



American Arbitration Association

Dispute Resolution Services Worldwide

American Arbitration Association

FINAL AWARD

AAA Case #: 01-18-0003-3285

**Case Name: *Vondell Wilbourn,*
*Claimant***

v.

***Unirush, LLC and MetaBank,*
*Respondents***

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 Respondents represented by Elizabeth M. Shaffer of Dinsmore & Shohl, LLP, hereby AWARD as follows:

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

Claimant asserted the following claims against Respondents:

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

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

BACKGROUND

Claimant claims that he did not authorize a series of withdrawals from his Rush Card prepaid debit card account, issued by MetaBank and managed by Green Dot Corporation. Three withdrawal transactions occurred July 26, 2018, each for \$400.00. On the same day, Claimant contacted Respondents to assert these transactions were unauthorized. Respondents immediately deactivated Claimant's card, began issuing a new card, and started an investigation. A dispute form was provided to Claimant, which was received and processed by Respondents on July 28, 2018. The investigation revealed that Claimant said his card was in his possession and control at all times in question, the card was present in person at the disputed transactions, the withdrawals were made using the PIN created by Claimant, there were no PIN changes or inquiries around the time of the disputed transactions, and the withdrawals occurred with the same merchant, Cardtronics, with which Claimant made similar undisputed withdrawals in the months preceding the transactions in question, including on June 25, 2018, in the amounts of \$200.00 and \$400.00, and on March 26, 2018, in the amounts of \$400.00 and \$300.00, and on February 23, 2018, in the amounts of \$400.00, \$400.00, \$400.00, and \$100.00. Also, similar withdrawals were made from the same kind of merchant on May 25, 2018, in the amounts of \$400.00 and \$300.00. The sort of merchant involved in these transactions were ATM machines located in various places in Chicago. Claimant asserts he had not visited the Cardtronics locations of the disputed transactions.

Respondents investigated the matter and provided Claimant with an explanation of their denial of the claims 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, the presence of the card, and the geographical area involved. Also, the documents Respondents used in reaching its conclusion, such as the PIN report, were not provided to Claimant. Respondents 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

Respondents did not breach the terms of the card agreement between the parties. Respondents 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 Respondents did not breach any contract, they 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 unauthorized transactions were made. Respondents have the burden of proof on this issue. 15 U.S.C. § 1693g(b). Respondents proved by a preponderance of the evidence that the disputed transactions were authorized. There are no damages on this claim.

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

Respondents' 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 Respondents of their findings was inadequate. The reasons for their conclusion were not provided but should have been. Thus, there was a violation by Respondents of the requirement to provide an explanation. There are no actual damages.

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

Respondents used a report on the use of the PIN by Claimant and a report showing the presence of the card at the location of the transactions by Claimant and the alleged unauthorized transactions. Respondents did not provide these to Claimant despite a request from Claimant for the documents relied upon by Respondents. Respondents violated the requirement to timely provide such documents. There are no actual damages.

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, frequent, or persistent non-compliance to justify an award of maximum damages. An award of \$500.00 damages is justified in this case, particularly where the violations are technical in nature but occurred in a number of cases and no actual damages were present.

Attorneys' Fees of Claimant. Claimant pursued a successful action on two of his EFTA claims and thus 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, are 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 \$5,337.50 claimed by Claimant, but that such amount should be

reduced by 40% 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 of attorneys' fees in the amount of \$3,202.50 will be made.

COUNTERCLAIM

Respondents allege 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, Respondents are not entitled to an award of fees against Claimant.

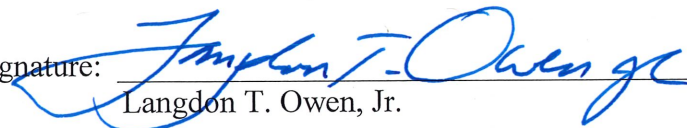
Accordingly, based on the foregoing:

1. Claimant's claims I, II, III, and IV are denied.
2. Claimant is awarded no actual damages.
3. Claimant is awarded \$500.00 of statutory damages with respect to claims V and VI.
4. Attorneys' fees are awarded to Claimant in the amount of \$3,202.50.
5. Respondents' 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.

Both Respondents are jointly and severally liable for the amounts awarded against them.

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.