

AMERICAN ARBITRATION ASSOCIATION

No. 01-14-0002-1379

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*In the Matter of the Arbitration of*

Lisa Russell

vs.

USAA Federal Savings Bank

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**FINAL AWARD**

I, SHAWN K. AIKEN, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the parties, and having been duly sworn, and oral hearings having been waived in accordance with the Rules, and having fully reviewed and considered the written documents submitted to me by counsel for the parties, do hereby, AWARD, as follows:

Claimant Lisa Russell commenced this action alleging eight causes of action against Respondent USAA Federal Savings Bank: (I) Violation of the Electronic Fund Transfer Act 15 U.S.C. § 1693 et. seg. (“EFTA”)-Unauthorized Transactions; (II) Violation of the EFTA-Response Time Denial; (III) Violation of the EFTA-Unauthorized Transactions related to alleged overdraft fees; (IV) Violation of the EFTA-Unauthorized Transactions related to alleged overdraft fees; (V) Breach of Contract-Stop Payments; (VI) Consumer Fraud Act Violation-Stop Payments; (VII) Breach of Contract-Account Closure; and, (VIII) Consumer Fraud Act Violation-Account Closure. Before briefing the issues, Claimant withdrew counts (III) and (IV).

Both sides submitted briefing, statements of authorities, and exhibits. I have reviewed all of the papers and find in favor of the Claimant on all of the remaining Counts (I, II, V-VIII).

The Claimant had three accounts with Respondent. From July 21-28, 2014, PayPal

tried to make twenty-three withdrawals in the amount of \$10 from one of the Claimant's accounts. Claimant made the Respondent aware of her dispute over these withdrawals. Rather than stopping payment, Respondent assessed insufficient funds fees for each PayPal transaction. Claimant also requested that Respondent close her account, but Respondent did not do so in a timely fashion. Respondent claimed that Claimant did not provide it with adequate information so it could not investigate or stop the charges. It also argued that the Claimant did not withdraw her funds as required to close the account.

Based on the record, I conclude and find that Claimant supplied enough information that should have allowed Respondent to determine the account in question and identify the disputed charges. Respondent should have investigated the disputed charges and should not have assessed insufficient funds fees for each disputed transaction. I also conclude that Respondent should have closed the Claimant's account when asked. Respondent relies on the fact that Claimant did not withdraw funds from her account, but it is not clear that there were any funds to be withdrawn due to the PayPal transactions and the numerous insufficient funds fees assessed against Claimant.

In sum, this award is in favor of the Claimant on all remaining Counts. Respondent shall pay Claimant the sum of \$870 for the wrongful transactions and the associated insufficient funds fees. In addition, Respondent shall pay the Claimant's attorneys' fees and costs in the amount of \$3,500.

In addition, Respondent shall pay Claimant a \$3,000 statutory penalty for its violation of the Electronic Funds Transfer Act related to the unauthorized transfers described in Counts I and II.

#### **AAA AND ARBITRATOR COST ASSESSMENT**

The administrative fees of the American Arbitration Association totaling \$1,700.00 and the compensation of the arbitrator totaling \$750 shall be borne by Respondent. Therefore, Respondent shall reimburse Claimant the sum of \$200.00 representing that portion of said fees and compensation in excess of the apportioned costs

previously incurred by Claimant.

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

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



Dated: August 6, 2015.  
Phoenix, Arizona

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Shawn K. Aiken, Arbitrator