

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

Case Number: 01-16-0001-1601

Jannah Rasul

-vs-

UniRush, LLC and MetaBank

AWARD OF ARBITRATOR

I, Laurel G Yancey, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between 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 do hereby, AWARD, as follows:

Claim One: Violation of Electronic Funds Transfer Act - Unauthorized Transactions

A. 5550 Card

Respondent's Exhibit A-1 supports the finding that the RUSHCARD ending in number 5550 was activated via a telephone call from the telephone number 678-559-8649 on September 29, 2015, on or about 11:00 p.m. CST. Respondent's Exhibit B attributes this telephone number to Laila Campbell, Ms. Rasul's daughter. The two exhibits establish a direct, causal link between the 5550 card and the source of its activation.

Respondent's Exhibit B incorporates a "RUSHCARD Affidavit of Unauthorized Card Transactions" form for the #5550 card that was completed by the Claimant, and bears a notary public stamp. Notarization assures that the document is authentic and can be trusted. In her Affidavit, Claimant states the following "Someone ordered a card w/out my knowledge or consent. I never had this card (#5550) in my possession. Email information was changed by someone other than me and I never received notice".

Paragraph 9 of Claimant's Affidavit reads: "THE TRANSACTIONS LISTED BELOW WERE NOT MADE OR AUTHORIZED BY ME. THE TRANSACTIONS LISTED WERE NOT MADE BY ANY PERSON TO WHICH I HAVE AT ANY TIME MADE AVAILABLE MY CARD, AND I HAVE NOT BENEFITTED FROM THESE TRANSACTIONS". Attached to Respondent's Exhibit B is a list of unauthorized transactions from September 30, 2015 to October 14, 2015, totaling \$544.71. Respondent's Exhibit B documents that

the first disputed transfer received from RUSHCARD ending in number 9517 occurred on September 30, 2015. Claimant notified the Respondent of the disputed transactions, including telephonically on November 4, 2015. Per Respondent's request, Claimant returned her completed "Questionnaire of Fraud" on November 12, 2015.

B. 9517 Card

Claimant asserts that she was the victim of identity theft, and, as a result, unauthorized transactions totaling \$1,773.70 on her RUSHCARD ending in number 9517 were made. Attached to Respondent's Exhibit B is a list of unauthorized transactions from July 28, 2015 to November 4, 2015. Respondent's Exhibit B documents that the first disputed transaction payment to PAYPAL from RUSHCARD ending in number 9517 occurred on July 28, 2015.

Respondent's Exhibit B incorporates a "RUSHCARD Affidavit of Unauthorized Card Transactions" form for the #9517 that was completed by the Claimant, and bears a notary public stamp. Section 11 of the Affidavit contained the following statement: "I HAVE NOT MADE MY CARD AVAILABLE TO ANYONE OTHER THAN THE FOLLOWING PERSON(S)". Listed therein is Name: Laila Campbell; Relationship: Daughter; Address: 433 Highland Avenue, Apt. 1302, Atl, GA 30312; Telephone: 678-559-8649; and Reason: "She was a minor and I allowed her to set up her college student account (Higher One) using my card." Also inscribed is "11/12/15 @ 8:51pm, Info was incorrect so I removed it."

Claimant notified the Respondent of the disputed transactions, including telephonically on November 4, 2015. Per Respondent's request, Claimant returned her completed "Questionnaire of Fraud" on November 12, 2015 for her RUSHCARD.

Claim Two: Violation of Electronic Funds Transfer Act - Response Time for Investigative Documents

Claimant states that Respondent did not satisfy the notice and written explanation requirements of 12 C.F.R. 205.11(c)(1) and 12 C.F.R. 205.11(d)(1). Per Respondent's request, Claimant returned her completed "Questionnaire of Fraud" on November 12, 2015 for her RUSHCARD. Respondent asserts that its November 13, 2015 denial letters, in reply to the Claimant, outlined the process for requesting a copy of the investigative documents, and provided a fax number to contact its Dispute Resolution department.

Claimant did not personally request the investigative documents. On January 14, 2016, Counsel, as retained by Claimant, requested the investigative documents and transaction history, for the purpose of a desired settlement. Respondent claims that 12 C.F.R. 205.11(d)(1) does not contemplate discovery demands by an attorney. Respondent further avers that Counsel for Claimant should have provided a power

of attorney. In rebuttal, Counsel for Claimant states that Respondent provides no legal basis for its arguments.

Claim Three: Violation of Electronic Funds Transfer Act - Explanation of Findings

Claimant submits that Respondent failed to provide its written explanation of findings for its denial pursuant to 12 C.F.R. 205.11(c)(1) and 12 C.F.R. 205.11(d)(1). Claimant asserts that Respondent's two denial letters dated November 13, 2015 do not meet the requirements of 12 C.F.R. 205.11(d)(1). Namely, the first letter does not provide any explanation or statement that Claimant failed to meet these requirements. Rather, the first letter recites various time requirements for notifying the issuing bank, but no explicit statement about Claimant's noncompliance. In the second letter, the Respondent concluded "no error occurred."

