

Before the Arbiter for Financial Services

Case ASF 211/2023

ID ('Complainant')

Vs

Calamatta Cuschieri Investment Services Limited¹

Reg. No. C 13729

('Service Provider' or 'CCIS')

Sitting of 28 March 2024

The Arbiter,

The Complaint

Having seen the Complaint filed by ID on 29 November 2023² where he complained that due to problems of access on the trading platform of CCIS, originally CC Trader, but later rebranded as Moneybase, he lost €34,000 of his portfolio investment. He also complained that Service Provider had denied his request to transfer out his portfolio to a third-party broker on the pretext that he had to clear his balance due and the transfer fees before executing such transfer. He argued that CCIS could have liquidated part of his investments to clear the debt and then transfer the residual portfolio.

By way of remedy, he requested:

¹ Originally complaint was also against Moneybase Limited (C 87193). Moneybase Limited were excluded from this Complaint by Arbiter's decision on 19 February 2024 (p. 141) as they do not provide investment services. Moneybase was used by CCIS as a brand for their online investment services.

² Pages (p.) 1 - 8 with attachments p. 9 - 36

1. compensation for the loss of €34,000;
2. an unquantified amount of interest on his capital since he had no access to his portfolio through the Moneybase APP in France;
3. transfer of his portfolio to a third-party broker without any costs or commissions;
4. compensation for 100 hours.

The Reply of the Service Provider

In their reply of 18 December 2023³, the Service Provider stated:

1. Complainant had and continues to have regular access to their online trading platform and execution services in line with their terms and conditions which did not make any reference to any trading app. The app was withdrawn from app stores in France in line with their Anti-Money Laundering (AML) policy, but trading through their website was never withdrawn or suspended.
2. Complainant has continued to trade extensively on his account in spite of the claimed interruption of service.
3. Complainant had refused to settle the outstanding debit balance of USD 351.33 on his account and only agreed to pay the transfer fee of USD 175 before making the transfer. CCIS insisted that the debit balance should also be cleared before the transfer.⁴
4. All fees and charges were disclosed at onboarding and are transparently available on their website.

As to the compensation sought, the Service Provider stated they were not responsible for any loss incurred on the Complainant's trading portfolio. They also insisted that fees and charges, including debit balance on Complainant's

³ P. 45 – 48 with attachments p. 49 - 88

⁴ P. 86 - 88

account, had to be cleared before the portfolio transfer could be executed, and that the claim for compensation for 100 hours needs clarification.

Hearings

First hearing

The first hearing was held on 16 January 2024 for the proofs of the Complainant who said:

“I say that in my point of view this is a breach of contract because the service provider, Calamatta Cuschieri, changed the statements, changed the terms and conditions, changed their fees, changed their platform; they changed everything, and they did not notify me.

As is declared in the statement 34.1 in the same statement, they have the obligation to notify me by writing and let me choose if I want to continue with them or not fifteen days in advance. This never happened. I never received a letter. This provider never sent a physical document where they notified me of these changes. As at the moment, I live in France, I lost the connection to the platform. The CC App is not working, the CC website is not working and I called them and they said that they had another new alternative which is MoneyBase. I did not know if they changed the brand. I did not know if it was a result of a fusion, an acquisition, a marriage. They did not notify anything.

I lost access to my phones. They gave me credentials to the platform and they did not notify me with the new fees. When I started to operate again, I received the new fees but in the website the fees are online so they have fees for all clients; new fees for new clients. I have no idea and I was never informed of this.

I cannot understand who is who in this relation; if it is the same company or not. The case is that they stopped operating as a CC trader. They told me that they have this new App and I tried to download the App but they did not tell me that it was not available in France. And I spent months trying to download this App. I dealt with Apple, I dealt with the supplier in France. They knew what they were doing. They knew it was a decision from their executive to be unavailable in the French market and they did not notify me. So, in the Terms and Conditions, 34.1, it clearly says:

'CC is entitled to amend the Terms, as permitted by law, without notice. Changes in this agreement, including to the Schedule of Fees and Charges, which are not in the Client's favour may take place at any time, by giving notice to the Client at least fifteen (15) days in advance and in writing unless a change in the Rules requires CC to take immediate action.'

Until now, the provider denied to confirm it when they used to work in France. Until now, they do not want to say it and they are hiding this information from me.

I also want to declare that the reason I stopped getting access to the platform, was not due to a technical decision; it was not based in the contract; it was a planned decision by the management with a date and time specifically executed by many employees with enough knowledge to know who the clients are who lose their access to the platform. And they did not give this information. They knew exactly what would happen to me if they close the platform and they did not give me an alternative or a chance to choose another platform.

