

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between:

Re: 01-14-0002-1955

Steven Maines ("Claimant")
and
AT&T ("Respondent")

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties, with Claimant represented by A. Blake Thomas, Esquire, of Consumer Fraud Legal Services, LLC, and Respondent represented by Len G. Briley, Jr., Esquire, General Attorney - Specialized Litigation of AT&T Legal Department, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby, AWARD, as follows:

On the Claims made by Claimant:

1. **On the claim for breach of contract, award for Claimant and against Respondent in the amount of \$224.00.**

Your Arbitrator has entered the above award after giving due consideration of all the evidence and reconciling the diametrically different impressions of the pivotal August 25, 2014, telephone conversation between the Claimant and the Respondent's employee, George Pree. In weighing the recollections of the Claimant and the said George Pree, your Arbitrator takes into account the fact that the Claimant only had to deal with one conflict regarding a telephone, while George Pree, by the nature of his employment, had to deal with numerous costumers with telephone related issues each day. Also, the statements made in the affidavits given by George Pree in April and June of 2015 are given little weight, because of the passage of time between the August 25, 2014 conversation and the giving of the affidavits.

Your Arbitrator finds as fact, based upon the preponderance of the evidence presented, that the Claimant had a Galaxy telephone that failed to operate properly, even after a number of repair attempts. The Claimant purchased this telephone for his daughter, and a contract was in place between the Claimant and Respondent for the purchase of the Galaxy telephone over a period of time pursuant to an installment sale contract. This contract was entered into by the parties in February 2014. The Claimant on a number of occasions tried to rectify the non-functions of the Galaxy telephone, without success. The Claimant explored his contractual options under the February 2014 contract. The Claimant telephoned the Respondent on August 25, 2014, and spoke to Respondent's employee, George Pree. The Claimant's intention in making the telephone call was to terminate his contract with the Respondent. At that time, George Pree, worked as a Consumer Retention Representative for the Respondent. George Pree's job function was to persuade an existing customer of Respondent to continue to do business with the Respondent, rather than to terminate the use of Respondent's services. At the time of this telephone call, the Claimant had knowledge that he had the right to

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upgrade the Galaxy telephone with payment of twelve months of payments under the installment sale contract. The contract for the Galaxy telephone had this customer option from the date of inception of the contract, even if the Galaxy telephone worked perfectly as designed and as expected. However, the Galaxy telephone involved in this matter did not meet that standard. Your Arbitrator finds it not credible, and, therefore specifically rejects as fact, that Claimant accepted to pay an extra seven months of payments for the Galaxy telephone that was defective, merely to have the right to purchase an iPhone, and remain contractually bound to use Respondent for his wireless service -- a right that Claimant already possessed under the February 2014 contract.

The credible interpretation, and the interpretation accepted as fact by this Arbitrator, is that the parties agreed during the August 25, 2014 telephone conversation, in effect, to amend the February 2014 contract. In consideration of Claimant not exercising his contractual right to terminate his contract with Respondent (being retained as a Respondent's customer), paying his current bill¹ and entering into a new installment sale contract for the iPhone, the Galaxy telephone installment contract would be cancelled without fees or penalties. This Arbitrator takes note that Claimant's wireless contract with the Respondent, was not limited only to the Galaxy telephone line, but also included other lines. If the Claimant had terminated the contract, Respondent would have lost revenue for the other telephones as well as the Galaxy telephone in question. Further, this Arbitrator takes note, but does not find it dispositive, that Respondent's Exhibit "B" shows the following entry for August 25, 2014, at 19:18:42 hours:

"An equipment upgrade has been completed with the following offer details.
Base offer: 20 month commitment with *waived* upgrade fees."

Emphasis added.

Several days after making the above \$224.00 payment (plus tax), the Claimant paid the current bill of \$203.38. The Claimant stated this second payment was in error. Your Arbitrator accepts Claimant's statement as fact. The actual billed amount was this \$203.38 and Respondent was, therefore, overpaid by Claimant the amount of \$224.00. The Respondent is in breach of the August 25, 2014 contract amendment by not refunding the amount of the \$224.00.

¹ The amount paid on August 25, 2014, \$224.00, was very close to the amount due under the then currently due bill. There is no evidence that the Claimant, during the telephone call at issue knew the amount of that bill was actually \$203.38.

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AWARD OF ARBITRATOR CONTINUED

The evidence that this Arbitrator accepts as fact shows that the \$45.50 double payment of the sales tax was refunded to Claimant via a credit to his charge card. Since this credit was given, there was no double payment and the claim for the \$45.50 is denied.

- 2. On Claimant's claim regarding violations of the Pennsylvania Unfair Trade Practice and Consumer Protection Law, award for Respondent and against Claimant.**

Your Arbitrator accepts the Respondent's position that the Pennsylvania Unfair Trade Practice and Consumer Protection Law ("UDAP") is not applicable in this instance. This matter involves different impressions of the effect of the contents of the telephone conversation of August 25, 2014. Differing opinions of contractual rights do not create a cause of action under the "UDAP". The Claimant has failed to prove that Respondent has violated the Act and has failed to prove that Claimant is entitled to damages under the Act.

The administrative fees and expenses of the American Arbitration Association totaling \$1,700.00, and the compensation of the arbitrator totaling \$750.00 shall be borne by Respondent. Any of these amounts advanced by Claimant shall be reimbursed by the Respondent to the Claimant.

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

I, John D. Hendricks, Esquire, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

July 6, 2015
Date


John D. Hendricks, Arbitrator