

Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 174/2024

SK`

(‘l-Ilmentatur’)

vs

Bank of Valletta p.l.c. (C 2833)

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

Seduta tas-6 ta’ Frar 2025

L-Arbitru,

L-ilment

Ra l-Ilment¹ magħmul kontra l-BOV dwar ir-rifjut li jirrifondi ammont ta’ €442.73 rigward pagament li sar mill-Ilmentatur lil terzi mill-kont tiegħu mal-Bank abbinat mal-*Visa Card* rigward pagament għal akkomodazzjoni f’lukanda li kien sar onlajn fuq il-pjattaforma digitali ta’ *Booking.com*.

L-ilmentatur spjega:

‘To whom it may concern,

I will substantiate with screenshots and emails accordingly.

I received what seemed like a very legitimate email from booking.com at 2:30 pm on 8.1.2024 (attached ‘scam email’) stating that my visa required verification following a recent (last week) booking I made.

¹ Formola tal-Ilment minn paġna (p.) 1 - 6 b’dokumentazzjoni addizzjonali minn p. 7 - 53.

The email was sent from the booking.com hotel messages with a secure (https:) link asking to verify my card within the next 24 hours in order to confirm the booking.

I proceeded to provide the necessary information and when the transaction went through at 3:54 p.m., the Visa was charged in Bulgarian currency (attached 'Purchase Alert'). This is what triggered my suspicion.

I immediately called BOV contact service at approximately 4:10 p.m. (attached 'BOV Call') and spoke to Emma who took immediate action and stopped the card. I was also informed that a new card will be issued at a charge of EUR 11.50 and that to claim my funds I need to contact this email, thereby providing a summary as I am doing.

Following this, at 6:27 p.m., I was contacted by the Hotel via email warning me not to trust emails asking for card details confirming that they were hacked (attached 'notification from Hotel of Hack') – Unfortunately they were late in noting that they were hacked.

In view of the above, I kindly request a chargeback of the amount.

*Feel free to call me if you have any queries.'*²

L-Ilmentatur isostni li BOV damu wisq (3 ġimgħat sa ma talbuh l-informazzjoni) biex attivaw is-sistema ta' *chargeback*, u kien biss fit-13 t'Awwissu 2024 li kkonfermaw li *ċ-chargeback* kien ġie miċhud mill-bank ta' barra. Fl-opinjoni tal-Ilmentatur, dan kien aktar minn 7 xhur minn meta ġara l-incident u, allura, jesprimi dubji kemm il-Bank, fil-fatt, kien għinu mill-aħjar li seta' biex jirkupra flusu:

*"BOV confirmed via email dated 30.8.2024 that it tried its best to claim back the funds but given the lack of responses (sometimes up to 5 weeks) as outlined above and delayed action (at least 3 weeks from first contact with foreign bank). I doubt whether BOV did in fact try its best."*³

² P. 21

³ P. 9

Ilmentanta wkoll li l-Bank mhux qed jagħmel biżżejjed biex jeduka lill-klijenti biex joqgħodu attenti minn *scams* bħal dawn fuq pjattaformi digitali bħal *Booking.com*.

Risposta

Ra r-risposta tal-BOV⁴ fejn qalu:

'Respectfully submits:

A. Introduction

- 1. Whereas Mr. SK ("the complainant") states that "I was a victim arising from a hacked hotelier website through booking.com."⁵ He does not explain exactly the steps he followed to approve a payment, however he is saying that he is requesting a refund from the Bank due to "delayed action from the Bank and what I deem baseless justifications when indicating that I was aware of the transaction and the amount authorised."⁶***
- 2. Whereas the complainant explains that the transaction being complained of occurred on the 8th of January 2024 and was for the sum of €442.73. According to the Bank's records, this transaction was duly authorised through the 3D Secure App registered on the mobile phone of the complainant. As part of the Bank's security systems which are in line with the Payment Services Directive 2 (PSD2), there are multiple levels of authentication to ensure that the transactions are affected by the customer themselves and from credentials and systems registered in his name. In fact, these transactions had no indication that they were fraudulent.***
- 3. Whereas article 40(1) of Directive 1 of the Central Bank of Malta (based on the PSD2) provides that a transaction is considered to be authorised if the person making the payment gave their consent for the transaction to be affected. As explained, the Bank received legitimate instructions from credentials associated with the complainant and therefore it has no obligation to refund Mr. SK.***

⁴ P. 59 – 64 u dokumenti annessi p. 65 - 86

⁵ P. 7 tal-Ilment

⁶ P. 4 tal-Ilment

4. ***Whereas the Bank implemented the necessary measures to ensure that its' systems are secure and in line with the PSD 2 which provides the following on 'strong customer authentication':***

