

## **Before the Arbiter for Financial Services**

**Case ASF 128/2024**

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**RS**

**and**

**RS on behalf of VE**

**Reg. No. C XXXXX**

**(the 'Complainants')**

**vs**

**Papaya Ltd**

**Reg. No. C 55146**

**('Papaya' or 'Service Provider')**

### **Sitting of 14 November 2024**

#### **The Arbiter,**

Having considered both Complaints filed on 13 June 2024 hereby decides that in terms of Article 30 of CAP. 555 of the Laws of Malta (Arbiter for Financial Services Act), he is treating both complaints together as they are similar in nature, presented against a common Service Provider by Complainants in the same beneficial ownership.

#### **The Complaint**

Where, in summary, the Complainants claimed that their accounts with the Services Provider jointly holding about €72,000 were effectively blocked as Papaya seem to have lost the ability to offer wire transfer services and they were having problems even accessing their funds by using the Papaya card.

The personal Complainant says this has caused him considerable stress as he needed the money to honour a preliminary agreement where he committed himself to purchase a garage and had to use his other savings and even borrow from family members to execute the contract. He claims to have a blue card and that the stress worsened his medical conditions and nervous system.

The company Complainant states that they have not been able to settle their bills. They both maintain that Papaya only informs them that they were working to find a solution but till the date of the complaint no solution was found or offered.

They both requested Papaya to find a means to make their funds available for practical withdrawal and they demand compensation for loss of income and compensation for moral damages caused by the stress.

### **Reply of the Service Provider**

In their common reply<sup>1</sup> to both complaints, the Service Provider stated:

*“Contrary to the statement of (‘Client 1’), the account of Client 1 is active and funds on the account are available. Even though SEPA payments are temporarily unavailable to customers of Papaya Ltd. (‘Papaya’), Client 1 can freely access the funds on the account via his payment card BlackCat Card and make transactions (top up his personal Revolut account using a card, cash withdrawals in ATMs and regular transactions with the card). According to the financial records of Papaya, the Client 1 has numerous times performed card transactions with the funds held on his account.*

*Contrary to the statement of (‘Client 2’), the Client 2 has been able to access its funds and, according to the financial records of Papaya, the Client 2 at least three times (on May 27, July 16 and July 22 2024) made internal transfers from the account of Client 2 to the account of Client 1. Considering the temporary impediments in operations of Papaya SEPA payments, Papaya has refunded to the Client 2 account maintenance fees for the period since February 2024 to June 2024.*

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<sup>1</sup> Page. p. 23 (personal)

*Papaya admits that due to objective reasons stated above, the functionality of the Clients' accounts has been limited. However, considering Papaya's clarifications regarding the actual situation with funds availability and functionality of the accounts, we believe that Papaya has applied all possible measures to mitigate the negative effects that the Clients might have had.*

*Taking into account the above stated, we hereby believe that the Clients' claims should be reconsidered and all the involved parties could come to mutually acceptable resolution of the situation in the way of negotiations."*

### **The hearings**

The first hearing was held on 02 September 2024 for the proofs of the Complainant who stated:

***"I say that I used Papaya on the suggestion of my accountant because, usually, I use Revolut.***

***He said the account was getting a bit too much and that I should consider another service provider. And I engaged with Papaya. I was waiting for an investment that went south and, after ten years, I received all the money back and I shifted everything to Papaya with the intention of buying a garage.***

***Up till that moment, everything seemed alright and that it would work as normal. In fact, I got committed into buying this garage. I did the Promise of Sale and during that process I noticed that somehow transfers were not allowed anymore due to a problem they had with SEPA.***

***Every time I called, a certain Mr Callum used to answer. He was very nice. He always used to say that they were working on it and they would be ready the next week. And this kept on repeating for several months.***

***I was getting frustrated and I started panicking because I had this commitment. To cut a long story short, I had to turn to all my personal reserves and to my elderly parents who are my only relatives. They had a project of their own, installing a service lift in their home, but my father decided to help me out because obviously I would have lost the deposit money.***

***I kept on insisting with the banks. At times, even the credit card would not work, always saying 'Technical issues'.***

***They kept promising, 'Next week, next week, next week', and I felt very offended. Give me a proper date, give me a real status position.***

***I was worried that the organisation was going to falter. I borrowed this money, I did the contract. And now the only access I have to Papaya is withdrawing the amounts that I would normally withdraw from the bank using the credit card because finally it started working again.***

