

## Before the Arbiter for Financial Services

**Case No: ASF 087/2021**

**PF**

**(the Complainant)**

**vs**

**Deriv Investments (Europe) Limited**

**(C 70156) (the Service Provider)**

### **Sitting of 22 February 2023**

#### **The Arbiter,**

Having seen **the complaint**<sup>1</sup> whereby the Complainant submits that he requests an investigation regarding his trading activity regarding his account GBP Account, MX50369, because he suspects that '*the rules of the market*' are not being complied with and he feels that his trades are continuously being manipulated.

He further states that there have been many occasions where he conducted lengthy analyses and placed a trade '*but arriving at a lose (loss?) at the expiration of the contract*'.

He declares that he is a customer of Binary.com which is licensed and regulated by Deriv Group and is now operating as Deriv Investments Limited.

The Complainant also states that he has been a customer since 2011 and has taken up trading more regularly within the past two years and has a lot of

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<sup>1</sup> Page (P) 2-4

experience. He finds it '*odd*' that almost all the trades which he placed with Deriv Limited (Binary.com) have ended in a loss.

Quoting the Complainant, the strategy that he uses is the following:

- '8 EMA
- 20 SMA -short-term trades
- 50 SMA -medium-term trades
- 200 SMA – for long-term trades but the main approach is when the trends are above 20, 50 and 200 SMA. I buy and when below the moving averages, I sell. The strategy is very lucrative and very useful in every way possible.

He then mentions further strategies which are found on page 3 of the Complaint Form.

The Complainant further submits that his strategies are well-known strategies. He states that the '*system*' employed by the Service Provider has to be more favourable to its clients to have more winning trades. He is facing continuous losses.

He asks for an investigation to see why he is constantly losing which may lead him to addiction and major losses as a result. The risk is far greater than the reward.

He regards his '*investment*' as futile and is constantly losing money after dedicating a lot of time to place his trades.

He is asking the Arbiter to order the Service Provider to refund his money as his experience with the Service Provider has caused him mental and physical health problems. He believes that his strategy should have landed him a minimum turnover of £1 million and over.

### **The Reply of the Service Provider:**

In summary, the complainant alleges that we are manipulating the trades, and is requesting a refund.

Kindly find herewith our internal investigation and summary of findings:

1. We hereby confirm that Mr PF does not hold, nor has ever held, an account with Deriv Investments (Europe) Limited.
2. We have run an entire database check within the Deriv Group of Companies for “PF”. The investigation concluded that details matching “PF” are held by sister company Deriv (MX) Ltd, a company licensed and regulated by the United Kingdom Gambling Commission (UKGC) and Isle of Man Gambling Supervision Commission (IOMGSC) to provide gambling products, represented on our site as Synthetic Indices, based on a cryptographically secure Random Number Generator (RNG), duly tested, and certified by third party game testers as required by the IOMGSC and UKGC.

Deriv (MX) Ltd is licensed and regulated in Great Britain by the Gambling Commission and by the Gambling Supervision Commission in the Isle of Man. Clients in the Isle of Man and the UK who wish to gamble can have accounts under Deriv (MX) Ltd.

Deriv (MX) Ltd is neither licensed nor regulated by the Malta Financial Services Authority and does not offer financial products. Please refer to our regulatory page <https://deriv.com/regulatory> for further information. The complainant has therefore approached the wrong resolution centre.

3. As illustrated in the attached response to Mr PF, he was prompted and made aware of the contracting company prior to the establishment of the business relationship.
4. After checking all communication channels, Deriv (MX) Ltd confirmed that no complaints have been received from Mr PF to date.

The complaints handling policy and procedure for clients contracted with Deriv (MX) Ltd [https://deriv.com/tnc/deriv-\(mx\)-ltd.pdf](https://deriv.com/tnc/deriv-(mx)-ltd.pdf) is publicly available through the Terms and Conditions page <https://deriv.com/terms-and-conditions#clients>.

For the full investigation, finding and conclusions pertinent to the points raised by Mr PF in his complaint, please refer to:

1. Annex 1 – the response to the complainant
2. Annex 2 – the MX50639 real-money account statement

### **Having heard the parties**

### **Having seen all the documents**

### **Further Considers**

The Service Provider raised the plea of lack of jurisdiction of the Arbitrator.

The Arbitrator will consider this plea.