Also, that the Terms and Conditions that Mr Maggio presented are not the correct ones because these statements were updated in 2022 and the agreements that I accepted are an older version 1.06 updated in January 29 because I opened my account in July 2020 and those were the Terms and Conditions that I accepted. And since they did not notify me with the new Terms and Conditions, they cannot be applied to me and neither do the new fees.

In the Terms and Conditions, it is clear that if I do not accept the new Terms and Conditions, I am allowed to change the supplier without fees and this is declared in both statements, in the new ones and in the old ones.

So, these are the reasons of my complaint.

The Arbiter is asking me what remedies I am seeking. I say that I have described them in my complaint. They should be responsible for all the losses they created for me.

The payment of €34,000 for the losses and the time I spent trying to clarify this throughout the months and any other expenses I could get on the late

payment, the interest for this money and the changes from the authority to clarify this because I have the right to know when they closed the market in France.

I want to inform the French authorities to let this information become available for all the users in my country.

Asked by the Arbiter whether I have proof regarding the €34,000 as a loss and what do I mean by 'I request compensation for 100 hours', I say that I can prove the deposits. I deposited with them €95,000. They can prove how much money I paid for withdrawals; and the difference is €34,000. This is basically the amount of the losses with the difference of the shares I have there. I want the shares back; I want the portfolio back and the difference between the initial deposit and the current shares deposit of €34,000.

To make matters clear, the Arbiter is saying that the €34,000 I am claiming is the loss in the market value of my portfolio because I am claiming I did not have access to it. I say, exactly.

The Arbiter is requesting any documentary evidence from the complainant to prove what the complainant is saying that the difference between his original investment and the current market value amounts to the claim that he is making of €34,000.

I say that the initial deposit was a transfer from HSBC Mexico so they received stocks and shares to be rated on their platform and we can see the value deposited at the beginning and I can prove the value of the current investment, the current portfolio. I do not have access to the platform for the withdrawals so I am trying to be responsible. I do not want to ask for extra money which is not mine. So they can prove all the money they sent from my account in Calamatta Cuschieri to my bank account and reduce the withdrawals from the initial amount.

Regarding the 100 hours, I calculate them by €15 per hour which is the minimum salary in France, for the number of hours I spent explaining my history, how I use my account, etc. I am, therefore, claiming €1,500.

I would like to know when they stopped being available in France with all the information related to this decision because it is something which is relevant to my local authorities.”⁵⁵

On cross-examination, the Complainant stated:

“It is being said that according to the service provider’s records, I had access to the account, and I had been trading up till November 2023.

It is being said that they have a list of trades from my account from 2022 and 2023 and after I claimed that the service was discontinued. Asked who made the transactions when I claim that I lost access to the account, I say that what the service provider is presenting are the connections of 2023 and part of 2022 (not the whole year). I opened the account on 18 July 2020, with a transfer of bonds from Mexico to your platform in Malta. I say that I do not access the platform daily to check the numbers. What I do is check the values in an account I have to verify the values, and if I decide to do an operation, I go to the platform and I execute the operation.

So, at the end of 2021, I tried to execute some operations and I couldn’t. And I called the customer services, and it didn’t work and, then, somebody helped me do this transaction, and, in the meantime, they analysed the case.

This happened for many weeks, and they gave me an ‘alternative’ to trade in the meantime on MoneyBase.com. It was the first time that I heard about it. So, they created new credentials; I did not do anything. They gave me new credentials and I got access. They told me that they were resolving the situation and that when they got new information, they will get back to me. They never came back to me. I call again and this happens for months.

It is being said that there might have been some technical difficulties and that I might have lost access to the App at one point. And to clarify, it is being said that MoneyBase is a brand of Calamatta Cuschieri; the fact is that our trading platform was renamed from CC Invest to MoneyBase Invest; it was simply a rebranding exercise.

It is being said that according to their records, I had been connecting to my accounts through their trading platform throughout the entire period and that there are hundreds of trades that I had undertaken, so, besides minor

⁵⁵ P. 89 - 92

interruptions or clarifications and calls that I may have had with the customer support for the use of the App, they are querying when did I lose access to my accounts, when I lost access to the trading platform, when from the records that they have, I had continuous access to my account and continuous access to the trading platform trading of the company and when I had, in fact, traded extensively on my account throughout 2021, 2022 and 2023.

I'll explain that the situation. I lose access one day and I recovered access three/four weeks later. I recovered access two or three times, and I stopped getting access again for another two/three months again. So, that is why there are in their records some connections during the whole period because I had access but the problem is I never validated my account. Usually, I download the App and do the validation process. The system blocked me all the time so when the system blocked me (which is not a usual situation in their company), when I called the support team, nobody knew what happened. So, I had to tell the story again of how I had access, but I lost it. They told me that they would check with ID. And, in the meantime, I lost access again for another four months. I lost a lot of money and when I recovered the access, I lost much more.

