



**AMERICAN ARBITRATION ASSOCIATION
Consumer Arbitration Rules**

In the Matter of the Arbitration between

Case Number: 01-23-0005-6535

██████████ Brown,
Claimant

-vs-

Green Dot Bank,
Respondent

INTERIM AWARD OF THE ARBITRATOR

I, ██████████ Sanders, 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 Consumer Arbitration Rules, and having fully reviewed and considered the written documents and other evidence submitted to me by the Claimant, represented by ██████████ ██████████, and the Respondent, represented by ██████████ ██████████, do hereby issue this INTERIM AWARD. I do hereby find as follows:

PROCEDURAL BACKGROUND

This matter commenced with an arbitration demand filed by Claimant on December 6, 2023. A telephonic preliminary hearing was conducted on April 3, 2024. The Arbitrator and counsel for the parties participated in the preliminary hearing. At the preliminary hearing, the Parties agreed to proceed on a Documents Only (Desk Arbitration) basis. The undersigned entered a Scheduling Order on April 6, 2023. The parties timely filed their briefs, along with voluminous exhibits. The Arbitrator reviewed briefs and the documentary evidence, and the Arbitrator listened to the call recordings submitted by the parties.

FACTUAL BACKGROUND

Claimant purchased a Green Dot prepaid debit card on November 16, 2023. A Cardholder Agreement governs the use of the prepaid debit card, and that agreement contains an arbitration clause. The agreement provides that it will be governed by the law of the State of Utah. Claimant loaded \$495 on her card on November 16, 2023. Respondent put a hold on Claimant's account. On November 16, 2023, Respondent rejected Claimant's first attempt to upload her identification. Claimant submitted another copy of her identification on November 16, 2023. The second copy of Claimant's identification was rejected by Respondent, but Respondent admits that the second copy of Claimant's identification should not have been rejected. Transactions were declined both on the day Claimant submitted a second copy of her identification to Respondent and after that day. The hold on Claimant's account was released three weeks after the hold was initiated. The release occurred after Claimant filed her Demand for Arbitration but before Respondent received notice of the Demand for Arbitration. After the hold was released, Claimant spent the entire \$495 she deposited to her account.

CLAIMANT'S CLAIMS

Claimant asserts eight claims. These claims, as listed in the Demand for Arbitration, are:

- I. Breach of Contract
- II. Money Had and Received
- III. Electronic Funds Transfer Act ("EFTA")—Declined Transaction
- IV. Regulation E, EFTA—Response Time-Notice of Error
- V. Regulation E, EFTA—Failure to Conduct Prompt and Reasonable Investigation
- VI. Regulation E, EFTA—Failure to Provide Required Statements
- VII. Regulation CC, Expedited Funds Available Act ("EFAA")
- VIII. Utah Consumer Sales Practices Act ("UCSPA")

As stated in her Opening Brief, Claimant seeks \$495 in actual damages, \$3,000 in statutory damages under the EFTA, \$1,000 in statutory damages under the EFAA, \$2,000 in statutory damages under the UCSPA, and attorney's fees in an unspecified amount. Claimant has the burden of proof on her claims.

RESPONDENT'S RESPONSES

Respondent denies Claimant's claims. Respondent alleges that it complied with the parties' contract, it did not violate the EFTA, EFAA, or the UCSPA, Claimant has no actual damages, and the hold on Claimant's account was released before Respondent received notice of this arbitration. Respondent requests that Claimant's claims be dismissed. Respondent also asks for reallocation of arbitration costs under Consumer Rule 44(c) and an award of attorney's fees under 15 U.S.C. Sec. 1693m(f). Respondent has the burden of proof to show that Claimant's claims are patently frivolous and/or the claims were filed in bad faith or for purposes of harassment.

