

Before the Arbiter for Financial Services

Case No. 029/2017

TV ('the Complainant')

vs

Corporate & Commercial FX Services Ltd.

(C50469) ('the Service Provider')

Hearing of 16 April 2018

The Arbiter,

Having seen the complaint

Having seen the reply by the Service Provider

Having seen all the relevant documents of the case

Considers:

The Complainant's version and claims:

- 1.1 The complaint relates to a transfer of a sum of money from the Complainant's bank to the Service Provider where the latter was to then transfer such sum to a trading account held by a third party indicated by the Complainant. It was claimed that the money transferred to the Service Provider did not reach its requested final destination. The

transfer of money between parties is an activity for which the Service Provider is licensed by the MFSA.

- 1.2 The Complainant held a trading account with B4Option, a binary options trading platform,¹ and wanted to transfer funds from his bank account in Sweden to his trading account with B4Option. The Complainant claimed that he followed the instructions provided by B4Option for the transfer of money which had to be done through the Service Provider.²
- 1.3 As indicated in the bank's transfer form, on 13 May 2016, the Complainant transferred Eur40,000 from his bank account held with Handelsbanken Brommaplan in Sweden to the Service Provider.³ The Service Provider was to then transfer the said sum to B4Option. The Complainant claimed that after sending payment to the Service Provider, the money did not reach the Complainant's account held with B4Option.
- 1.4 The money transfer form, which is in Swedish, dated 13 May 2016,⁴ signed by the Complainant and used for instructing his bank, Handelsbanken to transfer money to the Service Provider, indicates the following message to the Service Provider as payee "*Investment for B4Option – Smart Capital Ltd...*".
- 1.5 The Complainant explained that following the said transfer of money, he contacted B4Option but he did not receive clear answers as to the whereabouts of his funds. The Complainant claimed that "... *after a couple of weeks and strange explanations some of the money ended up in an account at Binarwin.com.*"⁵ The Complainant was not aware of '*Binarwin.com*' nor did he ever open an account with them. Moreover, the deposit held with *Binarwin.com* was for only Eur20,000, half of the amount of funds transferred. In an email dated 18 August 2016, to the Service Provider, the Complainant indicated that he was told that *Binarwin.com* is the same company as B4Option.⁶

¹ <https://www.leaprate.com/binary-options/regulation/binary-options-broker-b4option-receives-warning-canadian-regulator-bcsc/>

² Fol. 4

³ Fol. 10-11

⁴ Ibid

⁵ Fol. 4

⁶ Fol. 15

- 1.6 The Complainant indicated that he wanted his money transferred to his original account held at B4Option but, after some time, this site was no longer active and could no longer be reached.
- 1.7 It was further explained that during September 2016, four months after his bank transfer to the Service Provider “... *an unknown transfer of €20,000 ...and a ‘bonus’ of Eur20,000 showed up into my account at B4Option*”.⁷
- 1.8 The Complainant claimed that such ‘*bonus*’ payments are not the same as deposits in the trading account given that such ‘*bonus*’ payments cannot be withdrawn.⁸ The Complainant indicated that he made a withdrawal request with B4Option and made many attempts to contact them. No funds were, however, ever paid by B4Option and these can no longer be contacted.⁹
- 1.9 **In essence, the Complainant claimed that the Service Provider did not follow his instructions and did not transfer the money to the indicated recipient as intended. The Complainant also submitted that the Service Provider did not provide information in a timely manner and refused to provide information as to what was exactly done with his funds and to whom they were transferred.**
- 1.10 During the hearing of 6 November 2017,¹⁰ the Complainant submitted that payments were packed together so that these could not be traced.
- 1.11 The Complainant wants to retrieve his original funds and is asking for the refund of the money transferred to the Service Provider for the amount of Eur40,000, which was instructed to be remitted to B4Option.

