

Before the Arbiter for Financial Services

Case ASF 016/2025

NU

(the 'Complainant')

vs

EM@NEY p.l.c.

Reg. No. C 55558

('EM' or Service Provider)

Sitting of 31 October 2025

The Arbiter,

Having considered in its entirety, the Complaint filed on 22 January 2025, including the attachments filed by the Complainant.¹

The Complaint

Where, in summary, the Complainant says she is a victim of a scam orchestrated by unknown persons who introduced themselves as Mr. Anthony acting on behalf of SINU PUIT OU, depicting themselves as investment advisors who could guide her to make investments to take advantage of lucrative marketing opportunities.

She claimed that under the guidance of this Mr Anthony, she made various transfers for a total of €85,700 from her account with UniCredit (Italian based bank with international operations) to SINU PUIT OU in an IBAN account (MT

¹ Page (P.) 1 - 13 and attachments p. 14 - 36

33EMO 0555) provided to her by the scammers showing EM as the beneficiary bank (Banca Beneficiario).

She maintained that:

“EMONEY PLC allowed the opening and operation of the bank account for SINU PUIT OU without performing the mandatory AML and KYC checks.

This lack of verification is particularly egregious given the absence of any direct relationship or economic ties between Malta, where EMONEY PLC is based, and SINU PUIT OU, an Estonian company with a share capital of just €12,000.00.

Such omissions enabled SINU PUIT OU to receive significant sums and to perpetrate fraud against [the Complainant].

The ‘investment’ activity (fake!) ended after that transfer.

So, in mid-2021, the trader told us that a separate account of €350,000 would be created, and from that moment, I would receive approximately €10,000/month in fixed income while continuing to trade.

However, when I was asked for an additional €30,000-50,000 to ‘unlock the situation’, I decided not to proceed with providing more funds. All contact took place exclusively by phone.

At that point, I was also told that the account could be ‘frozen’ until further deposits were made to unlock it, with no time limits for the process.

For at least a year (until 2023) no one contacted me. Then, at the beginning of 2024, I started trying to find a point of contact, but none of the numbers I had were answering.

I spoke with several lawyers, but the quotes I received were always too high. The cost of initiating a lawsuit was significant.

Until mid-2024, there was a period of reflection to understand what could be done, alongside the fear of being judged and the shame of having been deceived and losing so much money.”²

² P. 4

She accuses EM of violating of Anti-Money Laundering (AML) and Know Your Customer (KYC) obligations as she said:

“Failure to verify the client’s identity (KYC):

SINU PUIT OU is registered as a company providing “other business support services,” a category entirely unrelated to the management of third-party funds.

The registered address of SINU PUIT OU, located in an anonymous and peripheral residential building in Tallinn (Harju maakond, Tallinn, Kristilne linnaosa, Kirsitn 3-52, 10616), and its limited share capital should have raised red flags for EMONEY PLC.

EMONEY PLC did not request any evidence of the legitimacy of SINU PUIT OU’s activities or their compliance with applicable laws.

Failure to report suspicious activities (AML):

The nature and volume of the transfers should have triggered enhanced scrutiny and suspicious activity reports to the competent authorities.

EMONEY PLC failed to conduct any verification of the origin and destination of the transferred funds.

Facilitation of fraud:

By allowing the account to be used without proper checks, EMONEY PLC indirectly facilitated fraud and potential money laundering.

RESPONSIBILITY OF EMONEY PLC

EMONEY PLC is civilly liable for:

Omission of due controls:

The institution failed to fulfil its obligations to verify and monitor the activities of SINU PUIT OU.

Material damages:

The institution enabled the wrongful appropriation of funds belonging to [the Complainant] amounting to €85,700.00.

REQUEST

In light of the facts presented, the claimant requests the Arbiter for Financial Services of Malta to:

Establish the responsibility of EMONEY PLC for violations of AML and KYC regulations.

Oblige EMONEY PLC to reimburse the claimant the total amount of €85,700.00 which must be credited to the IBAN account specified in the attached documents.

Impose corrective measures on EMONEY PLC to ensure compliance with current regulations and to prevent the recurrence of similar situations.”³

Basically she maintains that EM facilitated the fraud and held them responsible for her losses and, therefore, requesting they make good by refunding her full loss of €85,700.

In her complaint, she made various allegations of infringements of Prevention of Money Laundering Act (Cap. 373) of the Laws of Malta, but the Arbiter makes it clear that he has no competence to investigate such allegations as this competence belongs to the FIAU (Financial Intelligence Analysis Unit)⁴.