CLAIMANT HAS NOT PROVEN ACTUAL DAMAGES

As it is important for much of the analysis set forth below, I initially state that I find that Claimant did not prove by the preponderance of the evidence that she suffered any actual damages. It is undisputed that she was eventually given access to her funds and in fact spent those funds. Although Claimant makes some vague allegations in her Demand for Arbitration, briefing, and Declaration regarding "loss of use damages" and other damages, she has not specified those damages and provided no proof or insufficient proof of these alleged damages or their amounts. Claimant has not proven by the preponderance of the evidence she suffered any actual damages or the amounts of those damages. On this record, the only actual damages that Claimant could have recovered would be the \$495 she deposited into her account. Claimant spent the whole \$495 after Respondent released the hold on Claimant's account. Accordingly, I find that Claimant has not met her burden of proof on her claims for actual damages.

ANALYSIS OF CLAIMANT'S CLAIMS

Claims I and II: Breach of Contract and Money Had and Received

For the purposes of the breach of contract claim, it is unnecessary to determine whether or not Respondent breached the contract. Breach of contract and money had and received claims require proof of actual damages. Even assuming Respondent breached the contract, Claimant's breach of contract claim fails due to the fact that, as stated above, Claimant has no actual damages. Her money had and received claim fails for the same reason. I find against Claimant on Claims I and II.

Claim III: EFTA—Declined Transaction

To prevail on a claim for a declined transaction in violation of 15 U.S.C. Sec. 1693h, Claimant must show that Respondent improperly declined one or more transactions. Proof of actual damages is not required to prevail under Sec. 1693h. *Berenson v. National Financial Services, LLC*, 403 F. Supp. 2d 133 (D. Mass. 2005). There is no doubt that one or more transactions were declined. The inquiry is then whether any of those transactions were

improperly declined. Based on the preponderance of the evidence, I find that there were one or more improperly declined transactions. The undisputed evidence shows that there were declined transactions after Claimant provided what Respondent now admits was a proper copy of her valid identification. Even discarding the declined transaction on November 17, 2023, two transactions were declined on November 21, 2023. Respondent alleges that, due to the verification failure, Claimant's card became a temporary limited use card, but Claimant could not even use her card on a limited basis. The two declined transactions were attempted purchases at merchants well after Respondent received the proper identification from Claimant. I find in favor of Claimant on her EFTA—Declined Transaction claim. I award Claimant statutory damages in the amount of \$495 and will award her attorney's fees in an amount to be determined for her EFTA—Declined Transaction claim.

Claims IV and V: Regulation E, EFTA—Response Time-Notice of Error and Failure to Conduct Prompt and Reasonable Investigation

A declined transaction or an account hold do not fit the definition of an "error" in Regulation E, 12 CFR Part 1005.11(a)(1). Without an error, the investigation and response obligations under the Regulations E are not triggered. I find against Claimant on Claims IV and V.

Claim VI: Regulation E, EFTA—Failure to Provide Required Statements

Regulation E, 12 CFR Part 1005.9(b) requires a financial institution to provide monthly statements for each monthly cycle in which an electronic fund transfer occurred or a quarterly statement if no transfers have occurred. However, 12 CFR Part 1005.18(c) provides that periodic statements under 12 CFR 1005.9(b) need not be provided where the financial institution provides the consumer access to 12 months of account history electronically such as through a web site. Claimant swore in her declaration that no account statements were provided before May 1, 2024. The declaration from Respondent's Vice President states that Claimant's account history was made available online. Claimant did not present evidence refuting this assertion, and she presented no evidence that she was never able to access her account information electronically. Although there was a hold on Claimant's account, that hold was released less than a month after she initially purchased the prepaid debit card. Claimant provided no evidence that she could not access her account information electronically after the block was released. The evidence shows that by the time the first monthly statement would have been due, Claimant's account information was available to her electronically. Claimant did not prove this claim by the preponderance of the evidence. I find against Claimant on Claim VI.

