

**American Arbitration Association
Commercial Arbitration Tribunal**

AAA Case No.: 01-22-0001-0997

In the Matter of the Arbitration between:

ARTHUR ABRAMOV d/b/a AJ Watches,

Claimant,

v.

AMAZON PAYMENTS, INC., a Delaware corporation and AMAZON.COM SERVICES LLC,
a Delaware limited liability corporation,

Respondents.

FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR (the “Arbitrator”), having been designated in accordance with the Business Solutions Agreement entered into between the above-named parties through the terms of the Amazon Services Business Solutions Agreement provided on-line by Respondents, and having been accepted by Claimant by opening and maintaining its account, and having been duly sworn, and having duly heard the proofs and allegations of the Claimant, represented by Lance Johnson, Esq., and Respondents, represented by Tara Johnson, Esq. and Annamaria Taskai, Esq., and Evidentiary Hearings having been held via videoconference on February 7 and 8, 2023, hereby FIND and AWARD as follows:

I. Procedural History

A. The Parties and their Arbitration Agreement

1. Claimant Arthur Abramov d/b/a AJ Watches (“AJW”) is a proprietorship of Arthur Abramov, with its principal place of business at 575 5th Avenue, Suite 600, New York, NY 10036.

2. Respondent Amazon Payments, Inc. (“API”) is a Delaware corporation with its principal place of business in Seattle, Washington. Respondent Amazon.com Services LLC (“ASL”) is a Delaware limited liability corporation (sic) with its principal place of business in Seattle, Washington.¹ Collectively, API and ASL are sometimes referred to below as “Amazon,” and each performs certain functions in relation to the sale of goods on the Amazon.com website.

3. AJW, API, and ASL are parties to the Amazon Services Business Solutions Agreement (the “BSA”) (Ex. C-10; Ex. R-1), which the parties stipulate “is the operable agreement between the parties in this case and governs their relationship.” As also stipulated, “as a condition of registering a seller account and selling on Amazon.com, AJW accepted and agreed to the terms and conditions of the BSA.”

4. At Section 18 of the BSA, the parties agreed to binding arbitration of disputes:

[A]ny dispute with Amazon or its Affiliates or claim relating in any way to this Agreement or your use of the Services will be resolved by binding arbitration as described in this paragraph . . . [A]n arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would . . . The arbitration will be conducted by the American Arbitration Association (AAA) under its commercial rules. Payment of all filing, administration and arbitrator fees

¹ The Arbitrator assumes that ASL is a Delaware limited liability “company,” not “corporation.” The parties, however, have consistently referred to ASL as a “limited liability corporation.” Regardless, this distinction does not impact any issue decided in this Final Award.

will be governed by the AAA's rules . . . Amazon will not seek attorneys' fees and costs from you in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person at a mutually agreed location.

No Party objects to arbitral jurisdiction.

B. Pre-Hearing Proceedings

5. As discussed in more detail below, ASL suspended AJW's selling privileges in relation to AJW's Amazon.com storefront, ajlikeswatches, on December 21, 2020. Since then, Amazon has refused to remit to AJW the funds in AJW's Amazon seller's account or to return certain inventory belonging to AJW, which is stored in an Amazon warehouse.

6. After unsuccessfully attempting to resolve the dispute through Amazon's internal appeals process, AJW filed a Demand for Arbitration with the American Arbitration Association ("AAA") on March 15, 2022. Amazon filed its Answer to the Demand for Arbitration on April 5, 2022.

7. The AAA confirmed the Arbitrator's appointment on June 22, 2022.

8. Throughout the arbitration, AJW has been represented by Lance Johnson, Esq., Johnson Legal PLLC, 12545 White Drive, Fairfax, VA 22030-6413. Throughout the arbitration, Amazon has been represented by various attorneys from Davis Wright Tremaine, LLP, 920 5th Ave., Suite 3300, Seattle, WA 98104, including John Goldmark, Esq., Tara Johnson, Esq., and Annamaria Taskai, Esq.

9. After a duly-noticed Preliminary Hearing on July 15, 2022, and consulting with the Parties, the Arbitrator issued Tribunal Procedural Order No. 1 ("PO#1") dated July 18, 2022.

10. PO#1 set a virtual Final Hearing via Zoom videoconference for December 6-7, 2022. At the Parties' request, the Final Hearing was continued until February 7-8, 2023, as set out in Procedural Order No. 2 ("PO#2") dated October 12, 2022.

11. As stated in PO#1, the Parties agreed that (i) the Commercial Arbitration Rules of the American Arbitration Association effective October 1, 2013 apply to this arbitration, along with the Federal Arbitration Act; (ii) Washington law applies to the substance of the parties claims and defenses; and (iii) the place of arbitration is Phoenix, Arizona.

12. The schedule and procedures set out in PO#1 (as modified in PO#2) were designed to ensure that both sides would have a full and fair opportunity to prepare for and present their respective positions at the Final Hearing. Among other examples, as directed in PO#1, the Parties: (a) prepared a joint statement of disputed factual and legal issues; (b) produced each document, within a Party's possession, custody, or control, that the disclosing Party may use to support its position related to the matters to be decided at the Final Hearing; (c) exchanged preliminary lists of witnesses who might be called to testify at the Final Hearing; (d) had the opportunity to propound up to five contention interrogatories and 10 requests for production of documents; (e) had the opportunity to request that the Arbitrator issue subpoenas to third party witnesses; and (f) had the opportunity to endorse expert witnesses.²

13. Before the Final Hearing, the Parties exchanged hearing exhibits, disclosed hearing witnesses, prepared a fact stipulation, exchanged pre-hearing briefs and legal authorities, and participated in an interim status conference and a final status conference with the Arbitrator.

14. In addition to PO#1 and PO#2, the Arbitrator issued Procedural Order No. 3 dated January 16, 2023 concerning procedures for the Zoom Final Hearing and Procedural Order No. 4 dated February 13, 2023 concerning post-hearing briefs and submissions concerning costs.

² No party chose to endorse experts.

C. The Final Hearing

15. On February 7-8, 2023, the Parties appeared via Zoom before the Arbitrator for the Final Hearing. The AAA administered the Zoom hearing.

16. At the Final Hearing, Mr. Johnson represented AJW and Ms. Johnson and Ms. Taskai represented Amazon, with Ms. Johnson serving as lead counsel.

