

Quddiem l-Arbitru ghas-Servizzi Finanzjarji

Kaz ASF 084/2023

LG ('l-Ilmentatur')

vs

HSBC Bank Malta p.l.c.

Reg. C 3177

('il-Provditur tas-Servizz' jew 'HSBC')

Seduta tas-7 ta' Marzu 2024

L-Arbitru,

L-Ilment

Ra l-ilment¹ datat 7 ta' Lulju 2023 fejn l-ilmentatur issottometta li l-HSBC ghalaqlu l-kontijiet personali kemm dawk ordinarji (li jispicaw bin-numri 82001 u 82050) kif ukoll dak *fusion* (li jispicca bin numri 71001). Dan wara li kien staqsa fuq depozitu fi flus kontanti ta' €500 u pagament ta' €7,000 lil kumpanija fl-Italja jisimha *Airmail*.

Kien spjega li dan il-pagament kien hlas ta' mizati biex ibnu jsegwi studju ta' pilota fl-Italja, u li d-depożitu dahal fil-kont personali ghax il-kont *fusion* ma kienx qed jahdem sew. Offra wkoll li jaghtihom taghrif dwar xi mistoqsijiet ohra li jista' jkollhom dwar tranzazzjonijiet fuq il-kontijiet tieghu izda talabhom biex ma jaghalqulux il-kontijiet. Permezz ta' ittra datata 30 ta' Mejju 2023, kienu avzawh li l-kontijiet kienu ser jinghalqu wara l-ahhar ta' Lulju 2023.

¹ Pagna (P.) 1 - 6 u dokumenti annessi p. 7 - 16

Huwa talab lill-Arbitru biex jordna lill-HSBC ma jaghlaqlux il-kontijiet ghax familta u l-familji ta' impjegati tieghu kienu jiddependu fuq iz-zamma ta' dawn il-kontijiet.

Ir-Risposta tal-Provditur tas-Servizz

L-Arbitru ra risposta tal-HSBC permezz ta' sottomissjonijiet datati 27 ta' Lulju 2023 fejn qal:

“That the Complaint is unfounded and ought to be rejected because of the following reasons:

1. *The Bank submits preliminary that the relationship between a bank and its customers is a contractual relationship that is also subject to regulatory obligations. This relationship may be terminated by either party as it is established by its terms and conditions and as regulated by **Directive 1 of the Central Bank Malta** “the Provision and Use of Payment Services” (CBM01/2018) which is based on EU Directive 2007/64.*

*Section 31(1) gives the customer the right to terminate “the framework contract, at any time, unless the parties have agreed on a period of notice. Such a period shall not exceed 1 month.” On the other hand, **Section 31(4)** of the Directive provides that if agreed in a framework contract, **the payment service provider may terminate a framework contract concluded for an indefinite period by at least 2 months’ notice”.***

2. *The **General Terms and Conditions Current, Savings & Card Accounts** being the contract that regulates the relationship between the Bank and its customers also provides for ending this framework and terminating the relevant product or service states. Clause D.12.1 provides for when customers may wish to terminate relationship without the need to provide the bank with a reason. Clause D12.5 states that “**we may in our discretion and without providing you with a reason, end any product of service governed by these General Terms by giving you at least 60 days prior written notice Document A**”.*
3. *It is further submitted that, in addition to the regulatory aspect, it is also a well-established principle that one of the conditions that establishes the fundamental relationship between the bank and its customers is that the*

*bank may terminate this relationship unilaterally, giving notice to its customers as established in Common Law Judgement **Joachimson vs Swiss Bank Corporation** [1921] 3 KB 110 and **Prosperity Ltd v Lloyds Bank Ltd** [1923] 39 TLR 372. This same principle discussed in page 59 et seq of the book entitled *Paget's Law of Banking* (Seventh Edition – London, Butterworths 1966). Reference is also being made to two publications of the Ombudsman for Banking Services for South Africa precisely *Bulletin 3 Closure of Bank Accounts* AND *Consumer Note 14 Closure of Bank Accounts – Circumstances under which banks close customers' account*, copies attached and marked '**Document B**' and '**Document C**'.*

4. *Without prejudice to the preliminary submissions of a general nature on the bank's right of termination of an account, the Bank makes the following further submissions on the specific facts relating to the Complaint, the closing of account was triggered by reasons outside the control of the Bank, which the Bank is prohibited from disclosing due to legal and regulatory obligations applicable to it.*

That in view of the above, it is submitted that there could be no remedy to the Complaint as it is unjustified in fact and at law.