The transfers effected are listed as follows:

REF	DATE	AMOUNT IN €	BENEFICIARY	Transferree Bank ⁵
1 ⁶	13.05.2021	15000	SINU PUIT OU	EMONEY PLC
2 ⁷	16.06.2021	20000	SINU PUIT OU	EMONEY PLC
3 ⁸	18.06.2021	20000	SINU PUIT OU	EMONEY PLC

³ P. 5

⁴ <https://fiaumalta.org/>

⁵ EM does not have a banking licence but was indicated as a bank in the payment orders of UniCredit.

⁶ P. 28

⁷ P. 24

⁸ P. 23

4 ⁹	22.06.2021	24000	SINU PUIT OU	EMONEY PLC
5 ¹⁰	26.07.2021	4000	SINU PUIT OU	EMONEY PLC
6 ¹¹	30.07.2021	2700	SINU PUIT OU	EMONEY PLC
	TOTAL	85700		

All payments were made by bank transfers from Complainant's account with UniCredit (Italy).

Reply of EM

In their reply¹² of 04 March 2025, EM stated that Complainant made several incorrect factual allegations but did not enter into the merits of the complaint.

They raised a preliminary plea claiming that the Arbiter has no competence to hear and adjudicate this complaint as, according to them, Complainant is not an **eligible customer** as defined in Article 2 of CAP 555 of the Laws of Malta which codifies the powers of the Arbiter. They referred to Articles 11(1)(a) and 22(2) of the said Act, CAP 555.

Contumacy

As the reply of the Service provider was received 1 day later than the 20 days allowed by law (Article 22(3)(c) of the Act Chapter 555), the Arbiter had to consider whether to apply contumacy rules to EM.

The Arbiter's recent decisions on contumacy issues contained guidance on the application of contumacy in cases presented for his adjudication:

1. Contumacy will apply if Arbiter is convinced that the delay was meant to be disrespectful of his and his Office role.
2. Chapter 555 does not oblige the Arbiter to enforce contumacy where this would go against the provisions to deal with complaints in a procedurally

⁹ P. 25

¹⁰ P. 27

¹¹ P. 26

¹² P. 42 - 43

fair, informal, economical and expeditious manner in terms of Article 19(3)(d).

3. 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.
4. 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.

For these reasons, the Arbiter will apply contumacy only in cases 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.

In view of the above, the Arbiter decided not to apply contumacy rules against EM.¹³

Competence of the Arbiter

In their reply as above referred to, EM argued that In terms of Article 11(1)(a) and Article 22(2) of Chapter 555 of the Laws of Malta (Chapter 555 is an Act that defines the operations of the Office of the Arbiter), the Complainant is not an 'eligible customer' as defined in Article 2 of the Act and, therefore, the Arbiter has no competence to hear and adjudicate this complaint.

¹³ P. 44

At the hearing of 01 July 2025,¹⁴ the Arbiter overruled this preliminary plea and proceeded to hear the merits of the case. The Arbiter is hereby explaining his decision for overruling the preliminary pleas.

The transfers complained of show as beneficiary SINU PUIT OU who by EM's own declarations had no account with them.¹⁵ Nowhere in the transfer payment is there any reference to the Merchant/Corporate Client (Phoenix Payments Ltd) to whose account the Service Provider is claiming to have credited the funds.¹⁶

Phoenix Payments Ltd (eventually renamed Lazarus Long Limited) was a financial institution licensed by the Malta Financial Services Authority (MFSA) who surrendered their licence on 07.02.2023.¹⁷ At the time of payments subject of this complaint, Phoenix was, however, still active in terms of its licence.

Article 22(2) of Chapter 555 of the Laws of Malta ('the Act') stipulates that:

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

Moreover, in virtue of Article 19(1) of the Act, 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:

*(a) To deal with complaints filed by **eligible customer**."*¹⁸

¹⁴ *Ibid.*

¹⁵ P. 54

¹⁶ P. 49

¹⁷ <https://www.mfsa.mt/publication/surrender-of-licence-by-phoenix-payments-limited-the-institution/>

¹⁸ Article 11(1)(a)

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.**”¹⁹*

The Arbiter has to primarily decide whether the Complainant is, in fact, an **eligible customer** in terms of the Act.

No claim has been made that the Complainant was a customer, consumer of the Service Provider or that the Service Provider had offered her any service. The case revolves on whether the Complainant had sought the provision of a financial service from EM.

The Arbiter considers that the fact that in all payment orders in question it is evident that the remitter was the Complainant, and that EM was specifically nominated as *Banca Beneficiario*, this amounts to seeking (by Complainant) the provision of a financial service from a financial services provider (EM).

Therefore, the Arbiter decrees that he has the competence to deal with the merits of this Complaint and proceeds to evaluate and adjudicate on its merits.

Hearings

At the first hearing held on 01 July 2025, the Complainant reaffirmed what she stated in her Complaint, and during cross examination she stated:

“Asked the name of the trader, I say that he told me that his name is Anthony.

