BEFORE THE AMERICAN ARBITRATION ASSOCIATION

[redacted] EMARD	)	
	)	
Claimant,	)	
	)	
v.	)	Case No.: 01-23-0005-6523
	)	
GREEN DOT BANK	)	
	)	[redacted]
Respondent	)	

INTERIM AWARD OF ARBITRATOR

I, [redacted], 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 applicable Rules of the American Arbitration Association, and having fully reviewed, studied, and considered the written documents submitted to me by the parties, each represented by counsel, do hereby find as follows and make the following INTERIM AWARD:

Pertinent procedural background

Claimant filed his arbitration demand on December 6, 2023. A preliminary telephonic hearing was conducted, during which both parties conceded the jurisdiction of the undersigned Arbitrator to hear and decide this matter, and during which both parties waived their right to an oral hearing, opting instead to have the matter decided under the documents only procedure of the Consumer Arbitration Rules of the American Arbitration Association. Both parties submitted their documents timely. All submissions have been reviewed and studied.

Facts

On November 4, 2023, Claimant, a resident of Gary, Indiana, purchased a prepaid Visa Debit Card issued by Respondent through a local merchant and loaded that card with an initial deposit of $80.00.

Beginning on November 5, 2023, Claimant attempted to use the debit card for purchases including medicine for his daughter. Those attempts failed because Claimant's use of his prepaid debit card, initially unbeknownst to Claimant, had been blocked by Respondent. Respondent claims it blocked the account because the identification submitted by Claimant (an identification card issued by the State of Indiana to Claimant) was "blurry", and that it needed to block the account to prevent fraud and/or money laundering.

Claimant's identification card, a copy of which was presented as part of the parties' submissions, contains a photograph of Claimant, shows in plainly legible format the name, address, and date of

birth of Claimant, and identifies him by color of eyes and hair. The card has a clearly legible expiration date and even identifies Claimant as an organ donor.

Upon learning that his debit card had been blocked, Claimant made repeated unsuccessful efforts to resolve the matter with Respondent by resubmitting his identification on multiple occasions. For nearly a month, Respondent continued to deny Claimant access to his money and even refused to refund $15 to Claimant in response to his written demand submitted on November 21, 2023. On November 21, 2023, Claimant filed a complaint with the federal Consumer Financial Protection Bureau, who referred his complaint to the Federal Reserve Board. In late November or early December, Claimant hired counsel, and on December 6, 2023, Claimant initiated this arbitration.

On November 30, 2023, Respondent, who had previously determined written that Claimant's account could not be reopened, declared that its initial decision regarding insufficiency of Claimant's identification had been an error. It is uncertain whether that declaration was in response to Claimant's consumer complaint, but the timing is suspicious enough to create an inference of a causal relationship. Regardless, Respondent's decision to unblock the account was not communicated to Claimant until December 8, 2023 – two days after this arbitration was initiated.

When Respondent granted Claimant access to his account it also gave him credit for fees taken by Respondent and a nominal payment of less than $25, ostensibly to compensate Claimant for his inconvenience. Claimant then spent the entire initial deposit of $80.

The agreement between Claimant and Respondent includes the following provision relating to what will occur if Respondent is unable to verify the identity of a cardholder: "If you purchased your card at a Retailer and we are unable to verify your identity, you may receive a refund check, or we may choose to permit you to use the temporary card until the money on the Temporary Card has been fully spent, . . ."

The claims of Claimant

In his demand for arbitration, Claimant asserts the following claims:

1. Breach of contract
2. Money had and received
3. Violation of the Electronic Funds Transfer Act (the "EFTA") – Declined transactions
4. Violation of Regulation E of the EFTA – Response time, notice of error
5. Violation of Regulation E of the EFTA – Failure to conduct prompt and reasonable investigation
6. Violation of Regulation E of the EFTA – Failure to provide required statements
7. Violation of the Expedited Funds Availability Act (the "EFAA") Regulation CC
8. Violation of the Utah Consumer Sales Practices Act (the "UCSPA")

Claimant seeks recovery of his actual damages, statutory damages, and attorney's fees and costs, together with any other relief deemed appropriate by the Arbitrator.

Defenses and counterclaims of Respondent

Respondent asserts that the claims made by Claimant are without merit and that Claimant has suffered no actual damages. Respondent contends that its actions were within the scope of its contractual rights and did not violate any of the statutes and regulations as claimed by Claimant. Respondent requests that Claimant's claims be dismissed and that the costs of arbitration be reallocated to Claimant. Respondent also requests an award of its attorney's fees and expenses under 15 U.S.C. § 1693m (f).

