SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

Stephanie M. Hirl v. Bank of America, N.A. (A-42-08)

(NOTE: This Court wrote no full opinion in this case. Rather, the Court's affirmance of the judgment of the Appellate Division is based substantially on the reasons expressed in Judge Cuff's written opinion below.)

Argued March 10, 2009 -- Decided April 1, 2009

PER CURIAM

The matter before the Court relates to the scope of an authorized disclosure of "information relative to an electronic fund transfer or account to a third party" under N.J.S.A. 17:16K-3 of the Electronic Fund Transfer Privacy Act (EFTPA) and whether the EFTPA applies to any account with electronic fund transfer capability regardless of whether there had been an actual electronic fund transfer.

Suzanne Hirl filed a complaint seeking compensatory and punitive damages following the production of her bank records by Bank of America, N.A. (BOA) in response to a facially valid subpoena. She filed a similar complaint on behalf of her minor daughter, Stephanie. The facts leading to the production of Hirl's bank records are undisputed. Hirl and her former husband had an ongoing dispute in respect of support payable by the former spouse. On June 29, 2006, a facially valid subpoena in a matrimonial action was served on BOA, requesting production on July 10, 2006 of, among other things, information on Hirl's checking and savings accounts from August 2005 through June 2006. The subpoena informed BOA that "the subpoenaed evidence shall not be produced or released until *July 10, 2006*." The subpoena also notified the recipient that it must not produce the subpoenaed information if notified that a motion to quash the subpoena had been filed. The recipient was also informed that an appearance was not required if the documents were delivered before July 10.

By letter dated June 29, 2006, Hirl's attorney informed BOA that a motion to quash the subpoena was going to be filed. On July 6, 2006, BOA delivered documents in response to the subpoena that included a checking account for Hirl, a savings account in the name of her daughter, Stephanie, and savings accounts for three children of the marriage. On July 10, 2006, Hirl's attorney filed a motion to quash the subpoena, which was granted on July 21, 2006. An order to quash was entered on July 26, 2006. By correspondence dated July 24, 2006, BOA was notified that a motion to quash had been filed and granted.

At a bench trial, Hirl testified that she felt "violated" by the release of her subpoenaed bank records to her former spouse. She claimed that her former husband had hired a private investigator to gather information on the financial condition of her daughter Stephanie, her child from a previous marriage. In reaction to the turnover of her bank records, Hirl testified that she closed her accounts at BOA, opened an account at a smaller local bank, and avoids depositing most of her earnings in a bank. She bought a safe for her money and installed a security system in her home. Hirl also testified that she had suffered great embarrassment due to the actions of BOA because people knew what had occurred. She further testified that Stephanie now refused to allow any of her monetary gifts to be deposited in a bank account, insisting that that money be held in her mother's safe.

The trial judge found that BOA violated the EFTPA, allowing him to award compensative and punitive damages and award attorneys' fees. The judge reasoned that Hirl's attorney had notified BOA not to release the information sought in the subpoena by the attorney's call to BOA notifying it that a motion to quash the subpoena would be filed. Upon finding that the release of information on the account held by Hirl for her daughter Stephanie was a reckless violation of N.J.S.A. 17:16K-6, the judge awarded $2,500 in punitive damages. As to Suzanne Hirl, the judge also found a violation, awarding compensatory damages

of $450 and $2,000 in damages for her embarrassment and humiliation. The judge also awarded attorneys' fees in the amount of $3,420.

BOA appealed. The Appellate Division reversed the judgments in favor of Hirl and her daughter and remanded for further proceedings, noting that in order to invoke the remedial provisions of the EFTPA, Hirl must establish that the accounts she maintained for herself and her daughter at BOA were qualifying accounts. In reaching its conclusion, the Appellate Division looked to the federal Right to Privacy Act as well as the EFTPA. The Appellate Division noted that the EFTPA defines "account" and "electronic fund transfer" but does not define an electronic fund transfer account. Its definition of account is broad, thus, the panel looked to determine whether the EFTPA applies only to electronic fund transfers and electronic fund transfer accounts or includes all ordinary consumer accounts maintained by consumers at a financial institution. The Appellate Division noted that the ambiguity is resolved somewhat by the text and legislative history of the EFTPA, finding that Committee statements suggest that the EFPTA was intended to cover only electronic fund transfers and consumer accounts that are electronic fund transfer accounts.

The Appellate Division noted that the EFTPA is remedial legislation and should be construed liberally to effectuate its purpose to protect consumers. The interpretation afforded the federal statute that applies its protection to any account with electronic fund transfer capability appeared to the Appellate Division to be a sensible interpretation of the language of the EFTPA. Thus, the panel concluded that if information pertaining to such an account is improperly disclosed, the consumer may invoke the remedies provided under the EFTPA.

In applying its determination to the facts of this case, the panel held that BOA, in releasing the bank records, acted negligently as to Suzanne Hirl and recklessly in respect of Stephanie Hirl. As to Suzanne Hirl, her attorney notified BOA of the intended motion to quash the subpoena; therefore, the early production of the documents was improper. As to Stephanie Hirl, her account was created pursuant to the Uniform Gift to Minors Act and her mother's connection to the account was custodial only and should not have been released. According to the Appellate Division, if Hirl is able to establish on remand that the accounts were qualifying accounts under the EFTPA, she and Stephanie are entitled to the compensatory damages, punitive damages, and attorneys' fees previously awarded.