***This caused a lot and a lot of distress. The fact is that I went to this organisation and could not make use of it because whatever they have they would always have a problem with it. I cannot understand how an organisation such as this does not have SEPA access.***

***This caused a lot of trouble. I wanted to give my parents the money at once not bit by bit because otherwise they could not buy the lift. I am still giving their money back in instalments which is not fair.***

***This is the situation. I am complaining that the bank did not offer some sort of compensation, a proper apology or access to my whole funds; even to close my account, nothing like that. I felt mistreated, that is the word I am looking for.***

***I do not want anything special. I am in the process of paying what is due to my parents and give them something extra as a thank you. And I believe that this something extra should not come from my side.***

***The organisation should be honest about their business. If they have a problem that they cannot foresee fixing it, at least, they should be honest about it saying, 'Listen, we cannot provide this service anymore.' And stop recruiting people having accounts with them.***

***I say that these problems started shortly after I got committed with the organisation. This started several months ago, it's over six months now. The situation has not changed, just having access with the card.***

***Asked by the Arbiter how much money can I transfer in a day, I say that the problem is that sometimes it stopped saying that they have a technical issue so I stopped trying. I am just using it, spending as much money from the account as possible, whatever I do and I stopped trying because going to the ATM, trying to transfer and it stops.***

***So, I wanted to clear my mind that I just use it simply for expenses and when it stops, it stops again. I just call and hope that it will be released.***

***Asked how much money I currently have at Papaya, I say currently I do not know. It should be under €30,000, I believe, because I have been spending a lot.***

***Asked by the Arbiter whether it is €30,000 on both accounts, I say I think it is a bit more on both accounts. Sincerely, I did not even bother to check because it stresses me out even trying. So, when it stops, it stops.***

***I can check now. My personal account has €24,000 right now. The other account, I do not know, maybe €10,000. I confirm that I am not making any deposits in these accounts.***

***Something else that I did not mention is that although stress is not good for anyone, in my case it is particular because I suffer from a medical condition. In fact, I have a Blue Card that rendered me with certain disability. This caused considerable harm in my situation.”<sup>2</sup>***

No cross-examination was held as the Arbiter needed to consider whether to apply contumacy rules due to the late reply of Papaya. By decree of 05 September 2024, the Arbiter decided not to apply contumacy rules which allowed the Service Provider to cross-examine the Complainants on their evidence.

The second hearing was held on 15 October 2024, but the Service Provider did not conduct a cross-examination and provided their case by their representative, Ing. Marianna Luzanova stating:

***“I am the Chief Compliance Officer starting from 1 August 2024. And now I am the accessor of all these complaints and requests sent from our clients.***

***I say that we are trying to suggest to the clients the decisions for their funds that they have in our system and I undertake the investigation process.***

***And according to my investigation, and with the help of my colleagues, and the state’s authorities of Malta, we are creating some solutions for the clients which are proper in these situations which will correspond with the win-win strategy.***

***Asked what is the situation today in this case, I say that the situation is the same although it is developing in some way. We have reported; we had***

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<sup>2</sup> P. 25 -27 (personal)

***progress with our service provider from the end of February 2024, which we did not force. We could not influence it. We were connected to the National Bank of Lithuania. And after that, we are trying to connect with other providers. At the moment we have three. The process is really tough and very difficult in terms of compliance as well as technical compliance.***

***We have been all summer and through October trying to get in another partner in this sphere for SEPA transfers and that is why in these six months we have tried to create individual customer care and to provide to every client the possibility on how to manage his funds, no matter whether those funds are of the company or the individual.***

***So, in the Complainant's case, we have upgraded the limits because the limits were lower for the retail clients, and now the Complainant has a limit of €10,000 per day for the card payments and a limit of €10,000 a month for ATM withdrawals in cash.***

***We saw that the Complainant has made effective payments through payment cards and we saw that he also tried to withdraw money from the ATM though the limits were not corresponding to what was in his accounts.***

***The amounts of money which are in the Complainant's account and the money of his company are not very big to manage them in terms of these limits so should there be other requirements from the Complainant, we can make suggestions and we can negotiate with our Technical Department so that we could, for example, increase the limits for him to withdraw all the money. But, actually, as I see it, he could withdraw it in two days at the moment as he could make the withdrawal via transfer of his account at Papaya to his account at Revolut, for example, or to his account in any other financial institution.***

