

Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 185/2024

SK

(l-Ilmentatriċi)

vs

Bank of Valletta p.l.c.

(C-2833)

(il-‘Fornitur tas-Servizz’, ‘Bank’, jew ‘BOV’)

Seduta 25 t’April 2025

L-Arbitru,

Wara li ra l-ilment kontra s-socjetà Bank of Valletta p.l.c. (C-2833) rigward *scam* finanzjarja li l-Ilmentatriċi sfat vittma tagħha u, b’konsegwenza ta’ dan, tilfet il-flus.

Fis-sustanza tiegħu, l-ilment jittratta r-rifjut tal-BOV li jirrimborża lill-Ilmentatriċi l-ammont ta’ €16,000 rappreżentanti tal-flus li ngibdu mill-kont tagħha mal-BOV bl-awtorizzazzjoni tagħha, iżda li wara rriżulta li kienu frodi.

*L-Ilment*¹

Fl-ilment tagħha, l-Ilmentatriċi ppremettiet u sottomettiet illi fil-bidu ta’ Marzu 2023 hija sfat vittma ta’ *scam* kumplessa u elaborata, orkestrata minn ‘*Binary Book*’ li ddisinjat, żviluppat, immanifatturat, irrekklammat, u/jew bieghet servizzi frawdolenti ta’ investiment intenzjonati biex jisirqu u jqarrqu bil-klijenti.

L-Ilmentatriċi spjegat li l-flus fit-total ta’ €16,000 ġew trasferiti mill-kont bankarju tagħha permezz ta’ *bank wire* u permezz ta’ intermedjarju bl-isem ta’ ‘*Wallbitex*’.

¹ Formola tal-Ilment minn paġna (p.) 1 - 5, bid-dokumentazzjoni addizzjonali minn p. 6 - 41.

L-Ilmentatriċi saħqet li hija ma kinitx taf, u lanqas bid-diligenza xierqa ma setgħet tiskopri li dan kollu ma kien xejn ħlief *scam*. Hi sostniet li t-tranzazzjonijiet kienu kaġun ta' qerq min-naħa ta' '*Binary Book*'.

L-Ilmentatriċi esprimiet id-diżappunt tagħha bil-fornitur tas-servizz għaliex ma nvestigax u ma analizzax il-kumpanija '*Binary Book*' qabel ma ttrasferiet flusha u b'hekk soffriet telf finanzjarju. Saħqet li, bħala istituzzjoni finanzjarja, il-fornitur tas-servizz għandu jieħu l-passi kollha meħtieġa sabiex jirrangja s-sitwazzjoni, jew billi jipprova jgħib il-flus lura jew inkella billi jirrimborzaha tal-flus li tilfet.

Rimedju mitlub

Għaldaqstant, l-Ilmentatriċi qed titlob li l-Fornitur tas-Servizz jirrimborzaha s-somma ta' €16,000.

Ra t-twegiba tal-Fornitur tas-Servizz²

“Respectfully submits:

A. Introduction

1. *Whereas Ms ... (“the complainant”) explains that “commencing on or about March 9th, 2023, I fell victim to a multilayered scam operation orchestrated by “Binary Book.”³ She further explains that “money was transferred from my account via bank wire and through an intermediary named “Wallbitex” in the total amount of 16,000 EUR utilizing your service.”⁴ Therefore, she is expecting that the Bank refunds her the sum of £16,000.*

B. The Bank’s point of view

2. *Whereas according to the complainant’s complaint, the €16,000 is composed of the following transactions:*

- *1 card transaction of €1,050.00 on the 17th of February 2023,*

² P. 47 - 111

³ P. 7 of the complaint

⁴ *Ibid.*

- 1 payment order outward transaction of €3,000 on the 9th of March 2023,
 - 2 card transactions of €1,000.65 each on the 9th of March 2023, and
 - 1 payment order outward transaction of €10,000 on the 13th of April 2023.
3. Whereas in regard to the above-mentioned transactions, the Bank respectfully submits that in order to execute such transactions, it had received legitimate instructions from the complainant through the necessary channels.
4. Whereas three of these transactions were done through the complainants' card ending – 1691, through her 3D Secure app, by virtue of which the Bank implements Secure Customer Authentication. This confirms that the transactions were carried out with the cardholder's explicit authentication and authorization. This system is in line with the Payment Service Directive 2 which provides the following:
- 'strong customer authentication' means an authentication based on the use of two or more elements categorised as **knowledge (something only the user knows), possession (something only the user possesses)** and inherence (something the user is) that are independent, in that the breach of one does not compromise the reliability of the others, and is designed in such a way as to protect the confidentiality of the authentication data;*⁵
5. Whereas after each transaction, the Bank sent the complainant SMS's to inform her that the transactions were not genuine. Therefore, when the complainant affected similar transactions to the same merchant, the Bank did not have any indication that they were not genuine.

