



## AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration between

Case Number: 01-18-0003-2960

Emily Sebree, 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:

#### Background

Claimant purchased and funded a prepaid debit card from Respondent. On approximately June 26, 2018, Claimant asserts that Respondent improperly placed and subsequently maintained on a hold on her account, had an incorrect balance, and declined one or more transactions improperly. She seeks recovery of approximately \$1,216.31. She has asserted a breach of contract claim, violations 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 asserts that the hold was proper because it had detected potentially fraudulent activity on the account, namely an attempted direct deposit to a payee named Mathew Slaughter, who was not associated with the account. On multiple occasions, Respondent asserts, it explained the situation to Claimant and requested identifying information from her and from Mr. Slaughter. The record indicates that Respondent did not receive all of the requested information in the form requested, although Claimant apparently made some attempts to provide it. Finally, 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 placed a hold on her account, failed to notify her of the hold, and failed to remove the hold. She also claims that she was repeatedly asked to prove her identity and that, despite submitting identifying documents multiple times, Respondent refused to accept her proof of identity and that of Mr.

Slaughter. Claimant seeks recovery of her balance at the time of the hold, plus legal fees and costs of suit. Nowhere in Claimant's Summary of Claim or accompanying Declaration is there any evidence to prove that the questioned deposit was properly made into her account, and neither her declaration nor her other evidence offers any actual evidence concerning the identity of the person named in the deposit or attempts to explain why the use of the account by others was not a breach of the account agreement. However, Respondent's evidence includes documents Claimant submitted in an attempt to satisfy Respondent, including a temporary driver's license bearing Mr. Slaughter's name, address and photo. In addition, a payroll record was provided, although for the wrong pay period.

Claimant bears the burden of proof on the breach of contract claim. I find that she ultimately provided sufficient documentation to justify lifting of the hold on her account. I hereby award her \$1,216.31, the amount in her account at the time the hold was placed on her account.

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. Claimant asserts multiple violations of the Electronic Funds Transfer Act, Regulation E. In Claim III, Claimant asserts that the Act was violated because Respondent improperly declined transactions. Nothing in the evidence Claimant filed provides any specific information concerning a declined transaction. The initial hold on the account was justified because of the direct deposit on behalf of a person not associated with the account, and the continuation of the hold was warranted, at least for a time, by Claimant's failure to provide documentation. However, once Claimant submitted photo identification issued by the State of Texas and some payroll information, it was clear that the deposit of funds on behalf of Mr. Slaughter had been intended for her account. There is no legal justification for Respondent to retain those funds and enjoy a windfall, even if the deposit violated the "personal use" term of the account. For these reasons, I find in favor of Claimant on this claim and award \$200.00.

In Claim IV, Part I, Claimant asserts a claim of violation based upon response time – notice of error. This claim is based upon the idea that Respondent failed to respond within 10 days to Claimant's report of an error in her account. Similarly, in Claim IV, Part II, Claimant asserts a claim of violation based upon response time – investigative documents. This claim is based on the idea that once Respondent received a letter from Claimant's counsel, its deadline began to run on its duty to provide its investigative file. On this evidentiary record, I find in favor of Respondent on both claims. Respondent has filed a declaration detailing its efforts to obtain Claimant's cooperation so that her report of error could be investigated. The record does not contain any evidence to indicate that Claimant provided the requested information in a timely fashion. Although Claimant's counsel sent a letter dated July 10, 2018, to notify Respondent of an improper hold, I find that the letter provided insufficient information and failed to address the issues that Respondent had raised – repeatedly – with Claimant concerning the direct deposit.

4. Attorney's fees and costs. Claimant is entitled to recover her attorney's fees. A claim for \$3,937.50 is supported by a declaration. For this reason, I hereby award the full \$3,937.50 requested.

Respondent has requested that it recover its attorney's fees and the arbitration costs on grounds this arbitration was brought in bad faith. Since Claimant has prevailed on at least one of her claims, I do not

find that this arbitration was brought in bad faith and therefore decline to award fees and costs to Respondent.

Accordingly, based on the foregoing:

- Claimant is awarded \$1,216.31 on her breach of contract claim.
- Claimant is awarded \$200.00 on her one successful Electronic Funds Transfer Act claim.
- Claimant is awarded \$3,937.50 as attorney's fees.
- Respondent's counterclaim for fees and reallocation of the arbitration costs is denied.

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. 6, 2019



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Patricia A Nolan, Arbitrator