The Service Provider’s version and defence:

- 1.12 The Service Provider submitted that two months after it successfully processed the transfer, it was contacted by the Complainant. The Service

⁷ Fol. 4

⁸ Fol. 56

⁹ Fol. 4 & Fol. 37

¹⁰ Fol. 55

Provider had a call with the Complainant subsequent to which the Service Provider received an email from the Complainant dated 18 August 2016,¹¹ regarding the problem he had in withdrawing money from B4Option and about the transfer of money in May 2016.¹²

1.13 The Service Provider further submitted that it only acted as an intermediary and its role was limited to the execution of the instruction for the transmission of money received from the Complainant to the trading platform chosen by the Complainant. The Service Provider submitted that it is not responsible for the actions of B4Option with which it has no relation. During its communications with the Complainant, the Service Provider explained that they are in no way related to, or associated with, the Complainant's trading platform.¹³

1.14 The Service Provider submitted that they had an arrangement with a local investment services firm, MPM Capital Investment Ltd ('MPM'), which was acting on behalf of Smart Capital Ltd. and B4Option. MPM, with whom the Service Provider had an Introducer Agreement, had referred Smart Capital Ltd. and B4Option to the Service Provider. The Service Provider submitted that it was receiving instructions from MPM as to when and where to remit the funds for Smart Capital Ltd. and B4Option.¹⁴

The Service Provider confirmed¹⁵ that, on 13 May 2016, it received the sum of Eur40,000 from the Complainant together with instructions to transfer the money to Smart Capital Ltd., the latter being "*... the owner of binary options trading sites where Mr TV held an account to trade*".¹⁶

The Service Provider explained that they used "*to receive around 40 or more inward payments per day from different clients with instructions to pay the same beneficiary...*".¹⁷ In accordance with the instructions received from MPM as the agent of the beneficiary, they used to

¹¹ Fol. 15

¹² Fol. 58

¹³ Email dated 26 August 2016 to the Complainant from the Service Provider – Fol. 14

¹⁴ Fol. 31

¹⁵ Fol. 58

¹⁶ Ibid

¹⁷ Ibid

“aggregate together the different inward payments going to the same beneficiary in one payment in order to save transfer fees”.¹⁸

It was further submitted that on 2 June 2016, the Service Provider received instructions from the said local investment firm to transfer a sum of money of Eur576,994 to Smart Capital Ltd. which included the money received from the Complainant.¹⁹ The Service Provider claimed that they did send the Complainant’s money to Smart Capital Ltd. as instructed.

The Service Provider indicated in their letter dated 14 March 2017, addressed to the Office of the Arbiter for Financial Services,²⁰ that they had requested MPM to formally confirm that the said transfer included the money from the Complainant, but they only received a verbal confirmation from MPM to this effect. The Service Provider submitted that it is Smart Capital Ltd., and the local investment service firm as their representatives, which are to clarify how the Complainant’s funds were deployed and returned to him as applicable.

1. ANALYSIS

1.1 The Arbiter notes that in his email of 18 August 2016 to the Service Provider, the Complainant remarked that he has *“been attempting to do a withdrawal from B4Option for the balance [he has] there for about a month now, and despite being told that it would be processed or someone would contact [him] soon, this is yet to happen”*.²¹ In the same email, the Complainant stated that he had been calling B4Option several times for weeks but that nobody was answering and, given the lack of contact with B4Option, he also wanted to withdraw his funds from Binarwin whom he was also having difficulty to contact.

In the same email, the Complainant pointed out that, with respect to his transfer of money to the Service Provider in May 2016, he was first told

¹⁸ Ibid

¹⁹ Fol. 31

²⁰ Fol. 31-32

²¹ Fol. 15

that the payment *“got held up and was probably getting sent back and eventually [he] was told it went through”*, but that he had noticed that his transfer to the Service Provider *“never actually made it to B4Option”*.²²

The Service Provider replied to the Complainant on the 26 August 2016, indicating *inter alia* that his complaint should be taken with the trading platform as their role was only limited to the transfer of funds. The Service Provider also referred the Complainant to the terms and conditions relating to his account that was claimed was attached to its email.²³