The Bank respectfully reserves the right to produce further oral and documentary proof and to make additional submissions both oral and also in writing during the sittings before His Honour, The Arbiter, to substantiate its position as above indicated.

*For the above reasons, the Bank humbly submits that all Complainant's demands are to be rejected with costs to be borne by said Complainant."*²

Seduti

Fl-ewwel seduta ta' nhar l-20 ta' Novembru 2023, xehed l-Ilmentatur li qal:

"Jien ircevejt telefonata minn rapprezentanta tal-HSBC fejn din staqsietni ghalfejn jiena hallast kumpanija jisimha Airmail mill-kont tieghi personali.

Ghidtilha l-kumpanija XXX hija l-iskola fejn imur it-tifel ghax it-tifel qed jistudja ghal XXX l-Italja u l-Italja l-iskola hija rregistrata bhala kumpanija.

² P. 22 - 23 and attachments p. 24 - 63

Staqsietni ghandix kopji tal-invoices u ghidtilha, 'Iva.' U ghidtilha li jekk riedet, kont nibghathomlha. U qaltli li mhux problema.

Nghid li t-total kien ta' xi €7,300 ta' sena skola. Imbaghad, hallast ukoll €980 lill-istess kumpanija u riedet tkun taf x'inhuma. Ghidtilha li kienu ghall-uniformi tieghu, biex ikun jista' jidhol bit-tag go XXX u dawn l-affarijiet kollha. Qaltli, 'OK,' u qaltli li jekk ikollha bzonn aktar informazzjoni tibghatli email.

Jien ma smajt xejn aktar, la rcevejt email, la rcevejt telefonati, ma rcevejt xejn. U nircievi ittra li l-bank iddecieda li jaghlaqli l-kont tieghi personali u l-kont tieghi ta' fusion.

Jiena tlabt x'inhi r-raguni ghax jekk riedu kopji tal-invoices setghu staqsew u kont nibghathomlhom.

Nghid li jekk nipprova nidhol mill-Mobile App, ma jhallinix nidhol fih. Imma, nhar il-Hamis ircevejt kopja tal-istatements tal-kontijiet.

Jidher li l-kont ghadu miftuh imma naqqsuli l-facilitajiet. Nghid li m'ghandix access ghalih.

Nghid li jiena kelli current account fuq ismi personali, imbaghad, tliet snin ilu kont ftaht il-fusion account imma kellhom xi problemi bil-card u baghtuli xi erba' darbiet, baghtuli erba' darbiet f'indirizz hazin. Kull darba rridu nibblokkjawha, jgibuli wahda gdida u nibqghu sejrjn. Qisu dan il-fusion account qatt ma hadem. Nghid li dan m'ghandix flus fih u ma nuzahx. Nghid li qed nitkellmu fuq il-current u savings accounts.

Nghid li jien ma kellix facilitajiet bankarji. Nghid li l-kont kont nuzah ghal affarijiet personali, ma kienx hemm affarijiet ta' negozju; kont inhallas l-iskola tat-tifel imnizzla bhala kumpanija.

Nghid li jiena self-employed u ghandi kumpanija ta' XXX. Nghid li ma nuzax il-kont ghal din il-kumpanija; din il-kumpanija ghandha kontijiet separati u qeghdin ma' bank iehor.”³

Fil-kontroezami kompli jixhed:

“Nikkonferma li l-kontijiet li ghandi l-HSBC ma nuzahomx ghan-negozju tieghi.

Mistoqsi nikkonferma li jien gbidt il-flus tieghi kollha li ghandi l-HSBC, nghid li iva. Jekk inghalaqli l-kont, mhux ser inhalli l-flus fil-kont. Nghid li ghamiltihom

³ P. 64 - 65

transfer ghal mal-APS. Nghid li, iva, qed nuza kont ta' bank iehor. Nghid li bilfors; ma nistax nigbed il-flus u nhallihom pendent i fl-arja.

Nghid li ftaht kont ma' bank iehor f'ismi personali. Ma stajtx inhallihom fil-kont tal-HSBC, bilfors ridt naghlu għax tawni ultimum ta' xahrejn."⁴

Fl-ahhar tas-seduta kien hemm qbil bejn il-partijiet li l-HSBC jibghat lill-Arbitru kopja tal-*bank statements* sabiex l-Arbitru kollu idea ahjar ta' kif kienu jahdmu l-kontijiet li dwarhom qed isir l-ilment.

