

Before the Arbiter for Financial Services

Case ASF 086/2023

BE ('Complainant')

Vs

Calamatta Cuschieri Investment Services Ltd

C 13729

('Service Provider' or 'CC')

Sitting of 5 January 2024

The Arbiter,

Complaint

Having seen the complaint filed on 12 July 2023¹ originally filed against CC and Moneybase Limited (C 87193) which was processed solely against the Service Provider as it was established that Moneybase do not provide investment services which were solely provided by CC.²

The Complaint was about an online share purchase order for 4700 shares of a company LORDSTOWN MOTORS CORP (RIDE) with a price limit of \$0.28 per share involving an expected outlay of USD 1316. The order was placed on 24 May 2023.

The Complainant already had a position in these shares on which he was incurring a substantial loss and the new purchase was meant to average down the purchase price.

Complainant maintains that the price of RIDE went up to USD 4.26 and therefore he expected to make a profit of USD 18,706 being $4700 \times (4.26 - 0.28)$. Instead,

¹ Pages (p) 1 – 7; and attachments p. 8 - 28

² P. 39; 53

he received a contract note on 25 May 2023 showing the acquisition of 4700 shares at USD 4.26 which was way above the price limit of USD 0.28 and for which he had no funds in his account to cover the purchase. In fact, his account showed a debit balance.

Following his demand for an explanation, he received a contract note showing a sale of 4389 RIDE share (from the 4700 bought) at USD 3.53 per share.

The Complainant maintains that his instructions were not properly executed, citing a defect in CC's system and, as a remedy, he was seeking compensation for USD 18,706 for the lost opportunity to have the order executed at the set price limit.

Reply of Service Provider

The Service Provider replied³ that:

“On 23 May 2023, RIDE announced a 1:15⁴ reverse stock split that would become effective on 24 May 2023 at market open.”⁵

CC maintain that the order placed by the Complainant had no price limit and was indicated at best market price. So, when market opened on 24 May 2023, it was executed at USD\$ 4.2634 per share for a total consideration of USD 20,037.92.

During the process, it transpired that CC's system allowed the order to go through despite lack of proper funding because the system calculates the expected cost on the basis of the previous day's closing price which was before the reverse stock split went into effect.⁶

Following Complainant's enquiry on 25 May 2023, CC calculated that client's intention was to buy 1/15 for the 4700 shares in view of the reverse stock split effective on market opening on the 24 May 2023. Accordingly, they calculated he should have bought 311 post reverse stock split shares at USD 4.2634 = USD

³ P. 39 – 42; and attachments p. 43 - 45

⁴ Reverse stock split is an American term for the consolidation of a number of shares into 1 share, in this case, 15 shares were consolidated into 1 share.

⁵ P. 39

⁶ P. 41

1326. So, CC took it upon themselves to sell $4700 - 311 = 4389$ shares at best market price which by then had reduced to USD 3.53 explaining that:

“It is important to note that, in the best interest of the Client, the Company took upon itself any losses resulting from disposal of the excess post reverse split units inadvertently bought by Mr BE (i.e., 4700 – 311)”.⁷

In conclusion, the Service Provider stated:

“We reiterate that we have executed the order as instructed by the Client. We regret to note that the Client is still under the impression that he could have bought RIDE shares at USD0.28 and sold same at USD4.26, failing to understand that the difference in price is due to the reverse stock split aforementioned, whereas one post reverse split share bought at USD4.26 represents 15 units of pre reverse split RIDE share which were last trading at USD0.28 hence leaving the value of RIDE unchanged between closing on 23 May 2023 and opening on 24 May 2023.

We trust that the above clearly clarifies that CCIS has acted honestly and fairly and in accordance with the best interest of the Client and that Mr BE has not incurred losses of any kind.”⁸

The Hearings

A first hearing was held on 31 October 2023 for the proofs of the Complainant who said:

“I opened the account with Moneybase Calamatta at around 2020. I opened the account through online application, through Google Play or something like this. The account was of the type Execution Only.

I used to operate the account from my mobile and from my PC, the app that they gave me.

As an investor, I classify myself as a retail investor.

I say that the account that I was operating could not allow me to go in debit, not even one cent. You cannot trade if you are in debit. I could

⁷ P. 40

⁸ P. 42

never do a transaction that could put me in debit. The system would not allow me.

