

Before the Arbiter for Financial Services

Case ASF 119/2021

BR ('the Complainant')

vs

Truevo Payments Limited (C 62721)

('Truevo' or 'the Service Provider')

Sitting of 27 July 2022

The Arbiter,

Having considered in its entirety, the Complaint¹ filed by the Complainant,

Where, in summary, the Complainant claimed that he had been approached by representatives of *Ashford Investments* acting through the internet platform www.olympusmarkets.com.

The website did not contain any information about its owner/operator, but official warnings named the companies *Next Trade Limited* and the *Bulgarian R.S. Marketing EOOD* as such. Despite such lack of information, the same website was designed in a manner claiming at different times that the company and platform were located in the UK, Marshall Islands and/or other jurisdictions.

The Complainant argued that the website also contained misleading information about the merchant being a professional broker, qualified for trading with regulated financial tools. The persons communicating with the Complainant impersonated themselves as being qualified financial brokers with the relevant skills and certifications to provide financial advice.

¹ Page (P) 3 - 46

The Complainant declared that, acting in good faith and relying on the information and statement contained on the same website, between April and August 2019, he made various payments in favour of the merchant/website www.olympusmarkets.com amounting to EUR 174,989. He stated that based on the information disclosed to him, all transactions were processed by the Service Provider in its capacity as an *'... acquiring payment institution providing payment service to a possibly fraudulent merchant.'*²

The Complainant stated that the Service Provider should *'... know exactly the recipient's and beneficiary's identity of any of these payments'*³ whilst indicated that *'... it gave priority to their relations with the merchant based on their commercial agreement over the legal requirements for proper conduct of the acquiring business.'*⁴

He submitted that the non-fulfilment of major and substantial regulatory obligations by the Service Provider, led to the processing of payments in contradiction with the applicable law and led to the eventual loss of money for the client.

The Complainant also referred to a letter of complaint,⁵ addressed to Truevo Payments Limited by his legal advisors, whereby, *inter alia*, the following was submitted:

- There were concerns with the activity of a merchant, this being a company that used/uses the services of the Service Provider as a payment service provider for processing payments, which concerns led the Complainant to ask Truevo for assistance and support as it was believed that the issues raised could under some circumstances also affect the latter's business operations;
- That the Complainant accessed the internet-based platform www.olympusmarkets.com, and despite no contract was provided, the *'... terms and conditions contained on the site are intended to govern the relationship and responsibilities of the parties. Therefore, all information*

² P. 3

³ *Ibid.*

⁴ P. 4

⁵ P. 8

*on the web-site is relevant for determination of the services and the rights and obligations of the parties.*⁶

The same web platform also provided registration information about the company of the merchant through which it was commercially active in different time periods;

- That the merchant claimed to be a financial investment firm dealing with regulated financial tools, such as CFDs, indices, binary options, commodities, etc., with its officers and employees being presented as experienced financial brokers. 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. Warnings and citations for lack of licence were also issued against the merchant in this regard;
- That the merchant's claim as a financial broker were a clear example of *'misrepresentation of the Merchant'*;⁷
- That on reliance of the merchant's claims, the Complainant *'... ordered a service-related opening of an investment brokerage account to be used for subsequent trading with financial tools in real time- ...'*,⁸ and, eventually, the transactions in question were in fact withdrawn from his account;
- That there was an alleged *'misrepresentation of the service'*⁹ in view of the fact that the Complainant was never given the investment account and access to it to be able to use it for the trading of the financial products as listed;
- That, considering the service was *'not as described'* involves *'possible fraud'*.¹⁰

⁶ P. 9

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ P. 10

- That, after finding out that he was misled by the merchant, he cancelled the account on the merchant's website and requested the return of his money which, however, was '*... tacitly refused ...*'¹¹
- 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.*'¹²

In the said letter of complaint, further submissions were made, mainly related to the trading of regulated financial tools without the required licence and possibly facilitating such trade;¹³ the possible facilitating of an operation of a non-licensed payment service provider;¹⁴ the possible neglect of the payment service provider's duty to conduct initial and ongoing KYC;¹⁵ the possible neglect of the legal provisions for measures against money laundering;¹⁶ and the possible breaches of the card schemes rules and regulations.¹⁷

The Complainant finally declared¹⁸ that were the said breaches not committed, and the Service Provider had diligently fulfilled all major regulatory obligations, the payments in question would not have been processed and hence not credited to the merchant's account.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ P. 12

¹⁵ *Ibid.*

¹⁶ P. 14

¹⁷ P. 16

¹⁸ P. 4

In view of the above, as declared in the complaint form submitted, the Complainant is claiming

*'... from Truevo Payments Limited a compensation in an amount of EUR 174,989 (Euro one hundred seventy four thousand nine hundred and eighty nine) in favour of the Merchant/webplatform www. Olympusmarkets.com, such amount representing the sum of all payments made to said Merchant/webplatform and processed in breach of the applicable law by the acquirer.'*¹⁹

Having considered Truevo's reply²⁰ whereby, in terms of merit, the Service Provider is rebutting all the claims as being unfounded both in fact and in law.