Fil-fatt, l-HSBC baghat kopja ta' *statements* tal-kont li jispicca 71001 mis-16 ta' Marzu 2021 sad-9 ta' Jannar 2023.⁵ Dan kien kont kategorizzat bhala BUS. CURRENT – WTAX li jindika li kien qed jintuza għal xi negozju.

Baghat ukoll *statements* ta' kont jispicca b'numri 82001 mit-30 ta' Novembru 2020 sa ma l-kont spicca bla fondi xejn fit-3 ta' Gunju 2023.⁶ Dan kien kont kategorizzat CURRENT-NONTAXABLE u, għalhekk, mahsub għall-uzu personali.

Rigward il-kont li jispicca bin-numri 82050, baghat *statements* mis-26 t'Awissu 2020 sat-3 ta' Frar 2022⁷ u mill-15 ta' Frar 2022 sat-8 ta' Novembru 2023⁸ meta l-kont spicca bla fondi xejn u inghalaq. Dan il-kont kien kategorizzat bhala SAVINGS- TAXABLE u kien għall-uzu personali.

Fis-seduta li saret fid-9 ta' Jannar 2024, xehed mill-gdid l-Ilmentatur li qal:

"Mistoqsi jekk il-kontijiet tieghi qattx uzajthom u qattx għamilt transfers minhabba n-negozju tieghi minn gol-kontijiet personali tieghi, nghid li digà wegibthom u ghidt li le. U din qiegħda anke rekordjata għandhom li l-pagamenti li għandhom mal-kumpanija hija l-iskola tat-tifel għax peress li qed jistudja l-Italja għall-XXX hemmhekk l-iskola hija bhala kumpanija, jigifieri, jiena lilhom bilfors mill-kont personali tieghi irrid inhallas għaliex din hija haga personali.

⁴ P. 65

⁵ P. 69 - 76

⁶ P. 77 - 117

⁷ P. 145 - 154

⁸ P. 119 - 143

Mistoqsi jekk it-tranzazzjonijiet kollha li ghamilt mill-kont tiegħi speċjalment il-kont xxxxxxxx82050 humiex kollha relatati mal-hajja personali tiegħi, ngħid li iva; jew tiegħi, jew tal-mara jew tat-tifel, tal-familja.

Sottomissjonijiet finali tal-Ilmentatur:

Ngħid li t-transfers kollha li saru, saru kollha għalija personali bhala familja. Ngħid li ma għandix aktar xi nzid. Bhalma digà kont għidtilhom meta cempluli, jien jekk hemm bzonn li jagħtuni l-lista ta' x'kienu u nibgħatilhom kopja tal-invoices, nista' nibgħathomlhom ukoll.

Jekk għandhom bzonn anke dikjarazzjoni mill-iskola li t-tifel qed imur skola hemmhekk, ingib dikjarazzjoni wkoll, m'hijjex problema. Ngħid li min-naha tiegħi ma hi problema ta' xejn.

Mistoqsijiet mill-Arbitru lill-Ilmentatur:

Qed jingħad li fil-kont personali tiegħi hemm diversi depoziti li gew mill-Malta Enterprise bejn 2021 u 2022 li jammontaw għal madwar €30,000.

Mistoqsi x'inhuma dawn il-pagamenti, ngħid li jiena bhala self-employed fi zmien il-Covid spiccajt bla xogħol. Dak kien is-sussidju li kien jagħti l-Gvern min-naha tal-Malta Enterprise biex ikopri l-paga tiegħi. Bhalma rcevejtu jiena, rcevewh il-poplu Malti kollu.

Qed jingħad li fil-kont li jispicca 82050, fis-sena 2022, bidu tal-2023, hemm Cash Deposits li jekk tghodhom kollha flimkien hemm €20,000.

Mitlub nispjega dawn il-Cash Deposits, ngħid li jien, kif digà spjegajt, apparti l-kont personali tiegħi kelli wkoll account li kien Fusion; qatt ma baġhtuli l-card – erba' darbiet jibagħtuha f'post hazin. Jiena, bix-xogħol li nagħmel, għandi klijenti li jekk jien immur għand xi hadd innaddaf, dan ihallas cash.

