

## Before the Arbiter for Financial Services

Case ASF 053/2021

AP

(the 'complainant')

vs

Phoenix Payments Limited

(C 56013)

('Phoenix' or the 'service provider')

### Sitting of 25 April 2022

The Arbiter,

**Having considered in its entirety, the complaint filed by the complainant,<sup>1</sup>**

Where, in summary, the complainant claimed to have been a victim of fraud by *Nortfintechfx.com*, this being an offshore company allegedly holding a bank account with Phoenix Payments Ltd.

She referred to the correspondence exchanged between herself and Phoenix, whereby she declared that on 17 June 2020, she created an account with *Nortfintechfx.com* and provided all the required verification documents. The sum of EUR300 was deposited on 19 June 2020 whilst a further amount of EUR1,700 was deposited on 25 August 2020.

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<sup>1</sup> Page (P) 2-17

Whilst doing such transactions, she was guided by a broker with whom she also communicated on a regular basis.

However, she declared that *'... suddenly, a month back the communication stopped and I was not able to reach him or somebody else from the company by mail or phone.'*<sup>2</sup>

The complainant argued that although *Phoenix* was informed of her claim for refund, and that her attempts to contact *'the people she was contacting'*<sup>3</sup> remained futile, she was still advised to seek recourse against *Nortfintechfx.com* and that her request was *'unfounded at law and in fact'*.

In view of the above, the complainant wants to ensure that, in this case, the KYC guidelines and the European regulations were followed by the service provider and that the latter has all the necessary data on the beneficial owners of *Nortfintechfx.com*.

She also complained about *Phoenix's* denial to her request for further examination of this alleged fraud and her claim for refund. Thus, in this respect, she wants to *'... seek compensation of the transferred amount of 1.700 Euros.'*<sup>4</sup>

**Having considered *Phoenix's* reply,**<sup>5</sup> whereby the service provider dismisses all the allegations raised by the complainant.

Primarily, *Phoenix* explained how in terms of Chapter 373 of the Laws of Malta and its subsidiary legislation, it is obliged to carry out due diligence on its customers, and in fact, declared that, *'... we have carried out full customer due diligence on our customer, which is Qoin Services Ltd and we confirm that all the relevant due diligence on Qoin Services Ltd and the Ultimate Beneficial Owners was carried out and the Company has satisfied its obligations at law.'*<sup>6</sup>

The service provider also noted that all accounts pertaining to *Qoin Services Ltd* have been closed, and it has no relationship whatsoever with its customer anymore.

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<sup>2</sup> P. 16

<sup>3</sup> P. 3

<sup>4</sup> *Ibid.*

<sup>5</sup> P. 22

<sup>6</sup> *Ibid.*

Phoenix insists that it accepts no responsibility for the complainant's negligence and/or acts or omissions carried out by third parties. It emphasises that it has no obligations to reimburse the complainant for acts or omissions carried out by third parties and is essentially denying all allegations presented by the same complainant.

**Having heard the parties and seen all the documents and submissions made,**

**Considers:**

The Arbiter notes that the complaint mainly relates as to whether Phoenix has in fact followed the KYC guidelines and the 'European regulations', whether all the necessary data on the beneficial owners of *Nortfintechfx.com* has been obtained, whilst requesting further examination of this alleged fraudulent case.

The Arbiter notes further that despite the continuous reference to Phoenix by the complainant, it is amply clear that she has always communicated with *Nortfintechfx*.

She stated that:

*'I have been a victim of fraud by a broker company called Nortfintechfx that was trying to engage me as a client in order to invest some of my money. I have deposited €300 as a start. They were communicating with me on a very regular basis, let's say, three times a week; trying to show me how the system works and how we can invest the money to get a good revenue.'*<sup>7</sup>

This clearly implies that the company she communicated with prior to, and when investing money, was *Nortfintechfx*. She submitted that,

*'... I had deposited €1,700 in the bank that they indicated, Phoenix Payments Ltd in the account of Quoin Services Limited. We have been investing money with the support of the broker, Stefanos Makris ...'*<sup>8</sup>

She even acted on the instructions given to her by *Nortfintechfx's* representative when depositing money.

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<sup>7</sup> P. 24

<sup>8</sup> *Ibid.*

However, the complainant then admitted that,

*'I say that I do not know this company called Qoin Services Ltd.*

*Stefanos Makris, the contact from the broker company Nortfintech, told me to send money to Qoin Services Ltd.*

*Asked by the Arbiter how does Phoenix Payments get in the picture, I say I have deposited this amount of money to this bank, Paytah, Bank Phoenix Payments Ltd., the bank where I deposited the money.*

*I say that, according to the deposit document, the bank in which I have deposited the money, it was Phoenix Payments Ltd in the account of Qoin Services.'*<sup>9</sup>

On the other hand, in its reply to the complaint, the service provider declared that,

*'Kindly note that we have carried out full customer due diligence on our customer, which is Qoin Services Ltd ...'*<sup>10</sup>