### *Facts relating to this plea*

The Service Provider submitted that the Complainant did not hold nor has ever held an account with Deriv Investments (Europe) Limited. After running an entire database check with Deriv Group of Companies for “PF”, the investigation concluded that details matching “PF” are held by sister company Deriv (MX) Ltd, a company licensed and regulated by the United Kingdom Gambling Commission (UKGC) and Isle of Man Gambling Supervision Commission (IOMGSC) to provide gambling products and represented on their site as Synthetic Indices.

Deriv (MX) Ltd is neither licensed nor regulated by the Malta Financial Services Authority and does not offer financial services.

The Complainant was prompted and made aware of the contracting company prior to the establishment of the business relationship.

Moreover, after checking all communication channels, Deriv (MX) Ltd confirmed that no complaints were received from the Complainant up to that date.

On cross-examination during the hearing of 11 January 2022, on being asked whether he ever had an account with Deriv Investments (Europe) Limited, the Complainant stated that he was not sure because, at first, he was doing business with ‘Binary’ and then it became ‘Deriv’.

He clearly states that:

*'I had an account with Binary'.<sup>2</sup>*

However, the Service Provider's representative stated that there was no transfer of business. Binary Group became Deriv Group, and all the companies of the Group changed their name:

*'Mr PF had an account with Binary Isle of Man Limited which changed its name to Deriv (MX) Ltd. He has an account with Deriv but not with the service Provider in question. It has nothing to do with change in name. On our website, client open accounts with four different companies. Mr PF's account was opened with Deriv (MX) Ltd and not with Deriv Investments (Europe) Ltd. We have explained this to him and we asked him to direct his complaint to the relevant service provider ...*

*The Company in question where Mr PF has an account had a remote gambling licence in the UK, so it is a very different business and a different product. This is clearly indicated when the client opens the account and can see it at all times in his account. Deriv (MX) Limited is not a company registered in Malta.<sup>3</sup>*

### **The Arbitrator's Jurisdiction**

The Arbitrator's jurisdiction has been established by law and emanates from Articles 2 and 19 of Chapter 555 of the Laws of Malta (the Act).

The Arbitrator has the primary function to investigate and adjudicate complaints filed by *eligible customers* against financial service providers licensed or authorised by the Malta Financial Services Authority (MFSA).

Article 2 of the Act defines '*financial services provider*' as follows:

*"financial services provider" means a provider of financial services which is or has been **licensed or otherwise authorised by the Malta Financial Services Authority<sup>4</sup>** in terms of the Malta Financial Services Authority Act or any other financial services law ...'.*

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<sup>2</sup> P. 459

<sup>3</sup> P. 459-460

<sup>4</sup> Emphasis of the Arbitrator

Furthermore, the Arbiter can only entertain complaints filed by *eligible customers*. Eligible customer is defined as follows:

*“eligible customer” means a customer **who is a consumer of a financial services provider**,<sup>5</sup> or to whom the financial services provider has offered to provide a financial service, or who has sought the provision of a financial service from a financial services provider. ...’*

As a consequence of these definitions, the Arbiter has to decide whether the Service Provider against whom the complaint has been lodged is the proper Service Provider and also whether the Complainant is an ‘eligible customer’ according to law.

From the facts as emerging in this case, the Arbiter has a very detailed explanation given by the Service Provider highlighting that it is not the proper Service Provider against whom the complaint should have been lodged.

The Complainant was never a client of Deriv Investments (Europe) Limited but a client of Deriv MX Ltd:

*‘Mr PF’s account was opened with Deriv (MX) Ltd and not with Deriv Investments (Europe) Ltd. We have explained this to him and we asked him to direct his complaint to the relevant service provider ...*

*The Company in question where Mr PF has an account had a remote gambling licence in the UK, so it is a very different business and a different product. This is clearly indicated when the client opens the account and can see it at all times in his account. Deriv (MX) Limited is not a company registered in Malta.’*

The evidence given by the Service Provider is not contradicted by the Complainant.

The Arbiter notes that Deriv MX Limited with whom the Complainant had a contractual relationship is not authorised or licensed by the Malta Financial Services Authority, and on the basis of the definition of ‘financial services provider’ as provided in the Act and as quoted earlier in this decision, the Arbiter cannot have jurisdiction to enter into the merits of the case.

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<sup>5</sup> Emphasis of the Arbiter

Moreover, since the Complainant did not have any contractual relationship with the Service Provider, he cannot be considered as an 'eligible customer' under the Act.

### **Decision**

**For the above-stated reasons, the Arbiter does not have the jurisdiction to enter into the merits of the case.**

**This is without prejudice to the rights of the Complainant to seek a remedy in any other forum.**

**Dr Reno Borg  
Arbiter for Financial Services**