

Before the Arbiter for Financial Services

Case ASF 097/2023

NC (the Complainant)

Vs

Multitude Bank plc

(Formerly known as Ferratum Bank plc)

**Reg. No. C 56251 (the Service Provider
or the Bank)**

Sitting of the 10 November 2023

The Arbiter

Having seen the Complaint¹ filed on 21 July 2023 related to the blocking by the Service Provider of EUR 123,420.78 in an account held in the personal name of the Complainant which the latter feels have been unjustly blocked for over 5 years without being given a proper explanation for such measure.

The Complainant is requesting the Arbiter to:

- Order the release of the funds
- Close the Account
- Refund EUR 5,000 to cover the attorney fees
- Award damages up to EUR 25,000 for loss of earnings of 4 years

¹ Pages (P.) 1 - 6

The Complainant

The Complainant is a French citizen and also the Chief Executive Officer of a French Company named XXXX.²

He opened an account in his personal name with the Service Provider on 07 March 2018. The Complainant claims that although the Account was in his personal name, he made it clear at the onboarding stage that it will be used for the professional purposes of his company, XXXX.

This is essentially the same complaint covered by the Arbiter's decision related to case ASF 063/2022³. The Arbiter in that case had decided:

'The Arbiter therefore upholds the preliminary plea for lack of competence to continue hearing and adjudicate this Complaint by virtue of the fact that the Complainant is not deemed as an eligible customer as defined in CAP. 555 and, in accordance with Art. 11(1)(a) of CAP. 555, the OAFS has no competence to continue hearing this complaint.'

This was motivated by the fact that that Complaint was filed by XXXX as a company who was not an eligible customer of the Service Provider that held the blocked funds in the personal account belonging to the Complainant of this new case.

So, whilst essentially the basic facts of the Complaint remain as explained in case ASF 063/2022, this case is now filed by an eligible customer as defined in Chapter 555 of the Laws of Malta, and the Arbiter can proceed with deciding it on its merits.

The Complaint

The Complainant maintains that:

'Mr. NC opened a bank account number 011201001608700 for his professional activities with his company XXXX the 7th of March 2018 in Ferratum Bank, in accordance with General Terms and Conditions. The 16th of March 2018,

² P. 3

³ [ASF 063-2022 NC vs Multitude Bank plc.pdf \(financialarbiter.org.mt\)](#)

*Ferratum Bank notified Mr. NC that his bank account had been blocked which implied the restraint of funds available on the account, 123 420, 78 euros. The reason for the block alleged was the professional use of the bank account. However, Mr. NC had verified with the Ferratum Bank customer service that opening a professional bank account was possible before starting the procedure to do so. Until the 14th of June 2021, Mr. NC tried to end this commercial dispute with an amicable resolution. When he contacted the customer service, by mail and by phone, he had been answered that “the case is still under study”. Then, he filed a claim to Ferratum Bank the 24th of April 2019 to propose many solutions that could have end the serious financial harm caused by the blockage. Ferratum Bank responded on the 16th of July 2019 that, after “further internal controls to ensure that the available balance to be further credited is one actually resulting from the transactions duly authorise from [Mr. NC] end”, the funds will be credited back to Mr. NC. Without to possibility to specify a precise date, they assured Mr. NC that the crediting will occur as soon as possible. Since the situation never had evolved, Mr. NC ask his Council to send a formal notice to Ferratum Bank. This formal notice, of the 14th of August 2021, explained the illegally of Mr. NC’s bank account blockage and of the restraint of funds. Thus, by this formal notice, Ferratum Bank had been enjoined to unblock the bank account and to credit the funds available on the bank account to Mr. NC without delay. Ferratum Bank responded the 2nd of September 2021 that the bank account is still blocked and the restraint of funds still maintained for “reasons outside the control of the Bank, which the Bank is prohibited from disclosing due to legal and regulatory obligations applicable to it ». Ferratum Bank add that « any action undertaken by [Mr. NC] against the Bank will be frivolous and vexatious” and call Mr. NC to “cease and desist from taking any further action in this respect”.*⁴

The Reply of the Service Provider

The Service Provider’s reply of 08 August 2023 submitted as follows:

‘Multitude Bank p.l.c. (the ‘Bank’) makes reference to the above-captioned communication received from the Arbiter for Financial Services (the ‘Arbiter’)

⁴ P. 3

relating to a complaint submitted by Mr NC relating to the blockage of funds in the bank account with number 011201001608700 from 15 March 2018 to date.

