

## Before the Arbiter for Financial Services

**Case ASF 078/2021**

**CH ('the Complainant')**

**vs**

**Truevo Payments Limited (C 62721)**

**('Truevo' or 'the Service Provider')**

**Sitting of the 27 July 2022**

**The Arbiter,**

**Having considered in its entirety, the Complaint<sup>1</sup> filed by the Complainant,**

Where, in summary, the Complainant claimed to have been approached by representatives of *Trade Fintech* acting through internet platform [www.cfdcorporate.com](http://www.cfdcorporate.com), a company owned and operated by *Mpower Technologies Limited*, a subsidiary of *Finmaster Group Ltd*.

He submitted that the webpage in question contained misleading information about the merchant, stating that the persons coming in contact with him feigned to be professional brokers qualified for trading with regulated financial tools and also impersonating themselves as qualified financial brokers with the relevant skills and certifications to provide financial advice.

But, from further research in the available public registries, it resulted that the merchant was not licensed to offer regulated financial tools and to provide financial advice to third parties. In fact, warning and citations for lack of licence

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<sup>1</sup> Page (P.) 2 - 48

were also issued against the merchant and, thus, the merchant's claims as a financial broker were a clear example of *'misrepresentation of the Merchant'*.<sup>2</sup>

The Complainant stated that on reliance of the merchant's allegations, he ordered a service related to the opening of an investment brokerage account to be used for subsequent trading with financial tools in real time and, eventually, the disputed transactions were withdrawn from his account. Considering that he was never given the investment account as promised by the merchant and the access to it to be able to use for the trading of financial products as listed, the Complainant declared this to be a *'misrepresentation of the service'*<sup>3</sup> and, above all, *'possible fraud'*.<sup>4</sup>

After finding out that he was misled by the merchant, the Complainant cancelled the account on the merchant's website and requested the return of his money which, however, was *'... tacitly refused ...'*.<sup>5</sup>

He submitted further that, based on the above, the following breaches of applicable law would have taken place:

*'(a) Trading regulated financial tools without required license; Facilitating persons to provide financial services without required license/possible joint knowledge (accessory) in trading regulated financial tools without required license*

*(b) Possible neglect of the bank's duty to actively prevent fraud and abnormal payment patterns*

*(c) Possible neglect of the legal provisions for measures against money laundering*

*(d) Possible theft/fraud committed.'*<sup>6</sup>

Further submissions were made by the Complainant, mainly related to the lack of financial licence of the merchant/breach of KYC, AML and onboarding

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<sup>2</sup> P. 3

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

guidelines;<sup>7</sup> the facilitating of unlicensed trading with regulated financial tools;<sup>8</sup> AML related issues;<sup>9</sup> the acceptance of refundable amounts for funding clients' investment accounts by a payment service provider;<sup>10</sup> the possible non-compliance with VISA core rules and MasterCard rules and regulations;<sup>11</sup> and the warnings against the possibly fraudulent merchant.<sup>12</sup>

The Complainant also stated that '*... the transactions to the Merchant/ [www.cfdcorporate.com](http://www.cfdcorporate.com) should not have been processed by Truevo Payments Limited if it has observed all relevant regulatory restrictions and regulations.*'<sup>13</sup>

In view of the above, and as declared in the complaint form submitted, the Complainant is '*... seeking for a compensation from the acquiring bank that, in our opinion, knowingly or recklessly contributed and/or facilitated the illegal activity of the non-licensed broker.*'<sup>14</sup>

He argued that Truevo should not have provided payment services to the said broker and thus, thereby preventing his losses. In this respect, '*... the compensation claimed amounts to the sum of all payments paid by the Client and processed by Truevo in favour of the illegal merchant.*'<sup>15</sup>

**Having considered Truevo's reply,**<sup>16</sup> whereby, *inter alia*, the Service Provider primarily argued that, without prejudice to other pleas, the action proposed by the Claimant is time-barred in terms of Article 21(1)(c) of Chapter 555 of the Laws of Malta, this considering that the disputed transactions took place in May 2018.

