

Before the Arbiter for Financial Services

Case ASF 120/2024

CY

(‘Complainant’)

vs

OKCoin Europe Ltd.

Reg. No. C 88193

(‘OKX’ or ‘Service Provider’)

Sitting 16 January 2025

The Arbiter

Having seen the Complaint¹ made against OKCOIN Europe Ltd. relating to blocking of the Complainant’s account (Digital wallet) following transfer on 29 April 2024 of 1200 USDT to a wallet controlled by MetaMax which resulted to be controlled by fraudster(s). Consequently, Complainant could not manage his remaining digital assets referred to as NEAR and TIA which he claims had a value of €3,000.

Originally the Complaint filed on 05 June 2024 sought as a remedy the restoration of the OKX account to normal accessibility with updated statement of the holdings and their valuation. Additionally, he expected an unspecified compensation for the loss resulting from his inability to trade whilst the account was blocked.

Eventually it resulted that OKX closed the account and realised the digital assets which produced a value of €2,463.64 which was transferred back to Complainant bank account on record at the onboarding stage with IBAN ending 0557.

¹ Pages (p) 1 -7 with attachments p. 8 - 65

Consequently, the Complainant was allowed to elaborate on his complaint and stated²:

- *'The time period of the OKX investigation (29/04/2024 – 04/06/2024) lasted 36 calendar days. It is up to Arbiter to decide whether this time period is justified or not for a single transferring of approximately 1200 USDT from my OKX account to an official app listed IOS App Store.*
- *OKX didn't protect me initially although their initial email had the kind of protecting character. They act AFTER the transaction happened. Even on that time they punished me who was the victim by suspending my account. The period my digital assets were locked was crucial. During the period of the 36 calendar days there were fluctuations in the price of NEAR and TIA cryptocurrencies comparing to EUR. Not being able to manage my assets and take the appropriate actions (selling/buying actions, investing on other cryptocurrency assets) cause financial losses on my portfolio.*
- *It is noted that since 29/04/2024 that OKX suspended my account not only I couldn't manage my digital assets but also, I couldn't get my digital balances. Since then, and after reporting to the Arbiter for Financial Services they only submit a statement showing bank transactions towards and back to their platform, but no information about my digital assets. Below is a breakdown of the possible selling/buying actions could be done during the suspension period (29/04/2024 – 04/06/2024). The data and the candle charts of the NEAR and TIA cryptocurrencies comparing to EUR were extracted from TradingView charting platform (www.tradingview.com). The NEAR/EUR and TIA/EU pairs are chosen for simplicity. NEAR and TIA cryptocurrencies comparing to digital stable coins could be demonstrated as well.*

In my account I had in my possession NEAR and TIA cryptocurrencies of approximately equivalent to €3000. In this breakdown scenario the initial balance on 29/04/2024 for NEAR and TIA

² P. 112 - 119

cryptocurrencies is €1500 each. Besides these balances could be altered to my favour in any way. Selling/buying actions do not include any fees.'

Consequently, the remedy was changed to compensation of €5,011 being the potential trading gain Complainant could have made in the period between 29 April to 04 June basing on a starting valuation of €3,000 and a potential of €5,011 trading gain (167% gain equivalent to about 1670% p.a.) on such investment as explained on folios 115 and 116.

Furthermore, he also expects to be paid an unspecified amount, based on the law, on the legislation of Malta and the EU Directives, for the offence of having his account blocked, and for OKX deciding unilaterally to close his account and terminate the relationship without prior notice and to convert his digital assets into fiat currency and sending the amount in Euro to his Revolut account.³

Service Provider's reply

In their first reply,⁴ the Service Provider stated:

'The Respondent refutes all the reasons given in the Complaint by the Claimant as unsubstantiated at law and in fact in particular but not only:

- 1. The Claimant's account was frozen pending an investigation into suspected fraud pursuant to Respondent's discretion under its Terms of Service, including Section 4.5 (Account Suspension and Investigation) which provides in relevant part: Claimant agrees Respondent may, in its "sole and absolute discretion," "temporarily or permanently suspend" access to Respondent's services based on suspected "violation of [Respondent's] Terms of Service," "violation of any applicable laws or regulations," or "suspicious and/or fraudulent activities on the account."*
- 2. Based on that investigation, and confirmed transactions between Claimant's account and withdrawal addresses tied to known or suspected fraudulent activity, Claimant's account was terminated for violating the*

³ P. 276

⁴ P. 71 with attachments p 72 - 104

Respondent's Terms of Service, and all funds in his account were returned to the Claimant;

- 3. The Claimant has been refunded in toto all funds that he had with the Respondent Company, totalling €2,463.64;*

Under the circumstances, Respondent considers the full refund to Claimant an appropriate resolution of this matter.