17. After both sides presented opening statements, the following witnesses testified in AJW's case-in-chief: (1) Dennis Shauloff, a representative of AJW who is responsible for AJW's retail watch sales; (2) Casey Hewitt, an attorney for AJW; and (3) Pinku Raikundalia, a representative of ENE Ltd. ("ENE"). The Claimant, Arthur Abramov, did not testify.³

18. The following witnesses testified in Amazon's case-in-chief: (1) Sarah Naden, Amazon's Global Brand Relations Manager; (2) John Rutledge, Amazon's Risk Manager II for funds disbursement appeals; and (3) Amber Barnes, Brand Protection Specialist for Fossil Group, Inc. ("Fossil").

19. At the Parties' request, to avoid the expense of a court reporter, each day of the Final Hearing was recorded using the recording function in Zoom. The AAA made these recordings available to the Parties and the Arbitrator.

20. Both sides submitted post-hearing briefs, as directed in PO#4.

21. In PO#4, the Arbitrator ordered that if any Party sought to recover amounts in fees or costs, other than the amounts described in R-53, R-54, and R-55 of the AAA Commercial

³Although he initially did not announce his presence, Mr. Abramov sat with Mr. Shauloff during at least part of the Final Hearing, as Mr. Shauloff acknowledged on cross-examination. At this point, Mr. Abramov waved to the Zoom camera. When confronted by Amazon's counsel, Mr. Shauloff also acknowledged that Mr. Abramov texted him something to read into the record. This conduct violated Procedural Order No. 3, ¶¶ 4 and 7, which required witnesses to identify any persons present with them and to testify without assistance. When evaluating Mr. Shauloff's overall credibility, the Arbitrator considered this incident.

Rules, the Party should provide certain information in a written brief by or before March 5, 2023.

No Party responded or submitted such a brief.

22. By email dated March 1, 2023, the Arbitrator directed the Parties to let the Arbitrator know by no later than March 8, 2023 whether they had any further submissions, including proofs to offer or witnesses to be heard. Neither side responded, and the proceedings were declared closed on March 9, 2023.

II. Facts

A. AJW's business

23. After considering all the evidence, including the witnesses' testimony and the parties' respective exhibits, I find the following facts to be true, after giving appropriate weight to the evidence presented and considering the credibility of the witnesses.

24. AJW operates a retail business in New York, New York and (among other items) sells watches. During relevant times, the watches that AJW sold ranged in price from approximately \$50 to approximately \$100,000. Some of the less expensive watches that AJW sold include Michael Kors and Diesel brand watches. These brands are owned by Fossil.

25. Mr. Shauloff testified that in addition to sales from its store in New York, AJW has sold watches through Amazon.com, as well as on other internet sites including Ebay and Chrono 24.

26. AJW began sales on Amazon.com in 2017, when it agreed to the BSA. The watches were sold by AJW but shipped by Amazon under the "Fulfilled by Amazon" ("FBA") program, which allows third parties to sell their goods on Amazon.com.

27. AJW sold Diesel and Michael Kors brand watches on Amazon.com through a virtual storefront called, "ajlikeswatches." Mr. Shauloff testified that AJW is not an authorized

distributor of Michael Kors or Diesel watches. As he explained, AJW purchased these watches from two suppliers, ENE and Edison Watch & Gift Center (“Edison”). ENE and Edison shipped these watches to AJW in New York, where Mr. Shauloff says he inspected some of the watches. AJW then shipped the watches to designated Amazon warehouses. If a customer ordered the watch on Amazon.com, Amazon would ship the watch to the customer, consistent with the “Fulfilled by Amazon” moniker.

28. For more than 10 years, ENE was AJW’s primary supplier, and AJW would purchase “close out” watches from ENE. In 2020, AJW also purchased some watches from Edison, with which AJW had not previously done business. Two invoices from Edison dated November 30, 2020 and November 23, 2020, are included in Ex. C-17. These invoices show that Edison sold AJW various models of what Edison represented were Michael Kors and Diesel brand watches, totaling (between the two invoices) several hundred watches.

29. Ex. C-1, an invoice from ENE dated January 17, 2020, shows that AJW also purchased 12,157 Michael Kors watches from ENE.

30. Neither ENE nor Edison purchased their inventory directly from Fossil, and thus neither ENE nor Edison is an authorized distributor of Michael Kors, Diesel, or other Fossil brand watches. This does not necessarily mean that the watches purchased from ENE or Edison are counterfeit, but it does mean that Fossil does not guarantee that the watches are authentic.

31. Mr. Shauloff testified that he inspected some of the watches received from ENE and Edison by opening the back of the watches and observing the watches’ movements. Under cross-examination, he conceded that he has no formal training in the detection of counterfeit watches. Rather, he said that he had learned how to detect counterfeit watches through his

experience on the job and through conversations with “other watchmakers.” He testified that he did not suspect that any of the watches sold to AJW were counterfeit.

B. The BSA and Amazon’s “Service Terms” and “Program Policies”

32. The BSA section entitled, “General Terms,” states:

Welcome to **Amazon Services Business Solutions**, a suite of optional services for sellers including: [Selling on Amazon](#), [Fulfillment by Amazon](#), [Amazon Advertising](#), [Transaction Processing Services](#), and the [Selling Partner API](#). THIS AMAZON SERVICES BUSINESS SOLUTIONS AGREEMENT (THE "**AGREEMENT**") CONTAINS THE TERMS AND CONDITIONS THAT GOVERN YOUR ACCESS TO AND USE OF THE SERVICES AND IS AN AGREEMENT BETWEEN YOU OR THE BUSINESS YOU REPRESENT AND AMAZON. BY REGISTERING FOR OR USING THE SERVICES, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, INCLUDING *THE SERVICE TERMS AND PROGRAM POLICIES THAT APPLY FOR EACH COUNTRY FOR WHICH YOU REGISTER OR ELECT TO USE A SERVICE (IN EACH CASE, THE "ELECTED COUNTRY") . . . If there is any conflict between these General Terms and the applicable Service Terms and Program Policies, the General Terms will govern and the applicable Service Terms will prevail over the Program Policies.*

(Ex. R-1, BSA at 1; boldface type in original; italics added).

33. Among these Program Policies are the Amazon Funds Withholding Policy (Ex. R-3), the Amazon Anti-Counterfeiting Policy (Ex. C-13 and R-4), and the Amazon Intellectual Property Policy for Sellers (Ex. R-5).

