



AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

Case Number: [REDACTED]

[REDACTED] Pollack, Claimant

-VS-

Green Dot Bank, Respondent

INTERIM AWARD OF ARBITRATOR

I, [REDACTED], 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 Claimant [REDACTED] Pollack having been represented by Gregory Pierre, Esq. of Gregory Pierre & Associates PLLC and Respondent Green Dot Bank having been represented by [REDACTED] Esq. of Dinsmore & Shohl LLP, and oral hearings having been waived in accordance with the Rules, and having fully reviewed and considered the written documents submitted to me by the parties, do hereby issue this AWARD as follows:

On or about August 31, 2021, Claimant opened a "CVS Classic Everyday Debit Visa" account (hereinafter "Visa Debit Card") with Respondent in the amount of \$350 at a CVS store in Morrisville, North Carolina.¹ The Claimant registered the card on or about that same date at which time he provided his Social Security number, date of birth, address in Washington, DC, and some form of identification.^{2,3}

¹ Claimant Exhibit H.

² Claimant Exhibit D; Respondent Exhibit A. Claimant did not testify regarding what identification he provided when he registered his card. However, the Cardholder Agreement states in part:

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Accordingly, when you try to register your Card with us, we will ask you for certain information, including, but not limited to, your name, address, date of birth, Social Security Number, phone number, and other information that will allow us to identify you. In addition, when you try to register your Card and from time to time thereafter, we may ask to see your driver's license or other identifying documents and may ask you security questions. If we verify your identity, your Card will be registered to you.

³ As used in this Award, "testify" or "testified" refer to statements made in declarations under penalty of perjury by Claimant (Claimant Exhibit A) and Matthew Pearce, Respondent's Vice President of Fraud Management (Respondent Exhibit A). (Declaration Exhibits 6 through 12 and 14 were not attached to the copy of Respondent Exhibit A submitted to the Arbitrator.)

The Claimant attempted to use his Visa Debit Card at a Budget Rent-A-Car facility in Virginia Beach, Virginia four times on August 31, 2021 to cover a charge of \$364.50.⁴ Later on August 31, the Claimant attempted twice to use his card for a Chipotle online purchase, and on September 3, 2021, the Claimant attempted twice to use his card for a McDonald's purchase in the amount of \$10.61 in Cary, North Carolina.⁵ Each of these attempts was declined.

It is undisputed that Respondent placed a B5 block on Claimant's account. Matthew Pearce, Respondent's Vice President of Fraud Management, testified:

6. Pursuant to the terms of the Cardholder Agreement, and as part of its routine business policies and procedures, Green Dot monitors card activity, such as incoming deposits, for certain characteristics potentially indicative of suspicious activity. For example, Green Dot makes note of when a card is loaded with funds in one state, and registered in a different state, as such activity is frequently indicative of fraud. Green Dot adopted this policy because it has certain responsibilities to avoid aiding fraudulent activity. This policy was in effect at the time Mr. Pollack's Visa Debit Card was purchased and registered.

7. There are also multiple types of blocks that Green Dot may place on a cardholder's account to address or prevent fraudulent activity. A "B5" block is a standard miscellaneous risk block, and may be removed once the cardholder provides whatever information, or complies with whatever request, Green Dot has specified. However, a B5 block may also be made permanent – a "P9" block – when Green Dot determines there will be no opportunity to cure the deficiency.

8. Pursuant to the filing of this arbitration, Green Dot has re-reviewed the underlying facts in Claimant [REDACTED] Pollack's ("Mr. Pollack") dispute, and has determined that Green Dot's conduct regarding Mr. Pollack's account (the "Account") was reasonable based upon Green Dot's internal policies and procedures and the evidence available to Green Dot at the time.

....

11. Because the Visa Debit Card was purchased and registered in two different states, and pursuant to Green Dot's fraud detection and prevention policies and procedures, that same day [August 31, 2021] Green Dot then placed a temporary B5 block on the Account to protect and secure the funds. A note was placed on the Account indicating that full access would not be restored to the cardholder until an image of his valid, non-expired driver's license or other state-issued identification had been submitted and reviewed. The note further stated that Green Dot would send an email to Mr. Pollack once it had received and completed its review of his identification documents. (Footnotes omitted.)⁶

⁴ Claimant Exhibit E. Respondent has not alleged that the fact that the charge exceeded the Claimant's balance was in any way related to its decision to decline the charge.

⁵ Claimant Exhibit E.