This is what the Respondent has to submit at this stage to this honourable Arbiter reserving the right to submit additional pleas and information at a later stage.'

In their further reply to the elaborated Complaint of the Complainant, OKX submitted:

- 1. 'It needs to be noted through the communication with the Complainant, the Respondent Company, amongst other things, (a) requested clarification on the transactions made on "other platforms to gain returns or commissions," which queries were raised by the Respondent Company's fraud risk operations process; and (b) the Complainant was repeatedly reminded with the following "Do not easily transfer funds to untrustworthy investment platforms or online part-time job platforms ... **Please be vigilant against online scams.** (added emphasis)" (Vide Doc A of the Note of Reply by the Respondent dated 01.07.2024).*
- 2. Irrespective of the warnings listed in the Terms of Service and those made through correspondence, the Complainant confirmed that the transactions "on other investment or part-time job platform" were done by him and also acknowledged the warnings referenced in the correspondence made by OKX's fraud risk operations team. (Vide originally submitted complaint document page numbered 053, email correspondence sent by the Complainant dated 29/04/2024).*
- 3. The Respondent Company additionally reiterates that it is not responsible for actions undertaken by the users of its platform, and the Terms of Service clearly stipulate that the user shall remain responsible for the transactions they undertake.*

Article 3.3 of the Terms of Service provides that “We take fraud and scams very seriously and work diligently to prevent them. However, **We cannot be held responsible for any losses incurred by You as a result of engaging with fraudulent or scam companies outside of Our platform.** It is Your responsibility to conduct Your own due diligence and exercise caution when dealing with third-party entities. (added emphasis) (Vide Doc D. page 14)

4. Moreover, the Terms of Service continue to state that the Respondent Company:

cannot guarantee the recovery of any lost Assets, **will not be liable for the value of any lost Assets**, nor can we be held liable for any chargebacks resulting from such losses. By using Our platform, **You acknowledge and agree to assume all risks associated with Your cryptocurrency purchases and transfers.** (added emphasis) (Vide Doc D, page 14)

The Complainant had no concerns about the legitimacy of the MetaMax app until prompted by OKX’s team. It could be concluded that the Complainant would not have recognised that the application he used was indeed a scam had the Respondent Company not triggered its initial correspondence. It is also of importance to highlight that the Complainant has indeed ex admises accepted that MetaMax app is fraudulent:

Regarding the “MetaMax” application to which the withdrawal transaction happened of approximately 1200 USDT from my OKX account, although it was an official app listed in IOS App Store for the last 4 years and has an official website, **finally it turned out to be scammed.** (added emphasis). (Vide Note of further submissions – Complainant 08/08/2024)

This further confirms the bona fide of the Respondent Company in all its actions, in particular when highlighting this matter to the Complainant and the decision it took to terminate his account when he remained resolute in interacting with a fraudulent app. This shows that the

Respondent Company actively cares for the financial interests of its users to the level of a bonus paterfamilias.

- 5. It is impractical for the Complainant to assume that the Respondent Company is aware of the transactions to be done by the user, as OKX can only monitor transactions after they have been affected. At the time of onboarding the Complainant, the applicable Terms of Service, clearly provided that it remains the Complainant's responsibility that*

*By opening an Account, a **User accepts the risk of trading in Digital Assets**. In entering into any Trade, a **User represents that they have been, are, and will be solely responsible for making their own independent appraisal and investigation into the risks of each Trade and the underlying Digital Assets**. (added emphasis) (Vide Doc E, page 28 – 29)*

- 6. The Respondent Company also notes that even if OKX's actions resulted in the Complainant's harm, the Terms of Service duly limit the liability of OKX. According to article 15.5 of the EEA Terms of Service:*

*In no event will [OKX] ... be liable to you for: (a) **any amount greater than the value of the supported Digital Assets on deposit in Your account at the time the event giving rise to your claim first arose.*** (added emphasis) (Vide Doc D, page 31)

In light of this provision, the Respondent Company would be limited to the total digital asset on deposit in the user's profile (once converted amounted to EUR 2,463.64) and not on potential gains. As per the records available all the digital assets were released and confirmed to have been received by the Complainant in Annex 1 of the documents submitted by the Complainant himself, thus the Respondent Company would have no further liability towards the Complainant.

