



I find that Respondents breached their contract with Claimant when they failed to credit Claimant for the unauthorized charges, failed to provide Claimant with a written explanation, and failed to provide Claimant the investigative documents upon request.

2. Unauthorized Transactions

The burden of proof is on Respondents to show that the transactions were in fact authorized, 15 U.S.C. 1693 (g). Respondents have failed to satisfy their burden of proof by failing to provide copies of the EFT reports showing whether the disputed transactions required a signature, and failing to provide copies of the claimed signatures themselves, failing to provide copies of the EFT reports showing whether the disputed transactions were card present in person transactions, and by failing to include all of the unauthorized transactions from Sunoco in Pembroke Pine FL in Claimant's dispute. I find in favor of Claimant that the disputed transactions were unauthorized.

3. Affidavit/Declaration of Fraud Requirement

12 C.F.R. 205.11(b)(2) provides that "a financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice". However, this does not give Respondents the right to require Claimant to sign an Affidavit/Declaration as they did in this case. I find Respondents' use of the Affidavit to be a violation of the Act.

4. Explanation of Findings

Under 12 C.F.R. 205.11(d)(1), a financial institution is obligated 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 its determination letter, 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. I find in favor of Claimant.

5. 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. Respondents failed to respond. I find the request for investigative documents sufficient under 12 C.F.R. 205.11(d)(1)(iii), as requests for investigative documents are not subject to the same requirements of Notices of Error. Respondents did not fulfill their statutory obligation to promptly provide copies of the documents upon Claimant's counsel's written request. I find in favor of the Claimant.

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 it is not.

Respondents failed to timely provide copies of Claimant's Card EFT report to Claimant's counsel as requested before Claimant filed the Opening Brief.

**IT IS ORDERED:**

1. Claimant, MICHELLE THOMPSON, is hereby awarded damages in the amount of \$702.35.
2. Claimant, MICHELLE THOMPSON, is awarded statutory damages in the amount of \$1,000.00 pursuant to 15 U.S.C. 1693 (m).
3. Claimant's attorney fees are hereby awarded in the amount of \$2,500.00 pursuant to 15 U.S.C. 1693 (m).
4. Respondents', UNIRUSH, LLC and METABANK, claims presented herein are DENIED.
5. All damages and fees awarded to Claimant shall be borne by Respondents and paid within thirty (30) days.
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 in this Arbitration. All claims not expressly granted herein are hereby denied.

**November 26, 2019**

**Robert L. Cowles**

**Date**

**Robert L. Cowles, Arbitrator**