In this particular case, I saw that Lordstown had a very favourable price. I sold immediately my Google shares because I did not have credit in my account, and I bought Lordstown shares. I did this because they were at a very good price. I say that I already had shares at Lordstown. I saw this as a good opportunity to average my costs.

When I put this transaction through the app, it confirmed the transaction.

I say that I did not receive the Contract Note. From my app I saw that I was in debit. So, I called them to enquire about this situation. They replied that there was a mistake, something to do about a split share. I don't understand anything about these situations. They said that there was like an error in the system.

I say that I would never have bought these shares if the price was any different. I sold my Google shares to buy these Lordstown. Then, I saw that all of a sudden, I was losing 20K from Lordstown, but the statement said that I was losing 2K only. (The statements have already been presented to OAFS).

I say that the transaction which I put through was not there. There were other things. There was a lot of confusion because the transactions that I found on the statement were not the transaction that I made. After all this, I did not make any transactions with Lordstown ever. I left it as it was. I did other tradings but not with Lordstown.

Now, when I look at my account with Lordstown, the amount of shares that I see is 427.66667. The number of shares is in fraction.

I confirm what I say in my complaint that when I made the order, I put in a price limit. I do not remember now the amount I put for the price limit, but it was the trading that I did at that time. It could be that it was USD .28 as is written in the complaint.”⁹

A second hearing was held on 21 November 2023, where the Service Provider presented their proofs stating:

⁹ P. 55 - 56

“We have prepared two pieces of evidence.

One of them being an official source coming from the Nasdaq website, a historical data for this particular stock showing that the opening price on 24 May 2023 which is the date the order was placed opened at \$4.13 and also closed at the same session at \$3.73, which is not at the same level where Mr BE was placing his order or intended to place his order at \$0.28, So, it was substantially higher meaning that a limit order would not have been executed. And this is due to the fact that the stock split had taken place and the price had increased exponentially.

And, to back this up, we also have a third-party price source from Bloomberg which also confirms the same so we could also submit these pieces in hard copy.”¹⁰

“We reiterate that the order type was at market and, obviously, the company can only act upon the instruction that it had received. We still maintain that the order was without any price limit.”¹¹

Final submissions

The Complainant, through his lawyer, Dr Frank Chetcuti Dimech, made his verbal final submissions as follows:

“The facts of what happened are pretty clear in this case.

Mr BE was given an app by the service provider. The app was the beginning and end of the relationship with the service provider.

We know that the app does not allow you to go in credit. We know that it was an Execution Only service and that there was no investment advice involved. And we know that the account could never have gone in credit.

All the terms and conditions of the relationship are clear.

What happened on the day is that Mr BE saw an opportunity given to him by the service provider on the app to buy Lordstown Motor shares at a very low price which helped him to reduce the losses which he was

¹⁰ P. 58

¹¹ P. 59

already suffering on Lordstown Motor shares. Let us not forget that this company then went bankrupt; and I have my reservations whether buying it had been an option for a retail investor. I will leave this to the Arbiter.

The point of the matter is that Mr BE would have never bought Lordstown Motor shares if the app did not provide the price of \$0.28.

All that happened afterwards is an interpretation of intentions done by the service provider.

The service provider is not there to interpret intentions. The service provider could have very simply, if the system worked correctly, rejected the order – plain and simple. Is it impossible to execute? OK, reject.

Instead of rejecting, the service provider has done a series of transactions interpreting what the client wished without speaking to him. When all the transactions were done, they told him, 'Listen, this is what we thought you wanted to do.' This is not a guessing game. It is Execution Only; it cannot be executed, don't execute it.

Instead, we ended up in this situation where Mr BE thought he bought these shares at a very low price (because otherwise he wouldn't have bought them), and we have this series of transactions which were done without his consent, quite clearly, to make it seem that he bought a number of shares with that amount of money.

Trading does not work that way. Trading works when you want to buy at a particular price and not that you want to invest a sum of money. On the App, you have the price and the number of shares. You put in the number of shares, multiply and the amount is the amount that you want to spend but for that number of shares at that particular price which they gave.

Now, saying that the market was impossible because of the reverse stock split, quite honestly, it is not a matter concerning Mr BE. He should have been stopped at the outset but he was not stopped, they let him. Once they let him do the transaction, which was confirmed, there is no browser to check. This idea that he should have checked on the browser is a total heresy.