The Bank had opened a bank account for the complainant on 07 March 2018 which account was however blocked for security reasons on 15 March 2018 pursuant to Directive (EU) 2015/2366 ('PSD2') and the terms and conditions entered into by the complainant. The complainant was informed of the blockage of the account by virtue of a letter dated 16 March 2018.

The Bank acknowledges that it has not released the funds of the applicant however the Bank wishes to reiterate that this was occasioned by reasons outside of the control of the Bank which occurred after the initial blocking of the account described above. Pursuant to the legal and regulatory obligations to which the Bank is subject, the Bank is prohibited from disclosing such reasons.

For these reasons the Bank is unable to release the funds of the complainant to this day. Consequently, the Bank is unable to close the complainant's account and the Arbiter should reject such request.

Additionally, the Bank cannot be requested to pay damages since as detailed above the blocking of the funds is outside the Bank's control and in accordance with the legal obligations which the Bank is subject to. Therefore, the Bank respectfully submits that the complainant's requests for refund for the attorney's fees and the claim for damages for loss of earnings should be respectively rejected by the Arbiter.

For all the reasons described above, the Bank while confirming and acknowledging that it has not released the funds in question, respectfully requests the Arbiter to reject all the requests of the complainant in full.⁵

Developments following the Service Provider's reply

On 30 August 2023, the Office of the Arbiter for Financial Services (OAFS) was informed by the Service Provider of the following freezing Order published in the Malta Government Gazette of 29 August 2023.

⁵ P. 35

'ARB/FFXXXX/2023 – FOREIGN FREEZING ORDER

IT IS BEING NOTIFIED that by a court authorisation given by a judge of the Court of Appeal of Douai, Judicial Court of Lille. In the case:

NC, born on the Xrd of October, 1988, residing at XX XX XXX XXXX XXX.

ORDERED the attachment in the hands of third parties in general of an amount of money due to or pertaining or belonging to NC and prohibits the said accused from transferring, pledging, hypothecating, or otherwise changing or disposing of any movable or immovable property up to a limit of 123,420.78 euro.

This freezing order is being recognised and executed in Malta according to Cap. 621 of the Laws of Malta, Legal Notice 180 of 2021 (Mutual Recognition of Freezing Orders and Confiscation Orders Regulations, 2021), and European Union Regulations 1805/2018.

Today 10th August, 2023

Director, Asset Recovery Bureau'.⁶

The Arbiter issued a decree⁷ on 22 September 2023, whereby he brought the Government Gazette notice to the attention of the Complainant requesting him to state if he wishes to reconsider his Complaint in view of this development.

On 20 October 2023, the Complainant replied stating:

'We have become aware of a decision to freeze the sum of €123,420.78 dated July 28, 2023.

However, this decision appears to be recent and entirely unrelated to the freezing of funds carried out by Multitude Bank (formerly Ferratum Bank) since March 27, 2018.

⁶ P. 38

⁷ P. 39

The date of the freeze, July 28, 2023, is more than 5 years after Multitude Bank initially froze the funds. This suggests that Multitude Bank has held these funds unlawfully for an extended period, well beyond any reasonable timeframe.

It is important to emphasize that a fund freeze must be in compliance with the law, particularly Article No. 32 of EU Law 1805/2018, which requires: 1) informing the affected individual, 2) explaining the available recourse, and 3) providing reasons justifying the decision. In the case of the funds being blocked since March 27, 2018, NC was not informed of the freezing of his assets, nor provided with information about avenues for recourse, and no valid reasons were given for the freeze. This raises concerns about compliance with the law.

Multitude Bank appears to have exceeded its authority by freezing the funds for such an extended period without judicial authorization. Multitude Bank has never provided any legal justification for freezing the funds for more than 5 years.

This raises the question of why an attestation was not provided earlier if it was legitimate. If it had complied with the prevailing regulations, NC could have taken the necessary steps to have the funds released or obtain information from the relevant authorities. Multitude Bank merely left NC without any response, information, or point of contact, stating that “this freeze is beyond the bank’s control, and we cannot provide further details,” which contradicts the laws in place.

