

Before the Arbiter for Financial Services

Case ASF 163/2024

QK

(Reg. No. C XXXXX)

(‘the Complainant’ or ‘QK’)

vs

Papaya Ltd.

(Reg No. C 55146)

(‘Papaya’ or ‘the Service Provider’)

Sitting of 21 March 2025

The Arbiter,

Having seen the Complaint¹ relating to loss of access by QK² of their substantial balances (reportedly exceeding €250,000 at the time of filing of the Complaint in August 2024) with Papaya starting from February 2024 when Papaya reportedly had across the board technical problems for making SEPA³ payments.

In their initial Complaint, the remedy requested⁴ was:

1. Regaining full access to their frozen funds.

¹ Pages (p.) 1 - 7 with attachments p. 8 - 119

² In the process of registering the Complaint, QK submitted evidence that it qualifies as a micro-enterprise in terms of Article 2 of ACT Chapter 555 of the Laws of Malta.

³ SWIFT and SEPA payments are international systems for making cross-border payments. SEPA payments are limited to transactions in Euro currency.

⁴ P. 4

2. Waiver of monthly fees for the period they had no proper access to their funds.
3. Recovery of extra costs incurred quantified at €2,554 being ATM withdrawal fees and professional fees charged by the Corporate Service Provider (CSP) for trying to resolve the problems caused by Papaya's inability to continue providing the transfer services.
4. An unquantified reference to '*mental anguish brought upon the ultimate beneficial owner*' of Complainant company.

During the hearing held in February 2025, it was established that although Papaya have not yet resolved their problems with SEPA, the funds have been withdrawn by using the debit card which permitted a series of fund recovery through cash withdrawals from ATMs and card payments to third parties for goods and services purchased.

As a result, the remedy sought was redefined as follows:

1. Recovery of additional expenses:	
a. Charges by CSP	5,856.22
b. Charges by a supplier	947.77
c. Papaya account fees	384.00
d. ATM cash fees	2,030.00
e. Interest at 5% p.a. for blocked funds	11,474.37
f. Loss of earnings by UBO due to time lost on solving the issue	35,000.00
Total compensation sought	€55,692.36⁵

⁵ P. 134 – 135 and extensive schedules giving breakdowns held in soft copy attached to Complainant's email of 22.02.2025

Reply⁶ of Service Provider

In their reply of 17 September 2025, Papaya stated:

'We acknowledge the formal complaint submitted by QK regarding their account with Papaya Financial Services, and we would like to address the concerns raised as follows:

1. Access to Funds

The client's account was opened on November 14, 2021, and QK has had continuous access to their funds throughout the period in question. As of July 2024, we can confirm that the client's account balance had decreased over time, indicating effective use of the funds. The card service was activated in June 2024, and the client has since made regular use of this feature. Additionally, at the client's request, we adjusted the card's daily and monthly limits multiple times to accommodate their payment needs.

2. Communication and Ongoing Access

We have maintained regular communication with QK regarding their account and any service limitations, ensuring they were aware of alternative methods to access funds. For example, in our email correspondence dated April 16, 2024, we confirmed that card payments remained fully functional and accessible. Additionally, we promptly responded to the client's requests for limit increases to facilitate specific payments. The client continued to use their corporate card for transactions and withdrawals, confirming that access to their funds was not restricted.

3. Temporary SEPA Service Interruption

As communicated to the client, Papaya is currently transitioning between SEPA providers, which has temporarily affected SEPA payment services. This situation was explained to QK, and we provided regular updates on the status of this transition, including in our communications of March and April 2024. Despite the temporary SEPA service limitations, we made sure

⁶ P. 125 - 126

the client could still access their funds through alternative methods, including the use of the corporate card and manual processing options.

4. Fees and Charges

Regarding the client's claim for reimbursement of ATM withdrawal fees (€872) and CSP-related expenses (€1,682), we would like to clarify that these fees were incurred in line with our standard terms and conditions. Since these fees correspond to the services provided and were transparently communicated, we are unable to waive or reimburse them.

5. Claims for Business Losses and Damages

QK has requested compensation for business losses, advisory fees, and moral damages. While we understand the client's concerns, Papaya Limited has acted in full compliance with its obligations. We ensured continuous access to the client's funds through the corporate card, responded promptly to all communications, and worked diligently to resolve any service interruptions caused by external factors, such as the SEPA provided transition. As such, we do not believe the claims for compensation are justified.'

Hearing

During the hearing of 11 February 2025, the UBO of Complainant company gave his evidence stating:

'I have been banking with Papaya bank for several years; it is the bank for my company, QK . It is an engineering consultancy. I am the sole owner, so all my contracts go through the company; all the payments come out of the company through Papaya bank.

Luckily, I had opened a separate bank account because Papaya had only been able to see my payments but not SWIFT payments.

I've had a large amount of funds built up in there because my first tax bill since opening the company hadn't been paid. That was due to be paid last year. It was a large amount of money, actually, two tax bills were due last year. So, in

February, I had €350,000 in there which was a substantial amount of my net worth is one way to put it. And the majority of that was due to be paid in taxes.

