

## Before the Arbiter for Financial Services

Case ASF 052/2021

UM ('the Complainant')

vs

Trust Payments (Malta) Limited

(C 56013)

('Trust Payments' or 'the Service Provider')

### Sitting of the 28 September 2022

The Arbiter,

Having considered in its entirety, the Complaint<sup>1</sup> filed by the Complainant,

Where, in summary, the Complainant claimed that she had been solicited by *Finantik* at [www.finantik.com](http://www.finantik.com), whereby she was offered an attractive investment in funds that were going to be deposited into an investment account in her name.

She stated, however, that after having paid money to *Finantik*, either by wire transfer or by card, based on instructions given to her, she failed to receive the real investment as originally offered. Eventually, she came to understand that *Finantik.com* is neither regulated in Qatar, where she actually resides, nor in Europe, where *Finantik.com* allegedly pretends to be entitled to provide financial services. Moreover, the Complainant submitted that *Finantik* does not even have the ability to provide segregated accounts for investment purposes.

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<sup>1</sup> Page (P) 2 - 62

The Complainant submitted further that *Trust Payments (Malta) Limited*, formerly *Secure Trading Financial Services Limited*, was ‘the acquiring bank’ of the sum of EUR 10,000 which she has paid in February 2020 in three separate transactions as instigated by Finantik.

She declared that:

*‘In reply to my request for investigation and money recall, Trust Payments (Malta) denied recognition in its system the transactions although their ARN has been identified ...’.*<sup>2</sup>

The Complainant also referred to a letter of complaint dated 6 July 2020, sent by her legal advisors to *Secure Trading Financial Services Limited* where, *inter alia*, the following was submitted:

- That the Complainant brought to the attention of the addressee concerns relating to a company, initially referred to as *Unknown*<sup>3</sup> (the *beneficiary*), a client of SecureTrading Financial Service, which *beneficiary* is involved in suspicious activity that includes potential money laundering and fraud.
- That the Complainant was solicited by a merchant operating under the address <https://www.finantik.com> to wire funds to a false and fictitious trading account. The same merchant claimed to have the ability to offer and exchange digital currencies but, in reality, it provides a fictitious and malicious software which does not execute any exchanges or purchases of digital currencies and is not connected to any recognised exchanges.
- That, acting in good faith and on reliance of the website information, the Complainant was instructed in writing by the merchant to wire funds to a company holding account with SecureTrading Financial Service.
- That after much research, ‘... it was concluded that the merchant is **not** officially connected to the *Beneficiary*’,<sup>4</sup> and it was therefore concluded that ‘... the *beneficiary* is aiding the merchant to bypass the bank’s fraud

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<sup>2</sup> P. 3

<sup>3</sup> P. 39

<sup>4</sup> P. 40

*detection screening for embezzlement of our client's funds and laundering of the illegal proceeds.*<sup>5</sup>

In the said letter of complaint, the Complainant's legal advisors requested

*'... the bank [to] take the appropriate steps, to mitigate the loss to our client by conducting a thorough fraud investigation and to investigate potential money laundering for all related transactions and accounts and to freeze their accounts pending the results of the investigation ensuring that all the funds in the accounts of the beneficiary are held.'*<sup>6</sup>

The Complainant requested in the letter of Complaint, and also in the Complaint Form, the following remedy:

*'The remedy that I am seeking is to return to my account the amount of Euro 10,000 (Euro Ten Thousand) in addition to equal amount of Euro 10,000 (Euro Ten Thousand) being compensation due to regulatory breaches committed by Trust Payments.'*<sup>7</sup>

**Having considered Trust Payments's reply,**<sup>8</sup> whereby the Complainant's claims were rejected.

The Service Provider declared that it has no legal relationship, nor has it ever entered into a relationship with Finantik and is thus not the proper respondent in this matter and is to be declared non-suited.

It declared further that not only it does not have any relationship with Finantik, and this was never a merchant of the same provider but, additionally, there is no relationship with the Complainant. It stated that the latter's direct relationships are with the merchant and his credit card issuing bank, and it does not hold any direct relationship, implied, expressed, or otherwise agreed, with the same Complainant. Hence, the Complainant is not an *eligible customer* as defined under the Arbitrator for Financial Services Act.

The Service Provider further declared that without prejudice to the previous plea, the matter is already subject to a separate complaint which is currently

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<sup>5</sup> *Ibid.*

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

<sup>7</sup> P. 3

<sup>8</sup> P. 68

being investigated by the Cyber Crime Office in Qatar, which was even admitted by the Complainant herself and, hence, in terms of Article 22(2)(a) of the Act, the Arbiter is to decline from taking cognizance and deciding on the matter.