34. Mr. Rutledge testified that Amazon, on behalf of the FBA seller, collects the funds for the products that the seller sells and then remits those funds to the seller approximately 14 days in arrears. In other words, at any given time, Amazon generally will hold *approximately* 14 days’ worth of the proceeds from the seller’s sales. *See also* Ex. R-1, BSA, § S-5. Mr. Shauloff testified that the amount of proceeds in AJW’s account varied over time. For example, the account balance would be greater after the year-end holidays than it would during other times of the year.

35. BSA, Section P-1 (“Payments Processing Agency Appointment”) defines the circumstances under which API and ASL act as the seller’s agent:

For non-invoiced orders, you authorize [API] to act as your agent, for purposes of processing payments, refunds and adjustments for Your Transactions, receiving and holding Sales Proceeds on your behalf, remitting Sales Proceeds to Your Bank Account, charging your Credit Card, and paying Amazon and its Affiliates amounts you owe in accordance with this Agreement or other agreements you may have with Amazon Affiliates. For invoiced orders, you authorize: . . . (b) [ASL] to act as your agent for purposes of remitting Sales Proceeds to Your Bank Account, charging your Credit Card, and paying Amazon and its Affiliates amounts you owe in accordance with this Agreement or other agreements you may have with Amazon Affiliates.

As Mr. Rutledge summarized, “So generally, when a sale is made, Amazon takes the funds, and it holds the funds on behalf of the seller.”

36. The Amazon affiliates acting as the seller’s agent are defined in Section P-1 as “Amazon Payment Agents.” According to the BSA, Section P-2 (“Remittance”), “[s]ubject to Section 2 of the General Terms of this Agreement, the applicable Amazon Payments Agents will remit funds to you in accordance with Section S-5 of the Agreement and these Transaction Processing Service Terms. Section P-3 requires the Amazon Payments Agent to hold “Your Sales Proceeds” in an account with the applicable Amazon Payments Agent (a “**Seller Account**”) and will represent an unsecured claim against that Amazon Payments Agent.” (boldface in original).

37. In the BSA and the Program Policies, Amazon reserves the right to withhold the seller’s funds, temporarily or permanently, as Amazon determines in its discretion. For example:

- **If we determine that your actions or performance may result in . . . violations of our terms or policies, or other risks to Amazon or third parties, then we may in our sole discretion withhold any payments to you for as long as we determine any related risks to Amazon or third parties persist . . . If we determine that your account . . . has been used to engage in deceptive, fraudulent, or illegal activity (including the sale of counterfeit goods), or to repeatedly violate our Program Policies,**

then we may in our sole discretion permanently withhold any payments to you. Ex. R-1, BSA, §2 (boldface in original; underline added).

- “If we find that you have **engaged in deceptive, fraudulent, or illegal activity, . . . , or repeatedly violated our policies . . . we may withhold some or all funds in your account.** Examples of deceptive, fraudulent, or illegal activities include, but are not limited to: . . . violating Amazon’s anticounterfeit policy. . . .” Ex. R-3, Amazon Funds Withholding Policy (boldface in original; underline added).
- **Products offered for sale on Amazon must be authentic. The sale of counterfeit products is strictly prohibited. Failure to abide by this policy may result in loss of selling privileges, funds being withheld, and disposal of inventory in our possession.** It is each seller’s and supplier’s responsibility to source, sell, and fulfill only authentic products. Prohibited products include bootlegs, fakes, . . . products that have been illegally replicated, reproduced, or manufactured; and products that infringe another party’s intellectual property rights. Failure to abide by this policy may result in loss of selling privileges, funds being withheld, destruction of inventory in our fulfillment centers, and other legal consequences.” Ex. R-4, Amazon Anti-Counterfeiting Policy (boldface in original).
- Consequences of Selling Inauthentic Products. If you sell inauthentic products, we may immediately suspend or terminate your Amazon selling account (and any related accounts), destroy any inauthentic products in our fulfillment centers at your expense, and/or withhold payments to you. *Id.*

38. The BSA defines “Unit” to mean “a unit of Your [the seller’s] Product that you deliver to Amazon in connection with the FBA Program.” *See* Ex. R-1, FBA Definitions (AMZN000024). Section F-7.1 of the BSA gives the FBA seller the right, “at any time, [to] request that Units be returned to you or that we dispose of Units.”

39. The BSA also purports to give Amazon the right to dispose of “Unsuitable Units” “immediately (and you will be deemed to have consented to our action) if we determine that: (i) the Unit creates a safety, health, or liability risk to Amazon, our personnel, or any third party; (ii) you have engaged in fraudulent or illegal activity; or (iii) we have cause to terminate your use of Services with immediate effect pursuant to Section 3 and are exposed to liability towards a third party. . . .” *See* Ex. R-1, § F-7.2.

40. “Unsuitable Units” include any “FBA Excluded Products,” which (in substance) the BSA defines to mean any product that violates Amazon’s Program Policies. *See* BSA at AMZN000023-24 (definitions of “FBA Excluded Product” and “Unsuitable Unit”) and AMZN000009 (definition of “Excluded Product”). Thus, given that the Program Policies prohibit the sale of counterfeit goods, counterfeit goods are FBA Excluded Products and Unsuitable Units.

C. Fossil complains to Amazon that AJW sold counterfeit watches.

41. As Ms. Barnes testified, in late 2020, third-party investigators, whom Fossil retained, purchased several of AJW’s Michael Kors and Diesel brand watches on Amazon.com. The investigators then sent the watches to Ms. Barnes for inspection.

42. Ms. Barnes personally inspected the watches that the investigators forwarded and determined that six watches (four Michael Kors and two Diesel watches) were “not genuine” and were “counterfeit,” meaning that that Fossil did not manufacture them. When evaluating whether a watch is counterfeit, Ms. Barnes inspects the watch to determine whether the watch contains certain internal codes and whether those codes are found in the correct locations inside the watch. Here, the six watches showed “multiple flags,” evidencing that Fossil did not manufacture the watches.

43. In December 2020 and January 2021, Fossil complained to Amazon that AJW had sold counterfeit Michael Kors and Diesel watches. Fossil’s complaints are summarized in Ex. R-6. *See also* Ex. R-14 (emails between AJW and Amazon about the complaints).

