



AMERICAN
ARBITRATION
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CONSUMER ARBITRATION

██████████ BERGERON,
Claimant

AAA Case # 01-24-0006-0602

v.

GREEN DOT BANK,
Respondent

Interim Award on the Merits

I, Lynne Rothschild Stern, the undersigned arbitrator, having been designated in accordance with the arbitration agreement entered into by the above-named 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 by the parties, do hereby issue this INTERIM AWARD as follows:

Claimant purchased, funded and attempted to register a prepaid debit card with Respondent for \$60.00 on June 4, 2024. A few minutes after purchasing the debit card at Dollar General, Claimant tried to use the card but was unable to access the funds. Because he suspected something was wrong with the card, he notified Green Dot which informed him that the card was registered under someone else's name and a customer service representative stated that Claimant had been a victim of fraud (Respondent's Exhibit 3). Respondent opened a "Dispute-PIN" case on June 6, 2024 and closed it the following day after concluding that Claimant was entitled to a refund of the account balance of \$0.05 (Claimant's Exhibit G). Claimant alleges several causes of action under the Electronic Funds Transfer Act, Regulation E (12 C.F.R.205) and Utah law which the parties agreed in Scheduling Order #1 applied to this arbitration. Claimant also seeks to recover attorney fees and costs. Respondent did not submit a counterclaim.

Analysis

1. Respondent failed to show that Claimant authorized all the transactions on the debit card he purchased. Under 15 USC §1693g (b), Respondent bears the burden of

- proving that the electronic transfers were authorized and it failed to offer any proof that this was the case. Claimant furnished Respondent with a receipt for the debit card he purchased and immediately notified Respondent that shortly after the purchase all of the money he put on the card had disappeared. Respondent informed Claimant that someone named Amber used the \$60 Claimant had paid to fund the debit card he purchased. Respondent failed to carry its burden of proof and was unable to show that Claimant did or failed to do anything that would have permitted someone to access almost all of the funds on his debit card. In the recordings that Respondent produced of the two conversations Claimant had with Respondent's Customer Service representatives the day he purchased the card (Respondent's Exhibit B, Kingston Declaration, Exhibits 3 and 4),¹ the Claimant seems sincerely shocked to learn that someone unknown to him registered the debit card in his or her name shortly after he purchased it and used the money he loaded on the card to make purchases. Respondent did not submit any evidence to substantiate its allegation that Claimant willingly provided information about his debit card to a third party.
2. Respondent failed to properly investigate Claimant's dispute pursuant to 12 CFR 205.11d. There is nothing in the record to indicate that Respondent attempted to contact either the person who registered the debit card purchased by Claimant or the merchant who sold the card to Claimant. Similarly, there is nothing in the record to contradict the first customer service representative assertion that Claimant was a victim of fraud.
 3. Respondent failed to provide Claimant with a written explanation of their findings pursuant to 12 CFR §1005.11(c)(1). Claimant never received an explanation of how the Respondent determined that he was due \$0.05 as a refund or partial recovery and not a full recovery of his \$60. There is nothing in the record to show how Respondent investigated, determined that an error occurred or determined that Claimant was due a \$0.05 refund.
 4. Although Respondent failed to provide periodic account statements to Claimant pursuant to 12 CFR §1005.9(b), it alleged that since the account was not registered under Claimant's name, Claimant was not entitled to receive periodic statements. Because the Arbitrator found violations of other sections of the Electronic Transfer Act, it is not necessary to rule on this issue.
 5. Claimant failed to produce sufficient evidence to convince the Arbitrator that Respondent intentionally engaged in deceptive or unconscionable acts or practices in its claims handling or other practices under the Utah Consumer Sales Practices Act.
 6. Because the Arbitrator concluded that the Respondent violated the Electronic Funds Transfer Act, Regulation E, she need not determine if the equitable doctrine of

¹ Although page 6 of Respondent's Response Brief states that the second customer service recording was Exhibit 5 to the Kingston Declaration, it was emailed to the Arbitrator as Exhibit 4. The first recording was emailed as Exhibit 3 to the Kingston Declaration.

Money Had and Received should be applied to this case in addition to the more specific Electronic Funds Transfer Act. At least one Arbitrator who did not apply the Electronic Funds Transfer Act to facts similar to those in the instant case, concluded that the Claimant was entitled to recover under this equitable doctrine.

Accordingly, based on the foregoing Claimant is awarded:

1. Actual damages of \$58.45.
2. Treble damages \$175.35 under 15 USC §1693f(e) because the amount owed was not provisionally reccredited within 10 days and Respondent failed to make a good faith effort to investigate.
3. Statutory damages of \$1,000 under 15 USC§1693m(a)(2)(A).
4. Reasonable attorney fees and cost as provided in 15 USC §1693m(a)(3). Pursuant to Scheduling Order #1, ¶9, Claimant will have 14 days to submit an application for reasonable attorney fees and costs. Respondent will have 14 days after that to submit a response. As noted in the Scheduling Order these memoranda are limited to 12 pages exclusive of exhibits. This means 12 double spaced pages with normal margins and a 12 Font Size. In determining the reasonableness of the request for attorney fees and costs, the Arbitrator will consider the fact that attorneys for the Claimant raised and briefed legal issues similar to those in this case in several other arbitrations which were cited by both parties in their written submissions. Upon and after such submissions, the matter shall be deemed submitted to the Arbitrator for determination in a Final Award.

This Interim Award on the Merits is in full settlement of the merits of all claims except for the determination of reasonable attorney fees and costs and will remain in full force and effect until the Arbitrator renders a Final Award.

Date: April 16, 2025

/s/ Lynne R. Stern
Lynne Rothschild Stern, Arbitrator