

Grant & Eisenhofer Wins Jury Trial against Overstock.com

Jury finds that Overstock.com failed to report and remit dormant gift card balances to State of Delaware

WILMINGTON, DELAWARE (September 21, 2018) – Grant & Eisenhofer won a jury verdict on behalf of a whistleblower who exposed a scheme by Overstock.com (NASDAQ: OSTK) to avoid reporting and remitting to Delaware millions of dollars in dormant gift cards.

Stuart Grant, who recently retired as managing director of Grant & Eisenhofer, led the trial team, along with G&E director **Mary S. Thomas** and associate **Laina M. Herbert**.

Following a five-day trial in Delaware Superior Court, a 12-person jury found that Overstock failed to report and remit unredeemed gift card balances that by law should have been reported to the State of Delaware as unclaimed property. As a result, Overstock was found to have violated Delaware’s False Claims and Reporting Act over a four-year period (2010-13). The unanimous verdict was handed down on September 20.

The aggregate amount of unreported gift card balances was just under \$3 million – under terms of Delaware’s whistleblower statute, Overstock is liable for treble damages plus statutory fines and attorneys’ fees. Total damages will be determined by presiding Superior Court Judge Paul R. Wallace.

The lawsuit exposed a common occurrence in the gift card industry – what happens when large numbers of cards go unused, giving issuers essentially free cash. Over a period of time – five years in Delaware – issuers are required to turn over unredeemed amounts to the state.

Jurors found that Overstock entered into a contract with Ohio-based company **CardFact Ltd.** (now known as Card Compliant) attempting to avoid its obligations to Delaware to report and remit dormant gift card balances to Delaware. The Jurors rejected Overstock’s claim that the unused gift card balances were transferred to CardFact and therefore should have been reported and remitted to Delaware after five years for safekeeping.

“We are not surprised that the jurors had no trouble seeing through the scam that Overstock tried to pull,” Mr. Grant said. This case was simple and straight-forward. Overstock had a legal obligation to report and turn over almost \$3 million dollars from unused gift cards to the State. The Company knew the law and instead of following it, they intentionally tried to evade their obligation. We are pleased that the jury saw through the CardFact scheme and held Overstock accountable.”

Grant & Eisenhofer represented whistleblower William Sean French, a former employee of CardFact. Under Delaware’s False Claims Act, by reporting Overstock’s scheme to the State, Mr. French is entitled to receive a portion of the recovery.

The case is captioned: *The State of Delaware ex. rel. William Sean French v. Overstock.com, Inc.* (Superior Court of Delaware C.A. No. N13C-06-289 PRW CCLD).

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