- 7. As a result of internal investigation due to suspected fraud, the Respondent Company deemed the user to be in violation of the Terms of Service, among other things, as the Complainant admitted that he used the application. In line with the Terms of Service, OKX undertook the*

necessary action to terminate the Complainant's profile, and all funds returned to the Complainant once the investigation was concluded.

- 8. The Respondent Company notes that the Terms of Service have been approved and published since the services and products provided by the Respondent Company have been made available for public consumption. Due to organisational and logistical purposes the Complainant was in time migrated from a company outside the EU to Okcoin Europe Limited. The user was in agreement with this migration.*
- 9. Furthermore, the Respondent Company notes that although the Terms of Service may be updated from time to time the termination clause and the conditions that result in a user's suspension and/or termination of their profile did not change and have remained consistent since the Complainant established his profile in December 2023.*
- 10. Having said that, the provisions whether article 7.8 non-EEA Terms of Service or article 4.6 of the EEA Terms of Service, in essence reflect the same conditions that the Respondent Company has the **"right to terminate the [user profile] at any time and for any reason, and at our sole discretion."** (Vide Doc D, page 18)*
- 11. As evidenced through the previously presented correspondence, the Respondent Company would take action once replies are received from the Complainant and that following a review of the information received "reply back to [the Complainant] within 2-3 business days." The Respondent Company replied to the Complainant when his queries arose.*
- 12. Separately, the duration of the investigation, given it is an internal matter, does not require a specific turnaround timeframe, yet the Respondent Company exercised due diligence to conclude the investigation as thoroughly and efficiently as possible. The duration of internal investigations cannot be controlled as all matters would need to be assessed on a case by case basis.*
- 13. The conversion of digital assets are not carried out manually but completed through an automatic system. The system automatically converts at the best possible conversion rates, and this was the process*

utilised when dealing with the Complainant's portfolio. The Respondent Company, respectfully objects to the Complainant's position that the conversion rate was performed manually.

- 14. Separately, the Complainant had a portion of his digital assets held on-chain, therefore once the order "to stake" had been applied, "[the Complainant] may not be able to cancel, revoke, or edit the order" placed, until such time as that staked portion had been materialised in terms of pre-agreed conditions (Vide Doc F, page 6). Thus, the Complainant's statement is not correct that as a result of his account being frozen he could not manage his assets and take the appropriate action which allegedly caused financial loss. Consequentially any claim by the Complainant that there were market fluctuations in his favour on the digital assets held on-chain is superfluous and irrelevant to the matter.*

The Respondent Company further reiterates point 3 of its Note of Reply dated 1 July 2024, the Complainant was already compensated EUR 2,463.64 on 4 June 2024, which was the full account balance at the time his account was investigated and terminated pursuant to the Respondent Company's Terms of Service for engaging in transactions with a fraudulent website. The Complainant's request for additional compensation now based on speculative market fluctuation not only has no factual basis but is foreclosed by the Terms of Service, which would limit the Complainant's recovery in any event to the value of the assets held in his account. Because the Respondent Company has already reimbursed the Complainant in full, this matter is moot and should be dismissed.

In light of the further submissions by the Complainant to this original claim and the reply by the Respondent Company, the Respondent Company humbly requests the Arbiter, in addition to its original reply, to dismiss this claim on the basis of it being vexatious and frivolous, which remains in the Arbiter's prerogative in terms of the applicable law.⁵

⁵ P. 126 - 129

Hearing of 07 October 2024

OKX were ordered to submit a full explanation of how the amount of funds remitted to Complainant upon closure of the account was arrived at. In their reply they submitted that it resulted that Complainant at the time of blocking of the account had:

NEAR tokens 246.62 which were sold for €1,805.10 (average unit price 7.32)

TIA tokens 75.41 which were sold for € 658.55 (average unit price 8.74)

jointly amounting to the €2,463.65 transferred back to Complainant.