⁶ Respondent Exhibit A.

The Claimant called Respondent's customer service on at least two occasions on August 31, 2021.⁷ Recordings of the phone calls show that the Claimant quickly became aggressive, saying repeatedly that he made one purchase and wanted it to go through immediately, threatening to bring criminal charges against at least some of the representatives with whom he spoke, using the "F" word a number of times during the first phone call, and generally speaking over the customer service representative.⁸ The first phone call was answered by a representative, who "blind" transferred the call to a second representative, who, at the Claimant's request, transferred the call to a supervisor. The call ended when the connection was lost shortly after the supervisor came on the line.

The Claimant called Respondent's customer service again on September 1, 2021.⁹ Mr. Pierce testified:

13. On September 1, 2021, Mr. Pollack contacted Green Dot's Customer Service requesting that the block be removed from the Account. Mr. Pollack became belligerent when asked to provide his name for account verification purposes, and gave the fake name George Henderson. He continued to behave aggressively and would not let the agent speak, so the agent was again unable to provide him with instructions for unblocking the Account.¹⁰

14. Mr. Pollack called Green Dot's Customer Service again later that same day. On this call, one of Green Dot's agents was able to partially communicate the instructions for removing the block on the Account, but Mr. Pollack again became belligerent when he was informed of these instructions. Throughout multiple later conversations with Green Dot's agents on September 1, 2021, Mr. Pollack insulted and berated the agents, refused to accept the instructions he was given, and threatened to terminate his relationship with Green Dot. (Footnotes omitted.)¹¹

The Claimant sent Respondent an email dated November 3, 2021 wherein he demanded refund of his \$350.¹²

Respondent has charged Claimant's account with monthly service fees in the amount of \$7.95. As of November 1, 2022, the balance in the account was \$230.75.

Respondent has not refunded any amount to Claimant.

⁷ Claimant Exhibits A, I, J, K; Respondent Exhibit A; Declaration Exhibit 5 to Respondent Exhibit A.

⁸ Claimant Exhibits J and K.

⁹ Claimant Exhibits A, D; Respondent Exhibit A.

¹⁰ Neither Claimant nor Respondent offered recordings of the September 1, 2021 conversations into evidence.

¹¹ Respondent Exhibit A.

¹² Claimant Exhibit F; Respondent Exhibit A; Declaration Exhibit 13 to Respondent Exhibit A.

Claimant claims:

Breach of the Cardholder Agreement;

Violation of the Electronic Fund Transfer Act (EFTA) by improperly declining Claimant's transactions;

Violation of EFTA by (1) failing to timely report the result of its investigation to Claimant, and (2) failing to provide a written explanation of its findings to Claimant; and

A claim for money had and received in the amount of \$350.

Respondent counterclaims for attorney's fees and the cost of the arbitration. Respondent claims that Claimant's counsel, not just Claimant, should be liable for payment of Respondent's attorney's fees.

BREACH OF CONTRACT

The elements of a *prima facie* case for breach of contract are (1) a contract, (2) performance by the party seeking recovery, (3) breach of the contract by the other party, and (4) damages.¹³ It is undisputed that the Cardholder Agreement is a contract between Claimant and Respondent. The evidence leaves no doubt but that Claimant performed its obligations under the Cardholder Agreement. As stated above, he made a deposit of \$350 and registered the card.

Whether Respondent breached the Cardholder Agreement and, if so, whether Claimant suffered damages are disputed. Construing the Cardholder Agreement against Respondent, as the Arbitrator must, it becomes clear that Agreement provides that deposits made into a cardholder's account will be available for use via the card.¹⁴ The Cardholder Agreement states: "If we do not complete a transaction to or from the Card on time or in the correct amount according to this Agreement, we may be liable for your losses or damages under section 910 of the Electronic Fund Transfer Act." The clear inference is that Respondent is obligated to honor requests for transfers of funds, unless some other provision of the Cardholder Agreement authorizes Respondent not to do so. At another point, the Cardholder Agreement states: "*FDIC Insurance*. When you registered and loaded your Card, the money credited your card will be held in a custodial account at the Bank on your behalf." Despite the provision's heading "FDIC insurance", the sentence clearly and unequivocally states that if a cardholder registers and loads their card, the money credited to the card will be held in a custodial account at Respondent. In other words, Respondent was the custodian of Claimant's \$350. At a third point, the Cardholder Agreement states: "Charges to Your Card and Receipts. Each time you use your Card to purchase goods or services, you authorize us [Respondent] to charge the amount against the money on your Card." The clear inference is that Respondent will charge the amount in question when a cardholder uses their card to purchase goods or services. Indeed, the cardholder obtains no other benefit from entering into the Cardholder Agreement and depositing money in Respondent. That Respondent did not make Claimant's deposit available when he tried to use the card on August 31 and September 3, 2021 is undisputed.