'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;⁷

5. ***Whereas the complainant was aware of the amount and recipient of the transaction. In this case, the recipient was MY FIN APP and not booking.com and Mr. SK would have had a clear indication of the recipient. The recipient and the amount would have been visible on the 3D Secure app of the complainant, and he needed to approve the payment by a passcode or using his fingerprint (if his mobile phone is compatible with this feature). This satisfies the elements of possession and knowledge, or inherence as required by strong customer authentication. This process can be seen from the attached document marked as 'DOC.A' (this is easily accessible on the Bank's website). This process clearly shows that one is approving a transaction.***
6. ***Whereas this transaction was approved using the card details of the complainant and with the use of his 3D Secure app. Therefore, the Bank had no control over this transaction since it was affected completely by Mr. SK himself. When the Bank receives legitimate instructions from the adequate systems, the Bank implements them accordingly since it is expected that the only person who has access to these details and systems is the person with whom they are associated.***
7. ***Whereas the complainant was familiar with the system of affecting payments using the 3D Secure app since according to the Bank's records, the mobile used to approve this transaction was the same one used by Mr. SK to affect payments of this type, which he is not contesting the legitimacy of. In***

⁷ Article 4(30) of PSD2.

fact, it results that the 3D Secure app used to approve these payments was enrolled on this particular device on the 8th of November 2021 and is still being used today. This can be seen from the document marked as 'DOC.B' which will be explained in detail during the proceedings.

- 8. *Whereas the terms and conditions of the BOV Visa Gold Card clearly provide that the 3D Secure app is used to approve payments:***

3. YOUR PIN / 3D SECURE PASSCODE / VERIFICATION CODES / OTHER SECURITY DETAILS

You may use your Card to effect transactions through various channels. For this reason, you will be issued with any one, or all, of the below:

- i. A PIN – personal identification number to be used for example at the ATM or at the Point of Sale;***
- ii. A 3D Secure passcode – to be used for example when effecting online purchase;***
- iii. A verification code – to be used to verify your cards when registering to an eWallet, or an app, such as the Bank's BOV Pay app or the BOV 3D Secure app.***

In all the above instances, any PIN and/or Card/Security Details communicated to you to be used in conjunction with your Card must be kept secret. This means that you must not disclose such Card/Security Details to anyone else, including Bank personnel, or record them in any way which allows another person to discover them.⁸

Moreover, the same terms and conditions provide the following regarding the cancellation of payments:

14(b) 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

⁸ DOC.C: Product Information Guide, P. 6.

processing of the payment. You will need to contact the retailer or supplier separately.⁹

B. Timeline of the Bank's handling of the complaint

- 9. *Whereas on the 9th of January 2024 Mr. SK submitted his claim to the Bank and provided the booking confirmation received from Booking.com, BOV SMS alerts, evidence of the date of his phone call with the Bank's Fraud monitoring team and a copy of the email received from Booking.com informing him not to divulge his card details.***
- 10. *Whereas on the 29th of January 2024, the Bank requested Mr. SK to provide additional documents to the Bank, particularly a signed declaration and communication with Booking.com.***
- 11. *Whereas on the same day, Mr. SK provided the Bank with the requested documentation and on the 30th of January 2024, the Bank acknowledged Mr. SK's email and documentation provided.***
- 12. *On the 22nd of April 2024, as part of the VISA Chargeback process, the Bank raised the dispute with the foreign Bank, since the Bank cannot communicate directly with the merchant who received the funds. However, this dispute was declined on the 15th of May 2024. The reason provided was that the customer (Mr. SK):***

“entered by himself the amount and specify the MY FIN account, which wanted to Top-Up. The Top-Up was completed timely and in full as well, hence all services were provided as expected and terms of sale were not misrepresented.”¹⁰
- 13. *On the 11th of June 2024, the Bank emailed Mr. SK where he was informed that the dispute was declined by the foreign bank and that in view of this, the next step was to raise a Pre-Arbitration which was raised on the same day. Moreover, Mr. SK was informed that the foreign Bank would have 30 days to review the Pre-Arbitration.***

⁹ *Ibid*, P. 10.

¹⁰ Extract from the response of the foreign bank.

14. On the 13th of August 2024, the Bank emailed Mr. SK where he was informed that the foreign bank declined the Pre-Arbitration since the transaction was authorised by the 3D Secure app. The below is an extract from their reply:

“The disputed transaction was processed successfully and 3D secure identification was required. As you can see in our Dispute Response documentation, the transaction completed successfully and the user was aware of the successful completion of disputed Top-Up (transaction) which was completed timely and in full as well, hence all services were provided as expected and as described, according to General Terms and Conditions for Electronic Money, Payment and Other Services (General Terms) of MyFin EAD.”¹¹

15. Whereas on the same day Mr. SK informed the Bank that he was not satisfied with the outcome, however the Bank informed him that the process was handled as per procedure.

16. Moreover, from the timeline outlined in this reply, it is clear that BOV followed the necessary steps and procedures to attempt to recover the money. However, the final decision rested with the foreign Bank who declined the request. Once it was declined, the Bank could not appeal the decision further since the argument for fraud cannot be used if a transaction is authenticated using the 3D Secure app which encompasses strong customer authentication. Moreover, the Bank had no right to dispute the matter further in the VISA Chargeback process and if the Bank attempted to do so, Mr. SK would have incurred a €500 charge when there was no reasonable prospect that the funds would be returned.

