

**AMERICAN ARBITRATION ASSOCIATION**  
**CONSUMER ARBITRATION RULES**

**CLAIMANT:**           **TARRA TISDALE**  
**RESPONDENT:**       **NETSPEND AND METABANK**  
**CASE #:**             **01-15-0003-1197**

**AWARD OF ARBITRATOR**

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties and effective in or about June, 2010, Claimant being represented by A. Blake Thomas, Esq., Consumer Fraud Legal Services LLC, Respondent being represented by Shannon Hutcheson, Esq., Hutcheson Bowers, and having been duly sworn, and oral hearing having been waived in accordance with the Rules, and having fully reviewed the written documents submitted to me, do hereby Find and Award as follows:

Claimant seeks recovery of damages for the alleged improper withholding and/or return of funds deposited to her "NetSpend" debit card. Claimant argues that she "suffered actual damages" as follows:

- in being unable to access the \$1,015.00 of Card funds for more than 6 months;
- the costs to acquire and deliver the requested documents to Respondents<sup>1</sup>;
- expenses incurred as a result of not having access to the funds<sup>2</sup>;
- the original purchase price and fees on the Card<sup>3</sup>; and

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<sup>1</sup> Claimant did not provide proof of costs to acquire or deliver requested documents. See, Declaration of Tarra Tisdale.

<sup>2</sup> Claimant did not provide proof of expenses incurred as a result of not having access to the funds. See, Declaration of Tarra Tisdale.

- the legal fees and costs of suit to get the hold lifted.

Claimant's Opening Brief, at p. 9, Claimant's Reply Brief, at p. 3

Notwithstanding the foregoing, the Claimant's actual demands are set forth as follows:

- a. actual damages of \$1,015;
- b. statutory damages of \$1,000;
- c. attorney's fees and costs of \$4,750 (19 hours at \$250 per hour); and
- d. all other necessary relief and relief to which Claimant is entitled.

Claimant's Opening Brief, at p. 18; Claimant's Reply Brief, at pp. 7-8.

The Arbitrator finds that the Claimant was without use of her funds (\$1,015) for a period of 65 days but that she ultimately did receive the funds. Accordingly, the Arbitrator awards interest at the Maryland Constitutional rate of 6% per annum on the amount withheld, for a total of \$10.85. The Arbitrator further finds that the Claimant is entitled to statutory damages of \$1,000 pursuant to the Electronic Funds Transfer Act.

The claim for attorney's fees presents a more troublesome analysis in that this case is a mixture of statutory and contract claims. Maryland recognizes that the computation of attorney's fees, when authorized by law or provided for by contract, follows two different methods of computation. See, discussion generally at Monmouth Meadows Homeowner's Association v. Hamilton, 416 Md. 325 (2010).

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<sup>3</sup> Claimant did not provide proof of the original purchase price and fees on the Card. See, Declaration of Tarra Tisdale.

Under the Lodestar method (applicable to fee-shifting statutes) the Court must analyze the 12 specific factors enumerated in Monmouth, and set forth in Maryland Rule 2-703(f)(3). In the case of contractual attorney's fees, the Court must determine if those fees are "fair and reasonable". As Monmouth instructs, the eight factors set forth in Rule 1.5(a) of the Maryland Rules of Professional Conduct are to be applied.

In the instant case, the Claimant has failed to provide the necessary analysis under either procedure. Accordingly, the Arbitrator is unable to award attorney's fees.

For the foregoing reasons, the Arbitrator:


- A. GRANTS Claimant's claim as breach of contract in the amount of TEN AND 85/100 DOLLARS (\$10.85);
- B. GRANTS Claimant's claim for violation of the Electronic Funds Transfer Act, and awards statutory damages in favor of Claimant in the amount of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00); and
- C. DENIES all claims and counterclaims not expressly granted herein.

The administrative fees and expenses of the American Arbitration Association totaling \$1,700.00 and the compensation of the Arbitrator totaling \$750.00 shall be borne as incurred.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration.

I, Tarrant H. Lomax, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

Date: December 16, 2015

  
Tarrant H. Lomax