Not only can Multitude Bank not use this recent freezing decision to justify a 5-year extended freeze, but it is highly likely that Multitude Bank’s actions in freezing the funds for this entire period contributed to the decision to freeze them again on July 28, 2023.

In conclusion, we note that these two freezes are not connected, and the initial 5-year freeze has still not been legally justified. Therefore, we insist that the complaint be pursued due to the breach of the law and the resulting complications. This prolonged freezing of the funds has had a significant impact on our business and persists with this new freeze. If the funds cannot be released,

the claimant wishes the arbitrator to consider various compensations for the damages suffered.⁸

The Complainant's reply was referred to the Service Provider who replied as follows on 06 November 2023:

'Multitude Bank p.l.c. (the 'Bank') makes reference to the above-captioned communication received from the Arbiter for Financial Services (the 'Arbiter') relating to a complaint submitted by Mr NC on the blockage of funds in the bank account with number XXXXXXXXXXXXXXXX from 15 March 2018 to date. The Bank also refers to various communications on the subject-matter with particular reference to the latest Decree of the Arbiter dated 26 October 2023.

The Bank would like to reiterate its position, as previously communicated on various occasions including its letter dated 8 August 2023, that the blocking of the complainant's funds which has occurred since 15 March 2018 is due to reasons outside the Bank's control which reasons the Bank is prohibited from disclosing pursuant the Bank's legal and regulatory obligations under the law applicable to the Bank. In this regard, the Bank assures the Arbiter that the blocking of the funds is in accordance with the legal and regulatory obligations to which the Bank is subject. Consequently, the request for compensation made by the complainant should be rejected in full since the Bank should not be requested to pay compensation for complying with its duties at law.

For all the reasons described above, the Bank while confirming and acknowledging that it has not released the funds in question, respectfully requests the Arbiter to reject all the requests of the complainant in full.⁹

Analysis and Considerations

The Arbiter starts by repeating the observations he had made in decision of case ASF 062/2022.

⁸ P. 40 - 41

⁹ P. 45

'Independently of the merits of this particular case, the Arbiter feels it necessary to register his views and concerns regarding cases where customer funds remain blocked for a considerable period of time without the banks or financial institutions being in a position to give proper explanations or offer remedies to affected clients.

The Arbiter is sensitive to the fact that in cases where there are investigations related to AML/FT issues, Banks are obliged by regulation not to disclose information to their customers. The Arbiter has no wish to issue any decisions which oblige licensed institutions to choose whether to break regulations or the decision of the Arbiter. Probably this would oblige the licensed institutions to appeal the Arbiter's decision and seek guidance from the Courts.

On the other hand, the Authorities need to be sensitive to customers' rights too and, therefore, their investigations need to be conducted with the necessary despatch. The Arbiter appreciates that investigations often take considerable time and the general protection of society prevails on expectations of individual clients. But every effort needs to be made to bring investigations to a conclusion so that licensed institutions can be in a position either to release funds or explain to their clients more properly why they are being blocked.'

Having considered the overall circumstances of this case, and the submissions made by both sides, the Arbiter cannot find fault for the action of the Service Provider in the blocking of the funds in the first place, and also for not disclosing more than the law permits them to do to explain why the funds were being blocked.

The Arbiter is satisfied that these were in compliance with their obligation initially based on PSD 2 EU Directive 2015/2366 (Central Bank of Malta Banking Directive 1), and eventually based on Chapter 373 of the Laws of Malta – Prevention of Money Laundering Act and subsidiary legislation.

The fact that, eventually, though much later, a Court of Appeal in the Complainant's home jurisdiction has ordered the freezing order of the funds already blocked by the Service Provider, which Order was recognised and executed by the Malta Courts in terms of Chapter 621 of the Laws of Malta and

EU Regulations 1805/2018, confirms that the actions of the Service Provider in blocking the funds, in the first place, were not frivolous or vexatious, but were founded on reasonable assumptions.

Decision

For reasons above explained, the Arbiter is dismissing this Complaint and ordering the costs of this case to be borne by the Complainant.

Alfred Mifsud
Arbiter for Financial Services