Analysis of Claims and Defenses

In their submissions, the parties reference and rely heavily on previous arbitration awards involving similar facts, similar issues, and even similar counsel. All of those submitted awards have been studied. The one that I find most closely analogous and instructive is the decision of Arbitrator Sanders in the case of *Brown v. Green Dot Bank*, Case No.: 01-23-0005-6535. In *Brown*, the claimant purchased a Green Dot prepaid debit card and loaded her card with $495. That same day, the respondent rejected the claimant's uploaded identification and placed a hold on the claimant's account. The claimant then submitted a second copy of her identification, which was also rejected by respondent. The hold on claimant's account was not released until three weeks later. In *Brown*, the hold was released after the arbitration demand was filed, but before it was received by respondent. Further, in *Brown*, the respondent admitted that the second I.D. should have been accepted. Under those facts, Arbitrator Sanders found in favor of the claimant on her EFTA – declined transactions claim, and in favor of the claimant on her claims under UCSPA.

1. Breach of Contract

Unlike Arbitrator Sanders in the *Brown* case, I find that Respondent breached its contract with Claimant. The breach occurred when Respondent blocked Claimant's access to funds he had deposited into his prepaid Visa debit card issued by Respondent, and continued to deny him access to those funds for a period of nearly a month, all without proper cause.

The language of the agreement between Claimant and Respondent (as drafted by Respondent) clearly states that if Respondent is unable to verify a cardholder's identification, the Respondent will either issue a refund check or allow the cardholder to use the temporary card issued by the retailer until the initial deposit amount is fully spent. Here, Respondent did neither. Instead, Respondent, for nearly a month, denied Claimant access to his money despite many phone calls, and repeated submissions of the same identification that Respondent repeatedly rejected until Claimant filed a consumer complaint and an investigation was initiated by the Federal Reserve Board.

In their contract, the parties designate Utah law as controlling. In Utah, an implied covenant of good faith and fair dealing accompanies most, if not all contracts. In *St. Benedict's Dev. Co. v. St. Benedict's Hosp.*, 811 P.2d 194, 199-200, (1991 Utah), the court wrote:

> In this state, a covenant of good faith and fair dealing inheres in most, if not all, contractual relationships. *See, e.g., Beck v. Farmers Ins. Exch.,* 701 P.2d 795, 798

> (Utah 1985) (first-party insurance contract); *Resource Management Co. v. Weston Ranch & Livestock Co.,* 706 P.2d 1028, 1037 (Utah 1985) (mineral development agreement); *Leigh Furniture and Carpet Co. v. Isom,* 657 P.2d 293, 311 (Utah 1982) (contract for sale of a furniture business); *Rio Algom Corp. v. Jimco Ltd.,* 618 P.2d 497, 505 (Utah 1980) (uranium lease); *Zion's Properties, Inc. v. Holt,* 538 P.2d 1319, 1321 (Utah 1975) (real estate contract for commercial property); *Ted R. Brown and Assoc. v. Carnes Corp.,* 753 P.2d 964, 970 (Utah Ct. App. 1988) (sales agreement). *But see Berube v. Fashion Centre, Ltd.,* 771 P.2d 1033, 1051-52 (Utah 1989) (Zimmerman, J., concurring in the result) (rejecting the application of the covenant in a contract for employment at will). For commercial contracts, a covenant of good faith is statutorily imposed. Utah Code Ann. § 70A-1-203. Under the covenant of good faith and fair dealing, each party impliedly promises that he will not intentionally or purposely do anything which will destroy or injure the other party's right to receive the fruits of the contract. *Bastian v. Cedar Hills Investment & Land Co.,* 632 P.2d 818, 821 (Utah 1981); *Ferris v. Jennings,* 595 P.2d 857 (Utah 1979). A violation of the covenant gives rise to a claim for breach of contract. *Beck*, 701 P.2d at 798.

I find that this implied covenant of good faith and fair dealing has been breached by Respondent. Had Respondent been diligent, acted in good faith, and dealt fairly with Claimant, it would not have delayed granting Claimant access to his funds for nearly a month. The identification submitted by Claimant was immediately rejected by Respondent and in doing so, Respondent, on November 5, 2023, noted that: "Customer's ID did not pass verification process. Account cannot be reopened and they will not be able to open any additional cards with this bank." While one can question the reasons for Respondent's decision considering the rather obvious legibility of the I.D. card, such reasons are not outcome determinative here. The block and hold that Respondent placed on Claimant's funds was, according to Respondent, "presumptively permanent." At that point, if acting in good faith and dealing fairly with Claimant, Respondent should have returned Claimant's money to him, or, per the parties' contract, allowed Claimant to spend down his initial deposit. Instead, Respondent kept the money, charged fees to Claimant, and forced Claimant into a month long ordeal that included multiple re-submissions of the same identification, multiple telephone calls, requests for a refund, the filing of a consumer complaint, and ultimately the hiring of counsel and the initiation of this arbitration.