⁵ Article 4(30) of PSD2

6. *Whereas besides the transactions effected by her card, the complainant made 2 other payments through the internet banking system, both of which were a 'Payment Order Outwards'.*
7. *These transactions were once again authorised through strong customer authentication and thus the Bank had the consent of the complainant to affect these transactions. Whereas for transactions authorised through internet banking, apart from strong customer authentication, the Bank implements also a system of 'dynamic linking' as outlined in the Commission Delegated Regulation (EU) 2018/389, which supplements the PSD 2. Article 5 provides the following:*

"Where payment service providers apply strong customer authentication in accordance with Article 97(2) of Directive (EU) 2015/2366, in addition to the requirements of Article 4 of this Regulation, they shall also adopt security measures that meet each of the following requirements:

- a) the **payer is made aware of the amount of the payment transaction and of the payee;***
 - b) the **authentication code generated is specific** to the amount of the payment transaction and the payee agreed to by the payer when initiating the transaction;*
 - c) the authentication code accepted by the payment service provider corresponds to the original specific amount of the payment transaction and to **the identity of the payee agreed to by the payer;***
 - d) any change to the amount or the payee results in the invalidation of the authentication code generated."*
8. *Whereas in her demand letter attached with her complaint, the complainant states "Money was transferred from my account via bank wire, and through an intermediary named "Wallbitex" in the total amount of 16,000 EUR utilizing your services".⁶*

⁶ P. 7 of the complaint

9. *Respectfully, the Bank submits that the money was transferred upon the express instructions and due authorization of the complainant herself and she was fully aware of the amounts she was transferring, the recipient of such money and where this money was being received. Therefore, the complainant was an active participant in this transfer.*
10. *Whereas months after the transactions were affected, that is, in October of 2023, the complainant contacted the Bank requesting the return of the funds for the five transactions in question in this arbitration. At this point, all the Bank could do was request a recall of the funds from the beneficiary bank for those 2 payments carried out through internet banking. However, a negative reply was received for one of the payments that the recall could not be affected. For the other payment, BOV never received a reply from the beneficiary bank.⁷*
11. *Whereas with respect to the transactions effected on her card, the Bank raised a dispute for each transaction with the foreign banks of the merchants. These banks informed BOV that their merchants provided complainant with a service, and that she had accepted the terms and conditions of this service which was fully rendered. Furthermore, the transactions were fully authenticated and authorised by the complainant. Thus, she was not entitled to a refund.⁸*
12. *Whereas when the complainant made the payments, she did not indicate or make some condition that she wanted the choice to cancel the payment, months after it was made. Obviously, the Bank would have rejected this condition ab initio because it is not reasonable to expect to cancel duly authorised payments, months after they were authorised.*
13. *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*

⁷ **DOC.A** – Extract of the recall correspondence

⁸ **DOC.B** – Replies received by BOV in the Chargeback process

instructions from credentials and systems associated with the complainant, and therefore has no obligation to refund the complainant.

14. *Whereas in this context, the Terms and Conditions of the BOV Cashlink Visa⁹ which the complainant voluntarily accepted, provide the following regarding a cancellation of a payment:*

We cannot cancel a payment made using your Card once you have given consent to make the payment to a retailer or supplier or provided your PIN and/or Card/Security Details and enabled the processing of the payment. You will need to contact the retailer or supplier separately. This includes payments made on a regular basis (recurring transactions) from your Account.¹⁰

15. *Moreover, the Terms and Conditions of the 24x7 Service which Ms. Ilmentatriči used to approve the 2 internet banking payments, provide the following regarding the cancellation of a payment instruction:*

“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.”¹¹

16. *Whereas the complainant had the choice to decide with whom to invest her money and cannot expect the Bank to take responsibility for actions which resulted from her own choices. Moreover, the Bank only provided the complainant with the service of processing payments she duly authorised. BOV never provided her with any advice regarding investing her money and the complainant never requested such advice. Therefore, she cannot now expect the Bank to bear any liability for her investment choices. Moreover, the Bank cannot prohibit its customers from willingly affecting investments or financial transfers. The Bank’s obligation in this respect is to ensure that the transactions are duly authenticated and authorised by the customer. The responsibility to confirm the reliability and the soundness of the investment remains with the customer,*

⁹ **DOC.C** – Product Information Guide of the BOV Cashlink Visa, page 6.

¹⁰ Article 6(b) of the Terms and Conditions of the BOV Cashlink Visa.

¹¹ **DOC.D**: ‘BOV 24X7 Services – Important Information and Terms and Conditions of Use’ page 6.

especially when considering that the customer did not seek any investment advice from the Bank.