Respondent argues that its refusal to make Claimant's funds available does not constitute a breach of the Cardholder Agreement because that agreement provides that Respondent "may refuse to

¹³ *Bair v. Axiom Design, LLC*, 2001 UT 20, 20 P.3d 388, 392 (Utah 2001); *American W. Bank Members, L.C. v. State*, 2014 UT 49, 342 P.3d 224 (Utah 2014).

¹⁴ *Cf. Muir v. Cincinnati Ins. Co.*, 514 P.3d 586 (Utah App. 2022).

issue a Card, refuse to register a Card, refuse to allow you to sign up for a Card, revoke or suspend your Card privileges, or cancel your Card with or without cause or notice, other than as required by applicable law.” (Emphasis added.) The difficulty with that defense is that it neither revoked, canceled, nor suspended Claimant’s Visa Debit Card. Rather, Respondent blocked access to his funds. That Respondent did not revoke, suspend, or cancel Claimant’s card is evidenced by the fact that Respondent continued to make monthly charges for the card and did not return to him the \$350 he had deposited. Moreover, an implied covenant of good faith and fair dealing is inherent in every contract.¹⁵ Mr. Pierce’s testimony that Respondent had a policy whereby it blocked accounts when the card was loaded in one state and registered in another was uncorroborated; if such a policy existed, one would expect that it be in writing. Similarly, Mr. Pierce’s statement that registration of a card in one state and the loading of funds in another “is frequently indicative of fraud” was uncorroborated. The Claimant’s Visa Debit Card was purchased in Mooresville, North Carolina and first presented for use in Virginia Beach, Virginia. North Carolina and Virginia are adjacent states, and, according to Google Maps, the highway distance between Mooresville and Virginia Beach is less than 250 miles. In addition, the card had only \$350, which is not a great sum of money in terms of interstate fraud. In this regard, the Arbitrator notes that the smallest amount of money referred to in Respondent’s Exhibit C, excerpts of Federal regulations regarding Suspicious Activity Reporting, is “in amounts of \$3000 and above.” Under the circumstances, the Arbitrator must find that Respondent’s determination to block Claimant’s account based on its potential for fraud was unreasonable and constituted a violation of the covenant of good faith and fair dealing.

Respondent’s argument that Claimant did not prove “the essential element of damages” is contrary to the evidence. Respondent’s B5 block prevented Claimant from using his Visa Debit Card to rent a car. That left him with two choices: find an alternative means of transportation or pay for the rental car with other funds. Both alternatives caused injury. At a minimum, Claimant suffered the loss of the time value of his deposit. The Arbitrator will grant Claimant’s breach of contract claim.

EFTA — DECLINING TRANSACTIONS

Fifteen U.S.C. § 1693h provides in pertinent part:

(a) Action for failure to act proximately causing damages

Subject to subsections (b) and (c), a financial institution shall be liable to a consumer for all damages proximately caused by—

(1) the financial institution’s failure to make an electronic fund transfer, in accordance with the terms and conditions of an account, in the correct amount or in a timely manner when properly instructed to do so by the consumer, except where—

- (A) the consumer’s account has insufficient funds;
- (B) the funds are subject to legal process or other encumbrance restricting such transfer;
- (C) such transfer would exceed an established credit limit;
- (D) an electronic terminal has insufficient cash to complete the transaction; or

¹⁵ See, e.g., *Eggert v. Wasatch Energy Corp.*, 2004 UT 28, 94 P.3d 193, 197 (Utah 2004).

(E) as otherwise provided in regulations of the Bureau;

....

(c) Intent

In the case of a failure described in subsection (a) which was not intentional and which resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, the financial institution shall be liable for actual damages proved. (Emphasis added.)