In rebuttal, Respondent asserts that it satisfied the requirements of 12 C.F.R. 205.11(d)(1) through its two letters dated November 13, 2015, as the statute simply requires a "written explanation", not a detailed analysis.

Claim Four: Breach of Contract

Claimant avers that she and Respondents entered into the PREPAID VISA RUSHCARD CARDHOLDER AGREEMENT. Per paragraph 22, this Agreement is governed by the law of the State of Delaware. Claimant claims that Respondent breached this Agreement by failing to provide Claimant a written explanation, by imposing liability in Claimant greater than \$0 when timely notified of debit transactions, and by imposing liability on Claimant greater than \$50 when timely notified of the transactions. As a result, Claimant suffered damages.

Respondent argues that it did not breach the Agreement under any of Claimant's theories. Respondent specifically cites provisions in Section 20 of the Cardholder Agreement. These provisions limit a cardholder's liability when transactions are "unauthorized" or someone uses a card or pin number without the cardholder's "permission".

Claim Five: Violation of Georgia Fair Business Practices Act

Claimant claims that the provisions of section 20 in the Cardholder Agreement were false, misleading or deceptive acts or practices by Respondent that violated the Georgia Fair Business Practices Act.

Respondent cites Section 22 of the Cardholder Agreement, arguing that since Delaware law governs, Claimant has not set forth a viable claim for violation of the Georgia Fair Business Practices Act.

FINDINGS:

A. Claim One: Unauthorized Transactions RUSHCARD # 5550

Find in favor of **Claimant** in the amount of \$544.71, per total of unauthorized transactions listed on page 16 of Respondent's Exhibit B. Respondent did not meet its burden of proof that Claimant activated RUSHCARD ending in number 5550, and that Claimant authorized the associated transactions. Respondent's Exhibit B directly links the activation of RUSHCARD ending in number 5550 to the telephone number 678-559-8649. This number is listed for Laila Campbell at a residence located at 433 Highland Avenue, Apt. 1302, Atl, GA 30312.

A. Claim One: Unauthorized Transactions RUSHCARD # 9517

Find in favor of **Respondent**. Per Rule 35 of the AAA Consumer Arbitration Rules, partial credence is given to Claimant's statement in Section 11 of her notarized Affidavit wherein she wrote that she gave her daughter permission to use the RUSHCARD # 9517. The Affidavit is incorporated as a part of Respondent's Exhibit B.

Counsel for Claimant did not submit an objection to the admission of such evidence in this arbitration. The evidence supports that the transactions were authorized by the Claimant. Per section 6 of the Cardholder Agreement, "If you provide access or permit another person to use your Card or Card number then you are liable for all transactions and fees incurred by such use of your Card."

B. Claim Two: Violation of Electronic Funds Transfer Act - Response Time for Investigative Documents

and

Claim Three: Claim Three: Violation of Electronic Funds Transfer Act - Explanation of Findings

Find in Favor of **Claimant** in the amount of \$1,000.00.

The January 14, 2016 letter, from Claimant's Counsel, was seeking ordinary work product materials from Respondent for the purpose of settlement discussions, not, on that date, for arbitration. Respondent did not cite privilege or other legal precedent for failing to provide the documents.

In addition, Respondent's November 13, 2015 letters failed to (i) provide Claimant a telephone number to contact Respondent's Dispute Resolution department, as required by 12 C.F.R. 205.7(b)(2); and (ii) provide Claimant a statement making clear Respondent's conclusion of "no error".

C. Claim Four: Breach of Contract

Find in Favor of **Claimant**.

Respondent breached the Cardholder Agreement (i) by imposing liability on Claimant greater than \$50 when timely notified of the unauthorized transactions for payments and transfers from RUSHCARD # 9517 to RUSHCARD # 5550, and (ii) by failing to provide Claimant a statement making clear Respondent's conclusion of "no error".

D. Claim Five: Violation of Georgia Fair Business Practices Act

Find for **Respondent**.

State of Delaware law governs, per Section 22 of the Cardholder Agreement. Claimant did not set forth a viable claim for violation of the Georgia Fair Business Practices Act.

E. Attorney Fees and Costs:

Find in favor of Counsel for **Claimant**. Respondent shall pay attorney fees and costs to Claimant's counsel in the sum of \$4,200.00 (12 hours at \$350.00).

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 \$750.00 shall be borne as incurred.

The above sums are to be paid on or before thirty (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.

October 19, 2016
Date

Laurel G. Yancey
Laurel G Yancey, Arbitrator