17. Moreover, one should note that at no point in the chargeback process did the foreign bank decline the Bank’s claim due to the Bank not raising it within the stipulated timeframes. Therefore, all of Mr. SK’s arguments about “delayed action from the bank”¹² is unfounded and unjustified. Had the Bank attempted to submit any of the claims outside the stipulated timeframe, they would not have been accepted by the system and no decision would have been issued.

¹¹ Extract from the response of the foreign bank.

¹² P. 8 tal-Ilment

- 18. Whereas Mr. SK had the option to decide which merchant to effect payments to and now cannot expect the Bank to bear the responsibility for his actions. The Bank simply provided him with a service to process payments which he himself authorized.**
- 19. Whereas the Bank makes numerous educational campaigns to raise awareness about the secure use of its' systems. In fact, the Bank also sends direct communications to customers to inform them of fraudulent schemes which imitate its' communication channels (smishing or spoofing). However, it is not reasonably expected for the Bank to send such direct communication about every possible scam which may be circulating. The Bank respectfully submits that the customer certainly has rights and interests, however, they also have a duty to adhere to terms and conditions and need to be aware of the use they are making of the Bank's services.**

C. Conclusion

- 20. For the reasons articulated above, the Bank respectfully submits that the Complainant's claims are unfounded in fact and in law and should be rejected by the Honorable Arbiter.**
- 21. Chapter 555 of the Laws of Malta vests the Honorable Arbiter with the authority to decide a case on the basis, inter alia, of the Complainant's legitimate expectations and what he 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.**
- 22. The Bank reserves the right to bring oral and documentary evidence in order to substantiate the defenses 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.**
- 23. The Bank reserves all rights/actions pertaining to it at law, and respectfully requests the Arbiter to reject and dismiss the complaints' claims.**

With expenses.'

Seduti

Fis-seduta tal-4 ta' Dicembru 2024, xehed l-Ilmentatur u qal:

'Ngħid li f'Jannar li għadda jew Dicembru, kont qed niddilja għal booking fuq Booking.com għal lukanda; u kien hemm a thread of emails mal-lukanda. U waħda mill-emails li rċevejt fuq l-istess thread kienet biex nagħmel authentication jew verification tal-card mill-istess email li kont qed niddilja mal-lukanda fuq il-pjattaforma ta' Booking.com.

Irċevejt email bil-link b'kollox, għafast il-link u tela' ammont li kien jikkorrispondi mal-ammont li kien miftiehem mal-lukanda. X'hin għamilt il-proċess, telgħet l-authentication tal-BOV, awtorizzajt l-authentication għax jien kont qed nagħmel it-tranzazzjoni u mexxejna minn hemm.

Ngħid li wara li sar dan kollu, ġieni dubju mit-tranzazzjoni. Apparti li sagħtejn wara, irċevejt email mil-lukanda biex jgħiduli li jekk nirċievi xi email għall-authentication jew verification biex ma naċċettahix għax li ġara, mid-dehra, kellhom hacking li saret mhux lil dik il-lukanda biss imma anke fuq lukandi li kienu hosted fuq il-pjattaforma Booking.com, qabdu l-istess thread of emails, li int qisek tkun bnejt rapport ta' trustworthiness magħhom, u wżaw dik il-pjattaforma biex jibagħtu dawn is-sensiela ta' emails.

Ovvjament kont ilhaqt ingdimt. Kellimt mill-ewwel lill-BOV; il-BOV – ikkoreġuni jekk sejjer żball – ikkuntattjaw lill-bank ta' barra, però, ir-request għar-refund ma ġietx aċċettata.

Jien, fl-opinjoni tiegħi, ngħid li hemm żewġ affarijiet:

- 1. Jien inħoss li mxejt skont ir-regoli kollha għax kont qed nibni relazzjoni ta' trustworthiness fuq l-istess email thread, allura, ma kelli ebda mod biex inkun naf li din kienet xi forma ta' scam għax jien irċevejt email mill-istess persuna fuq l-istess thread;***
- 2. Is-servizz li daqslikieku ħallastu, jien ma ħadtux. Ngħid li tista' tħares lejha b'żewġ modi din: waħda li, ovvjament, wara ndunajt li ġejt***

scammed u ma ħadtx is-servizz; u l-oħra, li kieku forsi pprovajna ngibu l-flus lura, jaf konna neħduhom. Il-BOV qalu li għamlu dak kollu possibbli.

Fir-risposta tal-BOV, intqal ħafna li huma mxew mar-regoli tagħhom, li kkuntattjaw lill-bank, però, qisni jien inqast b'xi mod milli ninduna u, allura, tort tiegħi. U qaluli wkoll li meta jiena nixtri, l-merchant ikun available. Issa huma jafu, l-BOV, li l-merchant jekk jien qed nixtri mingħand ABC mhux bilfors jitla' ABC.