Phoenix's representative, Dr Franklin Cachia, insisted that their customer is Qoin Services Ltd, and emphasised that,

*'Phoenix Payments Ltd had absolutely no contractual relationship or any sort of relationship with the broker that Ms AP was dealing with by the name of Nortintechfx.com which is completely unbeknownst to us. We have no relation with this broker whatsoever. We do not even know who they are.'*<sup>11</sup>

He submitted that,

*'The complainant suffered a scam from a third party which has absolutely no relationship with us.'*<sup>12</sup>

*'Ideally redress should have been obtained against Nortfintechfx and Qoin Services Ltd and not against Phoenix Payments Ltd.'*<sup>13</sup>

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<sup>9</sup> P. 25

<sup>10</sup> P. 22

<sup>11</sup> P. 25

<sup>12</sup> *Ibid.*

<sup>13</sup> P. 26

Therefore, in view of such declarations, the Arbiter has to examine his competence. In fact, the question of whether the Arbiter enjoys jurisdiction in a particular case is dictated by the provisions of Chapter 555 of the Laws of Malta ('the Act') whereby the Arbiter is obliged to investigate whether he has jurisdiction to deal with a particular case. Article 22(2) of the same Act stipulates that

*'Upon receipt of a complaint, the Arbiter shall determine whether the complaint falls within his competence.'*

### **Jurisdiction of the Arbiter**

By virtue of Article 19(1) of the Act, the Arbiter can only deal with complaints filed by *eligible customers*:

*'It shall be the primary function of the Arbiter to deal with complaints filed by **eligible customers** through the means of mediation in accordance with Article 24, and where necessary, by investigation and adjudication.'*

The Act stipulates further that:

*'Without prejudice to the functions of the Arbiter under this Act, it shall be the function of the Office:*

*(a) To deal with complaints filed by **eligible customers**.'*<sup>14</sup>

### **Eligible customer**

Article 2 of the Act defines an '*eligible customer*' as follows:

*'a customer who is a consumer of a financial services provider, 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.'*

The decision of whether the complainant is in fact an *eligible customer* as defined in the Act, or not, will be based on the statements submitted by the complainant, the service provider and its representative.

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<sup>14</sup> Article 11(1)(a)

As it has been previously noted in this decision, the complainant declared that she was *'... a victim of fraud by a broker company called Nortfintechfx.'*<sup>15</sup>

Despite being advised to deposit *'... €1,700 in the bank that they had indicated, Phoenix Payments Ltd in the account of Qoin Services Ltd,'*<sup>16</sup> she admitted that she does *'... not know this company called Qoin Services Ltd.'*<sup>17</sup>

Primarily, the Arbiter notes that Phoenix, contrary to what is at times referred to by the complainant, was not a bank, but a Payment Service Provider ('PSP'), as has also been declared by its representative,

*'I am the lawyer representing Phoenix Payments Ltd, which is not a bank. It is a payment services institution licensed by the Malta Financial Services Authority.'*<sup>18</sup>

The service provider clearly declared that their customer is Qoin Services Limited, implying that no relationship existed between the broker, *Nortfintechfx*, and Phoenix.

Its representative stated that:

*'I confirm that we have absolutely never had any business with this broker.'*<sup>19</sup>

When asked about her relationship with Qoin Services Limited, the complainant stated that:

*'Asked if I have contracted an agreement with Qoin Services Ltd, I say, no. I was just asked to deposit the money there.'*<sup>20</sup>

It was submitted further that:

*'Asked if I ever applied to become a customer of Phoenix Payments Limited, I say, no. I have no relationship with Phoenix Payments Limited. The only relationship was depositing money in Phoenix Payments to the account of Qoin Services.'*<sup>21</sup>

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<sup>15</sup> P. 24

<sup>16</sup> *Ibid.*

<sup>17</sup> P. 25

<sup>18</sup> *Ibid.*

<sup>19</sup> P. 26

<sup>20</sup> P. 117

<sup>21</sup> P. 118

## **Determination of eligibility**

Considering the above, and having reviewed the circumstances of the case in question, and as specifically declared by the complainant that it had no contractual relationship with Phoenix Payments Ltd, the complainant is not a client of Phoenix Payments Ltd. She was not even aware of Qoin Services Limited and its operations, let alone of Phoenix Payments Limited.

The service provider's declarations, which were not even contested, were clear, and no evidence to the contrary was submitted.

A complaint with the Arbiter can only be filed against a service provider in line with the Act.

Considering the above, it results that the complainant was not *'a customer who is a consumer'* of Phoenix, neither that Phoenix *'has offered to provide a financial service'* to the complainant, nor that the complainant *'has sought the provision of a financial service from Phoenix for the purposes of the Act'*.

Accordingly, the complainant cannot be deemed an *'eligible customer'* in terms of Article 2 of the Act.

Therefore, the Arbiter does not have the competence to deal with this complaint.

Considering that the case was decided on a procedural issue, each party is to bear its own costs of these proceedings.

**Dr Reno Bog**  
**Arbiter for Financial Services**