Dawn jien kont nispicca niddepozitahom fil-kont personali għax il-card tal-Fusion ma kinitx qed taħdem. Il-bank, il-Mosta, kienu jafu – jekk ticcekkjaw mal-Head Office tal-HSBC jafu wkoll – il-card erba' darbiet baġhtuha go indirizz hazin. Darba minnhom ircevejtha u lanqas ma kienet illinkjata mal-kont tiegħi u kkancellaw il-card u regghu baġhtuhieli. U meta, finalment, baġhtuli l-card u bdiet taħdem, gimagħtejn wara għalqu l-kont.

Qed jinghad li allura l-istatements li t-tranzazzjonijiet li ghamilt f'dawn il-kontijiet huma personali, mhux il-kaz. U li jien ghidt li dawn huma ta' familja normali u l-business ghandu kont iehor ma' bank iehor u kont ngħaddihom hemmhekk. Nghid li iva, ghandi kont iehor tal-kumpanija ma' bank iehor. Jien nagħmel zewg jobs: hemm jiena, LG, bhala self-employed li nahdem mal-HSBC fejn suppost kelli l-account Fusion u ma kienx qed jahdem. Imbagħad, ghandi l-kont bhala kumpanija ma' bank iehor ghax l-HSBC ma ridux jifthuli l-kont anke tal-kumpanija.

Nghid li l-branch tal-Mosta kienu jafu b'dan. Jien kont tkellimt ma' XX, jafu bil-problema li kellhom min-naha tagħhom il-card Fusion u qaltli, 'Hu pacenzja, itfagħhom għalissa fil-kont personali u mbagħad immexxuhom.' U jien hekk ghamilt.⁹

"Qed jinghad li fil-kont li jispicca 82050, fl-2022 hemm hafna aktar cash deposits mis-snin ta' qabel, nghid li fl-2022 kien suppost li nfetah ukoll il-kont tal-Fusion imma ma kienx għadu miftuh.

Mistoqsi mir-rapprezentanta tal-HSBC kif allura kont nagħmel l-online payments jekk ma kellix il-card, nghid li ma kontx nuza online payments fuq il-card.

Qed jinghad li fil-kont xxxxxxx82050 hemm transactions li jisimhom Online, nghid li daww huma tieghi personali. Daww mhumiex tal-Fusion.

Nghid li l-card li ma kinitx qed tahdem hi tal-Fusion mhux tieghi personali.

Dr Claudia Muscat¹⁰ qed tistaqsi la t-tranzazzjonijiet li ghandi hawnhekk ma kinux tieghi personali, allura, kif qed nuza l-kont tieghi personali meta ghandi kont ma' bank iehor, nghid li dawn huma t-tranzazzjonijiet tieghi bhala self-employed u mhumiex tranzazzjonijiet tal-kumpanija.

L-Arbitru qed jigbed l-attenzjoni għal pagament f'dan l-istess kont (xxxxxxx82050) ta' €11,392 a favur kumpanija jisimha XXX u li ma jidhrux li huma spejjez personali.

⁹ P. 155 - 156

¹⁰ Rapprezentanta tal-HSBC

Nghid li huma spejjez personali ghax huma hwejjeg li xtrajna jien, il-mara u t-tifel. Qeghdin l-Italja.¹¹

L-Arbitru talab li l-partijiet jaghmlu sottomissjonijiet finali u talab lill-Ilmentatur biex fis-sottomissjonijiet tieghu jispjega car il-pagamenti li saru mill-kontijiet ghall-uzu personali izda li jidher li kienu pagamenti relatati man-negozju.

Sottomissjonijiet finali tal-Ilmentatur

“I am enlisting the incoming and outgoing list as per bank statement:

- 1. Malta Enterprise income is the benefit coming from the government wage supplement due to covid*
- 2. 4th Feb 2021 we got also reimbursement of loss of business*
- 3. Outgoing to Malrom for service paid to get my family stuff from Romania to Malta*
- 4. Outgoing LG Rev is transfer to my credit card*
- 5. Received refund from Antonio Prospero for deposit of restaurant*
- 6. Payment to San Andrea school is the fee for our son’s school*
- 7. XXX is that we bought clothes for us, we returned from Romania and all our clothes were heavy ones. So we needed to buy new clothes for us four, as my wife’s mother was with us also*
- 8. XXX is payment to Identity Malta, today known as Identità for residence permits*
- 9. Payment to XXX, is payment of our son’s school in Italy as he is studying to become XXX.*