***We are ready to solve the problem and we are always ready to solve the problems in terms of the possibilities that Papaya has in the meantime.***

***I say that the problems regarding offering normal SEPA transfers have not yet been solved. We are trying to solve them but it does not depend on us only but also on other third parties.***

***So, in the meantime, in order to offer some sort of solution, card based transactions which were previously subject to rather small limits, we have offered limits which are much higher, €10,000 per day for transfers and €10,000 per month for ATM withdrawals and, based on these new limits, in***

***this case, the Complainant could make card based transactions to transfer money out of his account to other banks in order to regain access to their funds.***

***I would also like to add that these are not the new limits. The Complainant had these limits all the time so he could withdraw his money effectively during this time any day he wanted. Actually, if he had any technical issues, our Support Team could help him but the question always was that he wanted the SEPA payments and is not objectively the question that we could manage ourselves even if we would like to.***

***I say that the Complainant had these limits surely from the beginning of June and even before that because he was not a client with high risk but a client with mitigated and low risk so for him those limits were from the very beginning and we started to provide our clients with card payments and providing them with the possibility of how to withdraw that money.***

***I am sure that it was not later than beginning of June but am more confident that this was already in April. I have to see the transactions of the Complainant.”<sup>3</sup>***

On cross-examination:

***“The Complainant does not remember the month but says it went on for several weeks where he kept calling Papaya and the only person answering the phone said, ‘OK, we are working on it. We have this problem,’ and he could not give the Complainant any answer.***

***The Complainant says that this went on for several weeks, going daily to withdraw money and then he gave up with regard to whatever the limit mentioned here the point being that initially the Complainant wanted the money to transfer as a bulk because he had a promise of a sale and that could not happen and it got him into a narrow situation where he had to borrow money from family members causing a lot of stress and using all his reserves just because SEPA is not available.***

***The Complainant believes what I say, that he has had these limits that I indicated.***

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<sup>3</sup> P. 32 -34 (personal)

***The Complainant confirms that currently he has some €15,600 in his account and some €2,000 in the company's account as he kept the commitment of withdrawing.”<sup>4</sup>***

Following the evidence, the Arbiter asked Complainants what remedy they are seeking now that they managed to withdraw most of the blocked funds. The Complainants stated that they certainly expect compensation for €700 which they forked out to show their appreciation to relatives for bridging them over with funds to execute the property contract when their funds were blocked at Papaya. As to moral damages sought, they leave the quantum in the hands of the Arbiter.

In reply, Ing. Luzanova said:

***“I would like to comment first that Papaya is not a bank and has never represented itself as a bank. It is an electronic money institution which has different regulations from a bank.***

***The second thing is that Papaya's Support Team responded immediately to the requirements and to the requests from their clients, so Papaya tried to fix the problem in any possible way that it could be fixed.***

***And from seeing the Complainant's withdrawals from the account, he has used the card very actively. Actually, I see daily withdrawals from the card and I do not see the reason why he could not withdraw this money or, for example, transfer it because at the beginning, the amount in his account was higher and even if it were €70,000, then he could have withdrawn it within one week by transferring it to other payments accounts. These are his current limits from the beginning of June and I will check if these limits were actually effective with his account. This is not a dispute; these are just facts.***

***The third thing is that we have already withdrawn all the fees that were connected to the unavailability of the SEPA payments so this means that we are trying our best to move forward with our clients. We were saying all the time that the Complainant could withdraw money with the means that were available at the moment or he could close the account and use another company or bank. It is the client's responsibility that he uses the other account***

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<sup>4</sup> P. 34



***that he has for the payment services because we are not responsible for the terms and conditions which have changed at our provider, at SEPA.***

***I say that we are the party that have suffered damages from these third-party activities but we do not want to pass on those damages to our clients so that is why from our side we have really tried to provide all kinds of proper services that we had at the moment.***

***We can see the Complainant's formal request together with his cheques or invoices with some explanation and I can put this on the table of our director so that he can assess the real damage that the Complainant has suffered to which we can compensate.***<sup>5</sup>

### **Final submissions**

Both parties restated their case in the final submissions. The Complainants added that they have not been refunded account charges on the Company account and Papaya stating that:

#### **1. "SEPA Service and Account Fees:**

*We understand your concerns regarding SEPA service unavailability and associated account fees. However, please note that a refund of €125.00 was already issued to cover account maintenance fees from February to June. Additionally, we have considered your continued and active use of other account services, particularly through card transactions. In light of these factors, no further refunds of account fees are warranted.*