Nghid li jien ma kelli l-ebda mod kif inkun naf li din hija scam għax irċevejt il-link fuq l-istess email thread qisni qed niddilja miegħek, pereżempju, u wara tlieta, erba' emails irċevejt biex nivverifika u jien, ovvjament, bnejt relazzjoni tajba miegħek u ser nivverifika.

Nghid li reċentement xtrajt xi ħaġa minn Southampton u telgħet, pereżempju, minn Blackpool. Il-kumpaniji jkollhom brands; dan mhux bilfors li l-merchant ser jittlalek l-istess ma' min tkun qed tiddilja.

Nghid li r-request tiegħi hu li jiġu rrifonduti l-flus anke għall-fatt li ħallast bil-VISA li suppost tkun b'xi mod aktar secure u insured, però, min-naħa tal-BOV qed jgħidu li mxew kif suppost u l-flus mhumiex ser jeħduhom.

L-aktar li jien iddispjacut għax meta tidħol tiċċekkja – għax dan ma ġratx Malta biss, din ġrat f'ħafna postijiet fid-dinja – issib ħafna artikli fejn banek avżaw lill-klijenti tagħhom, ġew rifonduti l-klijenti; u nghid, allura, Malta hi daqshekk problema biex nirrifondu xi ħaġa li hi ġenwina? Meta jien ikkuntattajt lill-bank in less than 24 hours. Meta bagħtu request għal xi ħaġa, less than 24 hours bagħttilhom l-affarijiet.

Jiena xtaqt li, at least, jiġu rrifonduti daww il-flus li ġejt ingdimt.

Mistoqsi mill-Arbitru jekk meta bbukkjajt kontx diġà ħallast il-lukanda, nghid li upon reservation, no. Saret ir-reservation; ikkuntattajt il-lukanda through l-pjattaforma biex nghidulhom fi x'ħin ser naslu u dawn l-affarijiet. Imbagħad, waħda mill-emails li rċevejt mingħandhom fl-istess thread tal-emails biex nivverifika l-card. Ġeneralment, tħallas meta tasal il-lukanda u jien għamiltha li nħallas meta nasal il-lukanda.

Ngħid li t-thread li rċevejtx ma kienx qed jipersonifika lill-bank; kienet thread bejni u bejn il-lukanda.

Mistoqsi mill-Arbitru jekk jien approvajt bit-3D Secure, ngħid li iva.

Mistoqsi mill-Arbitru jekk ma nafx li t-3D Secure tintuża biex tagħmel il-pagamenti u mhux biex nawtentika l-card, ngħid li ġieli biex tawtentika titlalek it-3D Secure – jekk m'inix sejjer żball – titla' wkoll. Safejn naf jien ġieli titla' bħala zeros.

Dr Luana Vella tikkonferma li biex tawtentika l-card, it-3D Secure titla' wkoll imma l-ammont ikun zeros.

Ngħid li peress li rajt li l-ammont jaqbel preċiż ma' tal-lukanda, I proceeded to pay. Ngħid li jiena naf li awtorizzajt pagament.¹³

Fil-kontroezami, kompli jgħid:

'Mistoqsi niftakarx min kien il-merchant f'dan il-każ, ngħid li bħalissa nsejt imma ma kienx Booking.com.

Mistoqsi meta rajt li l-merchant ma kienx Booking.com, iċċekkajt online biex nara min hu dan il-merchant, ngħid li l-merchant telali li huwa payment services. Jekk qed niftakar sew, kien My Fin App, li hu a payment services company u, għalhekk, serraħt rasi. It is a licensed institution, a Bulgarian company u ma nafx għandhiex xi branches oħra.

Ngħid li fl-email kien hemm li ser jikkanċellawli l-booking għax il-card m'għaddietx u kelli bżonn nivverifika l-card.

Qed jingħad li jien ġieli għamilt verification permezz tad-3D Secure App u mistoqsi s-soltu x'nara, xi jkolli miktub, ngħid li mingħalija tara merchant u ġieli tara jew zeros – ħafna drabi titla' b'ħafna zeros il-verification tal-card – u ġieli jkun hemm 1. Dawk li kelli jien s'issa u, ovvjament, dan il-każ.

Mistoqsi inix familjari mal-użu tat-3D Secure App, ngħid li ġieli użajtha. Ngħid li jien qatt ma kkontestajt li m'għamiltx il-pagament, mhux dak il-każ. It-3D

¹³ P. 87 - 89

Secure tajba għax tagħti an additional secure level biex tara li jien qed nawtorizzah il-pagament.

Mistoqsi mill-Arbitru jekk tlabtx lil-lukanda biex tirrifondili hi peress li kienu huma li ġew hacked, ngħid li jien għidtilhom li jien kont ilhaqt għamiltu l-pagament u qaluli li kienu ġew hacked. Meta ċempiltihom, qalli biex inkellem lill-bank. M'inix ċert ċempiltihomx jew għidnilhom upon arrival x'kien ġara, però, huma qaluli mill-ewwel biex inkellem lill-bank.