17. *Whereas as part of the payment processing service, the Bank sent the money to the recipient indicated by the complainant and to the account indicated by her. The financial institution where the money is sent, is one of the factors the Bank takes into consideration in its transaction monitoring process of every transaction. The Bank also screened the receiving entities, and no suspicious signs were raised which could have led the Bank to stop the payment.*

C. The Complainant's Claim

18. *The complainant attached multiple letters with her complaint, explaining why she was let down by the Bank. In these letters, she makes numerous, serious, unfounded allegations against BOV, all of which the Bank vehemently denies.*

19. *Whereas in the section entitled 'Exposing your Organisation's Misconduct', the Complainant states that "On the basis of various signs, you should have assumed that something suspicious was going on" and further on mentions that "there were many obvious, even glaring, signs that I am a fraud victim."¹² However, the complainant fails to mention what these signs were. Once again, the Bank emphasises the fact that monitoring was carried out on these duly authorised transactions and no suspicious triggers resulted from the transaction monitoring procedure which would have led the Bank to stop the transactions.*

20. *Whereas the Bank was not cognisant of any communications the complainant had with third parties which led her to carry out these investigations. Therefore, it is unfounded for the complainant to say that "the financial institution must have known or reasonably ought to have known that I was dealing with a scammer".¹³ Respectfully, the Bank submits that the complainant herself did not realise that she was talking to a scammer, therefore it is not reasonable for her to expect that the*

¹² P. 10 of the complaint

¹³ P. 17 of the complaint

Bank should have realised this, when all the Bank had visibility to were the duly authorised transactions.

D. Conclusion

21. *For the reasons articulated above, the Bank respectfully submits that the Complainant's claims are unfounded.*
22. *Chapter 555 of the Laws of Malta vests the Honourable Arbiter with the authority to decide a case on the basis, inter alia, of the complainant's legitimate expectations and what she deems fair and equitable in the circumstances of the case. The Bank very respectfully submits that such element of fairness and a customer's legitimate expectations are founded and pivot on a balance between rights and obligations whereby a customer most certainly has rights but also an inherent interest and obligation to faithfully abide with all terms, conditions as well as guidelines issued by the Bank, as these are ultimately intended to serve and protect the customer.*
23. *The Bank reserves the right to bring oral and documentary evidence in order to substantiate the defences raised in this reply, as well as to make submissions both verbally and in writing pursuant to the provisions of Chapter 555 of the Laws of Malta.*
24. *The Bank reserves all rights/ actions pertaining to it at law, and respectfully requests the Arbiter to reject and dismiss the complainant's claims.*

With expenses."

Annessi ma' din ir-Risposta kien hemm, fost affarijiet oħra, korrisondenza li l-BOV irċieva bħala raġuni għalfejn it-talba għal *chargeback* ma ġietx aċċettata mill-merchant konċernat "Wallbitex".

Jirriżulta li *Wallbitex* hija *digital asset (crypto) exchange* li magħhom kienet fetħet kont l-Ilmentatrici bil-ħsieb li tinvesti fil-*crypto* bil-gwida tal-frodisti. Dawn id-

dokumenti juru li l-Ilmentatriċi ħadet responsabbiltà tat-tranzazzjonijiet li kienet qed tagħmel¹⁴ u tal-*wallet* fejn hija tablet jintbagħtu d-*digital assets*.¹⁵

Jidher ukoll li *Wallbitex* kienet infurmat lill-Ilmentatriċi bir-riskju ta' frodi fejn ikunu involuti trasferimenti ta' *digital assets* f'*wallets* oħra mhux fil-kontroll tagħhom (*external wallets*).¹⁶

Seduti

Fl-ewwel seduta ta' nhar id-19 ta' Frar 2025, l-Ilmentatriċi sottomettiet is-segwenti:

“Ngħid li dan kien każ tat-trading u konna bdejna b’ammont żgħir.

Ngħid li dawn iċemplulek; ġieli rajt reklami ta’ nies li użawhom u għidt ser nipprova. L-ewwel ammont kien xi €250 biex tibda bih, imbagħad, ovvjament, jgħidulek biex aktar tiggwadanja u hekk.

Ngħid li konna mexjin tajjeb. L-ewwel li għamilt €250. Ngħid li dak mhuwiex fil-complaint; dak kien għalih, ma daħħaltux. Dak ħallih, proprjament l-ammonti l-kbar.

Imbagħad, il-website tagħhom ma baqgħetx taħdem. U bgħatt lil min kont qed nikkuntattja u ma wegibnix. U bqajna nippruvaw biex naqbduh, però, la fil website ma stajna nidħlu u lanqas nikkuntattjawh ma stajna.

Ngħid li dan ġara xi tliet xhur, erba' xhur wara, imma kont digà għamilt il-pagamenti. L-aħħar pagament kien ta' €10,000 u in the meantime bqajna nittrejdjaw fl-iStock Exchange. Ngħid li kellna qisu Manager magħna biex jgħidlek fejn għandek titfa', jekk hux buy jew sell; jekk hux żejt, deheb, eċċ. U kien jiggwidani hu x'għandi nagħmel.

Ngħid li fuq il-website bdejt nara ħafna profitti. Imbagħad mort nidħol fuq l-application tal-website u giet 'Website not found'. Ippravajt nikkuntattjah fuq Whatsapp, in-numri li għandi tiegħu. Ngħid li tlietna kollox u minn dakinhar 'l hawn ma kellimnihx iżjed, ippravajna imma għalxejn.

