

Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 084/2024

SL ('l-Ilmentatur')

vs

Bank of Valletta p.l.c. (C 2833)

('BOV', 'il-Bank' jew 'il-Provditur tas-Servizz')

Seduta tat-18 t'Ottubru 2024

L-Arbitru,

Ra l-Ilment¹ magħmul kontra l-BOV dwar ir-rifjut li jirrifondi ammont ta' €750 rigward pagament li sar mill-Ilmentatur lil terzi mill-kont tiegħu mal-Bank li wara rrizulta li kien frawdolenti.

Isostni li kien instigat jagħmel dan il-pagament minn Eric Webb, rappreżentant ta' ditta ta' investimenti magħrufa bħala *Arp Trade* u li, apparti dan il-pagament, kien għamel pagament ta' €250 bil-*credit card* tal-BOV li, però, gie rimborżat².

Għamel ukoll tliet pagamenti oħra għat-total ta' €3,806 li saru minn bank ieħor u, għalhekk, mhux parti minn dan l-ilment.³

Il-pagament ilmentat sar favur ta' persuna fiżika **IB** fil-kont tagħha mal-*APS Bank* skont kif kien qallu jagħmel il-frodista.⁴

¹ Formola tal-Ilment minn Pagna (P.) 1 - 6 b'dokumentazzjoni addizzjonali minn P. 7 - 22.

² P. 49

³ P. 7

⁴ P. 10

L-Ilmentatur kien għamel rapport mal-pulizija nhar l-20 ta' Lulju 2023 dwar il-pagamenti frawdolenti, jiġifieri aktar minn xahar wara d-data tal-pagament ilmentat.

Jidher li l-Ilmentatur kien informa lill-Bank dwar il-pagament ilmentat li kien sar fis-6 ta' Ġunju 2023, biss wara li kienu għaddew kważi ġimagħtejn.

L-Ilmentatur qed jitlob lill-Bank jirrifondilu t-telf ta' €750 għax isostni li l-Bank messu waqqaf dan il-pagament frawdolenti għax:

“As a financial institution, it is their duty to keep an eye on the transactions their clients make, and who they make it to, so these situations don't happen. As this transaction was not familiar to my usual pattern, I should have been stopped from ever indulging in making those transactions in the first place, by no one else but the bank, as they have the better ability to inform me of when I am falling a victim to a scam.”

Ikkunsidra wkoll, fl-intier tagħha, ir-Risposta tal-Provditur tas-Servizz⁵

Fejn il-Provditur tas-Servizz spjega u ssottometta li l-Bank kien esegwixxa din it-tranzazzjoni b'rispett sħiħ t'artiklu 40(1) tad-Direttiva Nru. 1 tal-Bank Ċentrali ta' Malta, li hija ibbażata fuq Direttiva tal-UE magħrufa bħal PSD2⁶.

Fost affarijiet oħra, l-BOV sostna li:

“Whereas article 40(1) of Directive 1 of the Central Bank of Malta (which Directive is based on the PSD2) provides that a payment transaction is considered to be authorised only if the payer has given consent to execute the payment transaction. As explained, the Bank received legitimate instructions from credentials and systems associated with the complainant, a state of fact that is not disputed by the complainant himself, and therefore has no obligation to refund the complainant. Whereas the Terms and Conditions of the 24x7 Service which Mr. SL used to approve the payments, provide the following regarding the cancellation of a payment instruction:

⁵ p. 28 - 34, b'annessi fuq p. 35 - 48.

⁶ Direttiva (EU) 2015/2366

'If you ask us to make a payment immediately, we cannot change it or cancel the payment instruction because we start processing it when we receive it.'⁷

The Bank respectfully submits that this clause is in conformity with article 80 of the Payment Services Directive 2, entitled 'Irrevocability of a payment order'.

Whereas in the police report attached with his complaint, Mr. SL stated the following which sheds light on how this scam started:

'he had seen a advertisement of an investment company and he called them on 00447341728120 where he had a conversation with a certain Eric Webb from ARP Trade.'⁸

Respectfully the Bank submits that it is not an investment company and is therefore not authorised to make such advertisements. Moreover, the phone number indicated does not pertain to BOV, and it is not even a Maltese number. Finally, the Bank has no association with ARP Trade. Therefore, the Bank was completely extraneous to conversations Mr. SL had with any third parties.