All these were for personal use except the ones for XXX, and reason is that my fusion card went lost 4 times and this can be verified from Mosta Branch and also call centre. This can be also verified from a letter I just got 3 days ago, where HSBC is apologising that they have sent all my bank statements by post

¹¹ P. 157

to the wrong address, same thing as done by my card and pin. So now I have also a third party knowing my balances and accounts details.”¹²

L-ilmentatur spjega li dawn il-pagamenti kellhom isiru mill-kontijiet personali ghax il-kont tan-negozju *fusion* ma setax jintuza ghax l-HSBC ghal diversi drabi baghat il-card f'indirizz hazin tant li rcieva ittra ta' apologija mill-Bank.¹³

Sottosmissjonijiet finali mill-Provditur tas-Servizz

“The bank respectfully submits:

That, whilst the Bank refers to and confirms its statement of defence presented on the 27 July 2023 and the evidence presented by the Bank during the arbitration sittings, by virtue of this responsive note of submissions, the Bank will explain why the complaint of Mr LG (the ‘Complainant’) should be dismissed as unfounded in fact and at law for the following reasons:-

*The relationship between a bank and its customers is a contractual relationship that is also subject to regulatory obligations. This relationship may be terminated by either party as it is established by its terms and conditions and as regulated by **Directive 1 of the Central Bank of Malta** ‘the Provision and Use of Payment Services (CBM01/2018) which is based on EU Directive 2007/64. Section 31(1) gives the customer the right to terminate ‘the framework contract at any time, unless the parties have agreed on a period of notice. Such a period shall not exceed 1 month.’ On the other hand, **Section 31(4)** of the Directive provides that if agreed in a framework contract, **the service provider may terminate a framework contract concluded for an indefinite period by at least 2 months’ notice’.***

*The **General Terms and Conditions Current, Savings & Card Accounts** being the contract that regulates the relationship between the Bank and its customers also provides for ending this framework and terminating the relevant product or service given Clause D.12.1 provides for when customers may wish to terminate relationship without the need to provide the bank with a reason. Clause D12.5 states that **“we may in our discretion and without providing you with a reason,***

¹² P. 159

¹³ P. 166

end any product of service governed by these General Terms by giving you at least 60 days prior written notice (Document attached to the Bank's reply).

*It is further submitted that, in addition to the regulatory aspect, it is also a well-established principle that one of the conditions that establishes the fundamental relationship between the bank and its customers is that the bank may terminate this relationship unilaterally, giving notice to its customers as established in Common Law Judgement **Joachimson vs Swiss Bank Corporation** [1921] 3 KB 110 and **Prosperity Ltd v Lloyds Bank Ltd** [1923] 39 TLR 372. This same principle discussed in page 59 et seq of the book entitled *Paget's Law of Banking* (Seventh Edition – London, Butterworths 1966). Reference is also being made to two publications of the Ombudsman for Banking Services for South Africa precisely *Bulletin 3 Closure of Bank Accounts AND Consumer Note 14 Closure of Bank Accounts – Circumstances under which banks close customers' account*. (Document attached to Bank's Reply).*

*The relationship between a bank and its customers is based on trust as established in *RE u EE vs HSBC Bank Malta p.l.c.*, Office of the Arbiter for Financial Services 071/2019 decided on the 15th September 2020. The fact that, as will be explained further in this note of submissions, the customer has not always given satisfactory information to the bank on a number of transactions and further inconsistent responses to the Arbiter, explains why there cannot be the mutual trust that underpins any bank-customer relationship and which has rendered this relationship out of scope of the bank's risk appetite.*

The bank submits that the termination of a relationship is not something that it takes lightly and such decision is taken on a number of factors including internal procedure and policies, regulatory obligations and practices, the risk levels and the exigencies of the HSBC Group.

Account Activity:

*The **General Terms and Conditions Current, Savings and Card Accounts** being the contract that regulates the relationship between the Bank and its customers also provides Part D.2 'Any personal accounts you may have opened are to be used solely for personal purposes, and all business accounts, both newly opened or converted from a personal account are to be used solely for business purposes.'*

Mr LG is listed with the bank as self-employed Director at _____Ltd with a monthly salary of EUR 4,000.00 and additional monthly income of Eur 2,000.00, details last updated on 17 May 2021.