¹⁴ P. 62

¹⁵ P. 61

¹⁶ P. 66 - 67

Meta ndunajt li din kienet frodi, ikkuntattajt kumpanija, sibtha jiena, fejn għamilt ir-riċerka fuq dawn li jgħinuk biex tipprova ġġib il-flus lura, u qed nimxu magħhom. Ngħid li ma ħallasthomx flus lil din il-kumpanija, imma jekk jgħinek iġġib il-flus lura, tħallsu perċentaġġ minnhom.

Ngħid li l-ittra li jien ktibt lill-bank kitbuhieli huma avolja mhux qed jgħidu min huma u jien iffirmajtha.

Ngħid li jien m'għamiltx rapport lill-Pulizija dwar dan. Lanqas għaddietli minn rasi.

Ngħid li l-pagamenti saru bejn Frar u April 2023 u jien ma niftakarx bl-ament meta kellimt lill-bank imma x'aktarx f'Settembru 2023, xi ħaġa hekk. Nikkonferma li dawn il-pagamenti jiena għamilthom kollha, jiena awtorizzajthom. Però, għalkemm dawn il-pagamenti kont jien li awtorizzajthom, l-ilment tiegħi kontra l-Bank of Valletta hu li jiena għidt li dawn ser jagħmlu xi riċerka biex jaraw jekk il-bank jew kumpanija fejn ser imorru l-flus humiex kredibbli.

Ngħid li l-aħħar li tkellimna mal-bank, qaluli li fejn daħlu l-flus huma banek: wieħed il-Lithuania u l-ieħor l-Ingilterra, u li dawn il-banek huma kredibbli. Qaluli li l-problema kienet meta ġew trasferiti f'xi bank ieħor li ma kienx kredibbli. Allura, nistaqsi, dawn iż-żewġ banek l-oħra ma ċċekkjawx qabel ħarġulhom dawn il-flus?

Meta l-bank qalli li dawn iż-żewġ banek kienu kredibbli ma qallix li ser iġibuhom lura. Qatgħuli barra, mbagħad, meta jiena ili klijenta tagħhom snin twal.

Ngħid li l-ilment tiegħi huwa li l-bank missu nduna li jiena kont qed niġi iffrodata. Ngħid li peress li kont ili ħafna klijenta tal-bank, kont nafdahom u ħassejt li kellhom jiġġieldu għalija biex iġibuhomli dawn il-flus. Jien inħoss li l-bank ma pprovax biżżejjed biex iġibli dawn il-flus lura.”¹⁷

¹⁷ P. 112 - 113

Taħt kontroezami, l-Ilmentatriċi wiegħbet:

“Mistoqsija jekk qattx tlabt xi parir lill-Bank of Valletta fuq dak li kien jgħidli t-terz li kien jiggwidani biex ninvesti, ngħid li f’dan ir-rigward le. Konna nimxu fuq dak li kien jgħidilna dan it-terza persuna.”

Saret referenza għal dak li l-Ilmentatriċi qalet fl-ilment dwar ‘*suspicious signs*,’ u li l-bank kellu jwaqqafha milli tagħmel il-pagamenti. Mistoqsija għalxiex tirreferi meta ssemmi ‘*suspicious signs*,’ qalet li:

“ma kien hemm suspicions ta’ xejn għax kieku ma kontx noħroġ il-flus, m’inix miġnuna. Ma kien hemm suspicions ta’ xejn. Ngħid li wara li għamilt il-pagamenti, konna mexjin tajjeb u dak kien qed jiggwidana kif naħdmu u ma naħdmux. Imbagħad, tliet xhur, erba’ xhur wara, daqshekk, waqaf kollox. Hemmhekk ġew is-suspetti; qabel ma kellix suspetti.”¹⁸

Saret referenza għall-ittra mibgħuta mill-Ilmentatriċi lill-Bank (p. 10 tal-proċess) fejn hemm miktub:

“On the basis of various signs, you should have assumed that something suspicious was going on and suspended transactions until reasonable enquiries could be made to verify that the transactions were properly executed.”

L-Ilmentatriċi wiegħbet:

“Ngħid li l-bank messu għamel riċerka biex jaraw fejn sejr in il-flus. Nies oħra dejjem qaluli li l-bank suppost jagħmel riċerka qabel tirrilaxxa l-flus. Dak hu l-punt tiegħi. Jien ma kellix suspetti imma l-bank suppost li għamel ir-riċerki fejn sejr in il-flus.”

Meta ġiet mistoqsija għalfejn m’għamlitx rapport tal-Pulizija meta dan huwa każ ta’ frodi, l-Ilmentatriċi qalet li: ***“lanqas biss ġiena f’moħħna li nagħmlu rapport mal-Pulizija.”***¹⁹

Fit-tieni seduta, ta’ nhar l-24 ta’ Marzu 2025, dehret Sandra Stevens f’isem il-Fornitur tas-Servizz, fejn xehdet is-segwenti:

¹⁸ P. 114

¹⁹ *Ibid.*

“Ngħid li nokkupa r-rwol ta’ Risk and Fraud Investigation Manager fl-eBanking fis-sessjoni tal-Cards ġewwa l-Bank of Valletta. U ngħid li ili fil-Cards għal dawn l-aħħar 28 sena.

