

Before the Arbiter for Financial Services

Case ASF 036/2024

ZB (Complainant)

Vs

CSB International Ltd.

Reg. C 38923

(‘Service Provider’ or ‘CSB’)

Hearing of 21 June 2024

The Arbiter,

Having considered the complaint¹ filed on 05 March 2024 where the Complainant is seeking compensation for €30,000, being the expenses he incurred due to an unsuccessful application that CSB made on his behalf to the Commissioner for Revenue on 22 March 2023 for obtaining special tax status under the Global Residency Programme Rules 2013 Subsidiary Legislation 123.148 and Global Residence Programme Guidelines (GRP).

Complainant explains that he incurred these expenses and in support indicated the following:

EURO €	Reason
7000	Legal fees paid to CSB
6000	Application fees to Malta Government

¹ Pages (p.) 1 – 16 with attachments p. 17 - 160

EURO €	Reason
15800	Rental of local residences
1500	Travelling fare India to Malta

He maintains that CSB falsely made him believe that he needed to rent accommodation in Malta in order to get accepted for GRP status, and that, in reality, this was not a condition for satisfaction of the GRP at the application stage but only applicable in the post-approval stage, if the application gets approved.

He blames CSB for having his application for GRP refused as he maintains that he provided them with all documentation that they requested, including bank statements from 4 banks and declaration of assets, and that he has a job and enough funds to live in Malta as per evidence submitted.

He accuses CSB of breaking the code for business ethics.

Reply of the Service Provider

The Arbiter has considered the reply² of the Service Provider where they deny the accusation made against them in the complaint and deny that they had anything to do with rental of any property. They state that the Complainant was explicitly informed that a residential lease was unnecessary for the GRP programme application submission.

They further state that the GRP application of the Complainant was refused by the Commission for Revenue (CFR) by means of letter dated 18 December 2023³ that explained the refusal stating:

“The issues identified include, but are not limited to: Not in receipt of stable and regular resources which are sufficient to maintain himself and his dependents without recourse to the social assistance system in Malta.”

² P. 168 – 170 and attachments 171 - 172

³ P. 172

CSB maintain that they diligently adhered to the prescribed guidelines and criteria delineated by the CFR in processing the application, but the information provided by the Complainant fell short of CFR's standards of sufficiency. They maintain that CFR has complete prerogative to accept or decline applications at its discretion.

CSB also maintains that they have been providing such service from the inception of the GRP programme and this complaint is the first of its kind encountered.

Competence of the Arbiter

In accordance with Article 19 and 21 of Chapter 555 of the Laws of Malta, the Arbiter has competence to hear complaints presented by eligible customers against a financial service provider.

A financial services provider is defined in Article 2 of the same law as

*“a provider of a financial service which is, or has been licensed or otherwise authorized in terms of the Malta Financial Services Authority (MFSA) Act or in terms of any other financial services law, and is related to investment services, banking, financial institutions, credit cards, pensions, insurance, and **any other service which in the opinion of the Arbiter constitutes a financial service ...**”⁴*

At the hearing of 03 June 2024, the Arbiter informed the parties that before entering into the merits of the case, he needed to investigate and establish his competence to hear and adjudicate it, given that the licence of the Service Provider issued by the MFSA does not cover the service being complained of and that it is not clear whether the service being complained of can be considered as a financial service.

The Arbiter invited the parties to make submissions related to the competence of the Arbiter as above explained.

Submission by Complainant

The Complainant submitted:

⁴ Emphasis added by Arbiter

'NOTES TO THE ARBITER AS REQUESTED BY THE ARBITER

The Arbiter is informing the parties that he has to decide whether this case falls within his competence.

The Arbiter explained that the law permits him to hear cases which are related to a financial service which is given by a licensed institution in Malta.

Arbiter for Financial Services Act

The Arbiter of the Financial Services Act (Chapter 555 of the Laws of Malta) was set in force on 18 April 2016 by virtue of Act XVI of 2016. The Maltese Government realised the necessity for such an office and authority when complaints over financial services and other forms of fraud became predominant throughout the country up through to 2016.

