

## Before the Arbiter for Financial Services

Case ASF 023/2022

NF (the 'Complainant')

vs

Phoenix Payments Limited

Trading under brand Paytah Payment  
Solutions

(C 77764) ('Phoenix' or 'Paytah' or the  
'Service Provider')

Sitting of 15 September 2023

The Arbiter,

Having considered in its entirety, the Complaint (filed on 22 February 2022) including the attachments filed by the complainant,<sup>1</sup>

Where, in summary, the Complainant claimed to have been a victim of a scam orchestrated by *Capital Holdings* who, according to the Complainant were registered as CoinFarm OU, and who were claimed to be ***committing financial crime right under the nose***<sup>2</sup> of the Service Provider. The amount in question is that of EUR 250 transferred by the Complainant through his account with Postbank effected by transfer on 03 December 2020 to the account of CoinFarm OU held with Phoenix.<sup>3</sup>

In spite of the relatively small amount involved in his Complaint, the Complainant claims that Capital Holdings were involved in stealing and

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<sup>1</sup> Page (P.) 1 -30

<sup>2</sup> P. 7

<sup>3</sup> P. 18

laundering large sums of money, and warnings about them were issued by FCA (UK) on 22 January 2020 and by CNMV (Spain) on 03 November 2020.

Compensation was being sought for €250.

The Complainant accused the Service Provider:

***'You have facilitated the fraud, ... you are undeniably an involved player in the scam's ecosystem, by providing the infrastructure which fraudsters exploit to make their scams more plausible'.<sup>4</sup>***

The Complainant stated that despite his attempt to resolve the matter directly with Service Provider, the latter failed to co-operate and acknowledge their responsibility.

The Complaint further accused, *inter alia*, that:<sup>5</sup>

1. Phoenix had failed to make proper due diligence on CoinFarm OU which would have exposed that it was a scam entity.
2. That the Service Provider had a duty of care in relation to transactions being made on its platform which would have made it obvious that the Complainant was being defrauded.
3. That the Service Provider breached its fiduciary duties to the Complainant by failing to exercise the diligence required in the performance of its obligations, resulting in a significant loss to the Complainant.
4. That the Service Provider had possibly neglected legal provisions for measures against money laundering. Further, he accused the Service Provider of participation in fraud, unjust enrichment and violations of international law.

The Complainant insisted that:

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<sup>4</sup> P. 8

<sup>5</sup> P. 8 - 17

*'... it became glaringly obvious to me that no adequate information or/and documentation were sought by your organization, at best, and at worst – no appropriate safeguards were implemented at all.'*<sup>6</sup>

He insisted that the Service Provider knew, or should have known, that the funds being liquidated did not rightfully belong to the fraudsters, and that the assets being liquidated through its services were not profits earned in a legitimate and lawful way.<sup>7</sup>

The Complainant further stated that as a regulated and licensed financial institution, Phoenix/Paytah should have analysed their client's activities to be able to distinguish between what is a normal activity, and other illegal activity.

He stated further that the Service Provider has strict statutory and regulatory obligations to monitor client's transactions and report suspicious activities to the law enforcement authorities accordingly.

In view of the above, a full refund of losses was sought as compensation together with full disclosure of details of the holders of the account where complainant transferred the lost funds subject to the Complaint.

### **Reply of Service Provider**

**Having considered Phoenix's reply**<sup>8</sup> whereby, primarily, the Service Provider declared that it is not the legitimate respondent vis-à-vis the Complainant and his actions. It declared that it has no relationship with the Complainant, whether contractual or otherwise, and was not involved or in contact with the same Complainant when the alleged claim arose.

Phoenix stated that as submitted by the Complainant himself, the alleged dispute and claim is against Capital Holdings, a third party incorporated in a separate jurisdiction and, thus, if the Complainant has any claim, this should have been instituted against third party companies and directors as applicable, and not against Phoenix. It stated further that, as also admitted by the Complainant himself, he never engaged Phoenix to provide any service to him

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<sup>6</sup> P. 12

<sup>7</sup> P. 13

<sup>8</sup> P. 35

and, consequently, the Service Provider has no contractual or any other obligation towards him.

