

Before the Arbiter for Financial Services

Case ASF 237/2024

HC

(‘the Complainant’ or ‘HC’)

vs

Papaya Ltd.

(Reg No. C 55146)

(‘Papaya’ or ‘the Service Provider’)

Sitting of 03 April 2025

The Arbiter,

Having seen the Complaint¹ relating to loss of access by HC² to funds amounting to €40,798.77 on their account with Papaya starting from February 2024, when Papaya reportedly had across the board technical problems for making SEPA³ payments.

In their initial complaint, the remedy requested⁴ was:

1. Regaining full access to their frozen funds.
2. Reimbursement of fees amounting to €375 charged during the period when their account was dysfunctional.
3. Closure of their account.

¹ Pages (p) 1 - 5 with attachments p. 6 - 75

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

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

⁴ P. 3

During the hearing held on 25 March 2025, it was established that although Papaya have not yet resolved their problems with SEPA, the funds are being withdrawn by using the debit card which permitted a series of fund recoveries through ATM cash withdrawals.

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

1. Recovery of additional expenses:

ATM fees	€840
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2. Moral damages	€1,500
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Total compensation sought	€2,340
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Reply of Service Provider

In their reply⁵ of 31 January 2025, Papaya stated:

'We acknowledge receipt of the complaint submitted by Mr. XXX on behalf of HC Solutions Ltd regarding the account held at Papaya Ltd.

We confirm that HC is a client of Papaya Ltd and holds an active account. The client has access to the funds in the account and has been provided with a Mastercard linked to the account, which facilitates fund withdrawals. According to our information, the client has already utilized this card for transactions.

Regarding the client's request for account closure and withdrawal of funds, we would like to clarify that the client may access and withdraw the funds via the available card. Once the full balance is withdrawn, we will proceed with closing the account in accordance with the client's request.

Should any further clarification be required, please do not hesitate to contact us.'

⁵ P. 82

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.

Complainant confirmed that funds are being gradually withdrawn through ATM cash withdrawals and this process will be largely completed during April 2025. He then explained his revised claim for compensation as above explained.⁶

The Service Provider opted not to cross-examine Complainant on his evidence but informed that all account charges from March 2024 have been refunded and will stand by the Arbiter's decision for further claims made by Complainant.

On 27 March 2025, Service Provider informed that process of withdrawal of funds has been accelerated and is nearly completed.⁷

The Arbiter issued a decree requesting Complainant whether this new development would require revision of his expense claim and submission of evidence for such expense claims.⁸ Complainant confirmed that as a result of this development, his claim for expenses reduces to €560 and evidence for these expenses was submitted.⁹

Analysis and observations

There is no doubt that Complainant suffered quite an ordeal when in February 2024 they lost normal access to their 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 fully agrees that ATM fees incurred due to Complainant being obliged to gain gradual access to their funds through ATM withdrawals should be fully refunded to Complainant.

As to claim for moral damages, Article 26(3)(c)(iv) provides for compensation related to damages suffered as a result of the conduct complained of and this would include moral damages.

The Arbiter has awarded such damages in cases ASF 071/2021 and ASF 128/129/2024.

⁶ P. 83 - 88

⁷ P. 89

⁸ P. 90

⁹ P. 91 - 95

Calculation of such moral damages is not scientific and, generally, the Arbiter adopts a best judgement approach as normally followed by the principle of *arbitrio boni viri* where the amount is established *ex aequo et bono*.

Decision

For reasons above explained, the Complaint is being accepted and in terms of Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, Papaya is hereby ordered to pay Complainant the sum of €1,540 (one thousand, five hundred and forty euros) with interest at the rate of 2.65% p.a.¹⁰ payable within five days from the date of this decision until the date of effective payment.¹¹

The compensation amount is composed as follows:

Refund of ATM fees	€540
Compensation for moral damages	€1,000

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

Alfred Mifsud
Arbiter for Financial Services

Information Note related to the Arbiter's decision

Right of Appeal

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of

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

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

article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.

Costs of the proceedings to be borne by the Service Provider

The costs of the proceedings are not limited to the payment of any applicable cost of filing the Complaint with the Office of the Arbiter for Financial Services (presently Eur25) but may also include any reasonable lawful professional and legal fees paid by the Complainant limited to the acts filed during the proceedings of the case. Such professional fees should not include any extra-judicial fees and charges.

Whilst there exists no tariff about proceedings before the Arbiter nor such aspect is provided for under Chapter 555 of the Laws of Malta, it is being underscored the fact that the Office of the Arbiter for Financial Services is an Alternative Dispute Resolution Entity (ADR Entity). Therefore, the costs of the proceedings before the Arbiter cannot be higher than those prevailing for Court proceedings in Malta but are expected to be lower.

The Arbiter is inspired in this respect by the provisions of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes ('the ADR Directive') which clearly state that proceedings before an ADR Entity should *inter alia* be inexpensive so as to encourage consumers to seek a remedy for the solution of their disputes in a manner they can afford.

The ADR Directive insists on the low-cost nature of these proceedings. For instance, it provides that customers should have access to '*simple, efficient, fast*

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

The Arbiter accordingly directs the parties to take cognisance of the said principles listed in the ADR Directive. In reaching an agreement on the costs of the proceedings payable, the parties should accordingly be guided by the principle of a *'low-cost out-of-court solution to disputes between consumers and traders'*.¹⁴ The benchmarks on fees as legally stipulated for civil procedures in Malta may also provide certain guidance.¹⁵

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

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

¹⁴ *Ibid.*

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