The Complainant reverted to the Service Provider on the same day, the 26 August 2016, highlighting that he received no attachment to the email of the Service Provider and that he received emails from B4Option saying that they will contact him, although no successful contact was ever made.²⁴

A subsequent email from the Service Provider dated 15 September 2016, indicated that they are in the process of reviewing their account application forms and that they did not have any business relationship with the sites mentioned by the Complainant.²⁵ The Complainant had on the same day, the 15 September 2016, requested the Service Provider to look into the matter with B4Option. In the said email, the Complainant stated that *“I have received €20,000... I was told the money which wrongfully went to binarwin.com instead of B4Option.com would be put in the proper account very soon, after this did not happen in reasonable time, I asked them again, they said it would happen on 6 Sept 2016. But it did not as of yet. It is also suspicious that the payment that I received does not show up in any of the records on the site. There is something wrong, I have requested the remainder of €35,347 to be returned and have not heard back”*.²⁶ The Complainant also reverted on 16 September 2016, asking the Service Provider to explain what was done with the transfer of money that the Complainant had sent to them, also asking for details as to who had the money and how to get in contact, as well as for his funds to be returned.²⁷

²² Ibid

²³ Fol. 14

²⁴ Ibid

²⁵ Ibid

²⁶ Fol. 36

²⁷ Fol. 13

In another email dated 29 September 2016 to the Service Provider, the Complainant indicated that his money from B4Option never arrived despite being given the impression that he was going to receive his funds. In the said email, the Complainant specifically stated that *“The 40K was taken out of the binarwin account, and I received an email from B4Option that they had sent me money, however, it has not arrived...”*²⁸ The Complainant also indicated that he cannot login to B4Option anymore.

The Complainant sent another email on the 24 January 2017, asking for a reply and a solution to the matter but no reply was provided by the Service Provider.²⁹

- 1.2 Internet searches undertaken by this Office regarding B4Option yielded various posts and articles where B4Option was indicated as a binary options trading platform whose previous website www.b4option.com is now no longer in operation.

Warnings issued by regulatory authorities in respect of B4Option were also found, namely by the Canadian and Spanish financial services regulatory authorities, who had issued warnings regarding the lack of authorisation for B4Option to operate in their territories. The warning issued by the Spanish regulator dates back to 2015, whilst the warning by the Canadian financial services regulator is dated May 2017.³⁰ The regulatory status, if any, of B4Option and place of operation is unclear.

2. FINAL OBSERVATIONS AND CONCLUSIONS

- 2.1. The communications by the Service Provider with the Complainant leaves much to be desired. The Service Provider should not have left email communications from the Complainant unanswered,³¹ and should have provided clear and adequate replies to the Complainant regarding the

²⁸ Fol. 37

²⁹ Fol. 12

³⁰ <https://www.leaprate.com/binary-options/regulation/binary-options-broker-b4option-receives-warning-canadian-regulator-bcsc/>

<https://atozforex.com/news/cnmv-warns-against-binary-options-brokers/>

<https://www.cnmv.es/portal/AdvertenciasListado.aspx?tipoAdv=1&inicial=B&lang=en>

https://www.bcsc.bc.ca/Enforcement/Investment_Caution_List/B4Option/

³¹ Emails from the Complainant dated 16 September 2016 (Fol. 13) and 24 January 2017 (Fol. 12).

destination of the transfer of money. Moreover, there are also other aspects in which the Service Provider is considered to have been lacking, including that it should have been able to promptly and formally verify the transfer of 2 June 2016 to Smart Capital Ltd. which, as indicated by the Service Provider in its letter of 14 March 2017,³² included the funds received from the Complainant.

The Service Provider should have been able to verify from its own records that the aggregate sum of money transferred to Smart Capital Ltd. included the money from the Complainant, rather than seeking confirmation from the local investment firm. The said events indicate a lack of adequate record keeping and reconciliation by the Service Provider who is ultimately itself responsible for tracing the transfer of any client's funds.