Phoenix also stated that in spite of the fact that it had no legal relationship with the Complainant, when he contacted it making a number of what they considered vexatious claims, Phoenix referred the Complainant to the rightful respondent.

The Service Provider reiterated that there is no relationship between the Complainant and itself and, therefore, has no obligation to answer the complaint as submitted or to disclose any privileged information. It insisted that it always acted in good faith in the provision of its services, and any fraudulent actions on the part of third parties cannot be in any manner attributed to it.

Phoenix emphasised that it has no obligation to reimburse the Complainant for acts or omissions carried out by himself and/or third parties. It denies all allegations put forward by the Complainant, whilst insists that it accepts no responsibility for his negligence and/or acts or omissions carried out by third parties.

In conclusion, Phoenix explained how, in terms of Chapter 373 of the Laws of Malta, the Prevention of Money Laundering Act and Subsidiary Legislation 373.01 entitled Prevention of Money Laundering and Funding of Terrorism Regulations, it is obliged to carry out due diligence on all customers and has thus carried out full customer due diligence on its customers and the Ultimate Beneficial Owners.

Furthermore, in the response to the direct Complaint filed by the Complainant, Phoenix had informed that

***‘we have terminated and closed all accounts with this entity (Coinfarm) on 15/02/2021, thus we do not hold a relationship with such entity any longer, and we do not hold any funds pertaining to this entity. Kindly note we also have never held a relationship with Capital Holdings.’<sup>9</sup>***

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<sup>9</sup> P. 26

## **The hearings**

A hearing was held on 11 October 2022. The Complainant failed to connect/attend. The Arbiter gave the Complainant due time to submit a written statement explaining his complaint and also to address the preliminary plea of his not being an eligible customer so that the Arbiter can establish whether he has the necessary competence to hear this case.

On 21 October 2022, the Complainant sent an email to which he attached several documents in the German language which *prima facie* only related to the appointment of company called Money Back Ltd, registered in Israel, to help Complainant with recovery of his loss.<sup>10</sup>

In his official Complaint to the OAFS, the Complainant did not indicate that he was being assisted by anybody and, given that the Complaint and attachments were completed in quite sophisticated English language, it was not evident why Complainant did not submit an English version of the documents.

It is however quite evident that the documents submitted had nothing specifically to do with the Complaint in question especially considering that a fee of €1,665<sup>11</sup> was being paid to Money Back whilst the claim under the OAFS Complaint was for €250.

In reply, the Service Provider stated:

*'these documents are not anything we can comment on as they don't present any facts relating to the complaint discussed'.<sup>12</sup>*

## **Further Communications with Complainant**

The Complainant was informed by email on 13 March 2023 that he was expected to submit an English version of the documents sent in the German language.

As no reply was received, he was sent an email reminder on 20 April 2023; yet again no reply was forthcoming.

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<sup>10</sup> P. 39 - 47

<sup>11</sup> P. 46

<sup>12</sup> P. 48

### **Decree**

On 27 July 2023, the Arbiter issued a Decree ordering the Complainant to submit by 31 August 2023, an English version of the documents submitted in German language and requesting proofs that he was an eligible customer of the Service Provider, explaining that in terms of Article 11(1)(a) of Chapter 555 of the Laws of Malta, the Arbiter had competence only to hear complaints submitted by eligible customers.

The Complainant was informed that failure to make submissions by the stipulated date will lead to dismissal of the case.

### **Decision**

As Complainant has failed to reply to the emails of 13 March 2023 and 20 April 2023, and has failed to make submissions, as requested by the Decree of 27 July 2023, the Arbiter is dismissing this Complaint in terms of Article 22(4) of Chapter 555 of the Laws of Malta which states:

*‘the Arbiter may decide not to continue to deal with the complaint if the complainant fails to comply with a request for further information within a specified period of time’.*

Each party is to bear its own costs of these proceedings.

Alfred Mifsud

**Arbiter for Financial Services**