In reality, it has resulted that Mr LG deals in numerous companies and is oversimplifying the distinction between the 'company' and 'activity as a sole trader'. This is due to the fact that Mr LG claims that his sole trader activity is related to cleaning services when in actual fact the activity in his accounts shows:

- 1. Payments to clothing wholesalers (XXX)*
- 2. 'Help' given out to a friend who runs a shop who didn't have enough money to pay salaries restaurant deposit refund' from XXX(EUR 4,329)*
- 3. Malta Enterprise refunds he says are related to his salary but from Mr LG's statement, precisely the transaction narrative from the Malta Enterprise payments, indicate that such payments are linked to XXX. These payments are featured as frequent payments.*
- 4. Credits from XXX (EUR 119,084) referencing loan repayments and profit of shares*
- 5. Salary credits from XXX and XXX and 15 cheques totalling EUR 57,842.35*
- 6. Funds utilised towards 47 cheque debits (EUR 131,891.55)*
- 7. Transfers to counter parties XXX (clothing wholesaler), XXX. (cooling and ventilation manufacturer), XXX (clothing wholesalers) all located in Italy.*

Mr LG also explained that XXX (who is an Italian wholesaler) payments represent purchase of stock, as his wife had a clothes shop. During these proceedings, Mr LG said that this was for the purchase of personal clothes.

With regard to the 75 payments to XXX online each for EUR 280.50, which is the price for Non-Maltese national work permit, Mr LG, on the 9 March 2023 informed that his companies include the following activities: outsourcing of staff and cleaning services. Following on from this, customer went on to confirm the payments to XXX online represent visa permit applications for his staff.

Apart from the fact that Mr LG is applying for visa permits for multiple individuals through his personal account, it is curious to note that counter-transactions one would expect from such business, such as payment of salaries to employees, purchase of supplies for the purposes of his stated business, are not reflected through the statements.

Risk Appetite:

The Bank finally submits that ultimately the Bank's decision to terminate its relationship with the customer is dictated by its risk appetite and the Bank's internal policies which, on account of commercial sensitivities, need to remain confidential. Of course, the customer is free to have (and in fact he has stated that he has) banking relationships with other banks, which have different risk appetites.

The Bank feels that it is totally within its discretion to decide whether or not to entertain Mr LG's custom. The Bank hereby refers also to a decision given by the Arbiter for Financial Services reference ASF 018/2023 in MP vs APS Bank p.l.c. whereby the service provider refused to accept the opening of account on the basis that it is the Bank itself that determines whether a customer may open an account or not on the basis of the bank's risk appetite and the bank's internal policies.

For the above-mentioned reasons, and without prejudice to any remedy or action at law, the Bank respectfully requests that the complaint be dismissed.”¹⁴

Analizi u kunsiderazzjonijiet

Wara li xtarr l-ilment u r-risposta, wara li sema' x-xhieda tal-partijiet u ezamina d-dokumenti kollha sottomessi, u wara li ezamina s-sottomissjonijiet finali, l-Arbitru jghaddi biex janalizza u jiddeciedi l-ilment kif provdut f'artiklu 19(3)(b) ta' KAP 555 b'referenza ghal dak li, fil-fehma tieghu, ikun gust, ekwu u ragonevoli fic-cirkostanzi partikolari u merti sostantivi tal-kaz.

Decizjoni biex bank jaghlaq kont bankarju ta' klijent ghandha tkun l-ahhar mizura li jiehu peress li hija l-aktar decizjoni drastika li bank jista' jiehu fil-konfront tal-

¹⁴ P. 168 - 171

klijenti tieghu. Dan iwassal ghad-decizjoni li din il-mizura ghandha titqies bhala l-ahhar pass li l-bank ghandu jiehu u wara li jkun ta c-cans kollu lill-klijent li jottempora ruhu ghal xi nuqqas li jkun ghamel fil-konfront tal-bank.

Biex dan isehh, il-bank irid ifittex li jkollu djalogu kontinwu mal-klijent u jidderigih fit-triq it-tajba fejn dan jonqos. Dan huwa ekwu, gust u ragonevoli meta jitqies li fir-relazzjoni bejn klijent *retail* u bank ghandek zbilanc negozjali sostanzjali peress li fuq naha ghandek l-*expertise* u fuq in-naha l-ohra hemm nuqqas ta' taghrif li jwassal ghal dan l-izbilanc. Ghalhekk, l-ezercizzju ta' "*due diligence*" u "*review*" li jsir mill-banek fuq il-klijent *retail* ghandu jkun wiehed li, filwaqt li jissodisfa l-htigijiet tal-ligi, jkun ukoll wiehed proporzjonat u immirat lejn ic-cirkostanzi partikolari tal-klijent u ma jkunx "*one size fits all*". Dan l-ezercizzju irid ikun wiehed trasparenti u proporzjonat.