Despite the Complainant indicating in the complaint form that he had first knowledge of the matters complained about in December 2020, he had however notified the Service Provider with a legal letter on 27 November 2019, hence, the Complainant was surely aware of the facts complained about in 2019. It

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<sup>7</sup> P. 4

<sup>8</sup> P. 5

<sup>9</sup> *Ibid.*

<sup>10</sup> P. 6

<sup>11</sup> P. 6 - 7

<sup>12</sup> P. 7

<sup>13</sup> P. 4

<sup>14</sup> P. 8

<sup>15</sup> *Ibid.*

<sup>16</sup> P. 54

stated further that the action being complained of is also time-barred in terms of Article 2153 of Chapter 16 of the Laws of Malta.

Regarding the merits of the complaint, the Service Provider is rebutting the claims as being unfounded at law and in fact.

It also submitted that during the course of the proceedings, it would provide evidence that the Complainant is not an *eligible customer* in terms of Chapter 555 of the Laws of Malta. In this respect, the Service Provider declared that there was no direct relationship between the Complainant and itself and hence the latter is not the rightful defendant in relations to the claims brought forward.

The Service Provider emphasised that, '*... from the very definition of eligible customer established in Article 2 of Chapter 555 of the Laws of Malta, it is clear that:*

- *The complainant was never a consumer of the Respondent Company; &*
- *The respondent company never offered to provide a financial service to the complainant; &*
- *The complainant never sought the provision of a financial service from the Respondent Company.'*<sup>17</sup>

The Service Provider insisted that it is evident that the Complainant's contractual relationship was not with the Service Provider and that its agreement with *MPower Technologies Limited* only involved the processing of the transaction/s for its merchant.

The Service Provider further submitted that the complaint contains various allegations implying breach of AML duties on the part of the Respondent and also that CFD Corporate is an unlicensed financial service provider, but, as evidenced in the course of the proceedings, at the time of on-boarding, the Merchant and associated companies operated in terms of the laws and regulations of the jurisdiction of incorporation.

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<sup>17</sup> P. 55

It mentioned the fact that notwithstanding all the allegations of warnings, it was on the 1 August 2019 that the UK FCA confirmed that permanent restrictions on the same CFSs and CFD-like options to retail customers shall be applicable. For CFDs from 1 August 2019, and for CFD-like options from the 1 September 2019. Since the transactions in question were executed in May 2018, it is a full 12 calendar months prior to the same warnings by the FCA and, also, prior to the requisite to hold a UK FCA licence to carry out CFD or CFD-like transactions.

The Service Provider insists that it is being targeted because the Complainant cannot retrieve the monies from the rightful defendant. The Complainant is filing this complaint pretending that the Service Provider makes good for shortcomings/scam affected by third parties.

The Service Provider also refuted the unfounded and baseless allegations that it somehow failed in its regulatory obligations when onboarding clients.

Truevo concluded that the complaint and the requests therein are not contemplated in law, and that the Complainant is seeking redress from alleged regulatory breach which did not necessarily lead to the losses alleged.

**Having heard the parties and seen all the documents and submissions made,**

**Considers:**

The Arbiter notes that the complaint mainly relates to the allegation that Truevo contributed to, and facilitated the illegal activity carried out by a non-licensed broker. Also, that Truevo's non-compliance with the 'relevant regulatory requirements' led to the processing of payments received by an alleged fraudulent merchant leading to the client's losses.

Primarily, in its reply, Truevo declared that it is not the rightful defendant to the complaint in question and the Complainant is not an Eligible Customer in terms of Chapter 555 of the Laws of Malta as there was no direct relationship between the same Service Provider and the Complainant.

This was emphasised by Truevo's representative in the affidavit submitted, whereby it was declared that:

*'Truevo hereby reiterates the fact that, it never had a relationship or any form of contractual relationship whatsoever with the Complainant. In terms of the law*

*governing these proceedings, Truevo has always insisted that the Complainant was never an “eligible customer” because he was never a customer of Truevo, nor has it ever offered services to the Complainant and nor has the Complainant ever sought provision of financial service from Truevo.’<sup>18</sup>*

During the hearing of 2 November 2021, the Complainant declared that:

*‘I don’t have any sort of contractual or other relations with other parties apart from CFD Corporate.’<sup>19</sup>*

Therefore, in view of such declarations, the Arbiter has to examine his competence.