Mistoqsi mill-Arbitru jekk iffollowjajtx il-claim tiegħi magħhom, ngħid li le.

Mistoqsi mill-Arbitru jekk għamiltx claim ma' Booking.com, ngħid li Booking.com meta ċčekkjajt ma kinux qed jaċċettaw claims għaliex huma qalu li mhux mill-pjattaforma tagħhom għax min kien qed jagħmel l-iscam, attakkaw lukandi – skont ma qrajt jiena - li kienu hosted fuq Booking.com.

Mistoqsi pprovajtx nagħmel claim ma' Booking.com, ngħid li le għax ma kinux qed jaċċettaw claims u ngħid li ma mortx għand Booking.com, imma sirt naf mill-artikli li qrajt.

Qed jingħad mill-Arbitru li f'ċerta korrispondenza kien hemm 'suggest to use Banking App, Revolut, Monzo, Wise, Starling ... ,' u mistoqsi kif ma xegħelitlix bozza li hemm xi haġa hażina, ngħid li to be honest, le. Qisni l-fatt li qed inħallas bil-VISA ukoll isserraħli rasi.

Mistoqsi wkoll fuq il-fatt li qaluli 'Stay on for tech support for five minutes,' mhix xi haġa normali li ssir fil-verification tal-card, ngħid li le, kieku ma kontx nagħmlu l-pagament.'¹⁴

Fis-seduta tas-7 ta' Jannar 2025, il-Bank ressaq ix-xhieda ta' Shirley Scerri li qalet:

'Ngħid li jiena l-Manager taċ-Chargebacks Department. Ili nokkupa r-rwol minn Lulju 2023 u ili nagħmel parti minn dan id-dipartiment għal dawn l-aħħar tmintax-il sena.

Ngħid li jiena kont infurmata dwar dan il-każ u kif qed isiru l-investigazzjonijiet u bazikament naf il-każ dwar xiex inhu.

¹⁴ P. 89 - 90

Ngħid li meta tintuza t-3D Secure App, tintuza biex jithallsu t-tranzazzjonijiet online ma' merchant li hu wkoll 3D Secure compliant. Ngħid li meta l-klijent ikun qed iħallas b'dan il-mod ikun irċieva notification at check-out stage fuq il-mobile tiegħu fejn hemmhekk qed juri l-ammont u anke l-merchant, lil min ser iħallas. U kif appena jagħfas din il-push notification, jaċċessa t-3D Secure App li jkollu fuq il-mobile tiegħu.

Meta hu jara t-3D Secure App, ser jara l-ammont u ser jara wkoll isem il-merchant. U l-klijent jawtorizza b'dak il-mod li jaf huwa biss, jiġifieri jista' juża l-Pass Code, jista' juża l-fingerprint, però, huwa mod ta' kif jawtentika li l-klijent biss ikollu aċċess għalih.

Apparti minn hekk, kif it-tranzazzjoni tiġi awtentikata bit-3D Secure App, hu jerga' jiġi referred għall-authentication page fejn hu jawtentika din it-tranzazzjoni.

It-3D Secure App tista' tintuza biex tagħmel verification tal-card, jiġifieri inti tista' tirċievi notifika biex tivverifika l-card, normalment, wara li tkun aċċessajt xi website. Il-card verification ma jkollhiex ammont fuqha u l-ammont ikun zero, jiġifieri m'aħniex qed ngħidu li jkun hemm ammont partikolari.

Fil-verification ikollu wkoll l-isem tal-merchant u l-ammont li huwa zero.

Li nista' ngħid ukoll hu li l-ilmentatur huwa familjari ma' dan il-proċess, jiġifieri ġieli wżah dan – kemm qabel u kemm wara – u t-3D Secure Application ilha enrolled fuq il-mobile tiegħu mill-2021.

Ngħid li t-tranzazzjoni kienet awtentikata bit-3D Secure, jiġifieri m'għandniex Fraud Chargeback rights. Ngħid li għalkemm m'għandniex dawn ir-rights, aħna xorta ikkuntattajna l-bank tal-merchant u pprovajna nirkupraw il-flus through the Chargeback Cycle.

Ngħid li ċ-ċiklu taċ-Chargeback isir mis-sistema tal-VISA, jiġifieri mhijiex xi ħaġa li aħna nikkuntattjaw lill-merchant jew lill-bank ta' barra b'xi email jew b'mod ieħor. Hemm is-sistema tal-VISA li ċ-Chargebacks jiġu raised through this system.

L-ewwel step ikun iċ-Chargeback stage. Jekk dan l-istadju jiġi declined, ikun hemm step ieħor li hu pre-Arbitration stage ukoll li f'dan il-każ ġew declined.

lż-żewġ stages. Dawn ġew declined primarjament għax kien hemm l-authentication li tikkonferma li huwa ried iħallas lil dak il-merchant b'dak l-ammont.