Asked whether at any point I was restricted from accessing my account through their trading platform, (which service offered by the company as an investment service provider is the use of a trading platform and not through the application that might be available on multiple sources), I say, yes.

Asked in which period, I say that many times for a period of more than one week for four weeks each time.

I say that, yes, as Mr Maggio said, the platform was available. The problem was that my account was not available because my account never downloaded the App. Never had the Terms and Conditions and the platform blocked me. Each time that I had access to the platform, the platform blocked me. So, yes the platform is available but I could not trade. I can get access to the platform as they come through it, but when I tried to trade, the system blocked me and I called the team and through some manual process, I was able to do it once. But if I tried to do it again, the system blocked me. I asked them why and they told me that I never opened the account through the App. And I could not open the account through the App because it is not available in my country.

So, one thing is the unavailability of the platform and another thing is the unavailability for the client to execute through the platform and that is why I was not able to do it.”⁶

Before the date of the second hearing for the proofs of the Service Provider, the Arbiter requested that the parties provide this information:

1. Statement of the account to understand the volume of trading that had been undertaken;
2. Complainant to be specific and quote dates when he could not trade for inaccessibility of the trading platform;
3. Service Provider to be specific and quote time and dates when the trading platform was not available.

Service Provider submitted full statement as requested in 1. above on 07 February 2024.⁷

Regarding 3., the Service Provider stated:

“We also confirm that there were no particular periods ‘when the system was not available for the users in general’ nor for the client specifically during the past 3 years. Our trading platform uptime over this period exceeded 99.9% and we found no evidence to suggest that the client was unable to access the platform for any extended period. Furthermore, we have not received any evidence or reports from the client indicating losses incurred to the Company’s fault resulting in the inability to trade.”

The Complainant’s reply⁸ regarding point 2 was received at 23.16 hours on the day before the second hearing scheduled for 19 February 2024, and could not be considered at that hearing. This in spite of the Arbiter having ordered that the information had to be submitted *“in good time before the date of the next hearing.”⁹*

⁶ P. 92 - 94

⁷ P. 95 - 100

⁸ P. 109 - 140

⁹ P. 94

2nd hearing

The second hearing was held on 19 February 2024 for the proofs of the Service Provider who stated:

“With respect to our presentations, in addition to what we have already presented in writing, I would like to take a step back in respect to the timeline of events.

We received a complaint from Mr ID early in October 2023. Between the 3 and 5 October, Mr ID had asked for some securities on his account, the remaining securities on his account to be transferred. We had informed him that we could not because there was a transfer fee to be paid and his account was not sufficiently funded. At that point in time, Ms ID, at least in writing, had agreed to pay the transfer fee. What he was not agreeing with was that he had to settle the negative balance on his account for the transfer to occur.

Then, on 16 October, he filed a complaint with the Arbiter on the same basis which I just mentioned. But, at that point, he was no longer agreeing to pay the transfer fee on the basis that he had no access to the app and represented that the transfer had to be made free of charge.

Then the formal complaint with the Arbiter – Case ASF 211/2023 was filed on 29 November 2023 and, at that point, it was the first instance where Mr ID, in addition to the points already mentioned, claimed that he had suffered a loss of €34,000. So, that was the first instance where we became aware of this claim. This was not something we had come across before and we did not have the chance to address that before November 2023.

Notwithstanding that which we believe might have some form of impact but that is not for us to decide. So, notwithstanding the fact that we first became aware of this claim in November 2023, we still thoroughly analysed the claim. We have already submitted our representations to the extent that there is ample evidence that Mr ID continued to have access to trade and use our services well beyond the point he claimed he had lost access to that.

We have provided the trading history with respect to the claimed losses. There was no evidence provided so far, but even from our end, we did not come across any specific instance where Mr ID, for example, wanted to close off a

position and he could not trade in which case we would have executed the transaction on his instructions telephonically, but again no such request was made.

It is to be noted that the losses on this account have materialized throughout the three years of trading due to positions that had been closed at a loss and the largest unrealized loss today is about €34,000 and that would be specifically in respect to, (if I am not mistaken, but I can double check) the Best Inc., a position that has been stacked up throughout three years of trading. I believe he had started trading on this specific security back in 2020. So, the losses on the account are simply a result of the trading activity that has occurred.

Again, despite the fact that no evidence was provided, I can also confirm that we have analysed the case thoroughly. We did not come across any instance where the client could not close off a position because, again, we would have closed it ourselves on his behalf which has resulted in any losses.