Il-fatti u c-cirkostanzi partikolari ta' dan il-kaz jirrigwardjaw klijent li huwa mdahhal sew fin-negozju u, ghalhekk, ma jgawdix mill-protezzjoni normalment offruta lil klijent *retail*. Apparti minn hekk, dan mhux kaz fejn l-ilmentatur ma ghandux kontijiet bankarji ma' banek ohra u, ghalhekk, l-eghluq tal-ahhar kont huwa pass aktar drastiku b'konsegwenzi akbar.

Il-klijent stess ammetta li ghandu relazzjoni bankarja ma' banek ohra u, fil-fatt, nehha l-flus li kellu fil-kontijiet li l-HSBC infurmah li ser jaghlaqlu.¹⁵

Kif digà deciz fil-kaz ASF 018/2023, l-Arbitru jirrispetta d-dritt ta' bank li jtemm relazzjoni bankarja ma' klijent li tkun barra minn dak li l-bank iqis bhala riskju accettabbli skont ir-*risk appetite* u proceduri interni tal-bank, basta dan ma jsirx b'mod kapriccjuz u jsir biss wara li jkun ta cans ragonevoli lill-klijent biex igib ir-relazzjoni fuq linji accettabbli ghall-bank.

F'dan il-kaz partikolari, l-Arbitru jikkonkludi li l-HSBC kellu raguni bizzejjed biex jasal ghall-konkluzjoni li mill-kontijiet personali tal-klijent kienu ghaddejjin tranzazzjonijiet li m'humiex ta' natura personali oltre minn dak li gie spjegat bhala pagamenti ta' XXX ghax il-kont *fusion* ma kienx accessibbli.¹⁶

¹⁵ P. 65

¹⁶ P. 159

Oltre minn dak li gie spjegat mill-HSBC f'pagna 170, l-Arbitru jhoss li ma kienx hemm spjega sodisfacenti dwar depoziti fi flus kontanti li saru fil-kontijiet.¹⁷

Decizjoni

Ghar-ragunijet hawn fuq spjegati, l-Arbitru qed jichad dan l-ilment u jordna li kull parti ggorr l-ispejjez taghha f'dan il-kaz.

Alfred Mifsud

Arbitru ghas-Servizzi Finanzjarji

Nota ta' Informazzjoni relatata mad-Decizjoni tal-Arbitru

Dritt ta' Appell

Id-Decizjoni tal-Arbitru legalment torbot lill-partijiet, salv id-dritt ta' appell regolat bl-artikolu 27 tal-Att Dwar l-Arbitru Ghas-Servizzi Finanzjarji (Kap. 555) ('l-Att'), maghmul quddiem il-Qorti tal-Appell (Kompetenza Inferjuri) fi zmien ghoxrin (20) gurnata mid-data tan-notifika tad-Decizjoni jew, fil-kaz li ssir talba ghal kjarifika jew korrezzjoni tad-Decizjoni skont l-artikolu 26(4) tal-Att, mid-data tan-notifika ta' dik l-interpretazzjoni jew il-kjarifika jew il-korrezzjoni hekk kif provdut taht l-artikolu 27(3) tal-Att.

Kull talba ghal kjarifika tal-kumpens jew talba ghall-korrezzjoni ta' xi zbalji fil-komputazzjoni jew klerikali jew zbalji tipografici jew zbalji simili mitluba skont l-artikolu 26(4) tal-Att, ghandhom isiru lill-Arbitru, b'notifika lill-parti l-ohra, fi zmien hmistax (15)-il gurnata min-notifika tad-Decizjoni skont l-artikolu msemmi.

Skont il-prattika stabbilita, id-Decizjoni tal-Arbitru tkun tidher fis-sit elettroniku tal-Ufficcju tal-Arbitru ghas-Servizzi Finanzjarji wara li jiskadi l-perjodu tal-appell. Dettalji personali tal-ilmentatur/i jkunu anonimizati skont l-artikolu 11(1)(f) ta' l-Att.

¹⁷ P. 156