That Respondent belatedly determined and admitted that Claimant's I.D. was adequate, is no defense. Respondent has shown no legitimate reason for denying Claimant access to his account for the weeks that it did so. Respondent's stated reasons for placing the hold and the length of the hold, together with Respondent's failure to simply close the account and remit the funds back to Claimant when requested or to allow Claimant to spend down his initial deposit were neither reasonable nor good faith actions.

Stated somewhat differently, I find that Respondent cannot, under the facts of this case, in good faith, block Claimant's account as it did, and declare that the account cannot be reopened as it did, and not return his money to him or at least allow him to spend down his initial deposit.

Respondent claims that a finding should be made in its favor on the breach of contract claim because Claimant was eventually granted access to all of his initial deposit and has suffered no damages. Since Claimant was eventually given access to all of his initial deposit, I find that no actual damages have been proven[1]. However, even if Claimant suffered no damages as argued by Respondent, under Utah law he is entitled to an award of nominal damages, which is usually $1. *Fashion Place Assocs. v. Glad Rags, Inc.*, 754 P.2d 940 (Utah 1988).

2. Money had and received

In Utah, a case for money had and received requires a showing that the defendant received money from the plaintiff under such circumstances that in equity and good conscience, it should be returned. *Helper State Bank v. Cruz*, 61 P.2d 318 (Utah 1936). Recovery is limited to the money received. *Raleigh v. Salt Lake City,* 53 P. 974 (Utah 1898). Here, although as discussed above the Respondent breached its contract, it is undisputed that in December 2023 Claimant ultimately received back from Respondent all moneys he paid. I find this issue to be moot. Further, as noted above, having suffered no actual damages, Claimant cannot recover on this theory. I find against Claimant on this issue.

3. EFTA – Declined transactions

As its name suggests, the EFTA was enacted by Congress to regulate electronic transfers of funds. Part of the EFTA, 15 U.S.C. § 1693h, imposes liability on a financial institution such as Respondent for damages proximately caused by the institution's "failure to make an electronic transfer, in accordance with the terms and conditions of an account . . .", unless that failure was for one of five enumerated exceptions. Here, there is no question that Respondent, on multiple occasions, failed to make electronic transfers of funds as requested by Claimant.

As justification for its failures to make the transfers of funds, Respondent points out that the account of Claimant had been frozen by Respondent and that Respondent had the right to do so under the parties' contract. However, Respondent's actions of freezing and blocking Claimant's account and not remitting his funds to him or at least allowing him to spend down his initial deposit have previously been determined to be a breach of its contract with Claimant. Those actions, which were wrongful as to Claimant, cannot justify Respondent's refusals to make the electronic transfers requested by Claimant. Additionally, none of the enumerated exceptions of 15 U.S.C. § 1693h have been shown by Respondent to apply.

Most of Respondent's arguments under this issue center on its right to freeze of block the account. However, Respondent has admitted that its initial decision to reject Claimant's I.D. was wrongful. The bottom line here is that Claimant provided Respondent with proper identification at the outset of their relationship. Respondent's claim that the images and information on the identification card were "blurry" is rejected. And, since Respondent did not issue a refund check to Claimant

[1] Claimant argues that he has suffered a loss of use of his funds. Assuming an interest rate of 10% (Utah Code Ann. § 15-1-1(2) (2013) the loss of use damages would be about $.67. Respondent's gratuitous deposit into Claimant's account of more than $20 when it reopened the account fully satisfies any claim for loss of use.

when it was unable to verify his identification, it should have allowed Claimant to spend down his initial deposit. I find in favor the Claimant on his EFTA – declined transactions claim.

Taking into consideration those factors set out in 15 U.S.C. § 1693m (b), I award statutory damages to the Claimant in the amount of $250. I also award Claimant his attorney's fees in an amount to be determined.

4. EFTA – Regulation E - Response time and notice of error

A declined transactions is not an "error" under Regulation E, 12 C.F.R. § 205.11 (a). Without a statutorily defined error, the response time and notification requirements under Regulation E do not apply. I find against Claimant on this issue.