Taking the unit prices as quoted by the Complainant on 29 April 2024 when the account was blocked, the value at the time was:

NEAR 246.62 tokens at €6.633 = €1,643.23

TIA 75.41 tokens at €9.3796 = € 707.32

Total €2,350.55

This differs materially from the claimed starting value on which the Complainant based his expectations, i.e., € 1,500 for each crypto asset total €3,000.

At the hearing, the Complainant explained that the suspension and closure of his account was unjustified as it was triggered by a fraud payment he made to MetaMax app (about which the Service Provider tried to warn him before effecting the payment) but, in that case, he was the victim who deserved help and co-operation as

‘they say exactly in their articles ... but in this case they did not give me the least information; they froze my account and, finally, they terminated the account.’⁶

In their subsequent explanation, the Service Provider explained that the Complainant originally funded his account through three euro transfers amounting to €2,650. As explained above, the value of the portfolio at the time the account was blocked was €2,350.55.

⁶ P. 276

Final Submissions

In their final submissions, the parties largely restated the arguments made in their submissions and in the evidence at the hearings, with the Complainant making it clear that, whilst he has not included in his Complaint any compensation for the fraud suffered in his payment to MetaMax, he still contends that OKX had failed their responsibility to block him from making this payment.

Analysis and consideration

The Arbiter finds the behaviour of the Service Provider as commendable. At a time when consumers are increasingly exposed to creative schemes of professional fraudsters, the efforts by OKX to warn Complainant about the risk of making the 1200 USDT transfer to MetaMax is positive.

The Complainant disregarded their warnings at his own risk, and it is unfair that now he is trying to create an alternative scenario through frivolous claims on OKX. OKX acted within their rights in suspending the account and eventually closing it, given Complainant's disregard of their advice which in their mind raised a suspicion of collusion (which suspicion was not proven) with the fraudster.

The Arbiter sees no reason to sanction the Service Provider for taking 36 days from blocking of the account to final closure. Closing an account is an extreme measure which requires careful deliberation. Prompt blocking of the account made sure Complainant does not incur further fraud losses.

The Arbiter finds the hypothesis that the blocking of the account for 36 days caused him forfeiture of trading gains of over €5,000 as frivolous. Even if the digital assets were available for free trading (something which the Service Provider denies as assets were staked out)⁷, choosing perfectly timed high and lows with the benefit of hindsight is a poor basis for claiming compensation. Hindsight vision is 20/20!

The only area where the Arbiter finds fault with the conduct of the Service Provider is in the way the account was closed and the relationship terminated.

⁷ P. 129 and annexed Doc F, page 6, point 14

Complainant was informed of the closure following conversion of his digital assets to fiat currency (Euro) only after the funds were already in his Revolut account.

Complainant argues with reason that he should have been informed beforehand of this decision and that the Crypto assets should have been transferred to a wallet he would have indicated. The Service Provider seems to argue that once the account was closed for conduct reasons, they have an obligation to transfer the proceeds of the assets of the account in the same form (euro) and same account from where they originated. Supporting this contention is that the Service Provider, in their notification of 29 April 2024,⁸ had asked Complainant to submit evidence that the wallet address to where he had transferred the USDT 1200 fraud payment belonged to him. It does not appear that this evidence was provided.

In any case, there is no evidence that the position of the Complainant has been materially jeopardised due to transfer of proceeds in Euro rather than transfer of the digital assets, and the Arbiter can only consider nominal compensation for any inconvenience this may have caused the Complainant.

Decision

For reasons above explained, the Arbiter is awarding damages⁹ for inconvenience caused to the Complainant¹⁰ for Euro 250 (being 10% of net proceeds transferred which should amply cover trading fees to reconvert the proceeds to digital assets) and is dismissing the rest of the Complaint which he considers rather frivolous.

Each party is to carry its own costs of this procedure.

Alfred Mifsud Arbiter for Financial Services

⁸ P. 46

⁹ In terms of Article 26(3)(c)(iv) of CAP 555 - Arbiter for Financial Services Act.

¹⁰ Late notification of the decision to close the account and conversion of his digital assets and transfer of the resulting euro to his Revolut account, without giving opportunity to Complainant to give evidence of ownership of a digital wallet where to transfer the digital assets without conversion.

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.