



AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

Case Number: 01-18-0003-3308

Felecia Campbell, Claimant

-vs-

Green Dot Bank Respondent

AWARD OF ARBITRATOR

I, Patricia A. Nolan, 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 to me by the parties, each represented by counsel, do hereby, AWARD, as follows:

Claimant purchased and funded a prepaid debit card with Respondent. In this arbitration, she has asserted claims based upon an alleged breach of contract, violation of the Utah Consumer Sales Practices Act, and multiple violations of the Electronic Funds Transfer Act, Regulation E (12 C.F.R. 205). She also seeks recovery of attorney's fees and costs. Pursuant to the parties' agreement, Utah law applies.

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

Analysis

1. Breach of Contract: Claimant contends that Respondent breached its agreements with her when it failed to credit her for fraudulent charges in the total amount of \$274.84, a sum comprised of seven individual charges in May of 2018 for Playstation Network. Contrary to Claimant's claim, her Exhibit 23 shows that she disputed a total of \$174.88 in charges, a sum comprised of seven individual Playstation Network charges. Respondent asserts that one day after the seven transactions occurred, the merchant reversed three of the charges and issued a credit to Claimant's account. Respondent declined to reverse four charges on grounds that it believed they were valid because the card had been used approximately a month earlier for Playstation Network transactions. In October of 2018, Claimant allegedly refiled her dispute concerning the four charges. Respondent refunded the remaining four transactions with a check that Claimant apparently cashed. Claimant asserts that because Claimant's declaration was signed before the refund was issued, there was no way for her counsel to know about this refund. Because Claimant has received 100 percent of the disputed charges – whether by a credit the next day or by check later -- I find that the breach of contract claim is moot and Claimant should recover nothing.

2. Violation of the Utah Consumer Sales Practices Act: Claimant asserts that Respondent engaged in deceptive or unconscionable practices concerning its claims handling and other practices and its willingness to refund fraudulent charges. Claimant has failed to prove this claim by a preponderance of credible evidence.
3. Violations of the Electronic Funds Transfer Act. Claimant asserts four violations of the Act. With regard to the unauthorized electronic funds transfer claim, I find in favor of Claimant. The fact that three of the seven charges were reversed almost immediately casts doubt on Respondent's decision to allow the other four to stand. Claimant is awarded the total sum of \$100.00.

With regard to the explanation of findings claim, I find in favor of Claimant. The evidence establishes that Respondent's explanations consisted of nothing more than a flat statement that it believed that four of the charges were authorized. That is simply not an explanation. Claimant is awarded the total sum of \$250.00.

Claimant's other claims that the Act was violated concerned investigative documents – timely response and improperly required affidavit/declaration. I find in favor of Respondent. Although Claimant asserts that Respondent failed to provide its investigative documents, she did not prove that she had made a proper request for these items during the claims dispute process or later, through her counsel.

Although Claimant asserted that Respondent improperly demanded an affidavit/declaration, she submitted the claim form that she actually filled out to dispute the charges. It was not an affidavit or declaration and did not call for an oath or notary signature. The Federal Reserve Compliant Alert upon which Claimant relies states that it is improper to request items such as a notarized affidavit or police report. Neither was requested here. For this reason, I find in favor of Respondent on this claim.

4. Attorney's fees and costs. Claimant is entitled to recover her attorney's fees based upon the successful Electronic Funds Act claims. A claim for \$3,937.50 is supported by a declaration. Respondent challenges the appropriateness of any fee award as well and the amount Claimant seeks. The evidentiary record establishes that the 11.25 hours of Claimant's counsel were not well spent. For this reason, I hereby award \$1,500.00 in attorney's fees and costs.

Accordingly, based on the foregoing:

- Claimant's breach of contract claim is denied.
- Claimant's claim of a breach of the Utah Consumer Sales Practices Act is denied.
- Claimant is awarded the total sum of \$350.00 in damages and statutory penalties under the Electronic Funds Transfer Act.
- Respondent's claims for attorney's fees and reallocation of the arbitration costs are denied on grounds that Claimant has prevailed on at least one of her claims.
- Claimant is awarded \$1,500.00 in attorney's fees.

The administrative fees of the American Arbitration Association (AAA) totaling \$1,000.00 shall be borne as incurred, 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.

Sept. 4, 2019

Date



Patricia A. Nolan, Arbitrator