

## Before the Arbiter for Financial Services

Case AFS 009/2022

RT and VO

(Complainants)

Vs

Triton Capital Markets Limited

(Service Provider or FXDD)

(C48817)

### Sitting of 6 June 2023

#### The Arbiter,

Having seen this Complaint whereby the Complainants seek compensation from the Service Provider for a loss of UD\$ 40,941.02 they incurred as a result of FXDD closing an order (#2121252359 hereinafter referred to as the '**relevant order**') which Complainants maintain they have not closed,<sup>1</sup> whereas the Service Provider argued that the trading platform (known as MT4) did function correctly and there was no malfunction or tampering.

As a result, they maintained that it was the Complainants, wilfully or accidentally, that closed the **relevant order** and refused their request for refund.<sup>2</sup>

#### **The Complaint**

The Complainants claim that on 18 November 2020:

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<sup>1</sup> P.11

<sup>2</sup> P. 18

***“Order # 2121675304 (hereinafter referred to as the ‘previous order’) was stacked (on the terminal) right above the relevant order. Many retail traders close orders manually before prices reach their TP targets. This action was manually performed clicking of the cross at the right end of the previous order. ... last MT4 journal shows that the previous order was closed due to take-profit.***

***Instead of keeping orders in the terminal window when an order is closed, MT4 automatically removes and replaces it by the order seating immediately underneath together with the respective control button. Due to this particular MT4 design feature, my command may have taken effect a few thousands of a second after the TO triggered the closure of the previous order, but on the wrong control button pertaining to the relevant order which may have shifted upwards to the same location. Replacement of the previous order was not visible on the terminal screen.***

.....

***FXDD MT4 trading platform may have planted the relevant order control button on the very place where I triggered the previous order control.***

***Should all orders, both closed and active ones, being maintained in the trading tab terminal window, the event would not happen and liquidation could never occur at the time. Automatic replacement of order control buttons on a trading platform is definitely unfair, unethical, unacceptable and should be made illegal because, ultimately, it only benefits brokers, as in the present case.”<sup>3</sup>***

Following various email exchanges between the parties seeking clarifications, a complaint dated 20 August 2021 was filed with FXDD and the Service Provider reply was dated 24 August 2021.

The Complaint was filed with the OAFS on 26 January 2022.

In it the Complainants made basically the same claims as in their direct complaint to the Service Providers, requesting the same remedy for full refund of the loss of US\$40,941.02, and further explained that:

- Service Provider customer support did not provide reasonable and clear explanation on the sequence of transactions shown in the monthly statements for the period between 18 and 30 November 2020.

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<sup>3</sup> P. 9 - 10

- FXDD did not knowingly acknowledge and ignore the Complaint and did not conduct a proper and impartial investigation as requested.
- FXDD did not clarify satisfactorily the Complainants' doubts regarding the daily and monthly statements, as requested.
- Although MT4 trading platform was not designed by FXDD, an open-source code allows users to change and adapt software. The inconsistency reported makes the version of the MT4 platform suspect.
- FXDD is responsible and liable for the trading system they offer to clients.

The Service Providers reply dated 18 February 2022 basically re-asserts that in accordance with the logs provided to their client there is enough evidence that the **relevant order** was closed from the Complainants' terminal and the use of 'Expert Advisor' robots,<sup>4</sup> which are prohibited by FXDD, is not relevant to this case as what is relevant is that the closure of the **relevant order** came from the Complainants terminal.

The Service Provider further explained that:

- The Complainants had been customers since 2018
- Their account activity shows they are frequent traders using the MT4 platform for well over 2 years prior to the event in question.
- MT4 platform was selected, as a choice from a menu of platforms by the Complainants at the onboarding stage.
- The movement of a trade from the Active Tab to the History Tab once it is closed is a standard practice and something widely known by users of MT4 platform like the Complainants.
- The use of a manual chart trader utility tool falls within their definition of Expert Advisor and they do not take responsibility or assume any liability resulting from the use of an Expert Advisor.
- In terms of the Customer Agreement accepted and signed by the Complainants at onboarding in 2018, having chosen MT4 as their preferred trading platform, they confirmed having conducted simulated trading using the Company's Demo Trading Platform

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<sup>4</sup> Even though there was disagreement between the parties whether the manual chart trader tool used by Complainants was effectively an Expert Advisor as prohibited in FXDD policy

- That the Customer Agreement gives FXDD the right to make margin calls at any time a customer's balance falls below the margin level and to liquidate accounts in the case of sufficient margin.

