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AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

Case Number: 01-18-0002-7499

Yolanda Jones

-vs-

Varo Money, Inc., and The Bancorp Bank

AWARD OF ARBITRATOR

I, Marc S Dobin, 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 asserted the following claims against Respondents:

1. Violation of the Electronic Funds Transfer Act, Regulation E (12 C.F.R. 205), Unauthorized Transactions
2. Violation of the Electronic Funds Transfer Act, Regulation E (12 C.F.R. 205), Explanation of Findings

As damages, the Claimant seeks actual damages of \$203.00, statutory damages of \$2,000.00 and attorney fees and costs of \$3,762.50. The Respondents deny all liability to the Claimant.

Pursuant to the Scheduling Order, as Amended, the Claimant submitted an initial brief and a reply brief. The Respondents submitted a response brief. The respective briefs were extensive and contained numerous exhibits and case law. The Arbitrator has read the briefs, considered the exhibits and case law¹ and finds for the Claimant as described below.

As to Count 1, the Arbitrator examined the documents provided by the Respondents. Exhibit "D" to the Respondents' brief showed that two transactions took place at exactly the same time on June 29, 2018 at 9:13. Regardless of time zone, these took place at the same time in two different Florida cities. Since the Arbitrator was left with the task of interpreting the Respondents' documents, which were not fully explained, it is the Arbitrator's finding that the Claimant acted promptly when she noticed that the \$203 transaction had occurred. Further, the Respondents have apparently ignored the inconsistency in their own records which showed the two geographically diverse simultaneous transactions. With this information in hand, the Respondents failed to explain to the Arbitrator how this was possible, particularly when both the disputed withdrawal and the simultaneous entry required the presence of the card by the Respondents' own admission.

Since the Claimant did not dispute the other transaction on June 29, 2018 at 9:13, then it follows that the disputed transaction must be erroneous. Accordingly, the Arbitrator finds that the Claimant's account was improperly charged and prevails on Count 1.

¹ The arbitrator did not consider any arbitration awards as precedent nor any of the Respondents' submissions concerning the Claimant's counsel.

As to Count 2, the Arbitrator finds that Respondents' failure to provide a cogent explanation as to its findings violated its legal obligation to do so. Simply sending a letter stating that there was no error and requiring a customer to ask for further backup places an unreasonable duty upon that customer. The Arbitrator is experienced in financial matters and spent significant time deciphering Respondents' Exhibits C and D, along with the explanation provided in Respondents' Exhibit A, before determining that there was a second transaction at exactly the same date and time as the disputed one. A layperson could hardly be expected to conduct such an inquiry. The Respondents could have easily provided a plain language explanation to the Claimant which they were ultimately required, and failed, to do in this arbitration. Instead, it appears that the Respondents focused solely on what they clearly believed to be true – that a card was present for the withdrawal. If so, then the Respondents have no explanation, and provided none to the Claimant or the undersigned Arbitrator, for why the two transactions took place at precisely the same time and date.

Accordingly, the Arbitrator finds that the Respondents violated their legal obligation on both counts and are liable for statutory damages, attorney fees and costs.

It is therefore, AWARDED to the Claimant and against the Respondents, jointly and severally, as follows:

1. \$203.00 plus interest at the Florida statutory rate calculated from June 29, 2018 until the Award is paid; and
2. \$2,000 for statutory damages accruing interest commencing 30 days from the date of this Award; and
3. \$3,762.50 in attorneys' fees.

The administrative fees of the American Arbitration Association (AAA) totaling \$1,900.00 shall be borne as incurred, and the compensation of the arbitrator totaling \$1,500.00 shall be borne as incurred.

The above sums are to be paid on or before 30 days from the date of this Award.

This Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

January 3, 2019
Date



Marc S. Dobin, Arbitrator