Again, it has to be noted that this claim was only submitted in November 2023 whereas initially both with the Arbiter and with us, Mr ID was complaining about 175 transfer fees, so it comes as a surprise to me the fact that he had suffered €34,000 losses due to our fault was never brought to our attention before that.

One last point which we have represented in writing, I am not sure of the period because at first the client said that he lost access from 2021, then from 2022, then just at times; but, in any case, as I have represented in writing, our trading platform uptime over the past three years exceeded 99% and we did not come across any general shortcomings from our end, not specifically to his account.

I do not think that I have anything else relevant to add at this stage. I'm sure there have been single instances. I have analysed the case and the correspondence between Mr ID and Customer Care. There was a number of correspondences between the company and Mr ID. The instances where he did not have access at times was because he had changed his mobile number, for example, and to log into the platform you need to insert your mobile number, your password. And then, you will get a one-time passcode by SMS. So there

have been spot instances, unrelated, that I would not say they constitute lack of access, and he has continued to use our services well beyond 2021.”¹⁰

Under cross-examination, Service Provider stated:

“Asked whether I am aware that the complainant presented a past complaint to the company before October 2023, I say that I was referring to the complainant complaining in respect to these specific claims so that being either on the transfer fee, on the negative balance or on the sum that he has lost. The complainant had had extensive correspondence with Customer Care on a number of issues.

Asked about the losses, the biggest part being the Best Inc., how the sum of €34,000 was calculated, I say that that would be the sum of the unrealized losses the complainant has so far. I can double check on Best Inc., I believe it should be Best Inc. just in case. And that would be the aggregate value of all his realized losses throughout the entirety of his trading period. So, whenever he bought or sold the same position, if he had closed it at a profit or at a loss, that would be calculated in the system.

Asked whether the balance of €34,000 includes the losses of Best Inc., whether it is included or not, I say that I have to double check, but it depends on how the €34,000 are calculated. I assume it is, but I have not received any documents in respect of this €34,000. If the €34,000 include unrealized losses, it would take into account the Best Inc.; if it doesn't, it wouldn't.

It is being said that the losses of Best Inc. are not included which shows that we do not know how the system works because this €34,000 was calculated by our system. I say that I do not know to what he is referring exactly. The €34,000 is just a number he has put in writing in the complaint. I am not sure what he is referring to. I did not receive any documentation in respect to his aggregate position. I did not go through the documentation that he has provided. I understand he might be referring to something like that.

It is being said that we have presented the history of transactions starting in 2020, 2021, 2022 and 2023 until today. Asked whether I know the reason why he, as a client, stopped trading after April 2022, I say I wouldn't know the reasons that the complainant stopped trading but, in any event, from the evidence that I have, there were transactions after April 2022. Before referring

¹⁰ P. 141 - 143

to the same document, I say that there was trading activity in March, May, June, July, October, November 2022, January 2023 and so on and so forth.

It is being said that we have only five operations after April 2022 and in 2021 we have 79 for the whole year. Asked whether I know the reason why the number we sent went from 79 to 5, I say that I cannot speculate on the reason why he traded less.

Asked to confirm that it was in April 2022 when we launched our plan for MoneyBase, I say, to the best of my recollection, no, I believe it wasn't but I could check internally.

It is being said that according to a statement made by Mr Alan Cuschieri, CEO of Calamatta Cuschieri Group to the press, the platform was launched in April 2022 and that this is public information. Asked whether this is right, I say that I could check as I am not sure that he is referring to. If he is referring to the MoneyBase platform, the MoneyBase Invest, my understanding is that the trading platform (as he is referring to the app) is that it has been available for our clients for a number of years.

It is being said that regarding to the information I presented, it would be better and clear for the Arbiter and himself if I could identify which transactions were made by the platform cctrader.com on the web or in app and which transactions were made by Moneybase.com. I say that there is a misunderstanding. It is the same trading platform. It is just a rebranding. It is a different name. Mr ID had the account with the same company. The trading platform is the same. His account is the same.

It is being said that it is not so simple. We should know that when you switch from one platform to another platform, you have technical issues. Any tech company has issues when they change the platform.

Asked to show which transactions were made on the cctrader (and it is being said that we have this information) and which transactions were made on moneybase.com, I say, to my knowledge, there was no such change. It was a rebranding exercise. I doubt that this will capture the change in the way that the complainant is describing because to my knowledge, there was no such

change. But, if possible, I have no issue doing that. So, the question being CC Trader vs MoneyBase Invest transactions, if I understood it correctly.”¹¹

The Arbiter requested the Service Provider to submit by 29 February 2024:

- a. replies to questions that could not be replied to in the cross-examination.
- b. submit any questions to Complainant on his late submissions that could not be processed in the 2nd hearing.
- c. Submit copies of valuation statements of account as at end of 2020, 2021, 2022 and as at end April 2022 which is the date identified as the start of access problems by Complainant.