44. Fossil also complained to AJW directly. After negotiations, AJW settled with Fossil in consideration, *inter alia*, of AJW's payment to Fossil of \$45,000. The signed settlement agreement between AJW and Fossil is Ex. R-18. (the "Fossil Settlement").⁴

45. As part of the Fossil Settlement, and although denying any liability, AJW "represented and warranted" to Fossil that it purchased "Unauthorized Merchandise" from Edison, meaning watches that were counterfeit and infringed on the Michael Kors and Diesel trademarks. *See* Ex. R-18, Recitals A-C and § 2. AJW further represented and warranted that the watches included in the invoices from Edison attached as Ex. A to the Fossil Settlement were all "Unauthorized Merchandise." Ex. R-18, § 2(a). These are the same invoices as those included in Ex. C-17 and discussed above.

46. As of the date of the Fossil Settlement, AJW represented and warranted that it still had 324 units of Unauthorized Merchandise in its possession. Ex. R-18, §2(c). Under Section 5 of the Fossil Settlement, AJW agreed to forfeit these items and to send them to Fossil.

47. As part of the settlement, Fossil provided a letter (Ex. B to Fossil Settlement), which states:

Please be advised that Fossil Group, Inc. ("Fossil") has alleged that the "AJ Watches" account as it appears on the Amazon website was, prior to the date of this letter, offering for sale and selling watches bearing counterfeits and infringements of Fossil's licensees' trademarks (the "Claims"). Please be advised that Fossil has fully settled and resolved the Claims with "AJ Watches".

48. As Ms. Barnes explained, despite AJW's requests, Fossil has refused to retract its complaint to Amazon that AJW sold counterfeit merchandise. *See, e.g.*, Ex. C-3 (email from Fossil attorney Michael Lee declining AJW's request to retract Fossil's complaints).

⁴ C-16 is an earlier unsigned draft of the same agreement.

D. Amazon suspends and terminates AJW's Amazon account.

49. In response to Fossil's complaints against AJW, ASL suspended AJW's selling privileges on Amazon on December 21, 2020. Amazon froze AJW's account and refused to pay to AJW approximately \$92,000 in proceeds from sales of products on Amazon.com. Amazon also refused to return to AJW the remaining watches stored in an Amazon warehouse on AJW's behalf.

50. AJW pursued various "appeals" with Amazon to try to convince Amazon to restore AJW's selling privileges. *See* Ex. R-9 and R-10. In support of its appeals, AJW submitted its invoices from Edison and ENE as evidence that the products that AJW purchased were authentic. AJW also submitted Fossil's letter (Ex. B to the Fossil Settlement) and a "Plan of Action," under which AJW promised, among other things, that it would cease doing business with Edison.

51. Ms. Naden and Mr. Rutledge testified that Amazon rejected AJW's appeals because Fossil—despite AJW's requests—refused to retract its complaints to Amazon that AJW had sold counterfeit watches. After AJW's appeals were concluded, Amazon terminated AJW's account on February 20, 2021.

52. As a result, Amazon's position is that it can "permanently" withhold all sales proceeds in AJW's account and that it can destroy all AJW-supplied watches held in Amazon's warehouse.

53. Currently, given the arbitration, Ms. Naden says that AJW's inventory remains "quarantined" in an Amazon warehouse.

54. According to Mr. Rutledge, Amazon has transferred the funds in AJW's account to another Amazon account, although the funds are still identified to AJW. Ex. R-11, line 118

shows that AJW's balance was \$91,713.78 as of December 16, 2021, at or around the time when the transfer apparently was initiated. Since then, as Mr. Rutledge explained, Amazon has continued to deduct amounts from AJW's account for storage fees and customer refunds and returns, as itemized in Ex. R-11. Ex. R-11 also shows that other amounts have been credited to AJW's account. Taking these debits and credits into account, Ex. R-11 shows that AJW's balance is \$91,714.08 as of January 8, 2023, the most recent entry in Ex. R-11.

55. Mr. Rutledge said that there have been no customer returns or refunds since June 2022. Mr. Rutledge testified that Amazon offers a 90-day window for returns. Mr. Shauloff testified that he understood Amazon's deadline for returns was six months after the goods were sold. As of the date of the Final Award, either deadline has long since expired.

III. Analysis

56. In its Demand for Arbitration, AJW brought claims for breach of contract and breach of fiduciary duty, and seeks the following relief: (a) an order to Amazon to release the funds and property (or its value) withheld from AJW; (b) an order to Amazon to reimburse AJW for its costs in bringing this action; (c) an order restoring AJW's selling privileges on Amazon.com; and (d) other "just and proper" relief.⁵

57. In its Answer, Amazon generally denied AJW's allegations and asserted the following "affirmative defenses": (a) Claimant's claims and requested relief are barred by the BSA, which expressly authorized Amazon to take the steps about which Claimant complains; (b) Claimant's claims and requested relief are barred by Claimant's failure to perform its contractual conditions precedent under the parties' agreement; (c) Claimant's claims are barred

⁵ AJW's Demand for Arbitration also accuses Amazon of "conversion," but AJW did not separately plead this claim in the Demand for Arbitration and the conversion allegations are subsumed in AJW's claims for breach of contract and breach of fiduciary duty.

by Claimant's antecedent breach of the BSA, which is fatal to all of Claimant's claims and precludes any recovery; (d) Claimant's alleged damages were caused, in whole or in part, by its own actions or inactions; (e) the Demand fails to state a claim upon which relief may be granted; (f) Claimant consented to Amazon's actions under the parties' agreement; (g) Claimant failed to mitigate any alleged damages; (h) Claimant's claim for breach of fiduciary duty fails because Amazon does not owe the duties alleged by Claimant and complied with its duties as set forth in the parties' agreement; (i) Claimant's requested relief is precluded by the doctrines of unclean hands, estoppel, and/or waiver; (j) Claimant's Demand fails because Amazon acted at all times in good faith and in a commercially reasonable manner; and (k) Amazon's conduct was within the reasonable expectations of the parties, and Amazon at no time acted to deprive Claimant of any rights or to cause Claimant injury. Amazon seeks an award denying AJW's claims with prejudice, an award for costs incurred to defend this arbitration, and for other "just and proper" relief.