The App has no browser. It is the beginning and the end: you click and you buy; you click, you sell.

Everything else which happened at the back end, Mr BE has no idea how these things work. He sees the price, he sees the amount and he presses 'buy' or he presses 'sell'. It is plain and simple.

We heard today that the price kept going down, but if you look at \$0.28 and at \$3.73 or whatever the price was, the official price at the end of the day, this is actually the loss that he made – the loss which he made because the service provider allowed the transaction to go through. In his mind, and in his pocket, he made this profit because \$0.28 was the price that he bought and \$3.73 is the price at the end of the day. This is a simple mathematical exercise.

These are our submissions in a nutshell.¹²

The Service Provider made verbal final submissions through their Compliance Manager, Mr Gian Marco Maggio, stating:

"We have an obligation to put forward the order submitted by a client. And that is what we did.

We cannot exercise discretion once the order is placed on the market whether it gets to be executed and at which price it is to be executed.

We acted upon the instructions provided by Mr BE. It would have been illegal to do otherwise in the sense that we could not have cancelled this order; we cannot exercise discretion regarding at which price the order is executed. So, there were no other options.

Just for the sake of clarity, because this is a repeated matter, that Mr BE intended to buy at \$0.28 which price he considered to be low, and he would not have bought it at \$4, he bought, basically, at \$0.28, and he bought at a price which was lower than the previous purchase prices and lower than the purchase price. Obviously, he bought a different number of shares. What I am trying to say is that buying 15 shares at \$0.28 is the same thing as buying one share at \$4 at the lower average purchase price; so that's mostly to avoid confusion from the complainant's end although we have explained this in writing as well.

¹² P. 60 - 61

The only point we can make is that once we receive the order, we have the obligation to transmit that order as is. The order is placed on the market and it is irrevocable. It is there and it is not up to the company to decide at which price it gets executed. It would only get executed at the market price even that it was a market order.¹³

Analysis and further considerations

The Arbitrator,

Having heard the parties and examined all submissions of this case, considers that:

In terms of Article 19(3)(d) of Chapter 555 of the Laws of Malta, the Arbitrator shall deal with a complaint in a procedurally fair, informal, economical, and expeditious manner and, accordingly, in terms of Article 19(3)(b) 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.

On merits

The main point at issue of this case is whether there was a market opportunity for the order to be executed at the price limit that the Complainant maintains having put into his order, i.e., USD 0.28 per share.

Ample and unquestionable evidence has been provided by the Service Provider that as the reverse stock split (consolidation) of 15:1 took effect at market opening on 24 May 2023, giving no possibility to buy the shares at the price Complainant deems to have put as a limit on his order.

Consequently, the expected profit of USD 18706 which the Complainant claims as compensation could have never resulted even if one upholds his contention of placing the order with a price limit of USD 0.28. If the price limit was indeed put into the order, it could have never been executed.

¹³ P. 61 - 62

Consequently, it is almost irrelevant whether the order was put in with a price limit of USD 0.28, as the Complainant maintains, or at market price as has been argued by the Service Provider.

Accordingly, the Arbiter needs to decide whether to accept the Complainant's side that the order was subjected to price limit and should not have been executed once the market price was above that price limit, or the Service Provider's side that the order was without a price limit and therefore the Complainant bought 311 shares at \$4.2634 opening price.

In both cases, the amount involved would be practically the same, i.e.,

4700 @ 0.28 = USD 1,316

311 @ 4.2634 = USD 1,326

And, in both cases, the Complainant would reach the objective of averaging down the price of his existing holding.

Decision

The Arbiter notes that the Service Provider has already taken upon themselves the loss for disposing of the excess shares at a lower market price. The Arbiter, accordingly, does not see a case where the interests of the Complainant have been prejudiced, even if, for argument's sake, one accepts that his order was placed with a price limit.

On the other hand, the Complainant is expecting compensation for a reward that never existed as the shares could have never been bought within his hypothetical price limit once the reverse split price was applicable at the opening of trade on the day in question.

In the circumstances, the Arbiter is dismissing the Complaint and orders parties to carry their own respective costs of these proceedings.

Alfred Mifsud
Arbiter for Financial Services

Information Note related to the Arbiter's Decision

Right of Appeal

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than 20 (twenty) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within 15 (fifteen) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.