The events indeed point towards non-compliance with *Regulation 7(1) of the section titled 'Safeguarding of Funds', Part 3 of the Financial Institutions Act (Safeguarding of Funds) Regulations (S.L.376.04)*, to which the Service Provider is subject to. The said regulation specifies that *"A financial institution shall segregate the fund of payment services users at all times from the funds of any other person, provided that the funds of each payment services user may be held in a common account of payment services users. The funds of each payment services user held in a common account shall remain separately identifiable at all times"*.

However, with reference to the email of 18 August 2016, the Service Provider stated that from the said email *"it appears clear, from Mr TV's own admission, that the money reached Smart Capital, where we were instructed to send his funds. Furthermore, the fact that Mr TV took 2 months to contact us is another clear indication that the funds had arrived safely to the destination as otherwise he would have contacted us within a few days if the money did not appear in his account with the binary options site run by Smart Capital"*.³³

The Service Provider again remarked, with reference to the email of 15 September 2016, that *"it is abundantly clear that the company he sent the*

³² Fol. 31

³³ Fol. 59

*funds to was creating him troubles”.*³⁴ With reference to the email of 29 September 2016, the Service Provider stated that *“Again, Mr TV confirms that 40,000 eur were taken out of his trading account and also confirms that the trading site sent him an email confirming the sending of his funds”.*³⁵

2.2. Notwithstanding the shortfalls and apparent breaches by the Service Provider of regulatory requirements as referred to above relating to the proper safeguarding of clients’ funds, it is considered that there is no convincing and sufficient basis on which to arrive to a reasonable conclusion that the negligence or shortfalls of the Service Provider have actually led to the loss of the claimed money in the circumstances.

This is in view of the fact that there are various communications from the Complainant confirming that he was informed by B4Option about the receipt of funds by B4Option, and this as early as August 2016.³⁶ In his email of 18 August 2016, the Complainant himself stated that *“The payment firstly I was told got held up and was probably getting sent back, and eventually I was told it went through...”*³⁷ Similarly, in his email of 29 September 2016, the Complainant stated that *“I got the impression that B4Option sent my money, however it has not arrived yet. The 40K was taken out of the binarwin account, and I received an email from b4option that they had sent me money...”*³⁸ As also indicated in the Complaint Form by the Complainant *“Unexpectedly in September, 4 months later an unknown transfer of €20,000...and a bonus of €20,000 showed up in to my account at B4Option”.*³⁹

Hence, there is or was no claim by the ultimate intended recipient that they did not receive the money transfer from the Service Provider.

Even if the money transfer from the Service Provider had reached B4Option account first and not the account of Binarwin, whom the Complainant

³⁴ Fol. 60

³⁵ Fol. 61

³⁶ Fol. 15

³⁷ Fol. 15

³⁸ Fol. 37

³⁹ Fol. 4

stated was informed “*was the same company*”,⁴⁰ it is unclear whether this would have made any difference in the circumstances.

This is because the Complainant was already experiencing difficulties to withdraw funds from B4Option since July 2016. As claimed by the Complainant himself in his email of 18 August 2016 to the Service Provider, “*the problem is that I have been attempting to do a withdrawal from B4Option for the balance I have there for about a month now, and despite being told that it would be processed or someone would contact me soon, this is yet to happen*”.⁴¹

Whilst the practices of the Service Provider, as explained above, leave much to be desired, it is considered, however, that there is no convincing evidence that the resultant loss has been due to the failure of delivery or adequate transfer of funds by the Service Provider, whose role was only limited to execute the said transfer to B4Option – Smart Capital Limited.

From the information provided, the loss is considered to be rather attributable to the difficulties and problems experienced within B4Option and the reliability and integrity of such.

For the reasons indicated, the Complainant’s request for a refund of Eur40,000 from the Service Provider is not being accepted as it is not considered fair, equitable and reasonable in the circumstances of the case.

Due to the peculiarity of the case, each party is to bear its own legal costs.

Dr Reno Borg
Arbiter for Financial Services

⁴⁰ Fol. 15

⁴¹ Ibid