

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

Case Number: 01-18-0003-2966

April Tuck (Claimant),

-vs-

Green Dot Bank (Respondent).

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 Respondent under which Claimant has a prepaid debit card issued by Respondent Green Dot Bank. Respondent placed a temporary hold on Claimant's card because it suspected fraudulent or illegal activity.

Claimant brings the following claims against Respondent:

1. Breach of Contract
2. Violation of the Utah Consumer Sales Practices Act

Claimant brings the following claims under the Electronic Funds Transfer Act, Regulation E, 12 C.F.R, 205:

3. Improperly declined Transaction
4. Response Time – Notice of Error & Investigative Documents

Respondent asserts a counterclaim for Respondent's attorney fees and reallocation of arbitration costs to Claimant.

1. Breach of Contract:

Respondent placed a temporary hold on Claimant's card due to unusual activity (a replacement card, due to damage, and change of address form being requested in rapid succession) that tend to indicate fraud and/or stolen information. Claimant was advised to provide a clear photo of her identification. Claimant never provided said identification. And, the name on the passport Claimant provided did not match her own name. Respondent was fully authorized under the Cardholder Agreement and the law to implement the hold and request proof of identification to guard against potential fraud and identity theft. Based on Respondent's legitimate concerns of fraud, I find that it was justified in placing a hold on the account and did not breach the Cardholder Agreement.

2. Violation of the Utah Consumer Sales Practices Act:

For the same reasons that Respondent did not breach any contract, it did not knowingly or intentionally engage in deceptive or unconscionable acts or practices.

3. Violation of the Electronic Funds Transfer Act), Regulation E – Improperly Declined Transaction:

Based on the evidence submitted, Respondent did not violate the EFTA by improperly declining a transaction. Additionally, Claimant fails to identify what, if any, transactions were inappropriately denied.

4. Violation of the Electronic Funds Transfer Act, Regulation E – Response Time – Notice of Error & investigative Documents:

Claimant's counsel sent Respondent a Notice of Dispute and Error on August 1, 2018. Claimant's counsel clearly requested the documents relied upon in Respondent's investigation of both the hold and any computational/bookkeeping error. Respondent failed to timely respond and provide copies of the investigative documents requested. When Respondent attached documents to its Response Brief, what about the documents and information relied upon and referred to in the Declaration of Byron Suarez? At the very least, the passport images were documents that should have been provided to Claimant's counsel to review.

Regardless of whether the hold was originally justified on Claimant's card, Claimant's counsel reported a valid Notice of Error and Respondent had a duty to timely and properly respond under both the Agreement and the EFTA which it failed to do. I find that Respondent violated the procedural requirements of Regulation E.

Respondent had a contractual duty to close Claimant's account and remit the balance of funds on request.

5. Respondent alleges 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:

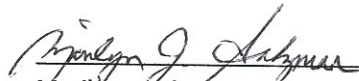
1. Claimant's Breach of Contract Claim is denied.
2. Respondent did not violate Utah's Consumer Sales Practices Act.
3. Claimant is hereby awarded damages in the amount of \$229.00, the actual balance in Claimant's account at the time the hold was placed on her account.
4. Claimant is hereby awarded statutory damages in the amount of \$1,000.00 pursuant to 15 U.S.C. 1693m.
5. Claimant's attorney fees are hereby awarded in the amount of \$3,937.50 pursuant to 15 U.S.C.1693m. I find Claimant's attorney spent a reasonable amount of time necessary for pursuit of the case and both the fee and hourly rate are reasonable and appropriate.
6. Respondent's claims presented herein are denied.

All damages and fees awarded to Claimant shall be borne by Respondent.

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