Ngħid li jiena rajtu l-ilment tal-Ilmentatriċi u t-tranzazzjonijiet li qegħdin jiġu kkontestati.

F’dan il-każ kien hemm tliet tranzazzjonijiet li saru bil-card. Waħda fis-17 ta’ Frar 2023 u tnejn fid-9 ta’ Marzu 2023.

...

Aħna nużaw is-sistema tal-VISA minħabba li l-VISA għandha aktar viżibilità tat-tranzazzjonijiet, mhux daww it-tranzazzjonijiet li jara l-Bank of Valletta biss u, allura, is-sistema tal-VISA ntagħżlet minn sistemi ta’ vendors oħrajn għax il-bank ra l-iscore ser ikun aktar reliable.

...

Ngħid li l-ewwel tranzazzjoni li saret f’dan il-każ saret fi Frar u kellha risk score baxx. It-tieni u t-tielet tranzazzjonijiet saru f’Marzu, fl-istess ġurnata. L-ewwel waħda kellha risk score baxx u t-tieni waħda kellha risk score aktar għoli imma mhuwiex fir-range li l-bank jiddeciedi li jwaqqaf tranzazzjoni outright.

...

Fil-każ tat-tielet tranzazzjoni, it-tranzazzjoni ttriggerjat alert u, skont ir-records tagħna, l-analist ikkuntattja lis-Sinjura biex jivverifika dik it-tranzazzjoni u dik it-tranzazzjoni ġiet ikkonfermata bħala ġenwina.

Ngħid li mhux kull online transaction għandha l-istess livell ta’ riskju. ...

Ngħid li f’dan il-każ, fuq it-tielet tranzazzjoni, għandna nota fis-sistema li l-klijenta ġiet ikkuntattjata; għandna wkoll il-mobile number imnizzel on record fejn saret din it-telefonata u li t-telefonata kienet dwar dan il-merchant, Wallbitex, u li t-tranzazzjoni ġiet ikkonfermata bħala ġenwina.

...²⁰

L-Ilmentatriċi ma kellhiex mistoqsijiet bħala kontroezami għax-xhud.

²⁰ P. 129 - 131

F'isem il-Fornitur tas-Servizz deher ukoll Keith Vella li ssottometta s-segwenti:

“Ngħid li nokkupa r-rwol ta’ Deputy MLRO fil-Bank of Valletta u anke Head tal-Anti Financial Crime ġewwa t-Transaction Monitoring and Proactive Analysis u ili nokkupa din il-kariga ta’ Head mis-sena l-oħra, minn Jannar 2024, u l-kariga ta’ Deputy MLRO mis-sena 2022.

Ngħid li rajt l-ilment tas-Sinjura partikolarment it-tranzazzjonijiet li qegħdin jiġu kkontestati.

Ngħid li kien hemm żewġ tranzazzjonijiet li saru permezz ta’ Payment Order Outward; waħda ta’ €10,000 li saret fit-13 t’April 2023 u oħra ta’ €3,000 fid-9 ta’ Marzu 2023.

...

F’dan il-każ, il-pagament, at a pre-transaction monitoring, ma kellux għalfejn jieqaf għax l-entitajiet li lejhom kienu sejrin il-flus, ma kien hemm l-ebda adverse news jew adverse media fuqhom jew ma kienu fl-ebda lista li tista’ tindika li dawn kienu marbutin ma’ xi allegati reati finanzjarji. Qed ngħidu kemm fuq il pagament tad-9 ta’ Marzu 2023 ta’ €3,000 mar lejn Secure Nordic Payments UAB li hija istituzzjoni finanzjarja rreġistrata fil-Lithuania u kemm il-pagament tat-13 t’April 2023 ta’ €10,000 mar lejn CFSZIPP Limited li hija istituzzjoni finanzjarja ibbażata l-Ingilterra.

Ma kien hemm l-ebda ħjiel li ż-żewġ kumpaniji setgħu kienu involuti f’attivitajiet kriminali finanzjarji; u wkoll li ż-żewġ pajjiżi huma pajjiżi, jurisdictions reputable u mhumiex marbutin ma’ xi listi fejn hemm xi eċċess ta’ reati finanzjarji f’dawn il-pajjiżi. U, għaldaqstant, il-pagament ma kellux jieqaf.

...”²¹

L-Ilmentatriċi ddikjarat li mhijiex ser tagħmel kontroezami lix-xhud.

L-Arbitru staqsa lix-xhud jekk *at the post-transaction monitoring*, il-Bank innotax li kien hemm xi ħaġa mhux tas-soltu f’dawn iż-żewġ pagamenti. Għal din il-mistoqsija, is-Sur Vella wieġeb:

“Ngħid li, le.”

