



American Arbitration Association

Dispute Resolution Services Worldwide

American Arbitration Association

FINAL AWARD

AAA Case #: 01-18-0003-3293

**Case Name: *Irazema Villalobos,*
*Claimant***

v.

***Green Dot Bank,*
*Respondent***

I, the undersigned Arbitrator, Langdon T. Owen, Jr., having been designated in accordance with the arbitration agreement entered into between the above-named parties, and having been sworn, and the parties having agreed to waive oral hearings in accordance with the Consumer Arbitration Rules of the American Arbitration Association (AAA), and having fully reviewed and considered the written documents submitted to me by counsel for the parties, with Claimant represented by A. Blake Thomas, Esq. of Consumer Fraud Legal Services, LLC, and Respondent represented by Elizabeth M. Shaffer of Dinsmore & Shohl, LLP, hereby AWARD as follows:

This matter arises out of a contract between Claimant and Respondent under which Claimant had a prepaid debit card issued by Respondent, Green Dot Bank. Claimant asserts that unauthorized transfers were made from Claimant's account.

Claimant asserted the following claims against Respondent:

Claim I: Breach of Contract

Claim II: Violation of the Utah Consumer Sales Practices Act

Claim III: Violation of the Electronic Funds Transfer Act ("EFTA") – Regulation E (12 CFR 205), Unauthorized Transaction

Claim IV: Violation of the Electronic Funds Transfer Act – Affidavit/Declaration of Fraud Requirement

Claim V: Violation of Electronic Funds Transfer Act – Regulation E (12 CFR 205), Explanation of Findings

Claim VI: Violation of Electronic Funds Transfer Act – Regulation E (12 CFR 205), Investigative Documents – Response Time

Respondent asserted a counterclaim for Respondent's attorney fees and reallocation of arbitration costs to Claimant.

BACKGROUND

Claimant alleges that an unauthorized withdrawal of \$286.00 was made from an ATM machine using her GoBank card. Respondent found that the transaction was performed using a PIN at the ATM and it occurred near Claimant's geographical area. Respondent, which has the burden of proof as to whether the transaction was authorized, offered a settlement to Claimant and has focused its defense in this matter to damages, without, however, admitting liability. Thus, this dispute now revolves around damages. Respondent investigated the matter and provided Claimant with an explanation of its denial of her claim that stated only that "we have concluded that this is a valid authorized transaction and it will remain on your account." The explanation did not describe the reasons for the denial concerning the use of the PIN and the geographical area involved. Also, the documents Respondent used in reaching its conclusion, such as the PIN report, were not provided to Claimant. Respondent provided a form for Claimant to use in reporting the unauthorized transaction which contained an affidavit the Claimant could use.

CLAIMS

I. Breach of Contract

Respondent did not breach the terms of the card agreement between the parties. It investigated the matter and had reason to conclude that the transaction was authorized. Claimant is not entitled to damages on this claim.

II. Violation of the Utah Consumer Sales Practices Act

For the same reasons that Respondent did not breach any contract, it did not knowingly or intentionally engage in deceptive or unconscionable acts or practices and did not violate the Utah Consumer Sales Practices Act. Claimant is not entitled to damages on this claim.

III. Violation of the Electronic Funds Transfer Act – Unauthorized Transaction

Claimant alleges that an unauthorized transaction was made. Although it had the burden of proof on the issue (15 U.S.C. § 1693g(b)), Respondent did not prove it was authorized. Actual damages are \$286.00.

IV. Violation of the Electronic Funds Transfer Act – Affidavit Declaration of Fraud Requirement

Respondent's provision of a report form to Claimant was not a requirement that the form be used as the exclusive way to present the claim. The use of forms is helpful to organize information. That the Claimant could make an affidavit using the form does not alone indicate that it was required. No violation is found. Claimant is not entitled to damages on this claim.

V. Violation of the Electronic Funds Transfer Act – Explanation of Findings

The explanation provided by Respondent of its findings was inadequate. The reasons for its conclusion were not provided but should have been. Thus, there was a violation by Respondent of the requirement to provide an explanation. The actual damages are the same, as with the other claims by Claimant, for which she is entitled to recover \$286.00.

VI. Violation of the Electronic Funds Transfer Act – Investigative Documents

Respondent used a report on the use of the PIN by Claimant and a report showing the location of the transactions by Claimant and the alleged unauthorized transaction. Respondent did not provide these to Claimant despite a request from Claimant for the documents relied upon by Respondent. Respondent violated the requirement to timely provide such documents. The actual damages are the same as on the other successful claims by Claimant, \$286.00.

Statutory Damages. Statutory damages up to \$1,000.00 are available to Claimant due to the EFTA violations found above. Only one award of such statutory damages is available per action, not the four (up to \$4,000.00) asserted by Claimant. Claimant has not proven the sort of egregious or frequent or persistent non-compliance to justify an award of maximum damages. An award of \$750.00 in damages is justified in this case, particularly where the violations are technical in nature but occurred in a number of cases.

Attorney Fees of Claimant. Claimant pursued a successful action on three of her EFTA claims and, therefore, is entitled to reasonable attorneys' fees with respect to those claims. However, the claim for fees does not allocate time to the particular successful claims, and the time reported as spent is very similar to the assertion of time spent in claims for numerous other claimants brought by Claimant's counsel, was not itemized, and does not seem particularized to this matter and thus has reduced credibility. It does not appear appropriate under the statutory scheme to simply deny Claimant's fees for failure of adequate proof where it is clear some significant time was incurred, and the statutory policy is to protect the cardholder in these situations. The Arbitrator, in reviewing the materials presented by both parties, including references to other cases of a similar nature brought by Claimant's counsel, finds that reasonable fees are not the \$5,687.50 claimed by Claimant, but that such amount should be reduced by 20% to approximate an amount of reasonable fees for the matters for which such fees are available. This amount is a reasonable fee overall for the work performed for which fees are recoverable. Thus, an award to Claimant for attorneys' fees in the amount of \$4,550.00 will be made.

COUNTERCLAIM

Respondent alleges that Claimant's arbitration demand was frivolous and brought in bad faith and for purposes of harassment and seeks attorneys' fees against Claimant. Claimant's claim was not brought in bad faith and was not frivolous. Thus, Respondent is not entitled to an award of fees against Claimant.

Accordingly, based on the foregoing:

1. Claimant's claims I, II, and IV are denied.

2. Claimant is awarded against Respondent actual damages in the amount of \$286.00 on claims III, V, and VI. This is one \$286.00 award for the entire case, not separately on each claim.
3. Claimant is awarded \$750.00 of statutory damages.
4. Attorneys' fees are awarded to Claimant in the amount of \$4,550.00.
5. Respondent's counterclaim is denied.
6. The administrative fees of the AAA totaling \$1,000.00, 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 are denied.

Dated: November 8, 2019

Arbitrator Signature: Langdon T. Owen, Jr.
Langdon T. Owen, Jr.