#### **2. Personal and Reputational Impact:**

*Your claim also includes requests for compensation for personal financial strain and reputational impact due to service interruptions. While we recognize the inconvenience caused, our records indicate you maintained full access to other services, including transfers and consistent card usage. Consequently, these personal expenses, including your decision to provide a gift for family assistance, are considered individual financial choices and do not contribute grounds for further compensation from Papaya Ltd.*<sup>6</sup>

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<sup>5</sup> P. 35 - 36

<sup>6</sup> P. 39

## **Consideration and Analysis**

**The Arbiter, having heard the parties and seen all the documents and submissions made,**

### **Considers:**

There is no doubt that the Service Provider has caused considerable stress and inconvenience, if not financial loss, through their inability to offer normal payments services to the Complainants. The alternatives offered, which were not always available, were inconvenient and unorthodox and fell well short of the level of service which Complainants had a right to expect from a licensed payment service provider.

On the other hand, the Complainants did not present any documentary evidence to support their claim for actual expenses suffered (€700) due to Papaya's failure to provide regular payments services.

As the Arbiter is aware that this is not a failure only related to the Complainants but is a failure of Papaya affecting all their customers, the Arbiter, in terms of CAP. 555 - Article 26(3)(c)(i) – (iii), is hereby ordering the Service Provider to communicate their failings to MFSA, their regulator, and seek their guidance and directions accordingly. For this purpose, a copy of this decision is being sent to MFSA as provided for under article 27A(1) of CAP. 555.

## **Decision**

**For reasons explained above in the absence of proofs about the actual costs incurred, the Arbiter is only awarding compensation for moral damages<sup>7</sup> suffered by Complainants, resulting from the conduct failures of the Service Provider. The damages are quantified at €1,000 to be shared between the personal Complainant and the company Complainant in the ratio of 84:16 being the ratio of the amount of blocked funds<sup>8</sup> at the time of filing of the complaint.**

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<sup>7</sup> On the basis of arguments already covered in Arbiter's decision re case 071/2021

<sup>8</sup> Approximately €60,000:€12,000

**The Arbiter is also ordering the Service Provider to refund all account service fees charged to both Complainants from February 2024 to date of this decision.**

**With charges to be borne by the Service Provider.**

**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.

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.

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*Costs of the proceedings to be borne by the Service Provider*

The costs of the proceedings are not limited to the payment of any applicable cost of filing the Complaint with the Office of the Arbiter for Financial Services (presently Eur25) but may also include any reasonable lawful professional and legal fees paid by the Complainant limited to the acts filed during the proceedings of the case. Such professional fees should not include any extra-judicial fees and charges.

Whilst there exists no tariff about proceedings before the Arbiter nor such aspect is provided for under Chapter 555 of the Laws of Malta, it is being underscored the fact that the Office of the Arbiter for Financial Services is an Alternative Dispute Resolution Entity (ADR Entity). Therefore, the costs of the proceedings before the Arbiter cannot be higher than those prevailing for Court proceedings in Malta but are expected to be lower.

The Arbiter is inspired in this respect by the provisions of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes ('the ADR Directive') which clearly state that proceedings before an ADR Entity should *inter alia* be inexpensive so as to encourage consumers to seek a remedy for the solution of their disputes in a manner they can afford.

The ADR Directive insists on the low-cost nature of these proceedings. For instance, it provides that customers should have access to '*simple, efficient, fast and low-cost ways of resolving domestic and cross-border disputes*'<sup>9</sup> and that '*Alternative Dispute Resolution (ADR) offers a simple, fast and low-cost out-of-court solution to disputes between consumers and traders.*'<sup>10</sup>

The Arbiter accordingly directs the parties to take cognisance of the said principles listed in the ADR Directive. In reaching an agreement on the costs of the proceedings payable, the parties should accordingly be guided by the principle of a '*low-cost out-of-court solution to disputes between consumers and traders*'.<sup>11</sup> The benchmarks on fees as legally stipulated for civil procedures in Malta may also provide certain guidance.<sup>12</sup>

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<sup>9</sup> Preamble (4) of the ADR Directive (EU/2013/11)

<sup>10</sup> Preamble (5) of the ADR Directive (EU/2013/11)

<sup>11</sup> *Ibid.*

<sup>12</sup> Tariff E, Cap. 12, Code of Organisation and Civil Procedure