Ngħid li għamilna, bgħatna d-dokumenti li bagħtilna l-ilmentatur u spjegajna xi ġralu. Hu fl-ittra spjega x'ġaralu, x'sar u x'ma sarx, u bagħtilna dokumenti li juru dak li qalilna fl-ittra. U l-ittra u d-dokumenti tiegħu bgħatnihom lill-bank ta' barra u spjegajnilhom x'qed jgħid il-klijent tagħna u għalfejn aħna rridu li l-flus jiġu lura.

Ngħid li teknikament it-tranzazzjonijiet kienu awtorizzati mill-klijent, jiġifieri l-bank ta' barra għalhekk m'aċċettax. Hemm terms and conditions, imma l-aktar li ġie emfasizzat hu li dawn kienu awtorizzati mill-ilmentatur, jiġifieri l-claim tal-ilmentatur jekk kienx hemm xi frodi għaddejja, it-tranzazzjoni ma kinitx fraudulent għax kienet authenticated and authorised by the client.

Ngħid li l-istadju li jmiss wara l-pre-Arbitration, hija l-Arbitration. L-Arbitration issir diretta mal-VISA Compliance. L-ewwel żewġ stages huma bejnna u bejn il-bank ta' barra.

Imbagħad, l-istep l-oħra hija l-Arbitration, però, l-Arbitration l-ewwelnett biex il-klijent jagħmilha irid jaċċetta għax il-VISA jiċċarġjaw an Arbitration Fee ta' €500, jiġifieri, once li int ser tagħmilha, inti qed taċċetta li ser jitħallsu dawn il-€500.

Ngħid li l-Arbitration issir jekk aħna naraw li hemm grounds li l-klijent ikompli. F'dan il-każ, aħna diġà nafu li in the first stages il-klijent m'għandux chargeback rights biex jikkontesta din it-tranzazzjoni għax hija awtentikata minnu. Ngħid li aħna m'aħniex ser niggwidaw il-klijent biex jidhol Arbitration, jidhol f'€500 oħra meta aħna nafu li in the first place dan qatt ma kellu chargeback rights.

Ngħid li aħna għamilna l-attentat taċ-Chargeback biex nipprovaw inġibu l-flus lura.

Ngħid li d-dispute li tagħmel għall-frodi meta hija awtentikata bit-3D Secure u hemm 2-Factor Authentication, din diġà nafu li teknikament hija prova

kontrina. Ipprovajna nagħmluha xorta għax aħna lill-klijent tagħna rridu nipprovaw nagħmlu minn kollox biex nipprovaw ingibu l-flus lura.¹⁵

Fil-kontroezami, kompliet tixhed:

‘Nikkonferma li l-ammont tal-Verification ikun dejjem zero. Jekk għal xi raġuni l-merchant jiddeċiedi li jrid jagħmilha 1 cent, pereżempju, dik il-merchant ser jiddeċidiha. Però, meta inti ser tawtentikaha, ser tarah l-ammont.

Ngħid li ħafna drabi jkun zero; issa jekk il-merchant partikolari jiddeċiedi li jrid jagħmilha 1 cent il-Verification, dak il-merchant ser jiddeċidiha. Inti meta tagħmel Verification ikollok ‘Your card has been verified,’ u anke l-messaġġ ikun li għandek Verification.

Qed jingħad li jista’ ma jkunx zero, ngħid li f’dak il-każ ma jkunx Verification.

Mistoqsija jekk ma jkunx zero ikunx pagament, ngħid li le, mhux bilfors ikun pagament. Jista’ jkun li l-merchant, il-Verification tiegħu jiddeċiedi li jagħmilha għal 1 cent. Imma meta tircievi n-notification tal-Verification, għandek eżatt l-ammont li int qed tawtorizza.

Qed niġi referuta għal dak li għidna li l-esperjenza tal-ilmentatur ilha mill-2021. L-ilmentatur jgħid li mhux dejjem jitla’ l-istess merchant. U jgħid li fir-risposta tal-BOV, waħda mir-raġunijiet kienet li hu kien jaf il-merchant min hu. U l-ilmentatur jgħid li l-merchant mhux dejjem ikun l-istess ma’ min tkun qed tiddilja.

Ngħid li l-ilmentatur ibbukja mal-Booking.com u rċieva email fuq l-istess thread ta’ emails. Però, l-hotel kellha isem. U kif qalilna fil-bidu, l-ilmentatur irċieva messaġġ biex jagħmel Verification imma ma qalilniex jekk irċevihex mill-Booking.com jew mill-hotel.

Qed jingħad li hu qalilna li rċeviha fuq l-istess thread of emails. Jgħid li hu mhux just irċieva SMS jew telefonata imma rċieva mill-istess email li kien qed jiddilja magħhom email biex jagħmel il-Verification tal-card għaliex m’għaddietx.

Nistaqsi ma’ min ried jagħmilha, jekk hux ma’ Booking.com jew jekk hux mal-hotel.