Complainant was given permission to reply to questions as in b. above in his final submissions, but without submission of new evidence.

Submission of information requested in the 2nd hearing

Service Provider submitted as follows:¹²

Hearing queries:

‘[...] Asked to confirm that it was in April 2022 when we launched our plan for MoneyBase, I say, to the best of my recollection, no, I believe it wasn’t but I could check internally. It is being said that according to a statement made by Mr Alan Cuschieri, CEO of Calamatta Cuschieri Group to the press, the platform was launched in April 2022 and that this is public information. Asked whether this is right [...].’

*We confirm that ‘Moneybase Invest’ was **not** launched in April 2022, as this was launched over 8 years ago. Whilst this should be evidently clear, as Mr ID has himself confirmed trading with us through the app since the account was opened, this can also be verified independently by referring to the app version history available on, for example, the apple store.*

We reiterate that ‘Moneybase Invest’ is the trade name of our previously known trading app ‘CC Trader’. When referencing some unidentified quotes of our CEO,

¹¹ P. 143 - 145

¹² P. 148 - 149

Mr Alan Cuschieri, we believe that Mr ID may be referring to online media coverage in relation to the launch of 'Moneybase' (as opposed to 'Moneybase Invest') app. Albeit this was launched in April 2022, this is a different app, providing payment services. No investment activities can be undertaken through that app which is not related to services provided through 'Moneybase Invest'/CCTrader.

'[...] Asked to show which transactions were made on the cctrader (and it is being said that we have this information) and which transactions were made on moneybase.com, I say, to my knowledge, there was no such change. It was a rebranding exercise. I doubt that this will capture the change in the way that the complainant is describing because to my knowledge, there was no such change. But, if possible, I have no issue doing that. So, the question being CC Trader vs Moneybase Invest transactions [...].'

As clarified above and reiterated on multiple occasions, 'Moneybase Invest' is not a different app than CC Trader. The CC Trader app was simply re-branded as 'Moneybase Invest'. All trades undertaken by the Complainant via app were carried out through the same application.

In any event, we wish to reiterate that Mr ID has had continued access to the Company's online trading platform and execution services in line with the Company's terms and conditions."

Request for Documentation

Submitted Valuations Statements as at the end of December 2020, December 2021 and December 2022 and as at 01 April 2022.

Questions re late submissions of Complainant's prior to 2nd hearing

Submission of Complainant

In his late submissions on 18 February 2024,¹³ Complainant had stated:

"Regarding the dates on which I did not have access.

I lost access in April 2022 to December 2022. On those dates, I had partial, sporadic and intermittent access. To connect, I had to triangulate between two

¹³ P. 109 - 110

phones, two telephony chips, and the new moneybase.com website. Sometimes it worked, sometimes it didn't. As of that date, the app and the original cctrader.com website were no longer available. During that period, they always said they were in a process of 'validating the credentials of the new site and that the intermittency would be resolved automatically.'

I regained access in January 2023 and lost it again in June 2023 and continues to this day. Now, I have partial access to the account, but again without being able to trade.

In the partial access that I have had since April 2022, and to date. The provider's platform has permanently blocked me from operating on pre- and post-markets, as other users can do it. This was a big disadvantage for me. Since these are the best time to buy and sell shares. The system shows a notice saying that my tax residency country, does not allow me to operate in pre- and post-markets, as I prove in the attached image. The contract I submitted clearly shows that my tax country of residence is France."¹⁴

Regarding his original investment, he quoted without submitting proper evidence, that he made a cash transfer of €2,000 and a portfolio transfer with a valuation of €71,000 giving a total valuation in US\$95,880.

On the amount claimed he stated:

"The claimed amount of €34,000 is the calculation that integrates the deposits received from the initial securities transfer and the sum of all cash. This amount minus all cash withdrawals and commissions collected from the provider, the current final balance is €15,000 as portfolio value with a loss of -€34,000. It is important to note that the calculation is done automatically by the provider's system and I cannot manipulate it. However, I agree with that number and base my request for compensation for damage on it."¹⁵

He also submitted evidence of 11 system failures which, according to him, took weeks or months to resolve.

¹⁴ P. 109

¹⁵ P. 110

Reply by Service Provider

CCIS submitted in reply:

“In his email, Mr ID claimed that ‘The provider’s platform has permanently blocked me from operating on pre- and post-markets, as other users can do it. This was a big disadvantage for me. Since these are the best times to buy and sell shares. The system shows a notice saying that my tax residence country, does not allow me to operate in pre- and post-markets, as I prove in the attached image. The contract I submitted clearly shows that my tax country of residence is France.’