A. AJW is not entitled to have its selling privileges on Amazon reinstated.

58. AJW does not seriously dispute that it sold some "counterfeit" Michael Kors and Diesel watches on Amazon.com. AJW seeks to overcome these facts by arguing that it was "duped" and was an "innocent victim" of Edison, its "unscrupulous supplier," which (without AJW's knowledge) included inauthentic watches among those that AJW purchased from Edison and supplied to Amazon. *See* AJW's Demand for Arbitration at 1. *See also* Ex. R-18, § 2 (Fossil Settlement). Thus, AJW argues that because the counterfeit sales were not its fault, the Arbitrator should order Respondents to restore AJW's selling privileges on Amazon.com.

59. Under cross-examination, Mr. Shauloff acknowledged that the BSA prohibits the sale of counterfeit products and that the sale of those products is illegal. Thus, because some of

the watches that AJW sold were counterfeit, AJW breached its obligations under the BSA, which expressly prohibits the sale of counterfeit goods on Amazon.com. *See* ¶ 37 above.

60. Mr. Shauloff testified that AJW did not intend to sell counterfeit watches. But when evaluating AJW's conduct under the BSA, it is not relevant that AJW did not intend to sell counterfeit watches. The BSA required AJW to ensure that all products that AJW sold on Amazon.com were genuine and not counterfeit. *See* Ex. R-1, § 2. In other words, under the BSA, AJW bore the risk if the products that it sold were inauthentic.

61. The BSA does not have a specific duration, and both AJW and Amazon had the right to terminate the BSA. Under Section 3 of the BSA, AJW had the right to terminate the BSA at any time. Amazon had the right to terminate the BSA for convenience upon 30 days' advance notice. Ex. R-1, § 3. Under Section 3, Amazon also had the right to terminate the BSA "immediately" if Amazon determined, for example, that AJW's "account has been, or [Amazon's] controls identify that it may be used for deceptive or fraudulent, or illegal activity" or if AJW's "use of the Services has harmed, or our controls identify that it might harm, other sellers, customers, or Amazon's legitimate interests." *See* Ex. R-1, § 3(b) and (c).

62. Here, Amazon properly exercised its right to terminate the BSA based on Amazon's determination that AJW's account was used to sell counterfeit watches. The sale of counterfeit watches on Amazon.com has the potential to harm Amazon's "legitimate interests," including its business reputation and prospects.

63. Regardless of AJW's desire to resume sales on Amazon.com, no basis exists to force Amazon to do business with AJW if Amazon does not want to do so. Accordingly, AJW's claim for an order restoring AJW's selling privileges on Amazon.com is denied.

B. Amazon must remit the funds from AJW's seller's account and return certain of AJW's watches to AJW.

64. The procedural posture of this case is unusual. AJW, as Claimant, seeks to recover the money and merchandise that belong to AJW, which Amazon was holding on AJW's behalf, and concerning which Amazon now argues AJW should be deemed to have "forfeited" to Amazon--to use Ms. Naden's term. The question is whether the law and the facts permit this result. After careful consideration of the facts and the law, the Arbitrator concludes that they do not.

1. Amazon must remit to AJW the funds from AJW's seller's account.

65. AJW breached the BSA by selling at least six counterfeit watches. Amazon, however, did not bring a counterclaim against AJW for damages. Likewise, Amazon has not claimed the right to set off any actual damages that it suffered against the amounts held in AJW's account. Instead, Amazon makes two principal arguments as to why Amazon should be allowed to keep AJW's money:

(a) Amazon argues that AJW's compliance with all the provisions of the BSA was a condition precedent to AJW's right to payment under the BSA. Thus, because AJW sold at least some counterfeit watches, Amazon contends that AJW is not entitled to any further payments, regardless of whether any of the sales proceeds in AJW's account are attributable to the sale of inauthentic products and even without proof that Amazon suffered actual damages.

(b) Amazon next argues that the money in AJW's account represents approximately two weeks' worth of sales, and this amount should be construed as reasonable liquidated damages and not a penalty.⁶

⁶ Without objection from AJW, Amazon raised this argument for the first time at the Final Hearing.

Both of Amazon's arguments go too far.

66. **No condition precedent.** In support of its "condition precedent argument,"

Amazon argues:

Section S-5 of the BSA provides that Amazon holds sales proceeds from sales made by third-party sellers and will remit those proceeds to the seller on a regular schedule, "[e]xcept as otherwise stated in this Agreement." Section 2 of the BSA, in turn, states: "If we determine that your account has been used to engage in deceptive, fraudulent, or illegal activity, or to repeatedly violate our Program Policies, then [Amazon] may in [its] sole discretion permanently withhold any payments to you." Thus, the BSA establishes a crucial—and commercially reasonable—condition precedent to disbursement of sales proceeds; a seller must not engage in deceptive, fraudulent, or illegal conduct in its use of the Amazon store.

67. The language on which Amazon relies does not demonstrate the parties intended that AJW's obligation not to sell counterfeit goods is a "condition precedent," as opposed to a "promise." *See Ross v. Harding*, 64 Wn.2d 231, 236, 391 P.2d 526 (1964). As the court explained:

"Conditions precedent" are those facts and events, occurring subsequently to the making of a valid contract, that must exist or occur before there is a right to immediate performance, before there is a breach of contract duty, before the usual judicial remedies are available . . . A breach of a "promise" subjects the promisor to liability in damages, but does not necessarily excuse performance on the other side. Nonperformance or nonoccurrence of a "condition" prevents the promisee from acquiring a right, or deprives him of one, but subjects him to no liability . . . *Where it is doubtful whether words create a "promise" or an "express condition," they are interpreted as creating a "promise."*

Id. (internal citations omitted and emphasis added). *See also Jones Associates, Inc. v. Eastside Properties, Inc.*, 41 Wash.App. 462, 704 P.2d 681, 685 (1985) (holding that appellant's assumption of responsibility to obtain county approval was a duty under the contract but not a condition precedent to payment).

68. In *Ross*, the court construed the phrase, “It is specifically understood and agreed that this offer is made subject to the written consent . . .,” and held that this language was unambiguously a condition precedent. *Id.*, 64 Wn.2d at 237. In contrast, *Jones Associates* held that the phrase, “Engineer shall be responsible for obtaining King County approval for all platting as set forth above,” was not a condition precedent, but a promise. *Jones Associates*, 704 P.2d at 684-85.

