

## Before the Arbiter for Financial Services

Case ASF 216/2024

TO

(Reg. No. C XXXXXX)

('the Complainant' or 'TO')

vs

Papaya Ltd.

(Reg No. C 55146)

('Papaya' or 'the Service Provider')

### Sitting of 25 April 2025

#### The Arbiter,

Having seen the Complaint<sup>1</sup> relating to loss of access by TO<sup>2</sup> to funds amounting to €170,368.16 on their account with Papaya starting from February 2024 when Papaya reportedly had across the board technical problems for making SEPA<sup>3</sup> payments.

In their initial complaint, the remedy requested<sup>4</sup> was to be given urgent access to their blocked funds as they need to make tax payments to CFR.

During the hearing held in February 2025 it was established that in the period of 12 months since SEPA transfer services were not possible through Papaya, the funds have been withdrawn by using the debit card which permitted a series of

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<sup>1</sup> Pages (p.) 1 - 6 with attachments p. 7 - 74

<sup>2</sup> In the process of the hearing of evidence, proof was submitted that it qualifies as a micro-enterprise in terms of Article 2 of ACT Chapter 555 of the Laws of Malta, p. 116 - 119

<sup>3</sup> SEPA is a European system for making cross-border payments in Euro currency.

<sup>4</sup> P. 3

fund recovery through cash withdrawals from ATM's and other card-based withdrawals.

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

1. Recovery of additional expenses:
  - a. Card based transfer fees €2,087.09
  - b. ATM cash fees €201.00
- Total compensation sought €2,288.09.<sup>5</sup>

### **Reply of Service Provider**

In their reply<sup>6</sup> of 30 December 2024, Papaya stated:

*'Responding to the complaint against Papaya Ltd.: Ref: ASF 216/2024 made by the company TO by its representative, Mr XX, we hereby would like to provide the following information:*

1. *We confirm that TO is a client of Papaya Ltd. We have been in regular communication with the client concerning the provision of payment services. The client's account is active, and the funds in the account are available.*
2. *As previously communicated to the client, Papaya Ltd. has encountered technical challenges in processing SEPA payments due to the transition to a new payment service provider. These issues have caused delays in service but are being addressed.*
3. *Papaya Ltd. has actively engaged with the client to mitigate the impact of these challenges. We have ensured the client's access to funds through alternative means, including their corporate payment card. However, the SEPA-related limitations are temporary, and we are working diligently to resolve them.*

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<sup>5</sup> P. 86 - 87

<sup>6</sup> P. 82

4. *The functionality of the client's corporate payment card has been restored, allowing for daily transactions. The client is able to access their account balance.*
5. *Regarding the client's request to transfer funds to another account or utilize SEPA transfers, we regret to inform that this is not possible at the moment. The limitations are due to the technical migration process, not regulatory actions or investigations, as implied by the client. Papaya Ltd. complies fully with all legal and regulatory requirements.*
6. *We understand the urgency expressed by the client and are prioritizing the resolution of these issues. Once SEPA services are operational, the client will be promptly notified.*

*We hope that the information provided adequately addresses the client's concerns. Should you require any additional details or clarification, please do not hesitate to contact us.'*

## **Hearing**

During the hearing of 25 March 2025, the Arbiter pointed out that the Reply of the Service Provider was filed later than the 20 days contemplated by Article 25(2)(b) and, accordingly, the Arbiter must first decide whether or not to apply contumacy rules to the proceedings.

The Arbiter has already issued several rulings on this matter stating, *inter alia*, that contumacy rules would only be applied where:

- a. There is clear evidence of disrespect towards the Arbiter or his Office;  
or
- b. Service Provider not only replies late (or does not reply) but fails to be present for the first hearing;  
or
- c. Service Provider's reply is registered late in a manner which the Arbiter considers exaggerated.

This in view of the following:

1. Chapter 555 does not oblige the Arbiter to enforce contumacy where this would go against the provisions to deal with complaints in a procedurally fair, informal, economical and expeditious manner in terms of Article 19(3)(d).
2. Article 19(3)(b) of Chapter 555 obliges the Arbiter to adjudicate complaints by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances of the case.
3. Arbiter feels that the duty to hear both sides of the complaint with equal opportunities is superior to technical inhibitions that may apply in Court but require more liberal interpretation in Arbitration obliged to procedures of informality.

Consequently, it was decided not to apply contumacy rules and to allow the Service Provider full opportunity to present their evidence.

On the merits of the case, TO's representative stated:

***'My complaint is about the refund of some expenses that I had due to the fact that Papaya had SEPA circuit blocked for one year. And the only way to move the money was to top up another credit card from another bank account and this, of course, has incurred some costs, which I have already listed, amounting to around €2,200 for every top up I made.***

***I am claiming the refund of these costs which is about €2,200.***

***The Arbiter states that originally the problem was that funds amounting to €370,368 were blocked.***

***Asked whether this problem has been resolved, I say that the problem has been resolved by using the top up system.***

***I say that these funds are no longer blocked.***

***I confirm that my complaint is the recovery of the expenses incurred in the process of moving these funds.***

***I say that it took one year to understand that I could take the money out, and the process how to do it, and there was just this top up. I just received an email***

***from my accountant in Malta and apparently, starting from today, they solved the problem of the SEPA system, if I am not wrong.***<sup>7</sup>

The Service Provider declared that they have no questions to cross-examine the evidence provided by the Complainant and they have nothing further to add to their official reply other than that the ***commissions have been refunded.***<sup>8</sup>

### **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 Arbiter agrees that the complaint is fair and equitable and agrees that all expenses incurred as account fees, transfer fees and ATM withdrawal fees incurred for the period when SEPA services were not available should be refunded to the Complainant by Papaya. It is not clear what 'commissions' Papaya contend already having been refunded but fees not yet refunded are to be refunded.

### **Decision**

In terms of Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders Papaya to refund to Complainant within 5 days of this decision any account fees, transfer fees and ATM withdrawals fees incurred for the period when SEPA transfer services were unavailable, and which have not yet been refunded.

Expenses related to this complaint are for account of Service Provider.

**Alfred Mifsud**  
**Arbiter for Financial Services**

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<sup>7</sup> P. 84

<sup>8</sup> P. 85

## **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*'<sup>9</sup> and that '*Alternative Dispute Resolution (ADR) offers a simple, fast and low-cost out-of-court solution to disputes between consumers and traders.*'<sup>10</sup>

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*'.<sup>11</sup> The benchmarks on fees as legally stipulated for civil procedures in Malta may also provide certain guidance.<sup>12</sup>

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<sup>9</sup> Preamble (4) of the ADR Directive (EU/2013/11)

<sup>10</sup> Preamble (5) of the ADR Directive (EU/2013/11)

<sup>11</sup> *Ibid.*

<sup>12</sup> Tariff E, Cap. 12, Code of Organisation and Civil Procedure