Respondent's argument that 15 U.S.C. § 1693h(a) has no application because the Claimant did not prove that Respondent's declining the transactions in question was improper is not supported by the evidence. As stated above, Respondent's declinations of the transactions noted above constituted a breach of the Cardholder Agreement. The undersigned respectfully disagrees with the finding by Arbitrator Daniel P. Albers in *James Bynum v. Global Cash Card and Metabank*, AAA Case No. 01-19-0002-1826, cited by Respondent, that a wrongful declination of a debit card transaction does not violate EFTA. Respondent's actions fall squarely within 15 U.S.C. § 1693h(a)(1), underlined above. The decision in *Rocio Lopez v. Green Dot Bank*, AAA Case No. 01-21-0004-7504 is distinguishable on its facts. The arbitrator in that case was apparently persuaded that the respondent's decision to decline the transaction was consistent with the cardholder agreement at issue. That is not the situation in this case, however. The undersigned Arbitrator will grant Claimant's claim that Respondent violated EFTA by improperly declining Claimant's transactions.

**EFTA —FAILURE TO TIMELY REPORT RESULT OF INVESTIGATION
AND PROVIDE WRITTEN EXPLANATION**

Fifteen U.S.C. § 1693f provides in pertinent part:

§ 1693f. Error resolution

(a) Notification to financial institution of error

If a financial institution, within sixty days after having transmitted to a consumer documentation pursuant to section 1693d(a), (c), or (d) of this title or notification pursuant to section 1693d(b) of this title, receives oral or written notice in which the consumer—

- (1) sets forth or otherwise enables the financial institution to identify the name and account number of the consumer;
- (2) indicates the consumer's belief that the documentation, or, in the case of notification pursuant to section 1693d(b) of this title, the consumer's account, contains an error and the amount of such error; and
- (3) sets forth the reasons for the consumer's belief (where applicable) that an error has occurred,

the financial institution shall investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days. The financial institution may require written confirmation to be provided to it within ten business days of an oral notification of error if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent. A financial

institution which requires written confirmation in accordance with the previous sentence need not provisionally recredit a consumer's account in accordance with subsection (c), nor shall the financial institution be liable under subsection (e) if the written confirmation is not received within the ten-day period referred to in the previous sentence.

....

(d) Absence of error; finding; explanation

If the financial institution determines after its investigation pursuant to subsection (a) or (c) that an error did not occur, it shall deliver or mail to the consumer an explanation of its findings within 3 business days after the conclusion of its investigation, and upon request of the consumer promptly deliver or mail to the consumer reproductions of all documents which the financial institution relied on to conclude that such error did not occur. The financial institution shall include notice of the right to request reproductions with the explanation of its findings.

.....

(f) Acts constituting error

For the purpose of this section, an error consists of—

- (1) an unauthorized electronic fund transfer;
- (2) an incorrect electronic fund transfer from or to the consumer's account;
- (3) the omission from a periodic statement of an electronic fund transfer affecting the consumer's account which should have been included;
- (4) a computational error by the financial institution;
- (5) the consumer's receipt of an incorrect amount of money from an electronic terminal;
- (6) a consumer's request for additional information or clarification concerning an electronic fund transfer or any documentation required by this subchapter; or
- (7) any other error described in regulations of the Bureau.

Twelve C.F.R. § 205.11(a), issued by the Board of Governors of the Federal Reserve System pursuant to EFTA provides in pertinent part:

(a) Definition of error -

- (1) Types of transfers or inquiries covered. The term error means:
 - (i) An unauthorized electronic fund transfer;
 - (ii) An incorrect electronic fund transfer to or from the consumer's account;
 - (iii) The omission of an electronic fund transfer from a periodic statement;
 - (iv) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;
 - (v) The consumer's receipt of an incorrect amount of money from

- an electronic terminal;
- (vi) An electronic fund transfer not identified in accordance with §§ 205.9 or 205.10(a); or
- (vii) The consumer's request for documentation required by §§ 205.9 or 205.10(a) or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1) (i) through (vi) of this section.¹⁶

Of the seven definitions, the only one that could arguably relate to the Claimant's claim is (ii). However, in context the word "incorrect" evidences a transfer that was made in an inaccurate amount or otherwise incorrectly. A non-transfer is not a "transfer to or from" a consumer's account. (Emphasis added.) Claimant has not referred the undersigned Arbitrator to a judicial or arbitral decision holding that an improperly declined transfer falls within the definition of "error" set out in 12 CFR § 205.11(a), and the Arbitrator's own brief research has uncovered none.¹⁷ The Arbitrator must deny Claimant's claim that Respondent violated EFTA by (1) failing to timely report the result of its investigation to Claimant and (2) failing to provide a written explanation of its findings to Claimant.

