

**AMERICAN ARBITRATION ASSOCIATION**

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In the matter of the Arbitration between

Case Number: 01-18-0003-3287

Kymerly Holmes (Claimant),

-vs-

UniRush, LLC and MetaBank (Respondents).

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AWARD OF THE ARBITRATOR

I, Marilyn J. Salzman, the undersigned arbitrator, having been designated in accordance with the arbitration agreement entered into by 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 with Respondent represented by Elizabeth M. Shaffer of Dinsmore & Shohl, LLP, do hereby, AWARD, as follows:

This matter arises out of a contract between Claimant and Respondents under which Claimant has a prepaid debit RushCard issued by Respondent MetaBank and managed by Respondent UniRush, LLC.

Claimant brings four claims against Respondents under the Electronic Funds Transfer Act, Regulation E, 12 C.F.R. 205, specifically as follows:

1. Unauthorized Transactions
2. Affidavit/Declaration of Fraud Requirement
3. Explanation of Findings
4. Response Time – Investigative Documents and
5. Breach of Contract

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

1. Unauthorized Transactions:

Claimant alleges she "discovered a series of unauthorized transactions" on her card and "contacted Respondents to file a dispute on or about May 19, 2018." In the Dispute Form she stated that she "lost" her RushCard. Claimant identifies one allegedly unauthorized transaction in the amount of \$200.00 at WalMart on May 19, 2018. The burden of proof is on Respondents to show that the transaction was in fact authorized, 15 U.S.C. 1693(g). Despite claiming her RushCard was lost, Claimant successfully completed undisputed transactions before and after the disputed Wal-Mart transaction. Additionally, there were no failed transactions or PIN attempts. The Respondents have satisfied their burden of proof.

2. Affidavit/Declaration of Fraud of Requirement:

Claimant argues that Respondents violated 12 C.F.R. 205.11(b)(2) because they improperly required an Affidavit. It provides that "a financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice." Claimant was not forced to sign the written dispute form or have the document notarized. I find the use of the suggested Affidavit not a violation of the Act.

3. Explanation of Findings:

Under 12 C.F.R. 205.11(d)(1), a financial institution is required to provide "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." In the Determination Letter, dated June 3, 2018, Respondents informed Claimant that "based on our investigation, we have concluded no error occurred" without further explanation. Rather than providing Claimant with a written explanation of its findings, Respondents offered nothing more than a conclusory statement that failed to inform Claimant of any basis for denying the claim.

4. Response Time – Investigative Documents:

Pursuant to 12 C.F.R. 205.11(d)(1), a financial institution is obligated to "promptly provide" copies of any documents that it relied on in making its determination. Claimant's counsel sent Respondents a request for the documents relied upon in the investigation and denial decision on June 13, 2018. Respondents failed to respond or advise Claimant that the only document relied upon was her transaction history. Respondents did not fulfill its statutory obligation to promptly provide copies of the documents upon Claimant's counsel's written request.

5. Breach of Contract:

Claimant relies on the same alleged facts to support her claim for Breach of Contract under South Dakota law. I find that Claimant has not proven the elements required to establish a Breach of Contract claim or that Claimant has suffered damages by a breach by Respondents, who did not act in bad faith.

6. Respondents allege that Claimant's arbitration demand is frivolous and is brought in bad faith and for purposes of harassment. Based on the evidence submitted I find that Claimant's arbitration demand is not frivolous and was not brought in bad faith and for purposes of harassment.

Accordingly, based on the foregoing:

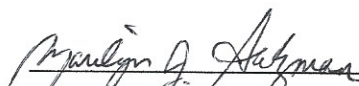
1. Claimant's claim for damages in the amount of \$200.00 is hereby denied.
2. Claimant is hereby awarded statutory damages in the amount of \$200.00 pursuant to 15 U.S.C. 1693m.
3. Claimant's attorney fees are hereby awarded in the amount of \$3,762.50.
4. Claimant's Breach of Contract claim is denied.
5. Respondents' claims presented herein are denied.

All damages and fees awarded to Claimant shall be borne by Respondents jointly and severally.

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 herein are hereby denied.

July 15, 2019

  
Marilyn J. Salzman, Arbitrator