



AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

Case Number: 01-18-0003-3282

Allen Hass, Claimant

-vs-

Green Dot Bank Respondent

AWARD OF ARBITRATOR

I, Patricia A Nolan, 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:

Claimant opened and funded a demand deposit account with Respondent. In this arbitration, he has asserted claims based upon an alleged breach of contract, violation of the Utah Consumer Sales Practices Act, and multiple violations of the Electronic Funds Transfer Act, Regulation E (12 C.F.R. 205). He also seeks recovery of attorney's fees and costs. Pursuant to the parties' agreement, Utah law applies.

Respondent asserted a counterclaim for attorney's fees and reallocation of arbitration costs to Claimant on grounds that his claims are frivolous.

Analysis

1. Breach of Contract: Claimant contends that Respondent breached its agreements with him when it failed to credit him for a series of unauthorized charges in the total approximate amount of \$1,500.00, failed to provide requested documents, and required excessive documentation. Claimant seeks recovery of the unauthorized charges, plus legal fees and costs of suit. Nowhere in the Summary of Claim or accompanying Declaration is there any detail concerning the allegedly unauthorized charges, their dates, amounts or payees.

Respondent's Response and supporting documentation show that Claimant disputed three charges that were incurred during the period July 31 – August 1, 2018. According to Claimant's dispute report, others had access to his card and/or pin (the report is unclear) because he wrote his pin number on the sleeve that held the card. Respondent asserts, via a declaration, that Claimant reported that he had lost his wallet and the note with the pin number, but there is no evidence of this other than the Respondent's declaration, and Claimant vehemently denies ever reporting that he lost his card.

Respondent also provided Claimant's transaction report, which shows that his card was used multiple times on July 31 and August 1, 2018, for charges made with the physical card. Claimant did not dispute many of these charges. Respondent further asserts that despite being aware that his card and/or his pin may have been compromised, Claimant made no effort to change his pin number to protect his account. With regard to the dispute handling breach of contract claims, Respondent asserts that it responded to the dispute timely and that it never received any request from Claimant for its investigative documents.

Respondent has the burden of proving that it acted appropriately in deciding that it would not credit Claimant for the charges he disputed. I find in favor of Claimant because Respondent (1) offered no documentation to support the claim in its declaration that Claimant has reported that he lost his card, wallet, and a note bearing his pin number – a claim that Claimant vehemently disputes, (2) this lost wallet claim is not found in the dispute report itself, and (3) the argument and evidence concerning Claimant's pattern of spending is unconvincing in view of the nature, location and size of the challenged transactions. Claimant is awarded \$1,500.00 in damages.

2. Violation of the Utah Consumer Sales Practices Act: Claimant asserts that Respondent engaged in deceptive or unconscionable practices concerning its claims handling and other practices and its willingness to refund fraudulent charges. Claimant has failed to prove this claim by a preponderance of credible evidence.
3. Violations of the Electronic Funds Transfer Act. Claimant asserts several violations of the Act. With regard to the unauthorized electronic funds transfer claim, I find in favor of Respondent for the same reasons stated above concerning the breach of contract claim. I award \$250.00 in damages.

Although Claimant asserted that Respondent improperly demanded an affidavit/declaration, he did not provide any documentary evidence to show that an affidavit or declaration was requested of him or that he provided one. The dispute form did not require an oath or notary signature. For these reason, I find in favor of Respondent on this claim.

Claimant's other claim that the Act was violated concerned response time – denial. Claimant asserts that because the written response to the dispute report was fairly cursory, it should be considered a failure to timely respond. I find in favor of Respondent. The explanation was cursory but it was timely.

4. Attorney's fees and costs. Claimant is a prevailing party and therefore is entitled to recover his attorney's fees. A claim for \$3,937.50 is supported by a declaration. For this reason, I hereby award the full \$3,937.50 requested.

Accordingly, based on the foregoing:

- Claimant's breach of contract claim is granted and he should recover \$1,500.00.
- Claimant's claim of a breach of the Utah Consumer Sales Practices Act is denied.
- Claimant's Electronic Funds Transfer Act claims are granted in part and denied in part. He is awarded \$250.00.

- Claimant should recover his attorney's fees in the amount of \$3,937.50.
- Respondent's claims for attorney's fees and reallocation of the arbitration costs are denied.

The administrative fees of the American Arbitration Association (AAA) totaling \$1,000.00 shall be borne as incurred, and the compensation of the arbitrator totaling \$750.00 shall be borne as incurred.

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

Sept. 6, 2019



Patricia A Nolan, Arbitrator