¹⁵ P. 91 - 93

Qed jingħad li mal-hotel. Qed jingħad li jekk wieħed huwa familjari mas-sistema tal-pjattaforma, Booking.com, meta qed tiddilja mal-Booking.com, tidħol il-hotel fuq il-pjattaforma tal-Booking.com u tikkomunika fuq il-pjattaforma tal-Booking.com through an email.

Qed jingħad li lill-ilmentatur iggwidajnih x'għandu jikteb biex fl-ittri tiegħu ma jiktibx scam jew fraud.

Ngħid li għidnilu biex ma jiktibx scam jew fraud għax it-tranzazzjonijiet ġew awtentikati. Ma jistax imur u jagħmel claim mal-bank ta' barra meta huwa awtentika t-transaction.

Qed niġi mistoqsija jekk il-pagament setax jitwaqqaf minħabba li l-klijent ċempel within the hour, ngħid li t-tranzazzjoni ma tistax titwaqqaf. Ngħid li aħna ma nistgħux immorru għand il-bank ta' barra u nipprovaw inġibu l-flus meta għandna l-ammont awtentikat u awtorizzat mill-klijent. Ma nistgħux immorru għand il-bank b'ittra mingħand il-klijent u ngħidu li hija frodi. L-ittra mhux qed turi dak li ġie awtentikat u għalhekk għidnilu biex ineħhi li hija frodi.

Qed niġi mistoqsija jekk l-ilmentatur setax iċempel il-bank ta' barra u jwaqqaf it-tranzazzjoni, Dr Luana Vella tirrispondi billi tgħid li lanqas il-BOV ma jista' jċempel il-bank ta' barra. Hemm il-proċeduri tal-VISA u jikkomunikaw miegħu huma.¹⁶

Sottomissjonijiet finali

Fis-sottomissjonijiet finali tal-partijiet, apparti li ġew repetuti l-argumenti li kienu diġà saru fl-Ilment, fir-risposta u fil-proċeduri waqt is-seduti, tqajjmu argumenti li ma kinux u, skont il-prassi, l-Arbitru mhux ser jieħu dawn l-argumenti godda fil-konsiderazzjonijiet tiegħu biex jasal għal deċiżjoni tal-każ.

Analizi u osservazzjonijiet

F'dan il-każ ma tqajjem l-ebda dubju li kien l-Ilmentatur stess li kien awtorizza l-pagament ilmentat permezz tas-sistema 3D Secure fuq il-BOV App.

¹⁶ P. 93 - 94

L-Ilmentatur lanqas ma nnega li l-BOV kien konformi mal-obbligu tat-2 *factor authentication* skont ir-regolamenti tal-pagamenti maħruġa mill-Bank Ċentrali ta' Malta¹⁷ u skont il-liġi tal-UE magħrufa bħala PSD 2.¹⁸

Iżda, l-Ilmentatur jippretendi li l-BOV għandu xorta jagħmel tajjeb għat-telf tiegħu minkejja li fil-frodi ma kienx hemm xi personifikazzjoni tas-sistema tal-Bank kif ikun hemm f'każ ta' frodi tip *APP push payments* fejn frodist jidħaq bil-vittma billi jippersonifika lill-Bank.

Rigward *APP push payments*, l-Arbitru ppubblika mudell kif tiġi allokata r-responsabbiltà tat-telf bejn il-bank u l-klijent skont iċ-ċirkostanzi tal-każ. Iżda dan il-mudell ma japplikax għal dan il-każ.

F'dan il-każ, il-frodi saret fuq websajt tal-lukanda (fl-Italja) fejn kien sar il-*booking* permezz tal-pjattaforma *Booking.com*. Il-BOV ma kien bl-ebda mod involut f'dan il-*booking* u ma setax ikun jaf bih u lanqas seta' jkollu xi indizzji li l-pagament approvat bit-3D *Secure* kellu x'jaqsam ma' *booking* ta' lukanda u wisq anqas li kien riżultat ta' frodi.

Għalhekk, l-Arbitru ma jistax jalloka xi ħtija fuq il-BOV li naqsu li jagħmlu xi ħaġa biex jevitaw jew iwaqqfu dan il-pagament li rriżulta frawdolenti. Jekk xejn, il-ħtija qiegħda fuq in-naħa tal-Ilmentatur għax meta kien qed japprova l-pagament kellu informazzjoni biżżejjed li kien qed jagħmel pagament li ma kienx dovut (għax il-pagament kien dovut meta jasal iż-żmien li jkun alloġġjat fil-lukanda) u li kien qed jagħmel pagament lil terzi li ma kinux la *Booking.com* u lanqas il-lukanda, iżda li kienu istituzzjoni residenti f'Sofia, l-Bulgarija, u fi flus tal-Bulgarija.¹⁹

Anke l-fatt li fil-komunikazzjoni frawdolenti, l-Ilmentatur gie mħajjar biex meta jagħmel il-pagament '*the best banking apps to use are Revolut, Monzo, Bunq, Wise, Starling, N26,*²⁰ dan ukoll kien indizzju li messu qajjem suspett għax mhux normali li lukanda jew *Booking.com* jindikawlek liema bank għandu jintuża biex isir pagament. L-Ilmentatur kellu indizzji biżżejjed biex jissuspetta li mhux kollox kien sew.