Claim VII: Regulation CC, EFAA

The EFAA and Regulation CC, 12 CFR 229.10 requires that funds be made available within certain time frames depending on the nature of the deposit. Claimant alleges that the hold on her account was a violation of Regulation CC. Compared to most of the other claims, the parties provided little briefing on this issue. Unlike other claims, they did not cite prior arbitration awards deciding claims under the EFAA. Respondent cites a case for the proposition that a hold placed on an account after funds are made available is not a violation of Regulation CC. *Little Donkey Enters. Wash. v. US Bancorp*, 136 F. App'x 91 (9th Cir. 2005). Claimant argues that the *Little Donkey* case is inapplicable and distinguishable. From the preponderance of the evidence, it appears that Claimant's cash deposit was posted to her account and then the hold was later placed on her account. Claimant did not prove this claim by the preponderance of the evidence. I find against Claimant on Claim VII.

Claim VIII: UCSPA

The UCSPA prohibits unconscionable and deceptive acts and practices in consumer transactions. Utah Code Sec. 13-11-4 and Sec. 13-11-5. The UCSPA is to be liberally construed to protect consumers. Utah Code Sec. 13-11-2(2). A consumer is not required to prove actual damages to receive statutory damages and attorney's fees. *Andreason v. Felsted*, 137 P.3d 1 (Utah Ct. App. 2006). A consumer who proves a "loss" as a result of a violation of the UCSPA can recover up to \$2,000 in statutory damages plus attorney's fees even where the Claimant's damages are de minimis, speculative, or difficult to prove. *Andreason v. Felsted*, 137 P.3d 1 (Utah Ct. App. 2006).

To recover for a “deceptive act or practice,” Claimant must show that Respondent acted knowingly or intentionally in committing one or more of the deceptive acts or practices listed in the statute. Utah Code Sec. 13-11-4(2). Claimant has the burden to prove that Respondent acted knowing that its conduct was deceptive or acted with intent to deceive Claimant. *Martinez v. Best Buy Co.*, 283 P.3d 521, 523 (Utah 2012).

Recovery for an “unconscionable act or practice” does not require a showing of knowing or intentional conduct, and the statute does not define the word “unconscionable.” Utah Code 13-11-5. The statute does provide that what is unconscionable is a question of law and that the circumstances which the defendant knew or had reason to know should be considered in an unconscionability analysis. Utah Code 13-11-5. A Utah case not decided under the UCSPA but cited by Claimant holds that “‘Unconscionable’ is a term that defies precise definition. Rather, a court must assess the circumstances of each particular case in light of the twofold purpose of the doctrine, prevention of oppression and of unfair surprise.” *Resource Management Co. v. Weston Ranch*, 706 P.2d 1028, 1041 (Utah 1985). That same case cites one standard for unconscionability as being something that is “so strong and manifest as to shock the conscience and confound the judgment of any man of common sense.” *Id.*

As for a knowing or intentional deceptive act, Claimant has not proven her case by a preponderance of the evidence. She has not met her burden of proof to show the necessary level of scienter, and she does not even identify which portion of Utah Code Sec. 13-11-4(2) she claims Respondent violated. Therefore, Claimant cannot recover under Utah Code Sec. 13-11-4.

As for an unconscionable act or practice in violation of Sec. 13-11-5, Claimant has proven her claim by a preponderance of the evidence. Respondent admits that the second copy of her identification submitted by Claimant, on November 16, 2023, should not have been rejected. Yet it took Respondent over three weeks to finally review the situation and release the hold. Had Respondent resolved this matter in a few days, this arbitration would likely have never been filed and the Arbitrator’s resolution on this claim would probably be different. Instead, Respondent gave Claimant the run around for weeks. Respondent repeatedly claimed it was escalating the matter and told Claimant to wait 48 hours or 2-3 business days. Respondent stated the 48 hours or 2-3 business days periods numerous times during calls taking place in the three-week period. Respondent took 14 business days from November 16, 2023, to recognize that Claimant had submitted a proper copy of her valid identification. It took a complaint to the BBB and the Federal Reserve for Claimant to finally get the hold lifted. Given the statute’s instruction that the UCSPA be liberally construed, the Arbitrator finds that Respondent committed an unconscionable act or practice. Respondent’s conduct was oppressive, shocks the conscience, and confounds common sense. Although Claimant has not proven actual damages by the preponderance of the evidence, she is not required to do so to recover statutory damages and attorney’s fees under the UCSPA. The three-week hold on Claimant’s funds qualifies as a “loss” that would entitle her to recover under the UCSPA. I find in favor of Claimant on her UCSPA claim. To promote the UCSPA’s purpose to protect consumers, I award Claimant \$1,485 in statutory damages and will award her attorney’s fees in an amount to be determined for her UCSPA claim.