Whereas Mr. SL had the choice to decide with whom to invest his money and cannot expect the Bank to take responsibility for actions and choices. Moreover, the Bank only provided Mr. SL with the service of processing a payment he duly authorised. BOV never provided him with any advice regarding investing his money and Mr. SL never requested such advice. Therefore, he cannot now expect the Bank to bear any liability for his investment choices which allegedly caused him to be 'deceived into transferring my funds for investment returns that were never delivered.'⁹

Whereas as part of the payment processing service, the Bank sent the money to the recipient indicated by Mr. SL and to the Bank account indicated by him. This Bank is legitimate, and its' accounts are obviously

⁷ DOC. C: 'BOV 24X7 Services – Important Information and Terms and Conditions of Use' page 6.

⁸ Fol. 012 of the complaint.

⁹ Fol. 016 of the complaint.

not in the control of the BOV. Once the funds left BOV, the Bank would not have any further control over them.

The beneficiary bank is one of the factors the Bank takes into consideration in its' transaction monitoring process of every transaction. In Mr. SL's case, the Bank is legitimate (APS Bank) and is duly registered with the Malta Financial Services Authority. Therefore, there were no suspicions for the Bank with respect to the beneficiary bank. Moreover, as part of its' obligations, the Bank also considers other information in the payment instructions where no potential red flags transpired.

Whereas as part of its' transaction monitoring obligations and procedures, the Bank also takes into consideration the amount of the transaction and in this case, it transpired that it is normal for Mr. SL to carry out similar transactions to different recipients, therefore there was nothing suspicious in that respect either.”¹⁰

Seduti

Inżammu żewg sessjonijiet ta' smiġħ. L-ewwel seduta tat-3 ta' Settembru 2024¹¹ kienet għall-provi tal-Ilmentatur u l-kontroezami dwar ix-xhieda tiegħu.

Fix-xhieda tiegħu, l-Ilmentatur ikkonferma li huwa kien ħaseb li l-pagament kien qed isir lill-*Arp Trade*, u lil IB ma kienx jafha u qatt ma ltaqa' magħha jew kellimha.

Sostna wkoll li ma kien irċieva l-ebda r-risposta dwar ir-rapport li għamel lill-pulizija. Ikkonferma wkoll li d-dettalji tal-pagament ilmentat kien daħħalhom hu, kif ukoll li l-BOV qatt ma kien tah xi parir dwar dan is-suppst investiment ta' *Arp Trade*.

Ikkonferma wkoll li l-pagament kien sar fis-6 ta' Ġunju 2023, iżda lill-Bank kien infurmah ***“biex iġibli lura dawn il-flus xi xahar wara.”¹²***

¹⁰ P. 30 - 32

¹¹ P. 49 - 50

¹² P. 50

Fit-tieni seduta li saret fl-14 t'Ottubru 2024,¹³ il-BOV ressaq ix-xhieda ta' Keith Vella, *Head tal-Anti Financial Crime* u *Deputy MLRO* tal-Bank. Huwa qal:

“Ngħid li wara li l-pagament ikun awtentikat biex jitlaq mill-bank, u jmur fir-receiving bank, f’dan il-każ, l-APS, jgħaddi minn sistema fejn is-sistema tiċċekkja l-ammont, jiġu ċċekkjati d-dettalji li jkun hemm fil-pagament; jiġifieri jiġu screened il-beneficiary, il-bank u d-dettalji l-oħra li jkun fihom il-pagament ma’ dawk li jgħidulhom Watchlists.

Il-Watchlists ikunu fis-sistema u d-dettalji jiġu analizzati u matched ma’ dawn il-Watchlists. F’dawn il-Watchlists ikun hemm dawk l-entitajiet li huma adversely known jew inkella marbutin ma’ ċerti reati. Allura, hemmhekk, is-sistema tippromptja qabel ma jitlaq il-pagament fis-sistema u mbagħad dan irid jiġi esegwit mill-analyst tal-BOV.

F’dan il-każ, qabel ma telaq il-pagament mill-BOV, ġew iċċekkjati l-ammont, id-dettalji l-oħra li hemm fil-pagament, il-beneficiary li, f’dan il-każ kienet (IB), u d-dettalji l-oħra inkluż il-bank li huwa l-APS. Ma kien jidher li hemm xejn ħażin fis-sistemi tagħna u l-pagament bl-ebda mod, f’dan il-każ, ma kellu jjeqaf.