The remit of the Arbiter for Financial Services is to investigate and adjudicate complaints lodged by eligible complainants (individuals and micro-enterprises) against financial services providers who are licensed or authorised by the Maltese financial services regulator. When cases are referred to the Arbiter and a decision is issued, such a decision is binding on both parties.

The Office of the Arbiter for Financial Services is an autonomous and independent body with the power to mediate, investigate and adjudicate complaints filed by eligible customers against financial services providers licensed by the Malta Financial Services Authority (MFSA), the financial services regulator in Malta.

Hereunder the Complainant is stating why, according to him, and according to the law which authorises the Arbiter to give decisions which is Chapter 555 of the Laws of Malta, why the Arbiter has the competence to hear his case.

This case falls within the competence of the Arbiter and the OAFS for the following facts:

Under definitions by the Financial Services Act (Chapter 555 of the Laws of Malta) set in force on 18 April 2016 by virtue of Act XVI of 2016, Complainant qualifies as an eligible customer.

Under definitions by the Financial Services Act (Chapter 555 of the Laws of Malta) set in force on 18 April 2016 by virtue of Act XVI of 2016, subject of the complaint

falls under jurisdiction of the Arbiter as defined under the Financial Services Act of 2016.

1. *CSB International Ltd is licensed by the MFSA but in the licensing register of the MFSA, it is licensed to give these financial services:*
 - *Arranging for another person to act as director or secretary of a company*
 - *Formation of companies and other legal entities*
 - *Offering services to third parties for acting as director or secretary of a company*
 - *Provision of a registered office, a business correspondence or administrative address and other related services for a company, a partnership or any other legal entity.*

Whereas CSB is licensed according to the above description, CSB was selling services to establish residency.

2. *Precedent The OAF has arbitrated cases involving CSB for much the same reasons in the recent past (Please see last page).*
3. *CSB Activities Actions of CSB suggest a pattern of fraud. As Complainant was seeking residency; and since CSB is not showing licence to advise for residency but offering corporate and business structure services. CSB was operating outside of their authorisation.*
4. *CSB and Sotheby's Claimant states it is clear that principals of CSB are also principals of Sotheby's Real Estate in Malta via Mr Michael J. Zammit. It is not accidental that Claimant was directed to lease properties under management, control or knowledge of CSB and Sotheby's as part of a scheme to defraud clients via unnecessary property leases in order to satisfy residency applications. Said leases are cancelled and client evicted as part of the scheme.*
5. *CSB unlicensed activities Based on CSB filing with MFSA, the CSB International Ltd is licensed to offer under the MFSA licence are the above-mentioned financial services but the complaint relates to something else*

for which, it appears to the Arbiter, that CSB International Ltd is not licensed by the MFSA.

- 6. CSB Caused Complainant to expend funds supposedly to meet compliance requirements to the GRP that are not legitimate and did not meet compliance according to CSB. The expenditures benefitted only CSB, Sotheby's Real Estate, and their clients or associates. CSB directed Complainant to follow unnecessary actions under compliance requirements for GRP, causing financial and emotional harm to complainant.⁵*

The Service provider submitted:

'Re: Plea of Non-competence and rebuttal of allegations in relation to complaint case number ASF 036/2024

Dear Arbiter,

On behalf of our client, CSB International Limited (hereinafter referred to as 'CSB' or 'Respondent'), we, CSB Legal, submit this plea of non-competence regarding the complaint lodged before the Arbiter by Mr ZB (hereinafter referred to as 'Complainant'). Additionally, we rebut the allegations made in the document attached as Annex A.

The Complainant has made several grossly false, incorrect and unsubstantiated allegations concerning the services provided by CSB, represented by Mr. Malcolm Ferrante and Ms. Michela Pace. However, it is our position that the Arbiter does not have the jurisdiction to adjudicate this matter for the following reasons:

- 1. **Jurisdictional Scope of the Arbiter:** According to Chapter 555 of the Laws of Malta - Arbiter for Financial Services Act (hereinafter referred to as 'Act'), with particular reference to Part IV 'Competence', the Arbiter is vested with the authority to hear complaints related to the conduct of financial service providers. The Act explicitly defines the scope of the Arbiter's jurisdiction to cover disputes arising from the conduct of entities*

⁵ P. 177 - 178

regulated by the Malta Financial Services Authority (hereinafter referred to as 'MFSA').