69. “Conditions precedent are not favored by the courts.” *Id.* at 686. Words and phrases such as “provided that,” “on condition,” “when,” “so that,” “while,” “as soon as,” and “after” can indicate a condition precedent. *Id.*, 704 P.2d at 684. Here, as in *Jones Associates*, the language on which Amazon relies (*see* ¶ 66) does not include any of these words and phrases. The use of the phrase “except as otherwise stated in this Agreement” in Section S-5 of the BSA cannot fairly be interpreted to turn AJW’s obligations under the BSA (including its obligation not to sell counterfeit goods) into a “condition precedent” to payment, such that AJW would forfeit all sales proceeds to Amazon in case of any breach.

70. This conclusion flows from the language on which Amazon relies in Section 2 of the BSA and similar language in Ex. R-2, R-3, and R-4, as set out at pp. 6-7 of Amazon’s Post-Hearing Brief. Under each of these provisions, in case of a seller’s breach, Amazon “may” withhold funds from the seller or take other actions. Nothing in this phrasing suggests that the parties intended a condition precedent.

71. Amazon is correct, of course, that the BSA contains various provisions under which Amazon claims discretion to retain funds held in an FBA seller’s account (including withholding funds “permanently”). But these provisions should be interpreted in light of the following sentence in Section 2 of the BSA’s General Terms: “If we determine that your actions

or performance may result in returns, chargebacks, claims, disputes, violations of our terms or policies, or other risks to Amazon or third parties, then we may in our sole discretion withhold any payments to you for as long as we determine any related risks to Amazon or third parties persist.” (emphasis added).⁷

72. The sale of counterfeit products on Amazon.com subjects Amazon to the risk of returns, chargebacks, claims, disputes, and other risks. Although (based on Fossil’s complaints) only six counterfeit watches were identified, Amazon arguably acted reasonably by withholding AJW’s funds based on the assumption that there might have been additional counterfeit sales. As Mr. Rutledge explained, Amazon’s right to withhold funds is intended, at least in part, to protect Amazon’s customers: “[Amazon] can withhold funds to make the customer who is buying a product on Amazon whole if needed, whether it’s a claim, a refund, there’s an issue with the delivery, or a variety [of situations] where a refund is due.” Mr. Rutledge also explained that Amazon’s right to withhold funds allows Amazon to satisfy “any liability claims that may arise from items that could be fraudulent or. . . actually hurt customers.”

73. Nonetheless, Amazon’s discretion to withhold a seller’s funds is necessarily limited by the duty of good faith and fair dealing that Amazon owed to AJW under the BSA. *See Plymouth Grain Terminals, LLC v. Lansing Grain Co., LLC*, No. 10-CV-5019-TOR, 2013 WL 12177037, at *10 (E.D. Wash. Dec. 20, 2013), modified on reconsideration, No. 10-CV-5019-TOR, 2014 WL 585838 (E.D. Wash. Feb. 14, 2014)(every contract is subject to the implied covenant of good faith and fair dealing, which applies when the contract gives one party

⁷ A similar concept is found in Section S-5 of the BSA: “We may establish a reserve on your account based on our assessment of risks to Amazon or third parties posed by your actions or performance, and we may modify the amount of the reserve from time to time at our sole discretion.”

discretionary authority to determine a contract term) (citing various Washington Court of Appeals cases).

74. At the very least, the duty of good faith required Amazon to act reasonably and not arbitrarily when exercising its discretion to withhold funds. For example, Amazon could not seriously contend that it could withhold a seller's funds based on Amazon's conclusion that a risk to Amazon exists even where Amazon lacked a rational basis for such a conclusion.

75. Under Section P-1 of the BSA, both API and ASL acted as AJW's agent, for the limited purposes detailed in Section P-1, including (in the case of API) "receiving and holding Sales Proceeds on [AJW's] behalf, [and] remitting Sales Proceeds to [its] Bank Account."

76. Under Washington law, agents ordinarily owe their principals fiduciary duties of "utmost good faith and loyalty." *See In re Estate of Palmer*, 145 Wash. App. 249, 187 P.3d 758, 765-766 (2008). Although it is unnecessary for purposes of this arbitration to define the full scope of Amazon's fiduciary duties as the seller's agent, the obligation of good faith that Amazon owed to AJW, both under the BSA and the law of fiduciary duties, means that Amazon must show more than its "say so" to take AJW's money "permanently."⁸

77. As of the date of this Final Award in April 2023, the deadline for customers to seek returns for watches purchased from AJW has long since expired. *See* ¶ 55 above. Indeed, AJW has been unable to sell on Amazon.com since December 21, 2020, when Amazon suspended its account. According to Mr. Rutledge and Ex. R-11, Amazon has not received any

⁸ The Parties debate over whether Amazon adequately disclaimed a fiduciary relationship in the BSA is a red herring. Regardless of whether the fiduciary duty is limited (Amazon's position) or more expansive (AJW's position), Amazon agrees that it owed a fiduciary duty in relation to the matters enumerated in BSA, Section P-1, including the handling of the proceeds in AJW's account. *See* Amazon's Post-Hearing Brief at 10-11. Mr. Rutledge testified that he even received training about Amazon's fiduciary obligations.

customer claims of any kind related to AJW since June 2022, which was far outside of the 90-day window about which Mr. Rutledge testified.

78. Amazon offered no evidence that AJW's sale of approximately six counterfeit watches to Fossil in 2020 presents a continuing risk of harm to Amazon in 2023. As noted, AJW has settled with Fossil, and (at least based on the evidence presented) has performed its obligations under the Fossil Settlement. No evidence suggests that Fossil or anyone else has asserted or threatened to bring a claim against Amazon related to AJW. To the contrary, based on Ms. Naden's and Ms. Barnes' testimony, Amazon and Fossil continue to maintain a cordial business relationship.

79. In other words, the risks to Amazon that might have existed when Amazon suspended and terminated AJW's account no longer are present. Indeed, by exercising its right to terminate AJW's account, Amazon mitigated these risks and thus helped to protect its customers and preserve its reputation, both with Fossil and otherwise. Mr. Rutledge made the same point: "Amazon can . . . protect itself and terminate the seller's ability to sell items on Amazon immediately if needed."

80. In its Pre-Hearing Brief (p. 1), Amazon wrote: "Earning and preserving customer trust is the keystone of Amazon's business." Amazon's witnesses testified in general about Amazon's anti-counterfeiting and intellectual property protection programs. Unquestionably, Amazon is justified in trying to prevent the sale of counterfeit goods on Amazon.com, both to preserve and enhance its own reputation and to avoid claims from intellectual property rights owners, customers, and other third parties.

81. In this arbitration, however, Amazon did not attempt to prove that it suffered any actual damages to its reputation or otherwise that were caused by AJW's breach of the BSA.

