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AMERICAN ARBITRATION ASSOCIATION

DERRICKA WILLIAMS,

Claimant,

Arbitration No. 01-17-0001-3399

and

UNIRUSH, LLC and METABANK,

Respondents.

AWARD OF ARBITRATOR

I, Kevin S. Hendrick, 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 Consumer Arbitration Rules of the American Arbitration Association, and after having fully reviewed and considered the briefs and documents submitted to me by both parties, with Claimant represented by A. Blake Thomas, Esq of Consumer Fraud Legal Services, LLC, and with Respondent represented by Elizabeth Shaffer, Esq. of Dinsmore & Shohl, LLP, do hereby, AWARD, as follows:

1. Claimant filed a Demand for Arbitration alleging that there had been an unauthorized transaction against her prepaid debit card issued by Respondent Metabank and marketed by Respondent Unirush, LLC; that on January 22, 2017, she notified Respondents of her dispute concerning the charge; and that Respondents failed to timely respond to the dispute as required under the Electronic Funds Transfer Act.
2. Claimant alleges that she was told that a written confirmation of dispute form would be forwarded to her, and that no such form was ever forwarded to her.
3. Respondents allege that, upon being notified orally of the disputed transaction, a copy of the dispute form was forwarded to Claimant both in hard copy by U.S. Mail, and by email, and a copy of the form was uploaded to Claimant's online account portal.
4. Under the Electronic Funds Transfer Act, Regulation E, Respondents had an obligation to investigate and resolve the dispute within 10 days of oral notice, or, if the investigation could not be completed and resolved within 10 days, then Respondent had additional time to investigate (either 45 days or 90 days depending upon the type of transaction) so long as Respondents provisionally credited the disputed transaction to Claimant.
5. The Arbitrator finds that the disputed transaction was not resolved within 10 days of oral notice of same, but that it was resolved within 44 days of same, and credit was provided to Claimant to reverse the transaction.

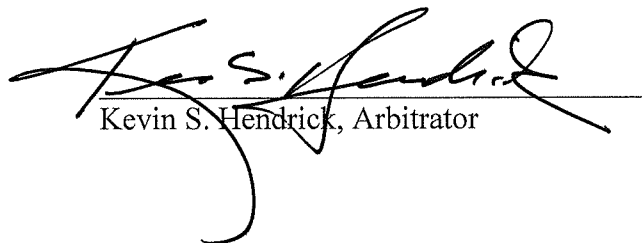
6. Respondents carry the burden of proving that they forwarded the written dispute form to Claimant, and that Claimant did not respond in a timely fashion (which, per the EFTA would have obviated the need for the provisional credit). Respondents have not provided, in support of their allegations, any copy of the transmittal letter, or email or other evidence to support that the written dispute form was provided to the Claimant. Accordingly, the Arbitrator finds that Respondents have not established that they timely forwarded a written dispute form to Claimant.

7. It is undeniable, however, that Claimant became aware of the unauthorized expenditure on January 22, 2017, the day that the expenditure occurred. Accordingly, Claimant cannot argue that she did not have access to locations where information concerning the dispute could have been obtained, nor that she did not have access to or knowledge that the transaction was reversed, and she received notice of the transaction being reversed on March 7, 2017.

8. The Claimant has not proven any out-of-pocket monetary loss, as the disputed transaction was reversed within 44 days of her making the oral claim of the dispute. However, when there is an irreconcilable factual dispute between Claimant and Respondents as to whether Respondents provided the written dispute form, or whether Claimant received the written dispute form, Respondents are in the best position to establish that the dispute form was made available, and Respondents did not do so. Accordingly, the Arbitrator awards statutory damages in the amount of \$100 to Claimant for the period between January 22nd and March 7, 2017, when Claimant was not made aware that the dispute was being processed, and the disputed transaction was not provisionally credited. Additionally, the Arbitrator awards attorney fees to Claimant in the amount of \$350.00, representing one hour's time. After the date of March 7, 2017, there is no justification for recovery of additional attorney fees. Accordingly, the Arbitrator awards as follows:

- a. Respondents Unirush and Metabank are jointly and severally liable to Claimant for damages in the amount of \$100.00, and attorney fees in the amount of \$350.00.
- b. The administrative fees of the American Arbitration Association totaling \$1,900.00 and the compensation of the arbitrator totaling \$750.00, shall be borne jointly and severally by Respondents.
- c. This Award is in full settlement of all claims and defenses submitted to this Arbitration. All claims and defenses not expressly granted are hereby denied.

SO ORDERED.


Kevin S. Hendrick, Arbitrator

Dated: September 18, 2017