5. EFTA – Regulation E – Failure to conduct prompt and reasonable investigation

For the same reasons noted above, the investigation requirements of Regulation E do not apply to declined transactions. I find against Claimant on this issue.

6. EFTA – Regulation E – Failure to provide required statements

Claimant has not presented sufficient evidence to show a violation of EFTA by Respondent for failure to provide periodic statements to Claimant. Insufficient evidence exists to support a finding that Respondent denied him such access. Rather, the most credible information on this point is that Respondent made Claimant's account information available to him electronically, compliant with 12 C.F.R. § 1005.18 (c). I find against Claimant on this issue.

7. EFAA – Regulation CC

Respondent's asserted defense based upon the cited case of *Little Donkey Enters. Wash. v US Bancorp.*, 136 F. App'x 91 (9th Cir. 2005), is persuasive. Since the hold on the account was placed after the deposit was made, Claimant has not proven his claim under Regulation CC by a preponderance of the evidence. I find against Claimant on this issue.

8. Utah Consumer Sales Practices Act

The Utah Consumer Sales Practices Act (the UCSPA") was enacted to protect consumers from a variety of deceptive and unconscionable practices. It is to be construed liberally to achieve its purposes. Utah Code Sec. 13-11-1 (2).

The Utah statute distinguishes between a deceptive act, which requires proof of knowing or intentional conduct, and an unconscionable act, which does not. Here, although Claimant has not shown an intentional or knowing deceptive act, he has shown an unconscionable one.

Respondent rejected Claimant's initial identification and declared that "Customer's ID did not pass verification process. Account cannot be reopened and they will not be able to open any additional cards with this bank."

Despite this declaration, Respondent kept Claimant's money and over the next 3-4 weeks forced Claimant to re-submit the same identification on multiple occasions. Ultimately, Respondent determined that the initial identification submitted by Claimant was acceptable, but did not notify Claimant of this decision until after Claimant hired counsel, filed a consumer complaint, and initiated this arbitration. This deprivation of funds rises to the level of a "loss" under the UCSPA. See, *Anderson v. Felsted*, 137 P3d 1 (Utah Ct. App. 2006).

Construing the UCSPA liberally in favor of the consumer compels the conclusion that Respondent has committed an unconscionable act under that statute. I find Respondent's conduct and treatment of Claimant to be both unconscionable and inexplicable.

I find in favor of Claimant on his claim under the UCSPA. As to damages, I find that Claimant has not proven actual damages but is entitled to statutory damages in the amount of $2,000. Claimant is also entitled to recover his attorney's fees on the UCSPA claim in an amount to be determined.

9. Reallocation of arbitration costs

Under Rule 44(c) of the Consumer Arbitration Rules of the AAA, an arbitrator may reallocate arbitration costs to any party upon a determination that a party's claim or counterclaim was filed for purposes of harassment or is patently frivolous. Respondent seeks such a reallocation arguing that Claimant's claims meet that standard. However, since Claimant has prevailed on some, but not all, of his claims, Respondent's claim for reallocation of costs of arbitration must be denied. I find against Respondent on this issue.

10. Attorney's fees claim of Respondent

Respondent seeks an award of fees and expenses under 15 U.S.C. § 1693f. Since Claimant was successful on at least one of his EFTA claims, it cannot be said that his EFTA action was "unsuccessful" even though he did not prevail on most of his EFTA claims. Respondent's request for fees under 15 U.S.C. § 1693m(f) is denied. I find against Respondent on this issue.

INTERIM AWARD

From the above findings, the following interim award is entered:

1. Claimant is awarded $1 on his claim for breach of contract.
2. Claimant is awarded statutory damages in the amount of $250 on his EFTA – Declined transactions claim.
3. Claimant is awarded statutory damages in the amount of $2,000 on his USCPA claim.
4. Claimant will be awarded attorney's fees in an amount to be determined on his EFTA – declined transactions claim and his UCSPA claim.
5. All other claims of Claimant are denied.
6. Respondent's claims for reallocation of arbitration costs and for an award of fees are denied.

Except for the determination of attorney's fees, this Interim Award is in full settlement of all claims and counterclaims submitted to this Arbitration. The Arbitrator retains jurisdiction to determine the reasonable amount of fees and costs to be awarded to Claimant. Claimant is ordered to submit his claim for fees and expenses related only to his claim of EFTA – declined transactions and his claim under USCPA together with any supporting documents within 21 days of the date of this Interim Award. Respondent will be given 21 days thereafter to respond. Upon receipt of such submissions, the record will be closed and a final award will be made.

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

So Ordered this 25th day of October 2024.