Nor did Amazon present any evidence of any pending claims or the likelihood of any pending claims related to AJW.

82. Although Ex. R-11 shows that certain customers returned merchandise or sought refunds for watches that AJW sold, Amazon debited AJW's account for the amounts attributable to the refunds and returns. Thus, based on the evidence presented, Amazon has not paid anything out-of-pocket from its own funds for claims related to AJW.

83. **No liquidated damages.** Contrary to Amazon's submission, the funds withheld from AJW are not liquidated damages. Under Washington law, "a liquidated damages provision is enforceable if (1) the amount so fixed is a reasonable forecast of just compensation for the harm that is caused by the breach, and (2) the harm is caused by the breach is incapable or very difficult of accurate estimation." *Wallace Real Estate Inv., Inc. v. Groves*, 124 Wn.2d 881, 885, 881 P.2d 1010 (1994) (citations omitted). "If the liquidated damages provision is either not a reasonable forecast or if the harm is easy to ascertain, then the provision is an unlawful penalty." *Minnick v. Clearwire US LLC*, 275 P.3d 1127, 1131 (Wash. 2012).

84. Here, Amazon is correct that the sales of counterfeit products can damage Amazon's goodwill and reputation and that liquidated damages clauses are often used in situations where damages would be difficult or impossible to calculate. For better or worse, however, the various provisions of the BSA that purport to allow Amazon to withhold "all or part" of the proceeds in the seller's account cannot reasonably be construed, individually or in combination, to constitute a valid liquidated damages provision.

85. This is true for at least the following reasons: *First*, damages are not "liquidated" where they are not determined by a fixed standard in the contract, without reliance upon opinion or discretion." *State Dept. of Corrections. v. Fluor Daniel, Inc.*, 160 Wn. 2d 786, 789, 161 P.3d

372 (Wash. 2007). Damages that cannot be calculated without the use of discretion are not liquidated. *Id.* Here, the BSA sections and related policies that Amazon argues should be construed as liquidated damages provisions purport to give Amazon “sole discretion” to withhold all or part of the seller’s proceeds. For example, as Mr. Rutledge acknowledged, the “Funds Withholding Policy” (Ex. R-3) says that Amazon “may withhold some or all funds in your account”—*i.e.*, whether funds are withheld and how much is withheld are up to Amazon. Thus, they are not liquidated damages provisions.

86. *Second*, nothing in the BSA or related policies mentions liquidated damages, and nothing in the record suggests that the Parties ever considered or agreed, *when they agreed to the BSA*, that some portion of the amounts in the seller’s account—or any amount for that matter—would be a reasonable forecast of Amazon’s actual losses. *See Walter Implement, Inc. v. Focht*, 107 Wn.2d 553, 560, 730 P.2d 1340 (1987) (purported liquidated damages provision that did not reasonably forecast actual losses was an unenforceable penalty clause). In sum, if analyzed as a liquidated damages provision as Amazon now contends, the provisions of the BSA and related policies that allow Amazon to withhold funds in the seller’s account are unenforceable penalty clauses.

Third, not only does the amount of “damages” vary based on what Amazon decides to withhold, the sales proceeds accumulated in the seller’s account during any given 14-day period is fortuitous and will vary over time, depending on the time of year and other factors. For example, as Mr. Shauloff testified, AJW’s sales increase around the year-end holidays. Thus, the account balance bears no reasonable relationship to what the Parties might have forecasted would be Amazon’s actual damages caused by the breach.

87. This is not to say that Amazon could not have drafted an enforceable liquidated damages clause. For example, Amazon could have included a clause that expressly provided for liquidated damages and not a penalty of (say) \$5,000 or another amount for each breach of the Anti-Counterfeiting Policy or other policies. But the BSA contains no such language.

88. For the foregoing reasons, AJW has proved that Amazon has breached the BSA by continuing to hold AJW's funds. No reasonable risk of continuing harm to Amazon exists, and the BSA does not contain a liquidated damages provision. Amazon's decision to withhold AJW's money is also inconsistent with Amazon's contractual and fiduciary duties of good faith and loyalty to AJW as AJW's agent under BSA Section, P-1. Therefore, Amazon must pay to AJW a total of \$91,714.08, representing the sums that were in Claimant's Amazon account for the "ajlikeswatches" Amazon storefront as of December 21, 2020, net of all amounts debited and credited to the account since then.

2. Amazon must return to AJW certain of the watches that Amazon is holding.

89. Amazon is still holding in its warehouse various watches that AJW supplied for sale. These watches are listed in Ex. R-16. Based on Fossil's finding and Ms. Barnes' testimony that AJW sold at least six counterfeit watches on Amazon.com, Amazon contends that it should be allowed to destroy *all* the remaining watches, regardless of whether they are counterfeit.

90. Mr. Shauloff testified that Amazon should return the watches itemized in Rows 7-10 of Ex. R-16 (99 watches total). He testified that Amazon need not return and may destroy the remaining watches (listed in Rows 2-6 of Ex. R-16), some of which AJW purchased from Edison.

91. Until they were sold, AJW owned the watches that it supplied to Amazon. As AJW points out, various courts have held that Amazon does not take title to the goods sold

through the FBA program and thus is not a “seller” for purposes of products liability law. *See, e.g., Erie Insurance Co. v. Amazon.com, Inc.*, 925 F.3d 125, 141 (4th Cir. 2019) (citing cases); *Philadelphia Indem. Ins. Co. v. Amazon.com, Inc.*, 425 F. Supp. 3d 158, 160 (E.D.N.Y. 2019) (“The FBA terms in the BSA contain multiple provisions to the effect that third-party vendors . . . retain title to their products while Amazon stores those products on the third-party vendors’ behalf.”); *Eberhart v. Amazon.com, Inc.*, 325 F. Supp. 3d 393, 398-399 (S.D.N.Y. 2018) (granting summary judgment in Amazon’s favor because Amazon never took title to defective products sold through the FBA program).

92. At the Final Hearing, Amazon failed to prove that any of the watches described in Rows 7-10 of Ex. R-16 are counterfeit.

93. After the arbitration was pending, Ms. Naden testified that she shipped three or four watches from AJW’s inventory to Ms. Barnes for evaluation. According to Ms. Barnes, three of these four watches showed “flags” suggesting that they were counterfeit. She did not determine whether the other watch was counterfeit.