²¹ P. 131 - 132

L-Arbitru staqsieh ukoll jekk l-aħħar pagament, dak tat-13 t'April 2023 ta' €10,000, il-fatt li l-klijenta ma kienet qatt għamlet pagament ta' €10,000 ma qajjimx suspetti. Is-Sur Vella rrisponda:

“Jekk nieħdu l-€10,000 vis-à-vis l-klijenta, il-klijenta veru li m’għamlitx pagamenti ta’ €10,000 jew f’dak il-binarju. Imma kienet digà għamlet pagamenti madwar €6,000 lejn klijenti oħra Maltin, lejn awtorità, f’dan il-każ, jiġifieri l-kwistjoni li għamlet €10,000 mhuwiex dak l-ammont kbir li qed ngħidu li l-bank għandu għalfejn għal €10,000 jistaqsi lill-klijenta x’kien hemm fuq dan il-pagament.

Irridu nieħdu in konsiderazzjoni l-kwistjoni ħolistikament. Jekk mill-pre-transaction monitoring ma waqfitx, imbagħad il-pagament ġie mgħoddi wkoll mill-klijenta, ġie validat ukoll mill-klijenta, għandna dawk is-safeguards ukoll bil codes li jintbagħtu lis-Sinjura biex tapprova l-pagament.

Il-kwistjoni mhux li għamlet pagament ta’ €10,000; f’dan il-kuntest mhuwiex dak l-ammont kbir vis-à-vis l-klijenta wkoll. U jekk inqabblu l-€10,000 ma’ kemm il persuna ddaħħal li bażikament huwa bejn wieħed u ieħor iddikjarat €27,000 fis-sena, mhuwiex dak l-ammont kbir li l-bank għandu jistaqsi lill-klijenta.”²²

L-Arbitru staqsieh jekk fid-dipartiment tas-Sur Vella jarawx ir-relazzjoni mal-klijent ħolistikament inkluż il-cards jew sempliciment il-pagamenti li jsiru *online*. Is-Sur Vella spjega:

“Ngħid li min-naħa tagħna, bħala transaction monitoring, nieħdu in konsiderazzjoni kollox.”²³

Meta l-Arbitru staqsa jekk dawn in-nies jitkellmex ma’ xulxin jew m’hemm ħadd li qed jara *the whole thing*, is-Sur Vella kkjarifika li: ***“l-whole thing – qed jarawha il-Monitoring Unit tal-klijent li hi dik il-branch fejn il-klijent jinqeda. Dik hi r-responsabilità unika tal-klijent vis-à-vis il-bank.”***²⁴

Bħala sottomissjonijiet finali, l-Ilmentatrici sottomettiet is-segwent:

²² P. 133

²³ *Ibid.*

²⁴ P. 133 - 134

“Il-karti li ressqu l-Bank of Valletta lill-Arbitru, f’himthom ta’ meta ili klijenta tagħhom jew inkella f’himtha ħazin jiena. Għax jiena f’himt li meta l-Arbitru staqsa lill-bank biex jipprezentaw id-dokumenti, kienu biex jara kemm ili klijenta tagħhom.

Fuq id-dokumenti kien hemm is-sena 2007. Ngħid li jiena ili fuq tletin sena żgur magħhom.”²⁵

L-Ilmentatriċi wriet il-ktieb tal-bank li jgħib id-data tal-1990.

L-Arbitru spjega li ma jaħsibx li hemm kontestazzjoni min-naħa tal-Bank li l-Ilmentatriċi ilha klijenta tiegħu mid-data murija. Id-dokumenti li ġew ipprezentati mill-Bank huma dokumenti mitluba mil-Liġi għax din titlob aġġornament kultant żmien.

Fis-sottomissjonijiet finali tal-BOV, reġa’ saħaq dak li kien diġà ħareġ mir-Risposta u mill-evidenza pprezentata waqt is-seduti. Ċaħad li l-Bank seta’ jagħmel xi ħaġa oħra aktar milli għamel biex jipprova jirkupra l-flus li kienu tħallsu bl-awtorizzazzjoni tal-Ilmentatriċi u kkonkluda:

“In vista tas-suespost, il-Bank jissottometti li huwa ma kellu l-ebda mod li jkun konxju tal-użu li kienet ser tagħmel [l-Ilmentatriċi] fuq il-‘platform’ ġenwina fejn hija bagħtet il-flus. Il-Bank sempliċiment serva ta’ entità li tipprovdi servizz li tipproċessa pagamenti li f’dan il-każ kienu debitament awtorizzati, ma ġie identifikat xejn suspettuż f’ihom skont il-mekkanizmi ta’ ‘monitoring’ tal-Bank u kienu fil-limitu meħtieġ. Għaldaqstant, il-Bank kien obligat li jipproċessahom. Bir-rispett il-Bank jissottometti li f’dan il-każ [l-Ilmentatriċi] tilfet il-flus in kwistjoni minħabba aġir tagħha stess, għaliex imxiet fuq struzzjonijiet ta’ terza persuna, meta kellha biżżejjed indikazzjonijiet tar-riskji u l-konsegwenzi li setgħu jirrizultaw mill-aġir tagħha għaliex kellha miktub b’mod ċar fit-termini u kundizzjonijiet tas-servizz tal-Cryptocurrency li kienet qiegħda tuża. Għaldaqstant, ladarba [l-Ilmentatriċi] kienet konxja tar-riskji u xorta kompliet tingaġġa f’dan l-aġir, huwa inġust li issa tistenna li l-Bank iġorr ir-responsabbiltà għall-aġir tagħha meta l-Bank aġixxa b’mod korrett u skont l-obbligi tiegħu.”

