



2. Violation of the Utah Consumer Sales Practices Act

For the same reasons that Respondent was in breach of contract, I find that Respondent engaged in deceptive and unconscionable acts or practices in violation of the Utah Consumer Sales Practices Act.

3. Unauthorized Transactions

The burden of proof is on Respondent to show that the transactions were in fact authorized, 15 U.S.C. 1693 (g). Respondent has failed to satisfy its burden of proof by failing to brief liability. I find in favor of Claimant that the disputed transactions were unauthorized

4. Affidavit/Declaration of Fraud Requirement

12 C.F.R. 205.11(b)(2) provides that “a financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice”. However, this does not give Respondent the right to require Claimant to sign an Affidavit/Declaration, as they did in this case. As Respondent did not brief liability in this case and only briefed damages, I find Respondent’s use of the Affidavit to be a violation of the Act.

5. Explanation of Findings

Under 12 C.F.R. 205.11(d)(1), a financial institution is obligated to provide “a written explanation of the institution’s findings and shall note the consumer’s right to request the documents that the institution relied on in making its determination”. In its determination letter, Respondent informed Claimant that “[w]e have concluded that this is a valid authorized transaction and it will remain on your account”, without further explanation. Rather than providing Claimant with a written explanation of its findings, Respondent offered nothing more than a conclusory statement that failed to inform Claimant of any basis for denying the claim. As Respondent did not brief liability in this case and only briefed damages, I find in favor of Claimant.

6. Response Time – Investigative Documents

Pursuant to 12 C.F.R. 205.11(d)(1), a financial institution is obligated to “promptly provide” copies of any documents that it relied on in making its determination. Claimant’s counsel sent Respondent a request for the documents relied upon in the investigation and denial decision. Respondent failed to respond. I find the request for investigative documents sufficient under 12 C.F.R. 205.11(d)(1)(iii), as requests for investigative documents are not subject to the same requirements of Notices of Error. Respondent did not fulfill its statutory obligation to promptly provide copies of the documents upon Claimant’s counsel’s written request. As Respondent did not brief liability in this case and only briefed damages, I find in favor of the Claimant.

Respondent alleges that Claimant’s arbitration demand is frivolous and is brought in bad faith and for purposes of harassment. Based on the evidence submitted, I find that it is not.

Respondent failed to both respond to Claimant's counsel's Notice of Dispute and request to timely provide copies of Claimant's Card EFT report, requested before Claimant filed the Opening Brief. In addition, Respondent's counsel filed a Counterclaim in this case arguing that Claimant's claims were frivolous, even though it attempted to settle said claims and failed to brief liability in its own Response Brief. I find that a reasonable person or advocate would not have filed such a counterclaim and then attempted to both settle the claims, as well as fail to then brief said claims in its Response Brief. I find this Counterclaim to have been patently frivolous.

**IT IS ORDERED:**

1. Claimant, LANIE PENCE, is hereby awarded damages in the amount of \$546.18.
2. Claimant, LANIE PENCE, is awarded statutory damages in the amount of \$1,000.00, pursuant to 15 U.S.C. 1693 (m).
3. Claimant's attorney fees are hereby awarded in the amount of \$3,000.00, pursuant to 15 U.S.C. 1693 (m).
4. Respondent's claims presented herein are DENIED.
5. All damages and fees awarded to Claimant shall be borne by Respondent and paid within thirty (30) days.
6. The administrative fees of the AAA totaling \$1,000.00, and the compensation of the arbitrator totaling \$750.00, shall be borne as incurred.

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

**November 26, 2019**

**Date**

**Robert L. Cowles**

**Robert L. Cowles, Arbitrator**