



AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

Case Number: 01-20-0015-5778

Greggory Businger

-vs-

US Bank, N.A.

AWARD OF ARBITRATOR

I, Lane Montz, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named parties, and having been duly sworn, and oral hearings having been waived in accordance with the Rules, and having fully reviewed and considered the written documents submitted to me by the parties, each represented by counsel, do hereby, AWARD, as follows:

Exhibits and Objections

As an initial matter, the parties submitted a large number of Exhibits and briefing documents. Claimant submitted over 130 pages of materials. Respondent submitted over 250 pages. Respondent objected to Claimant's Exhibits 1, 3, and 12-19 on various grounds but because arbitrations are more procedurally informal than trials the rules of evidence are relaxed. I considered every Exhibit and document submitted but did consider Respondent's objections when weighing the value of the challenged Exhibits.

Summary of Dispute

This case is about a two-stage hold Respondent placed on Claimant's ReliaCard prepaid debit card and account from September 30, 2020 to October 14, 2020 and then again from October 15, 2020 to October 19, 2020. Claimant obtained this ReliaCard to receive and access his unemployment benefits when laid off during the Covid pandemic.

Respondent initiated the first hold under its suspected fraud protocols after Claimant called to change his address. Claimant says the forms of proof Respondent required were too difficult and severe, and even more difficult because the hold prevented him from accessing his account documents online. He uploaded the proof on October 8, 2020 in a zip file but Respondent kept the hold in place because it couldn't open the file. Respondent finally opened the zip file on October 14, 2020, after which it released the holds. However, it again placed the card and account on hold the next day for the same reasons.

Claimant uploaded the documents again on October 17, 2020. Again, Respondent couldn't open the documents and asked for them as pdfs. Finally, on October 19, 2020, Respondent released the card and account holds, allowing Claimant access to his funds. Claimant spent all but a small fraction of the funds over the following days and has not used the card since.

Review of Claims and Defenses

Claimant's Common Law Claims

Part of Claimant's Demand is based on the common law claims of breach of contract and "money had and received." Claimant relies on a 2014 cardholder agreement but I find the 2018 agreement submitted by Respondent applies. I find no breach of contract because the sentence "We may terminate or suspend this Agreement or any features or services of the Card ..." permitted Respondent to put the card and account on hold here.

I also find the equitable claim of "money had and received" doesn't apply because the parties had a contract and Claimant did eventually get his funds. The loss of use of the \$571.77 for 20 days is too numerically trivial to make an award of equity here.

Claimant's EFTA Claims

Claimant's main claims are for statutory violations of Electronic Funds Transfer Act (EFTA), which imposes liability when "the financial institution's failure to make an electronic fund transfer, in accordance with the terms and conditions of an account, in the correct amount or in a timely manner when properly instructed to do so by the consumer". Since there is no dispute Respondent did impose 2 consecutive holds on Claimant's card from September 30 to October 19, 2020, the question is whether those actions were reasonably justified - and reasonably implemented.

I find that financial institutions like the Respondent *can* put holds on cards and accounts when there are potential fraud indicators. A customer calling to change his address seems like a borderline justification at best but I give Respondent the benefit of the doubt. However, once the hold is imposed, the Respondent's process to lift the hold *must reasonable and enforced with due diligence* to avoid a statutory violation.

Here, the kind of proof Respondent wanted here seems severe, especially since it didn't ask for that same kind of proof when Claimant opened the account. Respondent says the law doesn't require it to verify a cardholder's identity when a ReliaCard is opened. That may be true but it misses the point: the proof required was an *unexpected* hardship compared to how easy it was to open the account, and more so for someone depending on these funds while unemployed.

Additionally, Respondent must act with reasonable diligence and speed when processing the documents supplied. It never truly explained why it couldn't open Claimant's zip file or fax. Neither does it sufficiently explain why it reinstated another hold on October 15, 2020, again apparently for proof of identity reasons, after it released the same hold the day before after getting proof of identity.

The arbitration awards submitted by the parties were only marginally helpful because there were cases where holds were reasonable and cases where holds lasted too long.

For these reasons, I find Respondent did violate the EFTA, entitling to Claimant to statutory damages of \$750.00 and attorney fees.

Claimant's Consumer Claims

I also find that by violating the EFTA, Respondent also violated Ohio's Consumer Sales Practices Act (OCSPA), which prohibits unfair, deceptive, or unconscionable practices in a consumer transaction, which applies to every step in a consumer transaction and not just the contract terms. I find the limited documents Respondent was willing to accept as proof of identity, its slow processing of them, and its reinstatement of the same hold the day after it lifted it were unfair.

I award \$250 in statutory damages for this claim.

Conclusion

In summary, I award Claimant \$750.00 in damages for the EFTA claim and \$250.00 for the OCSPA claim. I also award Claimant \$1,500.00 in *reasonable* attorney fees for both claims.

The administrative fees of the American Arbitration Association (AAA) shall be borne as incurred, and the compensation of the arbitrator totaling \$2,700.00 shall be borne as incurred.

The above sums are to be paid on or before 30 days from the date of this Award.

This Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

July 7, 2021

Date

Lane Montz

Lane Montz, Arbitrator