Apparti minn hekk, jekk naraw it-transaction history tal-klijent, il-klijent jikkontendi fil-claim tiegħu li m’għamilx dawk it-tip ta’ transactions b’dawk it-tip t’ammonti, meta fil-fatt hemm transactions ħafna aktar għoljin minn dak l-ammont ta’ €750. Dan fil-kuntest li qed ngħidu li dan il-pagament kellu jiġi mwaqqaf.

Ngħid li dawn it-tip ta’ pagamenti huma normali għall-klijent. U anke aktar, ħafna aktar bħala ammonti.”

L-Ilmentatur ma għamel l-ebda kontroezami dwar ix-xhieda ta' Keith Vella.

Fis-sottomissjonijiet finali, l-Ilmentatur ikkonferma li ġieli kien jagħmel pagament għal ammonti akbar u li dan il-pagament kien għamlu minn jeddu. Iżda ħass li l-Bank seta' ***“qabeż għaliya aktar u daħal aktar fid-dettall kontra IB”***.¹⁴

¹³ P.51 - 53

¹⁴ P. 53

Min-naħa tal-BOV, ġie sostnut li huma m'għandhomx il-kapaċità jew obbligu fuq IB biex tirritorna l-flus għal darbha l-APS Bank ma aċċettax ir-*recall* li għamlu. L-investigazzjonijiet huma prerogattiva jew dover tal-pulizija.

Analizi u kunsiderazzjoni

L-Arbitru jrid jiddeċiedi dan il-każ skont kif provdut f'Artiklu 19(3)(b) ta' KAP. 555 b'referenza għal dak li, fil-fehma tiegħu, ikun ġust, ekwu u raġonevoli fiċ-ċirkostanzi partikolari u merti sostantivi tal-każ.

Mix-xhieda jirriżulta ċar li dan il-pagament ilmentat:

- Sar bl-approvazzjoni sħiħa tal-Ilmentatur.
- Ma kien hemm xejn stramb f'dan il-pagament, fil-kuntest ta' kif kien jopera l-kont tal-Ilmentatur, li setgħet tindika li dan kien pagament frawdolenti li l-Bank seta' jwaqqaf.
- Il-BOV mexxa din it-tranzazzjoni b'rispett tar-regolamenti dwar pagamenti skont il-PSD2.
- L-Ilmentatur messu qagħad attent iżjed milli jagħmel pagament lil persuna li ma jafhiex u li qatt ma kien iddiskuta xejn magħha.¹⁵

Deċiżjoni

Għar-raġunijiet hawn spjegati, l-Arbitru qed jiċċad dan l-ilment u jordna li l-partijiet igorru l-ispejjeż rispettivi tagħhom.

Alfred Mifsud

Arbitru għas-Servizzi Finanzjarji

¹⁵ Jidher li din il-persuna setgħet kienet qed topera '*mule*' account għan-nom tal-frodist.

Nota ta' Informazzjoni relatata mad-Deciżjoni tal-Arbitru

Dritt ta' Appell

Id-Deciżjoni tal-Arbitru legalment torbot lill-partijiet, salv id-dritt ta' appell regolat bl-artikolu 27 tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji (Kap. 555) ('l-Att'), magħmul quddiem il-Qorti tal-Appell (Kompetenza Inferjuri) fi żmien għoxrin (20) ġurnata mid-data tan-notifika tad-Deciżjoni jew, fil-każ li ssir talba għal kjarifika jew korrezzjoni tad-Deciżjoni skont l-artikolu 26(4) tal-Att, mid-data tan-notifika ta' dik l-interpretazzjoni jew il-kjarifika jew il-korrezzjoni hekk kif provdut taħt l-artikolu 27(3) tal-Att.

Kull talba għal kjarifika tal-kumpens jew talba għall-korrezzjoni ta' xi żbalji fil-komputazzjoni jew klerikali jew żbalji tipografiċi jew żbalji simili mitluba skont l-artikolu 26(4) tal-Att, għandhom isiru lill-Arbitru, b'notifika lill-parti l-oħra, fi żmien ħmistax (15)-il ġurnata min-notifika tad-Deciżjoni skont l-artikolu msemmi.

Skont il-prattika stabbilita, id-Deciżjoni tal-Arbitru tkun tidher fis-sit elettroniku tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji wara li jiskadi l-perjodu tal-appell. Dettalji personali tal-ilmentatur/i jkunu anonimizzati skont l-artikolu 11(1)(f) tal-Att.