

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

**Case ASF 133/2024**

**CA**

**(the 'Complainant')**

**Vs**

**Finance Incorporated Limited**

**(C 55838)**

**('FIL' or 'Service Provider')**

### **Sitting of 13 September 2024**

**The Arbiter,**

**Having considered in its entirety, the Complaint (filed on 27 June 2024) including the attachments filed by the Complainant,<sup>1</sup>**

### **The Complaint**

Where, in summary, the Complainant claimed to have made 31 payments in small transactions via bank transfer to Orange Entertainment BV who seem to have an account with the Service Provider. These transactions were made between 14 February and 17 April 2024, and in total amounted to Euro 15,504. From the IBAN number of the beneficiary he realised that payments were made into an account which the beneficiary had with the Service Provider. His bank tried to make recalls of these payments but these were unsuccessful.

Complainant stated that:

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<sup>1</sup>Pages (p). 1 - 6 and attachments p. 7 - 12

***“I am unhappy Finance Incorp. made payments to Orange Entertainment BV, a gambling provider. I feel these payments shouldn’t have been made as gambling is illegal in Germany, I like my payments returned.”<sup>2</sup>***

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

**FIL filed a reply on 24 July 2024<sup>3</sup>** whereby, primarily, the Service Provider declared that it is not the legitimate respondent vis-à-vis the Complainant and his actions. It declared that the Complainant is not an eligible customer of FIL given that:

- (1) Complainant is not a customer of Finance Incorporated Limited, neither currently nor has been in the past and is not a consumer of services offered by FIL.
- (2) FIL never offered to provide the Complainant with a financial service,
- (3) Complainant never sought the provision of a financial service from FIL.<sup>4</sup>

FIL explained that the Complainant was not their customer but a customer of their customer, Proton Bulls Ltd., a subsidiary of Orange Entertainment B.V. which is used as the payment agent to collect funds emitted by online gambling players which are then transferred by Orange Entertainment B.V. for use by online gambling players at one of its online casinos.

Proton Bulls Limited has held an account with FIL since 02 November 2021.

Orange Entertainment BV has held an account with FIL since 20 September 2021.

*“Commenching from 14 February 2023 until 17 April 2023, CA remitted, to an account held with Finance Incorporated Limited, by way of 31 SEPA transfers, funds having a total value of EUR15,504.00 with the reference ‘Orange Entertainment B.V.’ Such funds were received between 15 February 2023 and 18 April 2023.*

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<sup>2</sup> P. 3

<sup>3</sup> P. 19 - 23 and attachments p. 24 - 31

<sup>4</sup> P. 19 - 20

*Orange Entertainment B.V. is an online gambling operator being a limited liability company organised under the laws of Curacao and registered in the Commercial Register of Curacao with company registration number 18249. It operates through a sub-licence granted by C.I.L. Curacao Interactive Licencing N.V.*

*C.I.L. Curacao Interactive Licencing N.V. is a limited liability company organised under the laws of Curacao and registered in the Commercial Register of Curacao with company registration number 87909 and holds a Master Gaming Licence with number #5536/JAZ issued by the Minister of Justice in Curacao.*

*The Master Licence also states that the website/domain/URL that is approved under the sub-licence granted to Orange Entertainment B.V. is Lemon.casino and Orange.casino which are currently valid till 31 January 2025.”<sup>5</sup>*

In their reply, FIL also made a detailed defence on the merits of the Complaint explaining why, in their opinion, they have no case to answer for the return of the funds as made in the recall request by Complainants Bank in Germany (N26).

### **The hearing**

At the hearing of 09 September 2024, the Arbiter explained that in view of the preliminary plea raised by the Service Provider claiming that the Arbiter has no competence to hear this Complaint as the Complainant is not an eligible customer as defined in Chapter 555 of the Laws of Malta, he is obliged to treat this preliminary plea before hearing the merits of the case.

#### ***‘Solemn Declaration of CA:***

*Asked by the Arbiter when I knew that Finance Incorporated Limited had anything to do with the payments I am complaining of, whether I knew when I was making the payments or after, I say that I made an account on my name for my wife so that she could be allowed to play.*

*After a few weeks I was shocked about the amount in the account and checked the IBAN online and found the company.*

*I confirm that I only found that Finance Incorporated were involved in the processing of these payments after the payments had been made.*

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<sup>5</sup> P. 19

*I confirm that I never had any contact before with Finance Incorporated.*

*I confirm that the payments were made from my bank. I made recall requests to my bank, but they did not reply. I did not make a claim against my bank in a court or in an arbitration; I only made recall requests and they did not reply.*

*I come from Germany and the bank is in Germany.*

*The Arbiter is going to give a decision regarding whether he has competence to hear this case.<sup>6</sup>*

### **Decision re Preliminary Plea**

**Having heard the parties and seen all the documents and submissions made, the Arbiter proceeds to decide on the preliminary pleas raised by the Service Provider that Complainant is not an eligible customer in terms of Chapter 555 and, consequently, the Arbiter has no competence to adjudge this Complaint.**

The transfers complained of, showing as beneficiaries Orange Entertainment B.V., were made directly into their account with the Service Provider through online SEPA transfers through the Complainant's German bank. Consequently, it is evident that the Complainant was a customer of a customer of the Service Provider and not a customer of the Service Provider.

In fact, he emphatically confirmed that he only became aware of the beneficiaries of his transfers being in account with FIL only after he had already affected all the payments complained of.

**The Complainant accordingly failed to provide any evidence to challenge the plea raised by the Service Provider that he is not even a "customer" much less an "eligible customer".**

### **The Arbiter's competence**

Article 22(2) of Chapter 555 of the Laws of Malta ('the Act') stipulates that:

*"Upon receipt of a complaint, the Arbiter shall determine whether the complaint falls within his competence."*

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<sup>6</sup> P. 33

Moreover, in virtue of Article 19(1) of the Act, 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 customer**.”<sup>7</sup>*

Thus, the Arbiter has to primarily decide whether the Complainant is in fact an **eligible customer** in terms of the Act.

### **Eligible customer**

Article 2 of the Act defines an *“eligible customer”* as follows:

*“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.”*

The Complainant makes it clear in his Complaint that he a customer of a customer of FIL and not of FIL itself. FIL simply executed the payment instructions of the payment orders made by the Complainant’s German Bank and had no issue with whether gambling is legal or not in Germany as claimed by the Complainant. That issue, if raised at all, should be addressed to Complainant’s German Bank and/or to Orange Entertainment B.V.

### **Decision**

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

In view of the above, it results that the Complainant was not *“a customer who is a consumer”* of FIL, neither that FIL *“has offered to provide a financial service”*

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<sup>7</sup> Article 11(1)(a)

to the Complainant, nor that the Complainant *“has sought the provision of a financial service from FIL 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 the merits of this Complaint.**

This without prejudice to the right of the Complainant to take his case to a competent court or tribunal.

Considering that the case was decided on a procedural issue, each party is to bear its own costs 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.

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 Arbitrator'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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