The Supreme Court granted certification.

HELD: In the context of the Electronic Fund Transfer Privacy Act, the word "account" cannot be isolated from the phrase "electronic fund transfer." Nor can the word "account" be read so as not to exist within the disclosure authorization of N.J.S.A. 17:16K-3. Thus, N.J.S.A. 17:16K-3 permits a financial institution to disclose information to a third party as prescribed by the statute relative to an electronic fund transfer or an account with electronic fund transfer capability as elected by the consumer. Accordingly, the Court adopts the Appellate Division's construction of the Act and N.J.S.A. 17:16K-3 substantially for reasons expressed in the written opinion below.

1. Given the limited question on which certification was granted, the Court does not address or comment on the other issues considered by the Appellate Division.

Judgment of the Appellate Division is **AFFIRMED** and the matter is **REMANDED** to the trial court for further proceedings consistent with the opinion of the Appellate Division.

CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, RIVERA-SOTO, HOENS, and JUDGE STERN, temporarily assigned, join in this PER CURIAM opinion. JUSTICES LONG, ALBIN and WALLACE did not participate.

SUPREME COURT OF NEW JERSEY
A-42 September Term 2008

STEPHANIE M. HIRL, a minor,
by her guardian ad litem,
SUZANNE HIRL,

Plaintiff-Respondent,

v.

BANK OF AMERICA, N.A.,

Defendant-Appellant.

SUZANNE F. HIRL,

Plaintiff-Respondent,

v.

BANK OF AMERICA, N.A.,

Defendant-Appellant.

Argued March 10, 2009 -- Decided April 1, 2009

On certification to the Superior Court, Appellate Division, whose opinion is reported at 401 N.J.Super. 573 (2008).

Michael T. Collins argued the cause for appellant (Sodini & Spina, attorneys; Gregg S. Sodini on the brief).

Edward M. Thompson argued the cause for respondents (Callaghan Thompson & Thompson, attorneys).

PER CURIAM

We granted certification to decide whether the New Jersey Electronic Fund Transfer Privacy Act, N.J.S.A.

17:16K-1 to -6, applies to any account with electronic funds transfer capability regardless of whether there has been an actual electronic fund transfer. Hirl v. Bank of Am., N.A., 196 N.J. 597 (2008). The specific issue relates to the scope of an authorized disclosure of "information relative to an electronic fund transfer or account to a third party" under N.J.S.A. 17:16K-3. Plaintiff contends that the statute applies to any "account," as defined in N.J.S.A. 17:16K-2(b), whereas the bank contends that it applies only to an actual "electronic fund transfer," as defined in N.J.S.A. 17:16K-2(c).

We conclude that, in the context of the Electronic Fund Transfer Privacy Act, the word "account" cannot be isolated from the phrase "electronic fund transfer." Nor can the word "account" be read so as not to exist within the disclosure authorization of N.J.S.A. 17:16K-3. We therefore agree with the Appellate Division that N.J.S.A. 17:16K-3 permits a financial institution to "disclose information to a third party as prescribed by the statute relative to an electronic fund transfer or an account with electronic fund transfer capability as elected by the consumer." See Hirl v. Bank of Am., N.A., 401 N.J. Super. 573, 584 (App. Div. 2008). Accordingly, we adopt the Appellate Division's construction of the Act and N.J.S.A.

17:16K-3 substantially for the reasons expressed in its opinion.

Given the limited question on which certification was granted, we do not address or comment on the other issues considered by the Appellate Division. The judgment is affirmed, and the matter is remanded to the trial court for further proceedings consistent with the opinion of the Appellate Division.

CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, RIVERA-SOTO, HOENS and JUDGE STERN, temporarily assigned, join in this opinion. JUSTICES LONG, ALBIN, and WALLACE did not participate.

SUPREME COURT OF NEW JERSEY

NO. A-42 SEPTEMBER TERM 2008

ON CERTIFICATION TO Appellate Division, Superior Court

STEPHANIE M. HIRL, a minor,
By her guardian ad litem,
SUZANNE HIRL,

Plaintiff-Respondent,

v.

BANK OF AMERICA, N.A.,

Defendant-Appellant.

DECIDED April 1, 2009

Chief Justice Rabner PRESIDING

OPINION BY Per Curiam

CONCURRING/DISSENTING OPINIONS BY

DISSENTING OPINION BY

CHECKLIST	AFFIRM AND REMAND	
CHIEF JUSTICE RABNER	X	
JUSTICE LONG	---------------------	--------------------------
JUSTICE LaVECCHIA	X	
JUSTICE ALBIN	----------------------	--------------------------
JUSTICE WALLACE	----------------------	---------------------------
JUSTICE RIVERA-SOTO	X	
JUSTICE HOENS	X	
JUDGE STERN (t/a)	X	
TOTALS	5	