### **Competence of the Arbiter**

The question of whether the Arbiter enjoys jurisdiction in a particular case is dictated by the provisions of Chapter 555 of the Laws of Malta (‘the Act’) whereby the Arbiter is obliged to investigate his jurisdiction.

Article 22(2) of the same Act stipulates that,

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

Moreover, Article 19(1) of the Act stipulates that the Arbiter can only deal with complaints filed by *eligible customers*:

*‘It shall be the primary function of the Arbiter to deal with complaints filed by **eligible customers** through the means of mediation in accordance with Article 24, and where necessary, by investigation and adjudication.’*

The Act stipulates further that:

*‘Without prejudice to the functions of the Arbiter under this Act, it shall be the function of the Office:*

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<sup>18</sup> P. 73

<sup>19</sup> P. 62

(a) *To deal with complaints filed by **eligible customers**.*<sup>20</sup>

### **Eligible customer**

Article 2 of the Act defines an ‘eligible customer’ as follows:

*‘a customer who is a consumer of a financial services provider, or to whom the financial services provider has offered to provide a financial service, or who has sought the provision of a financial service from a financial services provider.’*

The Complainant testified that in 2018,

*‘... I was doing some research on the internet on investments and I came across CFD Corporate and I got in touch with the Customer Centre. I wanted to find out what this product was about and they gave all the details.’<sup>21</sup>*

He claimed that he was eventually asked to deposit the sum of around \$250 and considering this being a small amount, he agreed.

The complainant clearly declared that he was in contact with a representative of CFD Corporate,

*‘After that, I was in contact with one of their team members called Branson or Brandon, and he asked me what I wanted to do and I told him that I wanted to do some trades.’<sup>22</sup>*

In fact, as the Complainant himself declared,<sup>23</sup> it was *CFD Corporate’s* representative that mentioned oil trades with good leverage at that time. It was the same representative that asked him to invest again and also suggested that he can borrow the required sum to do this ‘investment’.

The Complainant also stated that:

*‘Since I had no experience, they told me that they will guide me in everything. They told me that they were going to do this and do that. And they reassured me that my funds were safe. At some point in time, they came back to me and gave me some instructions on what to do, and as I was quite new, I told them I*

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<sup>20</sup> Article 11(1)(a)

<sup>21</sup> P. 58

<sup>22</sup> *Ibid.*

<sup>23</sup> P. 59

*needed some assistance. They told me that I had to do this at the right time and, if I were unsure, I had to call them. They told me that if I do nothing, they will do it for me themselves.*<sup>24</sup>

The Complainant also admitted that the money deposited/invested were directed to *CFD Corporate*:

*'At the beginning, I believed that I was provided with this segregated account which was part of the deceit. Shortly after, I discovered that the amount which I gave to CFD Corporate ...'.*<sup>25</sup>

Based on the Complainant's declarations, it is amply clear that he has continuously communicated with *CFD Corporate*, that he sought advice directly from them, and that, eventually, the same company instructed him on trades and reassured him of their assistance.

Moreover, at the time of communication with *CFD Corporate* and when the relevant deposits/investments were made, the Complainant was not even aware of Truevo's existence or involvement in the transaction and only became aware of this through the issuing bank at the time he attempted to initiate the chargeback process. He stated that,

*'Asked when did I learn of Truevo's involvement in the transaction, I say through Halifax Bank in 2018/2019.'*<sup>26</sup>

### **Determination of eligibility**

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

This was admitted by the Complainant himself as he clearly declared that he had no relationship other than that with *CFD Corporate*.

A complaint with the Arbiter can only be filed against a service provider in line with the provisions of the Act.

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<sup>24</sup> P. 59 - 60

<sup>25</sup> P. 61

<sup>26</sup> P. 63



Having considered all the facts, it results that the Complainant was not *'a customer who is a consumer'* of Truevo, neither that Truevo *'has offered to provide a financial service'* to the Complainant, nor that the Complainant *'has sought the provision of a financial service from Truevo for the purposes of the Act.'*

Accordingly, the Complainant cannot be deemed an *'eligible customer'* in terms of Article 2 of the Act and, therefore, the Arbiter does not have competence to deal with this complaint.

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

**Dr Reno Borg**  
**Arbiter for Financial Services**