Trust Payments declared further that, upon internal investigation, the transactions in question were identified as being processed and protected with fraud detection. It specified that the transactions were authorised by the Complainant's credit card issuing bank and processed with her full cardholder authentication under the 3DS protocol but, holds no evidence that any chargeback/dispute attempts in relation to the same transactions were initiated.

The Service Provider explained that as a payment processor, it does not hold a direct relationship with the Complainant or any other cardholder. The latter's relationship is with the merchant, and with the Issuing Bank. It explained further that, as per standard industry practice, in case of a transaction dispute, the cardholder should first attempt to settle such dispute with the merchant and, should this fail, the issuing bank should be advised of the matter. In case the issuing bank considers the claim made by the cardholder as valid, then, a formal chargeback process will be initiated by the same bank. Should the chargeback be accepted by the merchant, the transaction will be debited from the latter's account and credited to the cardholder.

However, if an outcome to the dispute cannot be agreed upon, the issuing bank may refer the case to the payment network's arbitration process for investigation, and the case will be decided in favour of one of the parties.

The Service Provider submitted that during its response to the Complainant's query, and even by further correspondence on, or about, 23 October 2020, the same Complainant was advised to contact her issuing bank as related communications with the merchant were unsuccessful.

Trust Payments also mentioned the fact that based on the complaint documentation submitted, the Complainant has communicated multiple times with her issuing bank on this matter which, however, informed her that a chargeback on her behalf cannot be initiated as all transfers were personally and voluntarily executed by herself, and that the Complainant's self-authorised transactions could only be cancelled before payment was sent.

At the end, the Service Provider strongly contended the fact that, contrary to that alleged by the Complainant, there has been no regulatory breach occasioned by the same service provider. It also reiterated that there is no direct relationship between a payment processor and a merchant's customer as the payment processor simply connects the merchant's bank to the customer's credit card bank to enable the transaction flow of funds, whilst insisting that the merchant's customers are not and cannot be known to the payment processor.

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

**Considers:**

The Arbiter notes that the complaint relates to Trust Payments's support of the unlawful acts by *Finantik*, the merchant, and the failure to abide by the responsibilities of regulated financial institutions to carry out the necessary due diligence of entities and/or beneficiaries of funds which transactions pass through their systems.

Crucial to note that in its reply to the complaint, the Service Provider declared that:

*'... there is no relationship with Ms. UM ... TPM has no direct relationship (implied, express, or otherwise agreed) with Ms. UM ...',<sup>9</sup>*

and, therefore,

*'Ms UM is not an "eligible customer" of TPM and, accordingly, TPM is to be declared non-suited in this complaint ...'.<sup>10</sup>*

This has also been reiterated in its final submissions whereby the Service Provider declared that:

*'... TPML submits that it is not suited in these proceedings as the Complainant is not an 'Eligible Customer' in its regard and accordingly, it did not provide a "Financial Service" as defined in the Act.'<sup>11</sup>*

Meanwhile, the Complainant stated that:

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<sup>9</sup> P. 68

<sup>10</sup> *Ibid.*

<sup>11</sup> P. 202

*‘Asked if I have any contractual relationships with a party different to Finantik which might justify my payments, I say, no, because my business relationship was with Finantik and they were the party to decide or select any party to receive the money. I was not in a position to identify any of these.’<sup>12</sup>*

Therefore, in view of such declarations, the Arbiter has to examine his competence.

### **Competence of the Arbiter**

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 his jurisdiction.

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.’*

Moreover, Article 19(1) of the Act stipulates that 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>13</sup>*

### **Eligible customer**

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

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<sup>12</sup> P. 73

<sup>13</sup> Article 11(1)(a)

*'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.'*

In her complaint form, the Complainant declared that:

*'I have been solicited by Finantik at [www.finantik.com](http://www.finantik.com), owned by Pro Star Griffith Corporate Center and located in Saint Vincent and the Grenadines, who offered me an attractive investment and claimed that my fund be deposited into an investment account in my name.'*<sup>14</sup>

In her solemn declaration, she explained how, on insistence of *Finantik's* representative during the multiple phone calls received and encouragement by emphasising the benefits she will get from the investment offered, she opened an account and was requested to make the relevant payments by Mastercard. She admitted that it was in February 2020 when she discovered that payments were made through Trust Payments and, above all, that she was *'... the subject of unlawful work and that my money has been stolen ...'*<sup>15</sup>

She admitted having always acted on the instructions given to her by *Finantik*.

