

**AMERICAN ARBITRATION ASSOCIATION
Consumer Arbitration Rules**

In the Matter of the Arbitration between

Case Number: 01-20-0003-7896

Crystal Spears (Claimant)

-vs-

Axos Bank, HRB Tax Group, Inc.,
and Emerald Financial Services, LLC (Respondents)

AWARD OF ARBITRATOR

I, Jerome O. Pitt, the undersigned arbitrator, having been designated in accordance with the arbitration agreement entered into by the parties, and having been duly sworn and the parties having elected to proceed as a desk arbitration (documents only) in accordance with the Rules, and having fully reviewed and considered the written documents submitted by the parties, hereby find and award as follows:

I. FINDINGS

Respondents issued Claimant an H&R Block Emerald Prepaid MasterCard (the "Account"). On or about March 2, 2020, Claimant discovered a series of transactions in the Account that she contends were unauthorized. Claimant, in this action, asserts Respondents' violated the Electronic Funds Transfer Act ("EFTA"), 5 U.S.C. § 1693, *et seq.*, as implemented through Regulation E, 12 C.F.R. § 205, *et seq.* Respondents deny having violated those laws.

A. Claim I: Unauthorized Transactions

1. Claimant alleges unauthorized withdrawals were made from the Account between February 26, 2020 and March 2, 2020. The total of those withdrawals was \$4,959.90. Claimant timely notified Respondents of her contentions. She did so initially orally and subsequently in writing.
2. Following Claimant's notification of the error, Respondents contend they conducted an investigation to determine if the disputed transactions had, in fact, been authorized. Respondents subsequently concluded these transactions had been authorized, and on March 12, 2020 sent Claimant a letter to that effect.
3. Pursuant to the EFTA, the Respondents carries the burden of proving the transactions had been authorized. 15 U.S.C. § 1693g. Claimant contends Respondents failed to meet that burden.
4. I find Respondents did not present sufficient evidence showing the transactions were authorized and therefore failed to carry their burden of proof. Therefore, pursuant to 15 U.S.C. § 1693m, Claimant is entitled to recover her actual damages, a statutory penalty of \$1,000, and reasonable attorney fees.

B. Claim II: Affidavit/Declaration

5. Following Claimant's oral notification of the error, Respondents, pursuant to 12 C.F.R. § 205.11(b) (2), required Claimant to submit a written confirmation of the error. However, a 2006 Federal Reserve Compliance Alert does not permit Respondent to require an affidavit or sworn statement.
6. Respondents provided a form for Claimant's written statement (the "Form"). Claimant's Exhibit 2. I find the language contained in the Form constitutes a declaration under the penalty of perjury, which is the equivalent of an affidavit.

7. Respondents assert the Form contains this statement: "... you may write to us separately," which, Respondents argue, means Claimant was not required to use the form containing the declaration. I find that consumers will not understand the difference between using Respondents' form and a separate letter. To the lay public, the distinction between the two forms of writing is illusory.
8. I find Respondents required Claimant to file a prohibited affidavit or sworn statement.
9. Therefore, Claimant is entitled to recover her actual damages, the statutory damages found above, and her reasonable attorney fees. 15 U.S.C. § 1693m.

C. Claim III: Investigative Documents

10. "The institution's report of the results of its investigation shall include a written explanation of the institution's findings and shall note the consumer's right to request the documents that the institution relied on in making its determination. Upon request, the institution shall promptly provide copies of the documents." 12 CFR § 205.11(d)(1).
11. Claimant, in her declaration, alleges she requested but never received those documents. She, therefore, contends Respondents' failure to provide these documents violated the EFTA. Other than the allegation in her declaration, Claimant presented no other evidence supporting that allegation.
12. Respondent denies Claimant ever made a request for these documents.
13. In the absence of evidence of how and when Claimant made her alleged request, I find she failed to prove a request was ever made. Therefore, Respondents prevail on this claim.

D. Claim IV: Failure to Investigate

14. A financial institution, once notified of an error, is required to promptly conduct an investigation and a determination within 10 days following notification of the error. 12 CFR § 205.11(c)(1).
15. Claimant contends Respondents failed to conduct the required investigation and is are therefore in violation of the EFTA.
16. Based on the evidence presented, I find that Respondents conducted an investigation sufficient to meet their statutory obligation—even though that investigation failed to produce sufficient evidence to show that the transactions were, authorized.
17. Therefore, this claim is, denied.

E. Damages

18. Pursuant to 15 U.S.C. § 1693m, I find Claimant is entitled to recover these damages: actual damages in the amount of \$4,959.90; statutory damages in the amount of \$1,000; and her reasonable attorney fees, which I find to be \$7,875.

II. AWARD

I hereby award to Claimant and against Respondents, jointly and severally, the following:

- Actual damages in the amount of \$4,959.90.
- Statutory damages in the amount of \$1,000.
- Attorney fees in the amount of \$7,875.

The administrative fees of the American Arbitration Association (AAA) totaling \$1,900.00 shall be borne as

incurred, and the compensation of the arbitrator totaling \$1,500.00 shall be borne as incurred.

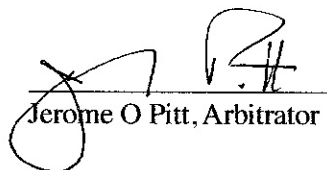
Respondents shall pay the above sums within 10 days from the date of this Award.

I, Jerome O Pitt, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

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

July 16, 2020

Date



Handwritten signature of Jerome O Pitt, consisting of a stylized 'J' and 'P' followed by a horizontal line.

Jerome O Pitt, Arbitrator