In respect of the attachment named ‘error 4 tax’ and the above claim, it is to be noted that the fact that Mr ID might not have had the opportunity to deal on certain instruments outside market hours is due to the fact that Mr ID had opened his account using a Mexican passport (please refer to Annex IV). Such securities were purchased under a non-EU tax residency and were therefore not eligible to be traded outside market hours.

We believe that Mr ID may have conveniently omitted this fact which he is aware of (please refer to Annex V), in his representations in an attempt to manipulate the narrative surrounding the Complaint. It is in fact simply untrue that ‘[...] The provider’s platform has permanently blocked me from opening on pre- and post-markets [...]’.

In any event, we are unsure how the fact that outside market hours trading in respect to certain securities – due to no fault of ours and based on the Complainant’s circumstances or changes therefrom – is relevant in the context of the Complaint whereby the basis of the Complaint is that ‘[...] I (Mr ID) was left without service, without notifications and with limited access to my assets [...]’.

Furthermore, in his email, Mr ID claimed that ‘[...] I lost access from April 2022 to December 2022. On those dates, I had partial, sporadic and intermittent access. To connect, I had to triangulate between two phones, two telephony chips, and the new moneybase.com website [...]’.

This claim is simply ludicrous and is a testament to Mr ID continued efforts to manipulate and adjust the narrative as evidence is provided by the Company

*proving his previous claims wrong. In fact, Mr ID first claimed that ‘[...] At some unannounced time, for reasons that were not public and, on a date that I do not know precisely but, it happened during the **year 2021**, MoneyBase was no longer available on Apple Store France, **and I was left without service**, without notifications and with limited access to my asses [...]’ and that ‘At some unannounced time, for reasons that were not public and, on a date that I do not know precisely but, it started in **2021 and continued until now** [29 November 2023] [...].’ (please refer to Annexes VI and VII respectively). When provided evidence that tens of transactions were undertaken in 2021, Mr ID then claimed that he had lost access from April 2022, and that, as evidence was also provided that tens of transactions had instead taken place through 2022 and 2023, that he only had partial and sporadic and intermittent access throughout.*

He is now claiming that to connect throughout that period (i.e., between April 2022 and December 2022) he had ‘[...] to triangulate between two phones, two telephony chips and the new moneybase.com website [...].’ Again, the Complainant’s statements are inaccurate and conveniently omissive. To log in onto his account, like every other client, he would need to enter his mobile number and password. Instead, he has omitted to outline that the Complainant had changed his phone number, with which he had registered the account with us and which was necessary to log-in onto his account, that a second account was created using the new phone number, and that, as a result, IT intervention was necessary to close the new account and to allow for access to his original account through his new mobile number.”¹⁶

Final submissions by the Complainant¹⁷

In his final submissions (with permitted replies to the submissions of the Service Provider on his late submission before the 2nd hearing), the Complainant stated:

“The provider’s presentation of my passport is only proof of identity. In no administrative, legal or financial process is a passport admitted as proof of residence. It is clearly intended to mislead the authority, assuming my country of original and my physical and fiscal residence are the same as those in the passport and that the supplier had no knowledge of anything different, even

¹⁶ P. 149 - 150

¹⁷ P. 155 - 157

though the contract itself explicitly confirms Domicile and Country of fiscal residence and both are marked as France.

Annex V

The same provider proves that on April 18, 2023, the technical support staff admitted that my account was operating under inferior conditions because I was registered as a resident outside the European Economic Area.

On February 19, 2014, I submitted to this authority a document called:

replaced_Proof_validation_process_feb_2022.pdf

This document is an exchange of emails confirming that on January 25, 2022, the provider applied an investigation and validation to me, my account and the origin of funds in it. As written by the provider's employees, the provider asked for a proof of residence less than 06 months old. This was received and validated by Sonei Van der Merwe and 'Andrea'. As it says in the email I presented, the process was successfully concluded on February 1, 2022, I quote her words: 'Our review is complete'.

The relevance of this is that the addresses in April 2022, and year 2022 as well as December 2020, December 2021 statements submitted by the supplier (Annex III) are all the same, XXXXXXXXXXXX, France.

The evidence submitted, together with Annex V, confirms that the supplier operated my account with internal human error.

Rejection of 11 tests with Screenshots with various errors by supplier

The provider argues for fraud and/or misrepresentation in the 11 pieces of evidence submitted. These include data such as the dates of the error, my full name, my contact number, the type of error, and even exchanges of emails with their own technical support staff. It is absurd to think that, as a user, I would have the ability, time and technical knowledge to falsify all these elements. However, I would accept the economic cost of any computer expertise that disproves the evidence.