Asked how I met this trader, I say that I was taking a course in trading with an Italian institution. During the course, I subscribed with MetaTrader 4 to make these operations. At this point, I was contacted by this person called Anthony saying that he was doing this course on behalf of an online trading company, SINU PUIT, and that he was calling from London, UK. I am not sure of his nationality.

Asked whether I encountered this trader via the online platform, MetaTrader 4, I say I do not know how to answer this technically. I cannot say because I am

¹⁹ Emphasis added by Arbiter

not aware of the technicalities involved. But I think he was because he connected me, and he gave me a password to make these operations.

Asked whether I made any verification on this trader, I say that I did not make any checks with regard to Mr Anthony himself, but I made 'amateurish' checks on the company on the internet which said that it was actually a trading company which made investments, but I cannot ascertain as to the professionalism and depth of the research.

I would like to add that since I was taking a course at the time, I thought that this was the correct procedure.

I am asked whether before taking these proceedings, I took any proceedings against the people who were organising the course, proceedings against MetaTrader 4, proceedings against Anthony and proceedings against the company itself to whom I sent the money.

[The Complainant] replied that she did not take proceedings against the school because she thought that they were not involved; she did not know who Anthony was and she could not take proceedings against him; MetaTrader 4 is a platform and she could not take proceedings against the platform or she did not take proceedings against the platform.

With regard to proceedings against the company in Estonia to which I sent the money, I would like my lawyer, Dott. Bertaggia to be given permission to explain.

The Arbiter gives permission to Dott. Bertaggia to explain where he said that he tried with the Chamber of Commerce in Estonia but resulted that this company has not been in operation since 2020 and it is managed by non-resident people, one in Nigeria and another one in Hungary; and it is not possible to make proceedings against the company.

Asked whether the Complainant took any action against her bank, UniCredit, Dott. Bertaggia stated that he reached out to UniCredit who denied responsibility and now they are preparing an appeal so that this might be revised with the relevant authority."

Cross-examination continues:

“Asked to confirm that I have no customer-provider relationship with Em@ney p.l.c., I say no, I don’t know.

The Arbiter states that when I sent the money there were five transfers which all happened between 13 May 2021 and 26 July 2021, collectively for €85,700 and all these transfers were made by UniCredit to the company, SINU PUIT OU, made via Em@ney p.l.c. as mentioned in the transfers.

Asked by the Arbiter whether when I sent the money I meant to send the money to SINU PUIT OU, I say, yes.

It is being said that I did not have an account with Em@ney, I say, no.

I say that Mr Anthony gave me the IBAN number. And, yes, I knew that the money would go to SINU PUIT OU.

Asked in what I was trading and if I ever received some kind of information, a prospectus, I say that they explained that the investment was being made in this company specialising in online investments in cryptocurrency and various trades in stocks and shares which at the time were very advantageous.

Asked whether I had any guarantee that my investment would be successful, I was told that when I reached a certain level of money, I would be given back my money plus any profit that I would have made.

At the beginning, to ascertain that everything was in order, I requested a withdrawal, and they had sent me a wire transfer. Only later did I realise that this was a trap to gain my trust. Then, whenever I asked to be paid the profits from the investments, they continued to say that I needed to add money, that it was not the right time to make withdrawals, etc. They always came up with various excuses.

Asked why I am referring to ‘them’ when, at first, I said that I was talking to a certain Anthony, I say that it was Anthony; and I spoke in the plural because it involved Anthony together with his company.”²⁰

²⁰ P. 45 - 47

At the second hearing held on 09 September 2025, upon further cross-examination, Complainant said:

“Asked if I had opened any accounts with Em@ney or have any agreements or contracts signed with Em@ney p.l.c., I say that I have never signed a contract with Em@ney. I have never had any accounts with Em@ney.

It is being said that the basis of my claim against Em@ney, is that I affected a payment to a company having an account with Em@ney.

Asked whether this is correct, I say, yes, that is correct.”²¹

EM then presented the evidence of Mark Busuttil who explained the IBAN number shown on the payment order belonged to Phoenix Payments who had an account with EM.²²

He explained that:

“I have been appointed director of Em@ney in April 2025.

From the verification of the file, it seems that as part of our onboarding, we had certain policies and procedures that Phoenix Payments were adopting on their end, so we relied on their internal procedures.

The fact that they gave us the manual and the policies, gave us the comfort that they were, or should have been doing, their own checks. They had their own financial institution licence.

In situations like this - and I know as I come from a family of bankers - when there is an injured party and funds seem to be going through the bank, there were instances with letters of credit or other financial transactions, if one of the parties has done wrong, the bank was never held responsible for the actions of the individuals.

