



## AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration between

Case Number: 01-18-0003-3300

Lonnie Haynes, Claimant

-vs-

Green Dot Bank Respondent

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### 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 opened and funded a demand deposit account with Respondent. In this arbitration, he 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). He 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 him when it failed to credit him for a fraudulent charge in the amount of \$200.27 at a Tom Thumb grocery store in Arlington, Texas. Respondent argues that its denial of this fraud claim was warranted because, among other things, the charge was made with Claimant's actual card and because the transaction fit Claimant's prior and subsequent spending patterns, which included multiple transactions at various Tom Thumb stores.

Exhibit A-1 to the Declaration of Respondent's key witness, a transaction history, does not support Respondent's characterization of Claimant's spending. Instead, it shows that while Claimant purchased fuel from time to time at Tom Thumb locations, he consistently purchased groceries from Tom Thumb competitors in cities other than the one that was the site of the disputed purchase. For these reasons, I find that Respondent breached its contract with Claimant when it repeatedly refused to credit him for the disputed charge. I find that Claimant should recover \$200.27 on this claim.

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. 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 the charge was 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, the evidence of a proper request for these items during the claims dispute process was insufficient. And although Claimant asserted that Respondent improperly demanded an affidavit/declaration, he did not submit credible evidence showing that Respondent demanded one or submit a copy of any declaration that he may have submitted during the charge-dispute process.

4. Attorney's fees and costs. Claimant is entitled to recover his attorney's fees based upon the successful Electronic Funds Act claims. A claim for \$3,937.50 is supported by a declaration. Respondent's response focuses more on entitlement to fees rather than the reasonableness and necessity of the amount sought. For this reason, I hereby award the full \$3,937.50 requested.

Accordingly, based on the foregoing:

- Claimant's breach of contract claim is granted and he is awarded \$200.27.
- 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 his claims.
- Claimant is awarded \$3,937.50 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



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Patricia A. Nolan, Arbitrator