Technical problems and system availability

The provider justifies that the platform has 99% availability. On a technical level, having the system available and knowing that an account may fail, or the user has problems with specific attributes, are two different technical situations that can be simultaneous, so even if it were true, it does not prove that the problem did not exist and does not disprove the evidence.

Conclusions

- 1. I have proven that the provider received in September 2020, the amount of 3,400 shares of the ETF USO (United States Oil Fund) with ISIN no. 91232N1081 with a value of approximately €90,000. The same, which the provider neither denies nor denies.*
- 2. I have proven that the provider offered its services in France. France is my country of residence, so I opened an account with CCtrader from France using a French telephone number, with a French bank account and with proof of French residency.*
- 3. The provider accepted that its services were offered in France and that it left the French market but refused to inform the date of its exit from the market.*
- 4. The supplier does not declare and does not prove that he contacted me and/or notified me in advance of his withdrawal from the French market. Nor does it prove that it has given me the possibility of withdrawing from another supplier following its withdrawal from the market in my country.*
- 5. The provider does not deny the changes to its platform in April 2022; it classifies them as 'rebranding' but does not provide a technical report on what they were, when they were made, in which countries and on what dates the changes were implemented. It only says, without evidence, that nothing happened on that date. He was asked to submit the update log in the Apple Store, but he did not do so and did not make a statement. The updates log obliges each supplier to report, among other things, the version number, release date and list of changes. The supplier knows this, has the information to clarify everything and hid it from this authority.*

6. *I have proven many technical errors without the supplier being able to argue a cause.*
7. *The provider just dismissed as not credible, possibly false and without accurate data, the eleven proofs of technical failures that I presented from their platform; they could not present a single technical analysis, a single proof that the error was mine. From the first filing of the complaint, I offered to submit dozens of emails asking for help with no response, and the provider only argues that there is bad intent and false evidence on my part.*
8. *I have proven my rights as a resident, that the provider knew about it, that he made a mistake, and that he did not inform his technical team of the correction.*
9. *The provider does not deny or make any statement about the fact that on January 25, 2022, it made an enquiry to my account, where it asked for proof of residence and this is the same before and after its own enquiry (France).*
10. *The provider never understood that the amount of €34,000 claimed as losses was calculated by their own system based on closed positions. He never understood that the open positions I have of Best Inc. with -94% and the Aytu Biopharma position, with +84%, are not considered in the balance sheet.*
11. *The provider lied by saying that the securities were purchased outside the European Union. As I proved in the funds transfer documentation, the provider received securities from USO, these were sold within the Cctrader platform and converted into cash, all subsequent transactions were done with that cash. Therefore, they are securities purchased within the EU.*

The provider has been at pains to focus the discussion on a technical issue and on an issue of rights respecting the user's residence. At this point, I have proven to the authority that this is false and that the supplier knew this from the beginning. This shows a malicious defence of the case, it indicates that the supplier is trying to confuse the authority, that there is no sincere interest in

knowing the truth, the supplier is not willing to conciliate in the previous stage, the supplier has not been transparent in showing all the information.

I await the resolution of this authority. I reiterate my availability for any clarification.”¹⁸

Final submissions by Service Provider¹⁹

“Further to our previous submissions, we wish to reiterate that the claims made by Mr ID (the ‘Complainant’) are factually incorrect and any remedies sought are inexplicable.

Specifically, regarding the purported loss of access, the Company has provided ample and unquestionable evidence that the Complainant continued to have access and indeed actively and extensively traded on his account following the alleged loss of access.

It is important to note that Mr ID has continuously and conveniently adjusted the narrative surrounding the Complaint. In fact, whenever evidence was provided showing that Mr ID was actively using his account after the purported loss of service, he continued to shift the time period in which he claimed he did not have access to his account. Nonetheless, with regard to the most recent claim in this respect (i.e., that access was lost from April 2022), evidence was also provided showing that such a claim is factually incorrect.

Such claim was submitted late in 2023, years after the alleged loss of access and following years of continued use of our services. It is amply clear that the Complainant made such claim solely to pressure the Company into allowing the transfer of his portfolio without settling the negative balance on his account or pay the respective transfer fees.

In respect to any purported losses incurred as a result of such alleged loss of access, not only is it rebutted that he did not have access to his account as per the ample evidence provided, but evidence has also been provided that such losses were accumulated over the years as a result of the extensive trading activity undertaken by Mr ID on his account. Furthermore, no evidence was

¹⁸ P. 155 - 157

¹⁹ P. 159 - 160

provided that at any point Mr ID was willing to undertake a specific transaction that resulted in a loss due to any failures from the Company's end.