When I saw that Papaya was under investigation, I was very nervous about the money being in there. I need to pay the tax bill. So, I try to get the money out of there. It was blocked by Papaya. That was in February. Papaya responded, saying that they had an issue with their SEPA provider and that that would be resolved in March. Despite repeated communication with Papaya, nothing was resolved in March. Then they said it would be April. Again. Nothing happened in April. Nothing happening forever. Nothing happening with Papaya. Every time they were contacted, they would say, 'Oh yeah, it's in process.' Nothing more than that. No more details other than that.

It was published in the newspapers that Papaya had given access to some of their customers but, obviously, not to me. I was personally going to go bankrupt, to be honest, if I didn't get access to this money. And my business would be bankrupt. A huge amount riding on it. And there was no empathy from Papaya whatsoever. No updates on what was happening, just that 'it's in progress'. My money was completely blocked. I had no access to it. Papaya says that one did have access by use of debit cards. Now I had a debit card which I'd never used with Papaya because it's not that type of business. I can't pay my bills by debit card. It's not a shop, it's not a retail business. So, my money was stuck in there. Even the debit card, which they said was a way of getting money out, was blocked. I was not allowed to use it.

Finally, after four months, I think, the 30th of June or 29th of June, was the first date I was actually able to use the debit card. So, at that point, I was able to use it only for genuine business expenses. I tried all sorts of things. I tried to pay the tax and authorities directly. Papaya would not assist in that, in preparing paying the tax authorities directly to pay off the debt, which I still had to pay.

So, the date passed for the tax bill to be paid, which I think was in June, I had to find that money by other means. I had to pay that personally from my own funds borrowing money to do it. Borrowing money from relatives, borrowing money from trading accounts. I cannot stress the amount of anguish my family

and I went through thinking we're going to go bankrupt. Again, no empathy or help whatsoever from Papaya. No updates on progress.

As I say, at the end of June, it looked like the card was able to be used. They said I could withdraw €15,000 per month on the card. It wasn't an easy task to do that. I actually went round every bank office in in Lisbon where I lived, because a majority of cash machines, you can only take out €400 daily. So that wasn't going to be enough to take out €15,000 per month. Even if that was accomplished, €15,000 per month would have taken me 25 months to get everything out of there. So, if Papaya were going to be withholding all their customers' money, it seems quite obvious that Papaya themselves are going to go bankrupt soon. So, I don't believe that the bank would still be around in 20 months.

As you can imagine, I was pretty desperate to get my money out. I started finding everything I could to put genuine business expenses on the on the card because I could spend on the card. But I cannot spend on personal expenses on a card, on a business account. It is not legal to do that. I then found ways - I say creative accounting ways and I was able to do that. So, by lending the company money in dividends, I was then able to put some personal expenses on the cards. And to be honest, I was so desperate to get the money out, I ended up just buying things that were completely unnecessary. But I thought if I don't get the money out, I'm going to lose the money completely. So, I bought a bunch of assets that I certainly wouldn't have bought otherwise. I ended up buying some gold, etc., etc, some stuff like that.

I tried to set up an account to purchase crypto. I wasn't successful. I opened other bank accounts in an attempt to open trading merchant accounts with Revolut, for instance, which looked like that was going to work; it did not work. I spent an inordinate amount of time, personal time, trying to resolve the situation to get money out. When I did start eventually being able to spend on the card on personal expenses, the main thing that saved me actually was that I was building a house which I thought I was going to lose because I wasn't able to pay the bills, and the builder luckily managed to get hold of an ATM machine for his business. He got it just for me, so I was able to pay his bills with the ATM machine using the Papaya account.

I'm trying to shorten the story. Again, I can't stress the amount of anguish and stress that put myself and my family through. As I was getting the money out successfully, Papaya then said, 'There's €100,000 per month limit.' It looked like I was going to get the money out and then, I found out this €100,000 per month limit which delayed it even further.

As I got closer to getting the balance down to 0, then other problems started to appear which seemed to be very deliberate by Papaya: by blocking the card again; me sending repeated emails, etc.; Papaya not answering the phone ever. Sending repeated emails, and Papaya ignoring them, just taking forever to respond; before unblocking the card again; then they would unblock the card, reduce the limit to an amount that was not viable for me to get the money out in time or reduce it down to (I forgot the numbers) like it was like €5000 per day, then €1000 per day. There were tens of thousands left in there. It looked like a very deliberate effort on Papaya's part to stop me getting the money out of the account. Again, further stress and anguish on my part.

The Arbiter states that this started in February 2024 and now it is February 2025, 12 months.

***Asked whether I have account statements which show the progression of the withdrawals; what was the amount blocked in February 2024 and where are we today, I say that the balance is zero now. The card that I had was expiring in November 2024, so I had a deadline for November because I knew Papaya wouldn't send me a new card. That is how difficult they were being. Actually, I requested a new card. I never received it. I knew I had only until November to get this money out. So, I did successfully get the balance down to zero. I have a full statement and I've issued that to Papaya and to the mediator.'*⁷**

When Papaya were invited to cross-examine the evidence, they asked for a detailed definition and supporting evidence of the residual claims now that the balance on account was fully withdrawn so that they will re-examine what, if any, they could accept.