The Act defines 'financial services provider' to be a provider of financial services which is, or has been licensed or has a valid authorisation issued by the MFSA or in terms of any other financial services law, and is related to investment services, banking, financial institutions, credit cards, pensions, insurance, and any other service which in the opinion of the Arbiter constitutes a financial service.

It is to be noted that the service in question relates to assistance with the submission of the Global Residence Program (hereinafter referred to as 'GRP') application. Among various benefits, the primary advantage for a GRP beneficiary is that s/he is subject to tax at a rate of fifteen cents (0.15) on every euro thereof on any income that is received in Malta from foreign sources by the beneficiary and his/her dependants. This rate of tax will apply from the year of confirmation of the special tax status up to year of cessation of status, both years included.

In no way, shape or form does this service entail that the service provider (CSB) will manage any money and/or assets, invest money on behalf of the client or any other characteristic which would classify the service as a financial service. Furthermore, whilst keeping in mind that an Authorised Mandatary is issued such authorisation by the Office for Commissioner of Revenue, the MFSA is the single regulator of financial services in Malta.

- 2. Nature of CSB's Authorisation:** *Contrary to what is being alleged by the Complainant in Annex A, CSB International Limited is listed as an Authorised Mandatary under the Office of the Commissioner for Revenue, with ARM number ARM00396. This authorisation is distinctly separate from any license or regulation under the MFSA. The official register of Authorised Mandatories can be verified as per the official list in Annex B.*
- 3. Service Provided Under Non-MFSA Authorisation:** *Contrary to what the Complainant is alleging in Annex A, the service in question, which is the subject of the complaint, was not provided by CSB "illegally" since such*

service was provided by CSB under its authorisation as an Authorised Mandatory by the Office of the Commissioner for Revenue.

Furthermore, the service in question was not provided under any license or regulatory framework governed by the MFSA. As such, the nature of the service falls outside the jurisdictional ambit of the Arbiter for Financial Services as outlined in Chapter 555.

- 4. Non-Applicability of Financial Services Conduct:** *Given that the complaint pertains to activities carried out under the authority of the Commissioner for Revenue and not under a financial services license, the Respondent is of the opinion that Arbiter is not competent to adjudicate on this matter.*

On another note, the allegation made that “the OAF has arbitrated cases involving CSB for much the same reasons in the recent past ...” is frivolous and false in its entirety since the regulatory action imposed by the Financial Services Tribunal on 13th of July 2022 in relation to such case was an administrative penalty of three thousand Euro (€3,000) for failure “to submit the Audited Financial Statements and the Auditors’ Management Letter for the year ended 31 December 2019 within the regulatory deadline.”

Contrary to the allegations made by the Complainant in Annex A, the claims that the relevant leases were cancelled, and that the eviction of the Complainant was part of a scheme orchestrated by CSB are grossly false. These accusations are deliberately intended to damage and ruin CSB’s stellar reputation.

Based on the aforementioned points, we respectfully assert that the allegations made by the Complainant are wholly false and unsubstantiated. Furthermore, both by law and by the presented facts, it is evident that the Arbiter lacks the requisite jurisdiction to hear and adjudicate the complaint lodged against CSB International Limited. Accordingly, we request that the complaint be dismissed on these grounds.

If there are any further questions or if additional information is required, please do not hesitate to contact us.⁶

⁶ P. 182 - 183

Decision

Having considered the arguments presented by both sides related to whether the service being complained of can, in the Arbiter's opinion, be considered a financial service which is licensed by the MFSA Act or any other financial services law, the Arbiter hereby decides that the MFSA licence issued to the Service Provider does not include any service related to an application for GRP programme.⁷ In the Arbiter's opinion, such activity is not considered as a financial service in terms of Article 2 of Chapter 555 of the Laws of Malta.

Consequently, the Arbiter considers the complaint as not being within his competence to hear and adjudicate and is hereby dismissing it. This without prejudice to the Complainant's right to take his case before a competent court or tribunal.

As the case is being dismissed without any hearing on its merits, each party will bear its own cost 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 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.

⁷ P. 173 and P. 201 list the services included in CSB's licence as Corporate Service Provider issued by MFSA

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.
