

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal**

BRIAN A. WILKINS

Claimant,

v.

PAYPAL, INC.,

Respondent.

AAA No. 01-22-0000-9181

**Rulings on
Dispositive Motions
Orders of Dismissal**

This arbitration was assigned to the undersigned on January 5, 2023, after the disqualification of a previous arbitrator. A preliminary hearing was held with the parties wherein the parties requested this arbitrator rule on the pending dispositive motions. It was agreed another status hearing would be held if needed after the arbitrator reviewed the pending motions. The undersigned makes the following

DECISION and ORDER:

1. Dispositive Motions were filed with the previous arbitrator and needed resolution:
 - a. PayPal's Motion for Summary Judgment
 - b. Wilkins' Counter-Motion for Summary Judgement

- c. Wilkins' Motion to dismiss PayPal's Counterclaim based on res judicata/issue preclusion.
 - d. PayPal's Motion for Summary Judgment supporting its Counterclaim.
2. This case originated with PayPal kicking Wilkins out of PayPal. Following this action, PayPal continued to email Wilkins to windup his account with Papal and notify him of its continuing to receive money from Wilkins' customers for their purchases.¹ Wilkins adequately summarized the current status of this arbitration:

When it's all said and done, the Claimant accepted PayPal's right to shut down his account on August 9, 2021. He didn't fight it at all because the User Agreement says PayPal has that right; and the two parties could have quietly parted ways.

3. Wilkins brought this arbitration seeking \$100,000 damages for the emails received from PayPal trying to wrap up Wilkins's account. Wilkins has submitted 190 pages of emails in support of his claims. The arbitrator has reviewed the emails. Wilkins claims these emails were spam and violated state laws concerning spam or junk emails. Wilkins attempted to stop PayPal

¹ January 14, 2021, Wilkins, on behalf of Veracity Objectives, LLC, opened the PayPal account. Throughout this decision the arbitrator will refer to the LLC and Wilkins as "Wilkins."

from sending these emails but was unsuccessful. The email communications received by Wilkins were not spam or advertising, but rather, were legitimate and reasonable communications with Wilkins concerning his account and the trailing consequences of his internet sales. PayPal had no choice in this regard, as they continued receiving payments from Wilkins' customers.

4. **PayPal's Motion for Summary Judgement.** The parties agreed Delaware law applied to any legal disputes concerning this contract. Wilkins claims PayPal violated California and Nevada state laws pertaining to spam. Even if these other states' laws applied to the relationship and communications between PayPal and Wilkins, since the communications sent to Wilkins were not advertising in any way, those statutes are not implicated. Also, Wilkins' breach of contract claim fails as a matter of law because there has been no showing Paypal breached any provision in the parties' agreement. PayPal has substantially performed all of its contractual obligations. Paypal's Motion for Summary Judgment is **GRANTED**. Wilkins' claim is **DISMISSED with prejudice**.

5. **Wilkins' Counter-Motion for Summary Judgement.** Wilkins asks that Summary judgment be granted regarding the choice of law that applies in interpreting the parties' contract. The parties agreed in their agreement:

You agree that, except to the extent inconsistent with or preempted by federal law and except as otherwise stated in this user agreement, the laws of the State of Delaware, without regard to principles of conflict of laws, will govern this user agreement and any claim or dispute that has arisen or may arise between you and PayPal.

The choice of law does not matter in this case. There has been no evidence of a violation of California or Nevada law. There has been no showing that the choice of law provision should be voided – the parties agreed. There has not been any legal challenge to the Delaware clause as to unconscionability, estoppel, or waiver. Wilkins' Counter-Motion for Summary Judgment is **DENIED.**

6. Wilkins' Motion to dismiss PayPal's Counterclaim based on res judicata/issue preclusion. Wilkins argues resjudicata should stop Paypal from claiming Wilkins was in breach of some policy resulting in his removal from PayPal. This is not an issue in this arbitration. The legal requirements of resjudicata have not been satisfied. Finally, the parties agreed in their contract the doctrine does not apply:

The arbitrator(s) shall not be bound by rulings in prior arbitrations involving different PayPal customers, but is/are bound by rulings in prior arbitrations involving the same PayPal customer to the extent required by applicable law.

Wilkin's Motion to dismiss Paypal's Counterclaim is **DENIED**.

7. PayPal's Motion for Summary Judgment supporting its Counterclaim.

Paypal seeks liquidated damages, as described in the agreement. This provision is not a proper or valid liquidated damages clause. The PayPal customer agreement is a penalty and cannot be enforced. PayPal's Counterclaim is **DENIED**. PayPal's Counterclaim is **DISMISSED with prejudice**.

8. Costs are assessed as paid by the parties.

February 23, 2023

/S/ Michael J. Streit

Michael Streit, AAA Arbitrator