¹⁷ [Directive-1.pdf \(centralbankmalta.org\) li tagħti effett lill-PSD2](#)

¹⁸ Direttiva (EU) 2015/2366

¹⁹ P. 16

²⁰ P. 13; p. 90

Rigward l-akkuża li dewmien min-naħa tal-Bank biex jattiva u jsegwi l-proċeduri ta' *chargeback* seta' ppreġudika ċ-ċans li l-flus jingabru lura, ġie spjegat li ġaladarba l-pagament ikun ġie approvat bit-2 *factor authentication (3D Secure)*, allura, l-pagament ma jistax jinżamm jew jitregġa' lura.²¹ Allura, ma jistax jingħad li b'xi mod il-pożizzjoni tal-Ilmentatur ġiet ippreġudikata anke jekk seta' kien hemm dewmien mill-bank biex jattiva u jsegwi ċ-*chargeback*.

Iżda anke hawn wieħed jifhem li l-proċeduri ta' *chargeback* jieħdu ċertu żmien u jridu jsiru b'ċertu proċeduri skont is-sistema tal-VISA li toffri tliet livelli (*chargeback claim, pre-arbitration* u *full arbitration claim*). It-tul tal-proċeduri jiddependi mhux biss mill-Bank, iżda anke mill-koperazzjoni li joffri l-*merchant* barrani (jew f'dan il-każ istituzzjoni finanzjarja Bulgara). Filwaqt li dejjem ikun hemm lok ta' aktar effiċjenza, l-Arbitru ma sabx prova li l-BOV wera traskuraġni li ppreġudikat l-interessi tal-Ilmentatur.

L-Arbitru jsib ċertu frivolezza min-naħa tal-Ilmentatur li jipprova jwaħħal fil-BOV li l-proċess ta' *chargeback* ma rnexxiex għax ma tħalliex jispjega li kien każ ta' frodi jew *scam*. Apparti li l-Bank għandu ħafna aktar esperjenza mill-Ilmentatur dwar kif l-aħjar issir talba għal *chargeback*, wieħed jifhem li ġaladarba l-pagament sar lil istituzzjoni finanzjarja fil-Bulgarija, li magħha l-frodist probabbli kellu kont, u mhux lill-frodist b'mod dirett bħala *merchant*, l-argument ta' *fraud* jew *scam* ma setax isir versu l-*merchant*, li huwa membru tal-VISA li rċieva l-pagament, u li kien qed jintalab jirrifondi.

Deciżjoni

Skont Artiklu 19(3)(b) tal-Att KAP. 555, l-Arbitru huwa obligat li jiddeciedi u jagħti ġudizzju b'referenza għal dak li, fil-fehma tiegħu, ikun ġust, ekwu u raġonevoli fiċ-ċirkostanzi partikolari u merti sostantivi tal-każ.

Hija l-fehma tal-Arbitru li l-Ilment mhux ġust, ekwu u raġonevoli għax il-pagament ilmentat ġie awtorizzat mill-Ilmentatur u ma kien hemm xejn li seta' qajjem suspett lill-Bank li dan kien frawdolenti. Anke fil-proċess ta' *chargeback* ma jsib xejn li l-Bank naqas b'xi mod milli jsegwi l-proċessi li jesigu l-VISA.

Għall-kuntrarju, l-Arbitru huwa tal-fehma li kien l-Ilmentatur li kien negliġenti meta approva pagament li ma kienx għadu dovut u li kien juri li qed isir lil terzi li

²¹ P. 94

hu ma kienx ikkuntratta magħhom u f' munita ta' pajjiż li ma kellu x'jaqsam xejn mal-*booking* tal-lukanda li kien għamel.

L-Arbitru jagħder lill-Ilmentatur li jhossu misruq iżda l-Ilmentatur messu kien aktar attiv biex ifittex drittijietu kontra l-lukanda li ppermettiet li s-sistemi tagħha jiġu ppenetrati mill-frodisti u jwegġġu lill-klijenti tagħhom. Aċċetta wisq b' mod legġer ir-risposta tal-lukanda li aħjar jitkellem mal-bank.²² Filwaqt li ma kien hemm l-ebda garanzija li attentat li jzomm il-lukanda responsabbli kien ser jirnexxi, iżda xorta messu sar għax il-lukanda seta' kellha anke xi forma ta' assikurazzjoni li jkopriha.

Għar-raġunijiet hawn spjegati, l-Arbitru qed jiċhad dan l-Ilment u jordna li l-partijiet iġorru l-ispejjeż rispettivi tagħhom.

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-

²² P. 90

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 anonimizati skont l-artikolu 11(1)(f) tal-Att.