I say that Ms NU was never a client of Em@ney and never expressed her willingness to be a client. She was never on our clients list.”²³

Upon cross-examination, Mr Busuttil continued:

²¹ P. 48

²² P. 49

²³ Ibid.

“Asked what controls have been made by us on this company which is based in Estonia and run by a Hungarian citizen whose only aim seems to be that of swindling people, I say that as part of the implementation procedures, this kind of arrangement with Phoenix Payments was a form of intermediary arrangement.

From an AML point of view, when there is an intermediary arrangement, there are certain guidelines that are dictated by the directive, not internal, that we have to keep on our accounts. One of the points on the directive is exactly the internal processes and the procedures that Phoenix adopted.

We reviewed those procedures, and they seemed to be in line with what the directive states. And, as I said, our remit stops there because there is Phoenix involved on the other end.

So, the question could be answered by Phoenix.”²⁴

The Arbiter asked EM to confirm whether the IBAN number quoted in the payment orders was a normal IBAN or a Virtual IBAN (VIBAN). It was confirmed that it was a VIBAN issued by Phoenix under the EM brand.²⁵

Analysis and Observations

To avoid repetition, the Arbiter refers to proceedings of case ASF 155/2024 which relates to the same circumstances and which the Arbiter had ruled that the Service Provider had no authority to take the provisions of PSD 2 as applicable to normal IBANs and apply them to VIBANs which are not covered by regulation and presented more risks to consumers than normal IBANs.

This Complaint, however, presents a very different set of circumstances than those applicable for case ASF 155/2024.

Whereas in that case, the Complainant was a vulnerable, old person who could not be expected to understand the manoeuvres of the scammers, in this case, the Complainant was, at the time of the event, a 50+ years old person who fell for a scam that offered her quick and easy huge profits on a false investment.

²⁴ P. 50

²⁵ P. 51; 54

So much so, that in her Complaint, she states:

“In mid-2021, the trader told us that a separate account of €350000 would be created, and from that moment, I would receive approximately €10,000/month in fixed income while continuing to trade.”²⁶

It is greed that was forcing the Complainant to continue transferring funds to the scammers in search of illusionary easy and quick profits.

The Complainant, by her own admission, knew that whilst the funds were being transferred to what she may have believed was an account with EM, the final destination of these funds were to an investment platform/house SINU PUIT OU registered in Estonia about whom she made no effective due diligence.²⁷

“Asked by the Arbiter whether when I sent the money I meant to send the money to SINU PUIT OU, I say, yes.

It is being said that I did not have an account with Em@ney, I say, no

I say that Mr Anthony gave me the IBAN number. And, yes, I knew that the money would go to SINU PUIT OU.”²⁸

And, yet again, she admitted:

“I have never signed a contract with Em@ney. I have never had any accounts with Em@ney”.²⁹

The Arbiter makes reference to a payment³⁰ which the Complainant seems to have made on 19 April 2021 (before the payments subject of this Complaint) to what seems an IBAN or VIBAN number to Phoenix Payments for €5,001.31, also, for account of SINU PUIT OU, and declares that this payment does not form part of this Complaint.

²⁶ P. 4

²⁷ P. 47

²⁸ *Ibid.*

²⁹ P. 48

³⁰ P. 20

Decision

As decided in case ASF 155/2024 (which is under appeal), EM had no authority to credit the funds to the owner of the VIBAN account shown in the transfers instead of the named beneficiary, without specific authority from the remitter.

Consequently, the Arbiter feels that this breach of conduct should be reported to MFSA (Malta Financial Services Authority) for proper investigation as the regulator for financial services who licensed the Service Provider. A copy of this decision is being sent to the MFSA.

However, all considered, especially the Complainant's admittance as above indicated, leaves no doubt in Arbiter's mind that the loss incurred by the Complainant was caused by her greed and gross negligence and not by the conduct failure of EM. The Arbiter sees no direct causation between the regulatory failure on the part of EM to the losses suffered by the Complainant.

Furthermore, the Arbiter declares that as this Complaint makes several claims of failures of the Service Provider on AML and KYC matters, his Office is not the Authority competent to consider such matters, and any such issues may be referred to the FIAU³¹ as the relative competent authority.

For these reasons, the Arbiter is dismissing this Complaint and orders parties to carry their own costs of these proceedings.

All decisions regarding this Complaint are without prejudice to the potential rights that may be explored against her home bank who, under the PSD 2,³² have a much more relevant obligation for effective transaction monitoring systems to protect their client with whom they have had a long-term relationship with deep KYC information.

Alfred Mifsud
Arbiter for Financial Services

³¹ <https://fiaumalta.org/>

³² EUR Directive 2015/2366 – Payments Services Directive

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.