It explained how, during the course of the proceedings, it will provide evidence that the Complainant is not an *eligible customer* in terms of Chapter 555 of the Laws of Malta, and that there was no direct relationship between the Service Provider and the same Complainant and, thus, the former is not the rightful defendant in relation 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:

- a) The complainant was never a consumer of the Respondent Company; &*
- b) The respondent company never offered to provide a financial service to the complainant; &*
- c) The complainant never sought the provision of a financial service from the Respondent Company.'*²¹

The Service Provider explained how, from the complaint lodged, it is evident that the Complainant's contractual relationship was not with itself and that it had no contractual relationships with the merchants referred to in the complaint and had never onboarded the merchants in question.

¹⁹ *Ibid.*

²⁰ P. 52

²¹ *Ibid.*

The Service Provider referred to the fact that despite the complaint in question contains various allegations implying breach of AML duties, it will, during the course of the proceedings, be evidenced that its sole involvement, if any at all, was to process payment of a payee, that is, the merchant, and was never the payment service provider of the Complainant.

Truevo submitted that it is being targeted because the Complainant cannot retrieve the monies from the rightful defendant. The Service Provider contends that it should not answer for the wrongs of others.

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

Moreover, the complaint and the requests therein are not contemplated in the law, because the Complainant is seeking redress from alleged regulatory breaches 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 alleged regulatory breaches by Truevo, which led to the processing of payments against the ‘applicable law’ and resulted in the eventual client’s losses.

In its reply²² to the complaint, Truevo submitted that it is not the rightful defendant in relation to the claims brought forward by the Complainant as the latter is not an Eligible Customer in terms of Chapter 555 of the Laws of Malta since there was no direct relationship between itself and the same Complainant.

In its affidavit, Truevo’s representative reiterated ‘... *the fact that it never had a relationship or any form of contractual relationship whatsoever with the Complainant.*’²³

The Complainant himself declared that:

²² P. 52

²³ P. 61

'As far as I know, I was paying Olympus Markets. And, especially, in the credit card payments there was never any others. It was impossible for me to know who it was.

*Asked if I have existing contractual relationship with other parties who can justify my payments, I say not that I am aware of.'*²⁴

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:

*(a) To deal with complaints filed by **eligible customers**.'*²⁵

Eligible customer

Article 2 of the Act defines an '*eligible customer*' as follows:

²⁴ P. 57

²⁵ Article 11(1)(a)

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

In his complaint form, the Complainant stated that in 2017, he

‘... was approached by representatives of Ashford Investments acting through internet-platform www.olympusmarkets.com.’²⁶

Alternatively, in the letter of complaint addressed to Truevo, he declared the matter in question as a *‘... case concerning **Olympus Markets** acting through the internet-platform www.olympusmarkets.com.’²⁷*

However, the Arbiter notes that in his solemn declaration, the Complainant clearly declared that:

‘I have been in contact with a company called Olympus Markets. It started in 14 March 2019. I made a lot of payments to them through my Visa bank card and through normal wire transfers. Those payments all ended up on a platform which to me was a platform supposed to be doing all kind of investments: in bitcoins, in shares, in exchanges, etc.’²⁸

He declared further that:

‘I have been essentially robbed of a lot of money by a lot of people from Olympus Markets. That’s the short version of it.’²⁹

The Complainant explained³⁰ how he always acted on the instructions and advice given to him by *Olympus Markets*, following the promised returns on trades and the assurance on the ability to get all his money back at a certain point in time.

However, in its reply to the complaint, Truevo declared that:

²⁶ P. 3

²⁷ P. 8

²⁸ P. 55

²⁹ *Ibid.*

³⁰ P. 56 - 57

*'... it had no contractual relationship with the merchants referenced in the Complaint and hence never on boarded the merchants in question.'*³¹

This was emphasised by Truevo's representative in the affidavit:³²

*'... Truevo does not have, nor did it have, or potentially had, any contractual relationship with Next Trade and/or R.S. Marketing, the merchant referenced in the Letter forwarded to Truevo by the Complainant. To this effect, Next Trade and/or R.S. Marketing were never onboarded as merchants of Truevo. By way of clarification, according to Truevo's internal records, Truevo never processed any transactions for Next Trade and/or R.S Marketing as alleged in the Letter.'*³³

This statement by the Service Provider contradicts what the Complainant had alleged in his letter to the Service Provider claiming that *Olympus Markets* is owned and operated by *Next Trade Limited*, with its payment provider being *R S Marketing Limited* and Truevo was in some way connected with them. The Service Provider stated clearly that it had never dealt with any of the entities mentioned.

It also results that the Complainant was not even aware of Truevo's existence, let alone having any contractual relationship with it.

The Complainant stated:

*'Asked when did I learn of Truevo's involvement in these transactions, I say probably a month ago or something like that. I already explained that I do not know who was behind everything. It was due to an investigation done by Mr Kramer and Mr Ivanov. I paid only through my credit card company to Olympus Marketing and that's it.'*³⁴

Evidently, the Complainant's communication was with no other entity other than *Olympus Marketing*.

³¹ P. 52

³² P. 61

³³ P. 61 - 62

³⁴ P. 58

Determination of eligibility

Considering the above and having reviewed the circumstances of the case in question, it is evident that there was no juridical relationship between Truevo and the Complainant. Also, there was no provision of a financial service to the Complainant by Truevo.

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

Considering the above, 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.

Therefore, the Arbiter does not have the 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