Before the ARBITER FOR FINANCIAL SERVICES

Case ASF 028/2023

DL

(Complainant)

Vs

Novum Bank Limited (C 46997)

(Service Provider or Bank)

Sitting of 21 July 2023

The Arbiter

<u>The Complaint</u>

Having seen the Complaint whereby the Complainant explains that

a. He was charged APR of 1900% on loans he took from Service Provider from August 2017 to January 2019 for which he claims that Service Provider has admitted that it has to refund an excess interest of €1,200;[1]
b. Service Provider has already refunded €800 for loans made in the period from August 2017 to January 2019;
c. Service Provider had lent him ***"more than €5000 and they charged me €9000, in quick loans of 1 month with an interest of more than 2500% TAE"***.[2]

By way of remedy, the Complainant expected an amicable settlement for €2,550 on top of the €800 already refunded as per b. above.

<u>The Reply of the Service Provider</u>

[1] No evidence provided
[2] P. 3

The Service Provider maintains they have already signed a compromise agreement dated 2 August 2022 in the Spanish language which is the language of choice of the Complainant.

A copy of this Agreement[3] was officially translated and reads as follows:

Cashperplus
your financial friend

Madrid, 2 August 2022.

The entity **NOVUM BANK LIMITED,** corporate tax ID number MT 2200 0114, registered address: The Emporium, Msida MSD 1421, Malta, hereinafter

The other party, **Mr/Ms DL,** national ID number XXXXXXXXN, on his own behalf, address: XXXXXXXX (XXXXX)

STIPULATIONS

FIRST: The borrower has signed several loan contracts with the entity.

SECOND: The parties have reached an agreement whereby the entity NOVUM BANK LIMITED undertakes to refund the client the amount of **€800.00** in respect of the overpaid amount of the loan principal.

THIRD: Having verified the payment by the entity to the client's account number, both parties state that the matter is closed and settled, with no claim between the parties for any of the signed transactions, and undertaking to cease and desist from any litigation in or out of court that may be underway.

In witness of all of the above, this document is issued to be signed by the parties involved.

Signed (illegible signature)

(logo) (stamp: cashper.es
PO Box 71
28100 Alcobendas, Madrid
Tel. 910 052 004 – Fax 910 059 017)

Email: contabilidadplazos@cashper.es
Tel.: 910 059 504

Signed (illegible signature)

XXXXXXXXX
DL

[3] P. 26

The Service Provider argued that in terms of Civil Code CAP 16, ***"a compromise agreement shall have as between the parties the effect of a res judicata."*** [4] [5]

The Bank mentioned that this was accepted in case law by Court of Appeal (Civil Inferior)[6] and that Spanish law similarly upholds the validity of such agreement.[7]

For this reason, without entering into the merits of the case, the Service Provider asked for the Complaint to be dismissed.

Hearings

As Complainant had language problems expressing himself in English, the hearings had to be held in written format.

In his filings, the Complainant argues that when he signed the agreement of 2 August 2022, he was not aware of much bigger overcharges from August 2019 to January 2022 and on loans from August 2017 to August 2019.

"I had not claimed them due to ignorance".[8]

He maintained that the compromise agreement he signed covered the loans for the period 2019 to 2021 only and accuses the Bank of manipulating the agreement and its interpretation. He argued that even for this period, the overcharge refund should have amounted to €2,714 not €800 and proposed an agreement to settle the difference out of court.

In their submissions, the Bank repeated the *res judicata* claim and further stated that:

"***Furthermore, and without prejudice to the above, the Complainant's level of education – he is employed as a Principal in a school – makes it inconceivable to accept that he was not in a position to properly understand the terms of the Settlement Agreement. He did not complain about the terms of the Settlement Agreement or even requested amendments thereto. At no point in time was any pressure or rush exercised on him to sign the Settlement Agreement. In conclusion, therefore, there is nothing to suggest that consent was not freely given or was otherwise vitiated.***

[4] P. 24
[5] Quoting at 1718 et seque and Article 1729 (1) of CAP 16.
[6] Quoting case *Gravino Anthony et vs La Valette Funds Sicav plc* et (23/2018) on 16.12.2019
[7] Quoting Spanish High Court 205/2018 dated 11.04.2018
[8] P. 31

Additionally, and without prejudice to any of the above, the Complainant conveniently fails to mention that on the 12 July 2022, he himself proposed the amount of €800, which he raised from a previous €600 claim, to amicably settle the disagreement between the Parties. Hence the €800 is not the result of any sophisticated calculation by the Bank, but rather, a nominal amount which was determined by the Complainant and which the Bank was ready to pay to amicably and finally close the matter.

Moreover, and without prejudice to any of the above, the Bank feels that the requests by the Complainant are the subject of a planned strategy to obtain additional gain. As a matter of fact, the funds subject of the Settlement Agreement, i.e., the €800, were transferred to the Complainant's account on the 17 August 2022. It is only two days after, on the 19 August 2022, that the Bank received yet another request by the Complainant, this time for €1,200. Amounts claimed in the subsequent months were not consistent and they kept getting higher.

In addition, and without prejudice to any of the above, while on the one hand the Complainant states that he felt deceived by the Bank, on the other hand, he kept applying for loans even following his first complaint with the Bank in April 2022. Indeed, a number of loan applications by him were received between the 29 April 2022 and the 9 November 2022, these were naturally rejected by the Bank.

Finally, and without prejudice to any of the above, the Complainant did not provide any breakdown or proof that substantiates his claim of €2,550. Not only does the Bank irrefutably reject the claim of the Complainant in principle and at law, it is also evident that the amount claimed is arbitrary. Indeed, in his own Settlement Proposal (never signed by the Bank) dated 5 January 2023 and reproduced in his submission dated 21 April 2023, the aggregate interest paid on such loans only amounts to €1,540, notwithstanding that the total of €2,550 is claimed.

For the above-mentioned reasons, and without prejudice to any remedy or action at law, the Bank respectfully requests that the complaint be dismissed."

Analysis and considerations

The Arbiter is bound by CAP 555 to determine and adjudge a complaint by reference to what, in his opinion, is fair, equitable and reasonable in the

particular circumstances and substantive merits of the case.[9] The Arbiter shall also deal with a complaint in a procedurally fair, informal, economic and expeditious manner.[10]

However, none of these provisions should be interpreted to mean that the Arbiter has discretion to challenge established and long-held legal doctrine such as *res judicata,* unless there is sufficient evidence that the complaining party's assent to the compromise agreement was flawed by fraud, misinformation or unfair commercial terms included in the compromise agreement.

No evidence was provided by the Complainant of any such flaws. The compromise agreement is written in very simple language and there is no limitation of partial application but refers generally to "*several loan contracts*".

Furthermore, there is little credibility that can be given to Complainant's assertion that the agreement signed in August 2022 only covered a period between 2019 and 2021 but not the loans before or after this period.

Credibility is also challenged by inconsistency of the amounts claimed which in the complaint is stated at €2,550 but in a draft agreement he proposed on 23 April 2023 (never signed), he seems to be suggesting €2,714 less the €800 already received under the compromise agreement.

Furthermore, it is no sign of consistency for the Complainant to seek further loans from the same lender that he accuses of excessive fees and charges (a claim made by the Service Provider and not refuted by the Complainant).

Decision

For reasons above explained, the Arbiter holds that in this case the *res judicata* doctrine should prevail and denies the Complaint, ordering the Complainant to settle the costs of this case.

Alfred Mifsud
Arbiter for Financial Services

[9] Art. 19(3)(b)
[10] Art. 19(3)(d)