⁷ P. 128 - 131

In subsequent email dated 11 March 2025,⁸ Papaya informed that:

'Papaya Ltd. has credited back to the client all the fees withheld for account maintenance and regular compliance checks for the entire period March 2024 to March 2025.

However, we must respectfully decline the client's request for additional compensation ...'

Later that same day, the UBO of the Complainant replied⁹ that:

*'It should also be noted that, as of the time of writing, **Papaya's claim to have refunded all fees for account maintenance and compliance fees during the period concerned is false.***

There have been repeated requests to close the account, it does however remain open and the balance was checked today with no fees having been refunded.'

The Arbiter offered Papaya to hold a second hearing to give them the opportunity to present their evidence and cross-examine the revised compensation claim and supporting schedules submitted by Complainant, but they informed that it was not necessary, and Arbiter should proceed to adjudication, as had also been requested by Complainant.

Analysis and observations

There is no doubt that Complainant has suffered quite an ordeal when in February 2024, they lost normal access to their high balance liquid funds held on their account with Papaya for reasons which were totally out of Complainant's control and fully attributable to the Service Provider's conduct of business.

The initial compensation sought by the Complainant at the time of filing the Complaint on 23 August 2024 was as already explained:

⁸ P. 138

⁹ P. 140

ATM fees	872
CSP costs	1,682
Total	€2,554

and an unquantified amount for the mental anguish they caused to their UBO.

The Arbiter will not consider any claim for mental anguish suffered by the UBO which was later quantified at €35,000 as the Complainant is a company, and no proof has been submitted that Complainant has paid any claims for mental anguish of a third party, i.e., the UBO. This apart from the fact that no evidence has been provided to quantify the claim.

The Arbiter will therefore consider the revised claim but only for new charges incurred after filing of the Complaint. The only exception to this is:

Papaya account fees **€384.00**

Papaya have already agreed to refund all fees charged between March 2024 and March 2025, even though it would seem that such refund has yet to be effectively executed.

As to other items in the revised claim, the Arbiter will be guided as follows:

Charges by CSP **€5,856.22**

Of these, €1,682 have already been included in the original Complaint and firm, reasoned rebuttal was not forthcoming from Papaya.

Relating to expenses incurred after filing of Complaint, the invoice for September 2024 for €833.03 by Sovereign is related to the expenses for filing the Complaint with OAFS and will therefore be governed by the decision which will include allocation of costs. The invoice for October 2024 for €1,188.26 is, if anything, very remotely related to this Complaint and is therefore not accepted.

Charges by a supplier **€947.77**

No satisfactory evidence has been provided that this expense relates to Complainant company transactions and the claim is not accepted.

ATM cash fees **€2,030.00**

Of these, €872 were already included in the original Complaint.

Whilst no evidence was provided for these fees, it is very credible that having been forced to make ATM withdrawals incurs charges which would not have been incurred if Papaya could execute SEPA transfers. This claim is accepted.

Interest at 5% p.a. for blocked funds **€11,474.37**

No such claim was included in the formal Complaint and no evidence has been provided that any interest charges has been incurred after filing of the Complaint. It was not even clear how the balance transited to zero between the Complaint date and the expiry of the card in November 2024.

Consequently, this claim is being refuted.

Decision

For reasons above explained, the Complaint is being accepted limitedly to the following:

Compensation as claimed in the original Complaint	€2,554
ATM Cash fees €2,030 - €872 included in original Complaint	€1,158

The Arbiter is also awarding a nominal amount of €1,000 for moral damages suffered by Complainant caused by Papaya through their inability to allow Complainant rightful access to their funds.

In terms of Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders Papaya to pay Complainant the sum of €4,712 (four thousand, seven hundred and twelve euros) with interest at the rate of 2.65% p.a.¹⁰ payable within five days from the date of this decision until the date of effective payment.¹¹

¹⁰ Equivalent to the current Main Refinancing Operations (MRO) interest rate set by the European Central Bank.

¹¹ It is to be noted that in case this decision is appealed, should this decision be confirmed on appeal, the interest is to be calculated from the date of this decision.

In addition to the above, Papaya has to make an effective refund (as they agreed in the process) of all account fees from March 2024 to March 2025, which were quantified at €384 up to November 2024.

Expenses related to this Complaint are for account of 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.

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*'¹² and that '*Alternative Dispute Resolution (ADR) offers a simple, fast and low-cost out-of-court solution to disputes between consumers and traders.*'¹³

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*'.¹⁴ The benchmarks on fees as legally stipulated for civil procedures in Malta may also provide certain guidance.¹⁵

¹² Preamble (4) of the ADR Directive (EU/2013/11)

¹³ Preamble (5) of the ADR Directive (EU/2013/11)

¹⁴ *Ibid.*

¹⁵ Tariff E, Cap. 12, Code of Organisation and Civil Procedure