MONEY HAD AND RECEIVED

It is virtually self-evident that Claimant's claim for money had and received claim is meritorious. Despite Claimant's requesting the return of his deposit, Respondent retained Claimant's \$350 while providing no service.¹⁸ Respondent's argument that this claim should be denied because Claimant refused to provide appropriate identification is not persuasive. As indicated above, Respondent has not shown that requirement was reasonable. The Arbitrator will grant Claimant's claim for money had and received.

DAMAGES

Fifteen U.S.C. § 1693m(a) provides in pertinent part:

(a) Individual or class action for damages; amount of award

Except as otherwise provided by this section and section 1693h of this title, any person who fails to comply with any provision of this subchapter with respect to any consumer, except for an error resolved in accordance with section 1693f of this title, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure;

(2)(A) in the case of an individual action, an amount not less than \$100 nor greater than \$1,000;

....

¹⁶ See *also*, 12 C.F.R. §1005.11(a), issued by the Bureau of Consumer Financial Protection.

¹⁷ The definition of "error" was not discussed in *Kendeshia Bryant v. Green Dot Bank*, Case # 01-18-0003-2946 (2019) or *Felecia Campbell v. Green Dot Bank*, AAA Case # 01-18-0003-3308 (2019),,

¹⁸ See, *e.g.*, *Rocio Lopez v. Green Dot Bank*, AAA Case No. 01-21-0004-7504.

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) Factors determining amount of award

In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance, the nature of such noncompliance, and the extent to which the noncompliance was intentional.

Giving due consideration to the factors summarized in 15 U.S.C. § 1693m(b), the Arbitrator will award Claimant \$200 for Respondent's violation of EFTA discussed above. The violation continued for an extended period, but the nature of violation was not so egregious as to warrant a greater remedy.

To remedy Respondent's breach of contract and money had and received violation, the Arbitrator will award the Claimant \$350 plus interest, which shall be calculated at the overpayment rate established by the Internal Revenue Service in accordance with 26 U.S.C. § 6621 from August 31, 2021 to the date of payment.

ATTORNEY'S FEES

In accordance with 15 U.S.C. § 1693m(a)(3), the Arbitrator will direct Respondent to pay Claimant's attorney a reasonable fee. The Arbitrator will retain jurisdiction of this case to receive and decide a petition for a reasonable attorney's fee.

The Arbitrator will deny Respondent's counterclaim for attorney's fees and costs of the arbitration. Not only were Claimant's claims not frivolous or brought in bad faith, they were in part meritorious.

INTERIM AWARD

The Arbitrator grants Claimant's breach of contract and money had and received claims and directs Respondent to pay Claimant the sum of three hundred fifty dollars and no cents (\$350.00) plus interest, which shall be calculated at the overpayment rate established by the Internal Revenue Service in accordance with 26 U.S.C. § 6621 from August 31, 2021 to the date of payment.

The Arbitrator grants Claimant's claim that Respondent violated EFTA by improperly declining Claimant's transactions. The Arbitrator directs Respondent to pay Claimant two hundred dollars and no cents (\$200.00).

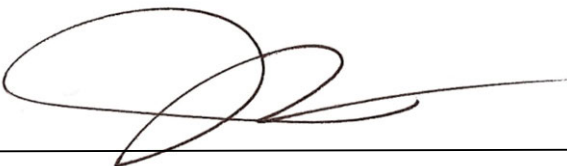
The above sums are to be paid on or before 30 days from the date of this Interim Award.

The Arbitrator grants Claimant's claim for attorney's fees. Claimant shall submit their accounting of such reasonable attorney's fees and costs and any supporting documents related thereto to the Arbitrator within 7 days of the date of this Interim Award. Respondent shall submit any responsive statement and supporting documents within 21 days of the date of this Interim Award. Upon and after such submissions, the matter shall be deemed submitted to the Arbitrator for determination in a Final Award.

The Arbitrator denies Respondent's counterclaims.

This Interim Award is in full settlement of the merits of all claims submitted to this Arbitration, except for the determination of reasonable attorney's fees and costs in favor of Claimant as set forth above.

This Interim Award shall remain in full force and effect until the Arbitrator renders a Final Award.

A handwritten signature in dark ink, consisting of a large, loopy initial 'A' followed by a series of connected loops and a long horizontal stroke extending to the right.

Dated: February 8, 2023

, Arbitrator