofamerica.com/digitalbanking/mobilebanking/Zelle#disclosure-961064947> "Send and receive money in minutes."

⁴ <https://www.Zellepay.com/faq/how-long-does-it-take-receive-money-Zelle> "Money sent with Zelle is typically available to an enrolled recipient within minutes."

⁵ <https://www.Zellepay.com/faq/can-i-cancel-payment>

⁶ 15 U. S. C. § 1693 *et seq*

⁷ <https://www.Zellepay.com/safety-education/fraud-scams-overview>

⁸ <https://www.chase.com/digital/resources/privacy-security/security/how-we-protect-you>

⁹ <https://www.wellsfargo.com/privacy-security/fraud/protecting-you/>

to the bank's attention, consumers face an appalling response of victim-blaming, as financial institutions refuse to conduct a thorough investigation or provide restitution by crediting the consumer's account. Financial institutions must be held accountable for these transactions, just as they would be if the fraudulent transaction occurred through a credit card purchase. When using a credit card, consumers have the ability to dispute charges and seek reimbursement from the card issuer in cases of fraud or scams. There is no justifiable reason for this stark discrepancy in consumer protection simply because the transaction occurred through a peer-to-peer payment app like Zelle. The banking industry cannot be allowed to draw this arbitrary line that leaves consumers vulnerable and without recourse. Comprehensive reforms are urgently needed to extend robust fraud protections to cover these modern digital payment methods, ensuring that consumer rights and remedies keep pace with financial innovation.

Banks' Deficient Investigations Betray Consumer Trust

Each instance of fraudulent Zelle transfer presents unique challenges. Financial institutions have not only exploited gaps in the existing EFTA, leaving only a small fraction of victims protected against the rapidly escalating problem of peer-to-peer payment fraud, but these institutions also fail to comply with the well-established investigation requirements enumerated in the EFTA.¹⁰

All transactions disputed by a consumer as unauthorized must be promptly investigated by the consumer's financial institution, including those that are fraudulently induced.¹¹ Despite consumers' persistent attempts to resolve the fraudulent Zelle transfers directly with their financial institution, these consumers find themselves stuck and unable to recover their losses through the bank's internal channels.

When a consumer discovers a fraudulent Zelle transfer, they must dispute the transaction with the bank. The dispute process is rarely simple for the consumer and requires diligence and persistence to navigate. Consumers spend countless hours calling banks, having calls drop, calling back, waiting on hold, re-explaining the fraud to every new representative that their call is routed to, sending in letters, asking for their complaints to be escalated or reviewed and decisions to be reconsidered. They even take time out of their day to personally visit a bank branch to dispute the transactions. Banks often require additional information or demand a police report, delaying the investigation, even though the bank is required to begin an investigation promptly upon notice from the consumer.¹² When banks decide to investigate, the banks only conduct a very cursory review of information in an attempt to satisfy their EFTA investigation duty. Financial institutions

¹⁰ 15 U. S. C. § 1693f(a)(3)

¹¹ 15 U. S. C. § 1693f(a)(3)

¹² 12 C. F. R. § 1005.11, comment 11(b)(1)-2 and comment 11(c)-2.

do not carry out a “close examination and systemic inquiry”¹³ to determine whether the consumer knowingly conducted or authorized the Zelle transactions. They look at the date the transaction happened, confirm it happened and conclude that the consumer was not a victim of fraud. Upon conclusion of this review, the banks respond and blame the consumer for the fraud or make a blanket statement that the consumer authorized the transaction and no credit will be made to the consumer’s account. Consumers are rarely, if ever, provided with a detailed explanation, despite provisions in the EFTA requiring the banks to disclose the information they relied upon to come to their decisions.¹⁴ As a result, consumers are left frustrated and financially vulnerable, without a satisfactory resolution from their banks. Consumers lose trust in the very banking system that promised to keep their money safe. Filing suit against a bank for failing to do its job under the Electronic Funds Transfer Act is the consumer’s last and most undesirable resort. None of my clients have ever been excited at the prospect of taking their bank to court. When a lawsuit is filed, the war with transparency continues.

Legal Action Exposes Banks’ Fear of Transparency

Banks avoid transparency at every turn. Upon filing a complaint, many banks immediately demand that the case be moved into arbitration, where a consumer’s rights are significantly limited, the results are never public, there is no right to appeal and the decisions are not subject to public review. Because the hearings are private and the results are unpublished, consumers are unable to review the process or decisions to better understand what happened in other cases, and how they might avoid the same or similar fates. Where arbitration is not demanded, the lack of transparency in the bank’s investigation process and many times, the banks outright refusal to provide documentation and even employee names, necessitate extracted motion practice in court to compel evidence financial institutions do not want consumers to see.