²⁵ P. 134

Analizi u osservazzjonijiet

Dan il-każ jinvolvi 5 pagamenti li saru mill-kont tal-Ilmentatriċi mal-BOV kif ġej:

20.02 2023	€1050	pagament bil- <i>card</i>
09.03.2023	€3000	pagament onlajn ²⁶
11.03.2023	€1000	pagament bil- <i>card</i>
11.03.2023	€1000	pagament bil- <i>card</i>
13.04.2023	€10000	pagament onlajn ²⁷

M'hemmx kontestazzjoni li dawn il-pagamenti saru kollha bl-awtorizzazzjoni esplicita tal-Ilmentatriċi li mingħaliha kienet qed tinvesti biex tagħmel qligħ minn trading fi *crypto*. M'hemmx dubju lanqas li l-klijenta kienet sfat vittma ta' frodisti li wara li rebħu l-kunfidenza tagħha, imbagħad, sparixxew bi flusha.

Fil-fatt, għalkemm fl-ilment formali mal-Uffiċċju tal-Arbitru tgħid li kienet taf bil-problema ilmentata sa minn Marzu 2023,²⁸ l-ilment mal-BOV sar biss f'Settembru 2023, u l-ilment ġie rreġistrat mal-Uffiċċju tal-Arbitru f'Ottubru 2024. Ma sar l-ebda rapport lill-pulizija dwar dan il-każ ta' frodi.

Għalhekk l-ilment mhux li l-pagamenti ilmentati saru mingħajr l-awtorizzazzjoni tagħha, iżda li l-Bank messu għamel riċerka biex ikun jista' jinduna li dawn il-pagamenti kienu frodi u, b'hekk, messu waqqaf lill-Ilmentatriċi milli tkompli għaddejja bihom. Tilmenta wkoll li l-Bank messu għamel aktar biex jipprova jirkupra l-flus mitlufa.

Dan huwa każ fil-kategorija ta' *scams* magħrufa bħala '*pig butchering*' li dwarhom l-Arbitru ħareġ Nota Teknika biex jiggwida lill-konsumaturi u lill-entitajiet liċenzjati dwar ir-responabbiltajiet li għandhom f'każi bħal dawn.²⁹

L-Arbitru elenka dawn il-kriterji li jiggwidawh biex jilħaq ġudizzju fuq ilmenti ta' dan it-tip.

²⁶ P. 116

²⁷ *Ibid.*

²⁸ P. 2 – stramba għax l-aħħar pagament ta' €10,000 sar f'April 2023 u fix-xhieda tagħha qalet li ma kellu suspetti xejn meta kienet qed tawtorizza l-pagamenti.

²⁹ <https://financiararbiter.org.mt/sites/default/files/Technical%20Note%20-%20EN%20%5BFebruary%202025%20v1%5D.pdf>

- (a) Il-**valur u d-daqs tat-tranzazzjoni** (ikkomparati mal-ammont medju ta' tranzazzjoni tal-klijent u l-ammont totali tal-kont bankarju u/jew id-dħul nett ta' kull xahar);
- (b) Il-**frekwenza, il-ħin, u x-xejra** ta' tranzazzjonijiet simili jew l-istess;
- (c) L-**ammont kumulattiv** li jirriżulta minn tranzazzjonijiet simili jew l-istess (ikkomparat mal-ammont medju ta' tranzazzjoni u l-ammont totali tal-kont bankarju);
- (d) L-**iskop tat-tranzazzjoni**;
- (e) Ir-**reċipjent tat-tranzazzjoni**;
- (f) **Twissijiet pubbliċi rilevanti u materjali rigward ir-reċipjent**;
- (g) **Inkonsistenzi oħra jew in-natura eċċezzjonali tat-tranzazzjoni jew tas-serje ta' tranzazzjonijiet** ikkomparati mal-operat preċedenti tal-kont bankarju.

Meta japplika dawn il-kriterji għal partikolaritajiet ta' dan l-ilment, ma jirriżultax li kien hemm ċirkostanzi sodi biżżejjed biex il-Bank kellu jissuspetta xi frodi. Dan japplika b'mod partikolari għall-ewwel 4 pagamenti.

