The congressionally stated purpose of the TILA is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." 15 U.S.C.A. § 1601. The Federal Reserve Board, pursuant to authority granted it by Congress, has promulgated rules and regulations to implement the TILA, collectively known as Regulation Z. 12 C.F.R. § 226.1 et seq. Courts are to require strict adherence to Regulation Z. "A creditor who fails to comply with TILA in any respect is liable to the consumer under the statute regardless of the nature of the violation or the creditor's intent." Smith v. Fidelity Consumer Discount Co., 898 F.2d 896, 898 (3d Cir. 1990) (citing Thomka v. A.Z. Chevrolet, Inc., 619 F.2d 246, 249-50 (3d Cir. 1980)). "`[O]nce the court finds a violation, no matter how technical, it has no discretion with respect to liability.'" Id. (citing Grant v. Imperial Motors, 539 F.2d 506, 510 (5th Cir. 1976)). Of most significance in this case is 12 C.F.R. § 226.23(b)(1), which requires, among other things, a creditor to "deliver two copies of the notice of the right to rescind to each consumer entitled to rescind. . . ." 12 C.F.R. § 226.23(b)(1). When there are two signatories to the contract, each one must receive two copies, making for a total of four copies. See, e.g., In re Meyer,

379 B.R. 529, 546 (Bankr. E.D. Pa. 2007); Stone v. Mehlberg, 728 F. Supp. 1341, 1353 (W.D. Mich. 1989).

The Jobes argue that Argent Mortgage failed to comply with 12. C.F.R. § 226.23(b)(1), thus triggering their right to rescind under 12 C.F.R. § 226.23(a). To exercise the right to rescind, a consumer has:

> until midnight of the third business day following consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, whichever occurs last. If the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first.

12 C.F.R. § 226.23(a)(3). Because Argent Mortgage allegedly failed to provide all material disclosures, namely two copies of the Notice of Right to Cancel to each of them (a total of four copies), the Jobes contend they validly rescinded their contract on February 15, 2006, less than three years after the March 25, 2005 date of consummation. Argent Mortgage counters by arguing that the Jobes' verified complaint alone, without additional corroborative evidence, is insufficient to rebut the presumption under 15 U.S.C. § 1635(c) that the Jobes each received two copies of the Notice of the Right to Cancel. (Def.'s Mot. Summ. J., at 6.)

15 U.S.C. § 1635(c) provides: "Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this subchapter by a person to whom information, forms, and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof." 15 U.S.C. § 1635(c). Thus, the Jobes' signatures at the bottom of the Notice of Right to Cancel create a rebuttable presumption of delivery of the two copies of the Notice of Right to Cancel. Stone, 728 F. Supp. at 1354. The burden then shifts to the Jobes to rebut the presumption that they each received two copies of the Notice of Right to Cancel.

As rebuttal evidence, the Jobes submit their verified complaint, which claims Argent Mortgage failed to give them each two copies of the Notice of Right to Cancel. (Compl. ¶ 17.) At their depositions, however, the Jobes testified that they could not remember what was given to them at the time of the closing. (Ian Jobe Dep., at 15; Catherine Jobe Dep. Dkt. Entry 23-5, at 35.)

The conflicting versions of what was delivered at the closing are not capable of resolution on summary judgment motions. Where a borrower's testimony has been found insufficient to rebut the presumption of delivery, there have been extenuating factors that revealed the self-serving testimony

to be unreliable. For example, in Sibby v. Ownit Mortg. Solutions, Inc., 240 F. App'x. 713, 717 (6th Cir. 2007), the court concluded that "[p]laintiff's deposition testimony that she only received one copy [of the Notice of Right to Cancel] is insufficient to rebut this presumption" given the fact that plaintiff had been deemed to have admitted receipt when she failed to respond to requests for admission. In Williams v. First Gov't Mortg. & Investors Corp., 225 F.3d 738, 751 (D.C. Cir. 2000), the court, noting that the district court had ample reason for finding plaintiff's trial not credible, affirmed the district court's determination that the plaintiff failed to rebut the presumption of delivery "because [plaintiff] offered no evidence of non-delivery beyond his trial testimony." In McCarthy v. Option One Mortg. Corp., 362 F.3d 1008, 1012 (7th Cir. 2004), the court affirmed the district court's grant of summary judgment, reasoning that "[e]vidence of regular office procedures and customary practices of a sender gives rise to a presumption of delivery and this Court has rejected the notion that this type of evidence may be rebutted by a mere denial of receipt." In Strang v. Wells Fargo Bank, N.A., No. Civ. A.04-CV-2865, 2005 WL 1655886, at *3 (E.D. Pa. July 13, 2005), the court awarded summary judgment to the lender where the borrower's filings in bankruptcy court belied their assertion that disclosures had not been provided.

Where a borrower's denial of receipt of the pertinent documents is not controverted, the presumption of delivery is rebutted and summary judgment in favor of the borrower may be warranted. See, e.g., Stone, 728 F. Supp. at 1354 (finding plaintiffs' affidavits sufficient to rebut the presumption, entitling them to summary judgment as a matter of law as the lender did not submit any evidence beyond the signed acknowledgment of receipt). Some courts have found that a borrower's testimony that he or she did not receive the TILA disclosure statement rebutted the presumption of delivery and created a question of fact. E.g., Schumacher v. ContiMortgage Corp., No. C99-160 MJM, 2000 WL 34030847, at * 3 (N.D. Iowa June 21, 2000) ("Courts have consistently held that a debtor's testimony that he/she did not receive the TILA disclosure statement is sufficient to rebut the presumption that he/she did."); Davison v. Bank One Home Loan Services, No. 01-2511, 2003 WL 124542, at *4 (D. Kan. Jan. 13, 2003) (denying the defendant bank's motion for summary judgment, finding the plaintiff's testimony sufficient to rebut the presumption and create issue of fact); Cooper v. First Gov't Mortg. & Investors Corp., 238 F. Supp. 2d 50, 64-65 (D. D.C. 2002) (holding, on cross-motions for summary judgment, that the plaintiff's testimony is sufficient to overcome the presumption of delivery so as to

create issue of fact for trial); Williams v. Gelt Fin. Corp., 237 B.R. 590, 595 (E.D. Pa. 1999) (affirming the bankruptcy judge's factual finding that plaintiff's testimony was credible and therefore plaintiff sufficiently rebutted the presumption). The D.C. Circuit has observed that borrowers face a low burden in rebutting this presumption under the TILA. Williams v. First Gov't Mortg. & Investors Corp., 225 F.3d at 751.[fn6]