Consumers are met with strong resistance from the defendant banks and their attorneys when they litigate these matters. In litigation, to determine whether the bank was justified in determining the fraudulent Zelle transfers were authorized, the primary question is - what did the bank do to investigate the transaction? This is at the heart of nearly every fraudulent Zelle transaction case consumers bring. Consumers eventually discover the investigations can hardly be characterized as investigations at all. Banks conduct cursory reviews of a few data points that fit the narrative the bank believes will save it the most time and money. The reviews conducted by the banks look like they set out to prove that the transaction happened, not that the transaction was made by or authorized by the consumer. We often see banks ignoring evidence that clearly indicates the Zelle transfer was not authorized. For example, evidence often ignored or not considered seriously by banks include the addition of a new recipient whose name is a sequence

¹³ Merriam-Webster (n.d.) Investigate. In *Merriam-Webster.com dictionary*. Retrieved May 17, 2024, from <https://www.merriam-webster.com/dictionary/investigate>

¹⁴ 15 U. S. C. § 1693f(d)

of random numbers and letters, the sudden addition of new devices, transactions initiated from IP addresses that are not an IP address associated with the consumer, a Zelle transaction pattern that is not similar to how the consumer has used Zelle previously, and multiple transactions in similar amounts occurring over the course of multiple days. The investigative processes currently employed by financial institutions amount to nothing more than a mere perfunctory review of a limited set of information, falling remarkably short of the thoroughness required by the EFTA.

When consumers successfully settle their cases, the transparency wars continue. Consumers who settle these disputes are frequently required to sign confidential settlement agreements that forbid them from disclosing the terms or even continuing their banking relationship with the financial institution and its affiliates. This draconian measure silences victims and perpetuates a shroud of secrecy around these cases. The implications are profound, as consumers are effectively penalized for exercising their legal rights and forced to sever long-standing banking relationships as a condition for obtaining a resolution.

Consumers face a deeply concerning prevalence of victim-blaming by financial institutions, substandard investigative methodologies, and an overall atmosphere of unjustified skepticism. The banking industry must do better to protect and rectify fraud perpetrated through Zelle, irrespective of the manner in which the fraud is perpetrated.

Shifting the Responsibility: Industry Accountability and Legislative Reform

The banking industry's proposed solution – educating consumers – is a reactive measure that comes too late, implemented only after financial institutions have already expended vast resources gathering data and analyzing fraud patterns involving Zelle transactions. This approach places an undue burden on consumers, expecting them to stay perpetually informed about the ever-evolving landscape of scams and deceptive tactics employed by fraudsters. Meanwhile, banks, with their extensive data analytics capabilities and insider knowledge of fraud trends, are better positioned to proactively identify and mitigate risks. Instead, the banking industry should take more responsibility in addressing Zelle fraud. Banks can flag suspicious transactions and include a short waiting period before those funds are made available, or transfer those flagged transactions into a holding account for a certain amount of time before releasing them to the recipient bank. These proactive steps would introduce a crucial buffer period, enabling banks to leverage their advanced analytics to identify and halt potentially fraudulent Zelle transfers before they are irreversibly completed.

Additionally, legislative changes must be made to strengthen consumer protection or peer to peer payment transactions such as Zelle including:

- Banning forced arbitration between financial institutions and consumers;

- Providing broader protections to consumers who are deceived into initiating a Zelle transfer;
- Clarifying that financial institutions are required to investigate Zelle transactions that are the result of mistake, fraud or deception;
- Requiring financial institutions share their investigatory details and supporting documentation for all disputed transactions under the EFTA;
- Inclusion of a punitive damages provision in the EFTA which will provide a better incentive to banks to follow the mandates of this law.

Thank you for the opportunity to address this critical issue before the committee today. It is imperative that we take decisive action to combat the pervasive problem of Zelle fraud, and protect consumers from the devastating financial and emotional consequences. The banking industry must be held to a higher standard of accountability, transparency, and responsiveness in investigating and resolving fraudulent Zelle transactions. Strengthening consumer protections under the Electronic Funds Transfer Act, eliminating forced arbitration, and implementing additional safeguards within the Zelle platform itself are essential steps in the right direction. By working together to enact these necessary reforms, we can restore trust in our banking system, provide victims with the support and restitution they deserve, and create a safer financial environment for all. Thank you.