

**AMERICAN ARBITRATION ASSOCIATION
Consumer Arbitration Rules**

In the Matter of the Arbitration between

Case Number: 01-20-0003-7896

Crystal Spears (Claimant)

-vs-

Axos Bank, HRB Tax Group, Inc.,
and Emerald Financial Services, LLC (Respondents)

AWARD OF ARBITRATOR

I, Jerome O. Pitt, the undersigned arbitrator, having been designated in accordance with the arbitration agreement entered into by the parties, and having been duly sworn and the parties having elected to proceed as a desk arbitration (documents only) in accordance with the Rules, and having fully reviewed and considered the written documents submitted by the parties, hereby find and award as follows:

I. FINDINGS

Respondents issued Claimant an H&R Block Emerald Prepaid MasterCard (the "Account"). On or about March 2, 2020, Claimant discovered a series of transactions in the Account that she contends were unauthorized. Claimant, in this action, asserts Respondents' violated the Electronic Funds Transfer Act ("EFTA"), 5 U.S.C. § 1693, *et seq.*, as implemented through Regulation E, 12 C.F.R. § 205, *et seq.* Respondents deny having violated those laws.

A. Claim I: Unauthorized Transactions

1. Claimant alleges unauthorized withdrawals were made from the Account between February 26, 2020 and March 2, 2020. The total of those withdrawals was \$4,959.90. Claimant timely notified Respondents of her contentions. She did so initially orally and subsequently in writing.
2. Following Claimant's notification of the error, Respondents contend they conducted an investigation to determine if the disputed transactions had, in fact, been authorized. Respondents subsequently concluded these transactions had been authorized, and on March 12, 2020 sent Claimant a letter to that effect.
3. Pursuant to the EFTA, the Respondents carries the burden of proving the transactions had been authorized. 15 U.S.C. § 1693g. Claimant contends Respondents failed to meet that burden.
4. I find Respondents did not present sufficient evidence showing the transactions were authorized and therefore failed to carry their burden of proof. Therefore, pursuant to 15 U.S.C. § 1693m, Claimant is entitled to recover her actual damages, a statutory penalty of \$1,000, and reasonable attorney fees.

B. Claim II: Affidavit/Declaration

5. Following Claimant's oral notification of the error, Respondents, pursuant to 12 C.F.R. § 205.11(b) (2), required Claimant to submit a written confirmation of the error. However, a 2006 Federal Reserve Compliance Alert does not permit Respondent to require an affidavit or sworn statement.
6. Respondents provided a form for Claimant's written statement (the "Form"). Claimant's Exhibit 2. I find the language contained in the Form constitutes a declaration under the penalty of perjury, which is the equivalent of an affidavit.