Dwar l-aħħar pagament ta' €10,000, li sar xahar wara il-pagament ta' qablu, l-Arbitru jaċċetta l-argument tal-BOV li:

“Jekk nieħdu l-€10,000 vis-à-vis l-klijenta, il-klijenta veru li m'għamlitx pagamenti ta' €10,000 jew f'dak il-binarju. Imma kienet diġà għamlet pagamenti madwar €6,000 lejn klijenti oħra Maltin, lejn awtorità, f'dan il-każ, jiġifieri l-kwistjoni li għamlet €10,000 mhux dak l-ammont kbir li qed ngħidu li l-bank għandu għalfejn għal €10,000 jistaqsi lill-klijenta x'kien hemm fuq dan il-pagament.

Irridu nieħdu in konsiderazzjoni l-kwistjoni ħolistikament. Jekk mill-pre-transaction monitoring ma waqfitx, imbagħad il-pagament ġie mgħoddi wkoll mill-klijenta, ġie validat ukoll mill-klijenta, għandna daww is-safeguards ukoll bil codes li jintbagħtu lis-Sinjura biex tapprova l-pagament.

Il-kwistjoni mhux li għamlet pagament ta' €10,000; f'dan il-kuntest mhuwiex dak l-ammont kbir vis-à-vis l-klijenta wkoll. U jekk inqabblu l-€10,000 ma' kemm il persuna ddaħħal li bażikament huwa bejn wieħed u ieħor iddikjarat €27,000 fis-sena, mhuwiex dak l-ammont kbir li l-bank għandu jistaqsi lill-klijenta."³⁰

L-Ilmentatriċi kienet klijenta tal-Bank għal 30 sena u skont l-aħħar dokumenti ta' KYC tal-2017 u l-2023, hija kienet fin-negozju XXXXXXXXXXXXXXXX u ġieli għamlet pagamenti bil-card u onlajn u kienet midhla tas-sistemi tal-pagamenti tal-Bank.

L-ilment tagħha huwa li hi tippretendi li l-Bank:

"messu għamel riċerka biex jaraw fejn sejr in-flus. ... Jien ma kellix suspetti imma l-bank suppost li għamel riċerki fejn sejr in-flus."³¹

Ma jirriżulta l-ebda obbligu fuq il-Bank kif qed tippretendi l-Ilmentatriċi. L-obbligu prinċipali huwa fuq il-klijenta li tiċċekkja sew lil min qed tafda bi flus. Dan l-Ilmentatriċi naqset li tagħmlu u nxejt għal kollox f'idejn il-frodist u giet mogħmija bil-wegħda ta' qligħ kbir u ta' malajr (*get rich quick scheme*).

"Ngħid li wara li għamilt il-pagamenti, konna mexjin tajjeb u dak kien qed jiggwidana kif naħdmu u ma naħdmux. Imbagħad, tliet xhur, erba' xhur wara, daqshekk waqaf kollox. Hemmhekk ġew is-suspetti; qabel ma kellix suspetti."³²

L-obbligu tal-Bank kien li jiżgura li l-pagamenti kienu saru bl-awtorizzazzjoni tal-klijenta u dwar dan m'hemmx kontestazzjoni. Il-Bank għandu wkoll l-obbligu (kif spjegat fin-Nota Teknika referuta qabel) li jkollu sistema ta' moniteragg ta' pagamenti li tkun sensittiva għal suspetti ta' pagamenti frawdolenti.

Dan iżda ma jfissirx li l-Bank għandu obbligu li jagħmel riċerka dwar il-benefiċjarju ta' kull pagament li jsir (jekk il-benefiċjarju ma jkunx imsemmi f'xi lista ta' frodisti jew sanzjonijiet oħra). Kif spjegat f'deċiżjoni ASF 025/2024,³³ dubji dwar pagamenti li jiskattaw l-obbligu fuq il-Bank li jinforma lill-klijent dwar

³⁰ P. 133

³¹ P. 114

³² *Ibid.*

³³ <https://financiarbiter.org.mt/sites/default/files/oafs/decisions/1738/ASF%20025-2024%20-%20CL%20vs%20Bank%20of%20Valletta%20plc%20%28with%20Technical%20Note%29.pdf>

suspetti ta' frodi jkollu storja ferm differenti miċ-ċirkostanzi ta' dan l-ilment partikolari.

Dwar l-ilment li l-Bank messu għamel aktar biex jipprova jirkupra l-flus li l-Ilmentatriċi kienet ħallset, dan ma jirriżultax. Il-BOV għamel *ic-chargeback procedure* dwar il-pagamenti li saru bil-*card* u dan gie rrifjutat għax *Wallibex* ippreżentaw dokumenti li juru li flus ġew trasferiti lill-*wallet* estern bl-awtorizzazzjoni tal-Ilmentatriċi.

Dwar *recall* tal-pagamenti onlajn, dawn ma jkollhomx effett mixtieq jekk isiru diversi xhur wara li jkunu saru l-pagamenti.

Deciżjoni

Għar-raġunijiet spjegati hawn fuq, l-Arbitru qed jiċċad dan l-ilment u jordna li kull parti ġgorr l-ispejjeż tal-kaz rispettivi tagħha.

Alfred Mifsud

Arbitru għas-Servizzi Finanzjarji

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 tipografici 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.