ANALYSIS OF RESPONDENT’S CLAIMS FOR REALLOCATION OF ARBITRATION COSTS AND/OR AN AWARD OF RESPONDENT’S ATTORNEY’S FEES

Reallocation of Costs Under Consumer Rule 44(c)

To reallocate arbitration costs, the Arbitrator must find that Claimant’s claim “was filed for purposes of harassment or is patently frivolous.” The use of the term “claim” in Rule 44(c) appears to refer to the entirety of the allegations made by a claimant and not each separate allegation or distinct cause of action. In other words, costs can be reallocated only when all of a claimant’s causes of action were filed for purposes of harassment or are patently frivolous. Claimant, through her counsel, asserted some frivolous claims. The claim for an entitlement to \$3,000 in statutory EFTA damages when the law clearly caps those damages at \$1,000 per action is patently frivolous. The EFTA claims under the error investigation regulations (Claims IV and V) are patently frivolous, because the hold on Claimant’s account unquestionably does not fit the definition of an “error” in Regulation E. However, the entirety of case was not patently frivolous or harassing. As stated above, Respondent was still holding Claimant’s funds when the Demand for Arbitration was filed and had declined transactions after Claimant had submitted a

proper copy of her identification. Claimant has prevailed on her EFTA-Declined Transaction and UCSPA claims. The costs of the arbitration will not be reallocated under Rule 44(c).

Attorney's Fees Under 15 U.S.C. Sec. 1693m(f)

To recover attorney's fees under 15 U.S.C. Sec. 1693m(f), Respondent must show that "an unsuccessful action under this section was brought in bad faith or for purposes of harassment." Just as an "action" under the EFTA encompasses the entire suit for the purposes of the \$1,000 statutory damages cap, the descriptor "unsuccessful" in Sec. 1693m(f) applies to the entire "action" brought by Claimant. For Respondent to recover attorney's fees under Sec. 1693m(f), Claimant must have first been unsuccessful on all of her EFTA allegations. Stated differently, success on one EFTA allegation takes the matter out of the scope of Sec. 1693m(f). Some of Claimant's EFTA allegations were brought in bad faith, as they are clearly barred by the plain language of the applicable statutes and regulations. As Claimant prevailed on at least one of her EFTA claims, this was not an unsuccessful action that would allow for any award of attorney's fees to Respondent.

INTERIM AWARD

Accordingly, the undersigned hereby enters this INTERIM AWARD as follows:

Claimant's Claims I, II, IV, V, VI, VII are denied.

Claimant's Claims III and VIII are granted.

Claimant is awarded statutory damages in the amount of \$ 495 under the EFTA.

Claimant is awarded statutory damages in the amount of \$1,485 under the UCSPA.

Claimant will be awarded attorney's fees in an amount to be determined for her EFTA-Declined Transaction and UCSPA claims.

Respondent's requests for re-allocation of arbitration costs and an award of attorney's fees are denied.

This Interim Award is in full settlement of the merits of all claims submitted to this Arbitration, except for the determination of reasonable attorney fees and costs in favor of Claimant as set forth above. The Arbitrator retains jurisdiction to address Claimant's claims for reasonable attorney fees and costs. Claimant shall submit their accounting of such reasonable attorney fees, attributable only to the EFTA-Declined Transaction (Claim III) and UCSPA (Claim VIII) claims, and costs and any supporting documents related thereto to the Arbitrator within 14 days of the date of this Interim Award. Respondent shall submit any responsive statement and supporting documents within 28 days of this Interim Award. Upon and after such submissions, the matter shall be deemed submitted to the Arbitrator for determination in a Final Award.

This Interim Award shall remain in full force and effect until the Arbitrator renders a Final Award.

7-3-2024
Date

[Redacted Signature]
Arbitrator