Such a claim was simply a result of the Complainant's narrative changes. In fact, initially, Mr ID complained that only the negative balance on his account was unjust, whereas he subsequently claimed that the transfer fees were unjust, and finally claimed that he had incurred significant losses.

In respect to any claims relating to the transfer fees, we submit that these are applicable in line with the respective terms and conditions agreed upon between the Complainant and the Company.

Against this backdrop, we respectfully request the Arbiter for Financial Services to dismiss the Complaint."

Arbiter's analysis and considerations

Having read the Complaint and the reply of CCIS, having heard the evidence, and read the final submissions, the Arbiter shall now proceed to consider and adjudge the case in terms of Article 19(3)(b) by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances of the case.

The Arbiter finds substantial gaps in credibility of the case of the Complainant for the following reasons:

1. The Complaint as first submitted to the Service Provider was simply about the charges that had to be settled before transfer of the portfolio to a third-party broker and never raised the claimed loss of €34,000, the interest claim, and the compensation for 100 hours. These were only made in the Complaint to the OAFS without giving opportunity to the Service Provider to defend themselves before filing the Complaint with the Arbiter.²⁰
2. In his Complaint, he claims that Service Provider could have withheld part of the securities to cover the debit balance and transfer fee and proceed with partial transfer of the portfolio. This is in conflict to what he said in his email to the OAFS of 30 October 2023, copied to Service Provider,

²⁰ In accordance with Article 21(2)(b) of Chapter 555 of the Laws of Malta, this prejudices the Arbiter's ability to judge the Complaint.

where in point 6 he states that *'the only acceptable instruction in force is: a total and integral transfer of my portfolio ...'*.²¹

3. He is inconsistent regarding the amount originally transferred to CCIS. In his evidence at the first hearing, he mentions €95,000. In his email of 18 February 2024,²² he mentions a value of cash €2,200, portfolio value €71,000 giving total equivalent of USD95,880. In his final submissions, he mentions a value of €90,000.²³
4. He has not given any credible evidence that the loss on his portfolio claimed at €34,000 is a result of his inability to trade rather than a normal portfolio trading loss. The losses claimed have not been properly quantified and seemed sourced from folio 111 presented by the Complainant with his email of 18 February 2024 showing total overall return as -€34,500 of which realised loss was -€14,754 and portfolio total return -€19,746 (presumably unrealised losses on 2 outstanding securities showing at USD21654.42).²⁴ Yet, in his final submissions,²⁵ paragraph 10, he claims that the €34,000 losses do not include the open unrealised open positions.
5. He claims that the compensation of €34,000 sought is all due to his inability to have regular access to trade as from April 2022 when the valuation statement as at 01 April 2022 shows that the portfolio was already down at €34,319²⁶ which, if compared to original investment of €73,200,²⁷ already shows substantial losses before April 2022.
6. He has not provided any evidence about the compensation sought for interest and for 100 hours, these presumably being the amount of time he spent arguing this case (which seems exorbitant).

In the period between April 2022 and December 2022, when Complainant claims he lost access and this caused his portfolio losses,²⁸ Complainant executed 8

²¹ P. 15

²² P. 109

²³ P. 156

²⁴ P. 111 profit of USD 2,820.93 on Aytu Bio and loss of -US\$ 24,475.35 on Best In.

²⁵ P. 157

²⁶ P. 202

²⁷ P. 109

²⁸ *Ibid.*

trades on 7 different dates. It is not quite convincing that he was deprived from performing other trades and it is not unlikely that the reduced volume of trading was the result of losses already incurred which reduced the portfolio size, rather than due to accessibility issues. After all, the Service Provider has stated under oath that:

“we did not come across any specific instance where (Complainant), for example, wanted to close off a position and he could not trade in which case we would have executed the transaction on his instructions telephonically, but again no such request was made.”²⁹

Decision

The Arbiter has concluded that this Complaint is nothing but a poor effort to try to recover the Complainant’s trading losses on his investment portfolio by magnifying unrealistically any faults in the quality of service offered by CCIL.

In the circumstances, for reasons explained above, the Arbiter is ruling against the Complainant and dismissing his Complaint regarding claims 1, 2 and 4.³⁰

The Arbiter is partially accepting claim 3 but only in so far as the debit charges outstanding on Complainant’s account giving him benefit of the doubt that the changes related to such charges were not properly notified to him. Complainant has still to pay in advance the fee related to the transfer of his portfolio indicated at €175 which Service Provider maintains had not changed since the account was opened.³¹

Each party is to bear its own cost of these proceedings.

Alfred Mifsud
Arbiter for Financial Services

²⁹ P. 142

³⁰ P. 2 of this decision

³¹ P. 47

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 twenty (20) 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 fifteen (15) 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.