In fact, she stated that:

*'Asked who has provided me with payment instructions, I say that it was the person who pretended to be the Relationship Manager who represented Finantik. There was this person named Jon Fletcher (I gave details in my complaint), he was establishing the link through which I had to pay ...'*<sup>16</sup>

Based on the Complainant's declarations, it is evident that she has always communicated with *Finantik* and eventually acted on its representative's instructions.

On the other hand, Steve Grech, representative of the Service Provider, clearly explained<sup>17</sup> the card acquiring service provided by the same service provider and the way transactions are handled. He stated, however, that, with reference to the complaint in question, *Finantik*, the company, which is continuously being

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<sup>14</sup> P. 2

<sup>15</sup> P. 72

<sup>16</sup> P. 72 - 73

<sup>17</sup> P. 87

mentioned by the Complainant, is not its merchant, and insisted that the Service Provider has '*... absolutely no relationship with Finantik.*'<sup>18</sup>

He submitted that the merchant, hence, their customer, was a company named *Local Capital*, trading as *Ask4bits*, which was onboarded as a licensed crypto exchange.

Despite the Complainant constantly referring to *Finantik*, and that Trust Payments was receiving the money on behalf of the latter and, also, that she indirectly considers herself a customer of Trust Payments,<sup>19</sup> it transpires that *Finantik* is not even the merchant in this case, hence, the Service Provider's client.

However, Steve Grech also admitted that:

*'In this particular case, there were three transactions totalling €10,000, where the cardholder purchased crypto currencies. I confirm that all three transactions were verified, processed through the 3D Secure ...'*<sup>20</sup>

Considering that the transactions in question were traced, Trust Payments was, in fact, the payment service provider to the company which eventually received the funds, this being *Finantik* or *Local Capital*.

In this regard, Steve Grech declared that:

*'Asked if it is correct that I said that the money has been passed through the merchant's account with Trust Payments and were dispatched to the merchant, I say that, from our end, we received the transaction request from the cardholder's card. Our role as an acquirer is to debit through the Visa or Mastercard (I forgot which it was) the card and credit our merchant. That is what we did and that is as far as we go. Reading the complainant's statement in the last sitting, she mentioned that she saw the amount being credited in her Finantik account. So, here I am assuming that somehow, the funds were passed from our customer to Finantik. We have no part in that; we just send the funds*

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

<sup>19</sup> p. 75

<sup>20</sup> p. 87

*to Local Capital and we stop there. What happens with the funds from there on, we have no visibility and it is not within our concern.'*<sup>21</sup>

Above all, the Service Provider insists that its customer is the merchant, that can either be an online or even a physical merchant,<sup>22</sup> and submitted that:

*'It is correct to describe that Trust Payments, as an acquirer, is a link in a chain of a full transaction: there is the cardholder, there is the merchant, there's the acquirer, there's Mastercard, there's the issuing bank and back to the cardholder.'*<sup>23</sup>

Furthermore, in its final submissions, the Service Provider insists that the Complainant is not an *eligible customer* and

*'... conversely, TPML did not provide a Financial Service (as defined in terms of the Act) to the Complainant, and this is purposely so because market players like TPML, or rather acquirers, are a mere link in the transaction chain and can never, by their very nature, be held responsible for the claims lodged by the Complainant.'*<sup>24</sup>

### **Determination of eligibility**

Considering the above and having reviewed the circumstances of the case in question, it is evident that there was no relationship between Trust Payments and the Complainant

The Arbiter will not go into the merit of whether at the time of payments, the Complainant was aware of the Service Provider's existence or not. Despite indicating that, indirectly,<sup>25</sup> she is in fact a client of the same service provider, no evidence that there was any contract and/or contact between them prior to, or at the time the transactions in question took place.

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

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<sup>21</sup> P. 91

<sup>22</sup> P. 87

<sup>23</sup> P. 88

<sup>24</sup> P. 202

<sup>25</sup> P. 75

Considering the above, it results that the Complainant was not *'a customer who is a consumer'* of Trust Payments, neither that Trust Payments *'has offered to provide a financial service'* to the Complainant, nor that the Complainant *'has sought the provision of a financial service from Trust Payments 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 Borg**  
**Arbiter for Financial Services**