94. On cross-examination, however, Ms. Naden was unable to identify by item number on Ex. R-16 any of the three watches that she supplied to Fossil or the vendor from which AJW purchased the watches. Neither was Ms. Barnes. Moreover, Ms. Barnes testified that in her experience sellers or retailers “quite often” mix counterfeit watches with genuine inventory. Neither Ms. Naden’s nor Ms. Barnes’ testimony is sufficient for me to find that Amazon may keep or destroy the AJW-supplied watches that Amazon is holding.

95. Washington law does not favor forfeitures, *Jones Associates, Inc.*, 704 P.2d at 686, and AJW has the express right under the BSA to demand return of its “Units.” Further, Amazon does not explain as to why or how returning the watches to AJW would harm Amazon.

Rather, Amazon's intention appears to be to punish AJW by compelling the forfeiture of AJW's property. Considering that the law does not permit "penalty clauses" and disfavors forfeitures, no basis exists to permit Amazon to destroy AJW's property, especially where, as here, Amazon failed to prove that the watches in Rows 7-10 of Ex. R-16 were counterfeit.⁹

96. For the foregoing reasons, AJW has proved that Amazon has breached the BSA by continuing to hold AJW's property. No reasonable risk of continuing harm to Amazon exists. Like its decision to take AJW's money, Amazon's decision to withhold AJW's watches is also inconsistent with Amazon's contractual and fiduciary duties of good faith and loyalty to AJW as AJW's agent under BSA Section, P-1. Rather than use its discretion under the BSA to give AJW the benefit of the doubt, Amazon instead decided to punish AJW and to try to compel a forfeiture. Amazon's conduct cannot be reconciled with its obligations under Washington law. In sum, Amazon must, at its expense, return to AJW the watches described in Rows 7-10 of Ex. R-16.

C. Costs

97. Procedural Order No. 1, ¶ 19(b) directed the Parties, in their respective pre-hearing briefs, to briefly address whether the Party is seeking to recover costs (including attorneys' fees) in connection with the arbitration, and if so the basis for claiming those costs.

98. In its pre-hearing brief (p. 11), AJW asked to recover "the costs for this proceeding" but did not provide further explanation. In their pre-hearing brief (p. 16), Amazon asked for an award of their "arbitration costs," but did not provide further explanation. Amazon also argued (pp. 15-16) that AJW cannot recover any fees or costs other than "filing,

⁹ The Arbitrator makes no finding regarding whether Amazon could destroy products that Amazon proves are counterfeit.

administration and arbitrator fees.” As noted above, in Section 18 of the BSA, the Parties agreed that “Amazon will not seek attorneys’ fees and costs. . . in arbitration unless the arbitrator determines the claims are frivolous.” Neither side’s position is frivolous.

99. After the Final Hearing, Procedural Order No. 4 directed the Parties to specify by March 5, 2023, if the Party is seeking to recover amounts in fees or costs, other than the amounts described in R-53, R-54, and R-55 of the AAA Commercial Rules, and if so, to provide additional information specified in Procedural Order No. 4. Neither side responded, and the Arbitrator is unaware of any basis for either side to recover fees or costs beyond those described in R-53, R-54, and R-55 of the Rules.

100. R-47 of the Rules requires the Arbitrator to assess the fees, expenses, and compensation provided in Sections R-53, R-54, and R-55 and allows the Arbitrator to apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate.

101. The Arbitrator finds that it would be appropriate for Amazon to reimburse AJW for 2/3 (66.67%) of the amounts that AJW paid for the AAA’s administrative fees under R-53 and for 2/3 (66.67%) of the Arbitrator’s compensation under R-55. Although AJW is the prevailing party on the claims for payment of the funds held in AJW’s account and return of the inventory, Amazon is the prevailing party on the claim for restoration of AJW’s Amazon account.

102. Neither Party provided any showing of expenses that might have been awarded under Rule R-54. Thus, the Arbitrator makes no award under Rule R-54.

FINAL AWARD

103. For the reasons set forth above, I hereby AWARD as follows in favor of Claimant Arthur Abramov d/b/a AJ Watches and against Respondents Amazon Payments, Inc. and Amazon.com Services LLC the following relief:

a. Within 14 days from the date of this Award, Respondents shall pay to Claimant a total of \$91,714.08, representing the sums that were in Claimant's Amazon account for the "ajlikeswatches" Amazon storefront as of December 21, 2020, net of all amounts debited and credited to the account since then.

b. Within 14 days from the date of this Award, Respondents shall, at their expense, ship to AJW at the address that AJW will designate the following inventory specified in Ex. R-16:

Row	sku	Product Name	Quantity
7	MK-00013	Michael Kors Men's Bayville Quartz Watch with Stainless Steel Strap, Gold, 22 (Model: MK8726)	95
8	MK-00013	Michael Kors Men's Bayville Quartz Watch with Stainless Steel Strap, Gold, 22 (Model: MK8726)	2
9	EE6-87	88 Rue du Rhone Men's 87WA130036 Double 8 Origin Analog Display Swiss Quartz Silver Watch	1
10	EE3-38	Mulco Unisex MW5-1621-045 Bluemarine Glass Chronograph Swiss Movement Watch	1

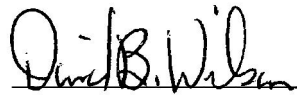
c. The administrative fees of the American Arbitration Association totaling \$8,925.00 shall be borne 2/3 by Respondents Amazon Payments, Inc. and Amazon.com Services LLC, jointly and severally, and 1/3 by Claimant Arthur Abramov, and the compensation of the arbitrator totaling \$34,755 shall be borne 2/3 by Respondents Amazon Payments, Inc. and Amazon.com Services LLC, jointly and severally, and 1/3 by Claimant Arthur Abramov. Therefore, within 14 days from the date of this Award, Respondents Amazon Payments, Inc. and Amazon.com Services LLC shall reimburse to Claimant Arthur Abramov

the sum of \$10,993.96, representing that portion of these fees in excess of the apportioned costs previously incurred and paid by Claimant Arthur Abramov.

104. This Award is in full settlement of all claims and defenses submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

105. This Award is intended to be specifically enforceable to the full extent permitted by law.

Entered this 6th day of April 2023 in the agreed place of arbitration, Phoenix, Arizona.



David B. Wilson
Arbitrator

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

April 6, 2023



David B. Wilson, Arbitrator