

Before the Arbiter for Financial Services

Case No. 143/2017

LW

vs

Northway Financial Corporation Ltd.

(C 36141)

Hearing of 26 June 2018

The Arbiter,

Having seen the complaint filed by the complainant which basically states that:

The complainant took several loans with the service provider from May 2010 to November 2014, and the service provider failed to check her personal circumstances to pay back the loans because she was already in arrears with her bank.

She felt '*pressurised in re-lending*' as she could not make her ends meet.

This caused her financial difficulty and stress as she had to take further payday loans to manage her day-to-day living.

The service provider let her down, first of all, for not following the correct guidelines and by lending her every month, they never checked her situation as she had poor credit score. She was paid the sum of £1,250, which she considered as non-binding.

She further claims that the MFSA had advised a refund of £4,034.

She asks the Arbiter to order the payment of £2,700, being the difference between the sum of £1,250, already paid to her and the recommendation of the MFSA.

Having seen the reply by the service provider which basically states that:

The complainant had filed a complaint with the MFSA and, although the recommendation by the MFSA was not binding on either party, the service provider had made an offer being a write-off of the outstanding balance amounting to £318.96 plus a refund amounting to £1,250.00, such gesture being in full and final settlement of this claim.

Whilst it is clear that the MFSA's recommendation was not binding on either the licensed entity or the consumer, it was expressly stated that our goodwill gesture was in '*full and final settlement*' of this claim and, therefore, was binding on both parties.

Based on the above explanation, a final settlement had been reached with LW by her acceptance of the settlement, provision of her bank details and transfer of the funds to her bank account. We consider this matter closed and will not consider further redress as the complaint has already reached a resolution.

Having seen the documentation filed.

Having seen its provisional order of the 23 January 2018, whereby MFSA was requested to provide the Arbiter with the relevant documentation of the case in relation to the settlement or otherwise of this case.

Having seen the documentation provided by the MFSA, filed at page 178 to 209 of the proceedings.

Having seen all the other documents.

Having heard the parties.

Considers

The Arbiter has to decide the complaint by reference to what in his opinion is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.¹

¹ CAP. 555, Art 19(3)(b)

The Arbiter notes in particular the letter sent by the MFSA to the Office of the Arbiter for Financial Services (OAFS) dated the 30 January 2018, which gives a detailed chronology of the negotiations which occurred between the parties on the initiative of the MFSA.

According to a letter dated the 31 January 2017, which Northway Financial Corporation Ltd. sent to the MFSA's Acting Consumer Complaint Manager, the service provider offered the settlement amount of £1,250 '*in full and final settlement*' in addition to the amount of £318.96, which was previously written off.

The complainant knowingly accepted the amount which was deposited in her bank account on the 1 February 2017.²

From the emails exchanged between the parties and MFSA, it transpires that MFSA explained to the complainant that if she accepted the offer it was going to be a final offer in full and final settlement of her claims, so much so that she asked the MFSA to ask the service provider to raise the amount to £1,500, which the service provider did not accept.

According to an email dated 1 February 2017, sent by CC from MFSA to NN for the service provider, it was stated that: '*LW is accepting Northway's offer. Please pay the goodwill amount to her account.....with Halifax*'.³

Finally, the amount of £1,250 was transferred to the complainant's bank account which she accepted.⁴

The Arbiter wants to emphasize that Chapter 555 of the Laws of Malta gave the opportunity to consumers of financial services to seek redress when the service provider has failed them.

The complainant had accepted payment in full and final settlement. Although she rejected the offer at first, then she accepted it and gave her bank's details so that the transfer would take place.

The Arbiter was not presented with any valid reason by the complainant why he should discard that agreement. The reason given by the complainant, that she thought that the offer was not binding, does not convince the Arbiter. The number of emails exchanged between her and CC from the MFSA are clear proof

² A Fol 209, Doc 9

³ A Fol 167

⁴ A Fol 168

that both the service provider and CC had made it clear to her that the amount was Northway's final offer in full and final settlement of her claims.

There was no pressure being exerted by the service provider because the negotiations were conducted through the MFSA which clearly explained to the consumer that she could accept or refuse the offer by the service provider. The circumstances in which the agreement was reached did not place the complainant in an inferior bargaining position because she had the time to consider the offer, so much so that she even tried to negotiate the amount. It was not imposed on her through some standard form contract which she could not negotiate. The offer was simple and transmitted to her in a diction that she could understand.

In accordance with the dictates of equity, justice and reasonableness the Arbiter cannot ask the service provider to pay twice on the same merits of the case. This would create an injustice.

For the above-stated reasons the Arbiter is rejecting the complaint.

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

Dr Reno Borg
Arbiter for Financial Services