### **The Hearing Process**

At the first hearing held on 10 May 2022, after explaining again their complaint, the Complainants confirmed under cross-examination<sup>5</sup> that:

- They informed FXDD at the onboarding stage that they have been using MT4 trading platform for forex transaction for a number of years.
- They chose platform MT4 from a choice of platforms offered by FXDD because they were already familiar with it.
- That they have trained and tested the demo MT4 platform provided by FXDD before undertaking live trading.
- That they were familiar with the forex products traded non MT4 as they had traded in them for several years.
- That before the event subject of this complaint they had a good experience with FXDD since 2018.
- That the signal for closing the relevant order came from their terminal.
- That they had opted out of the default two-click trading which would ask specific reconfirmation of a transaction by asking for a second click before execution, and instead opted for the one-click trading solution which is quicker but obviously offers more risk as it avoids the need for reconfirmation.

However, the Complaints re-affirmed that they did not click on the **relevant order** to close it, and it was the MT4 system that after closing the **previous order** and at almost the same time the **relevant order** took the place of the **previous order**.

***“So what may have happened was that I triggered the button belonging to the order (relevant order) that was previously below this order (previous order). When an order is closed and is moved to historical data, the order immediately***

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<sup>5</sup> P. 123 -126

***below that will occupy the same line in the trading depth together with the control button. So, I was acting on the control button of the previous order and the trading platform closed the relevant order that was previously below the previous order. This is what might have happened. I did nothing wrong. I was doing the right thing, closing the order that I wanted to close. Not this one, the relevant order.”***<sup>6</sup>

At the second hearing of 24 May 2022, the Service Provider made its case through Mr Shawn Dilkes, Chief Technology Officer, and stated:

- FXDD does not own MT4 platform chosen by the complainants. It is licensed from MetaQuote Software. It is not an open-source software.
- MT4 system divides the screen in two parts: one for active trades and one for historical trades and this is standard for all MT4 users.
- A user manual of the system is provided to all users.
- When users opt out of the default two-click trading to one-click trading, a screen with full disclosure of all risks associated with one-click trading pops up before the user gives his consent to switch to one-click trading.

When asked that Complainants are claiming that they closed the **previous order** but not the **relevant order**, Mr Dilkes said,

***“I know the normal operation. But the normal system operation can be modified by many different factors including his own computer, the software that he may have running on it, expert advisers he may have running on it, signals that may be running on it that are certainly outside of my control and anybody’s control”.***<sup>7</sup>

As regards doubts raised by Complainants that orders do not show on the statement in the same order as they are executed and, therefore, this could support their assertion of a system fault, Mr Dilkes explained that when a trade (hedge) is liquidated the system will

***“assign a new ticket ID but it retains the original time stamp because that was when the original order was executed. So that explains why it seems***

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<sup>6</sup> P. 125-126

<sup>7</sup> P. 130

***that the transaction took place before because it keeps the original time of the order”.***<sup>8</sup>

In their final submissions, the Complainants state without explaining that the one-click trading option

***“provides the trader an opportunity to correct possible errors, omissions or mistakes before placing an order. In the present case there was no error, omission or mistake from the trader”.***

Otherwise, both parties basically re-asserted their previously stated positions.

### **Considerations**

Unlike many cases presented to the Arbiter where the event triggering the complaint happens quite early during the relationship between the litigating parties, this case deals with a client and a service provider who had already established a well-rooted relationship which operated smoothly until the triggering event happened on 18 November 2020. In fact, the Complainants confirmed that

***“I have been a customer since 2018 ... I say that before this incident, it was a very good operation with FXDD”.***<sup>9</sup>

There is quite a lot in which the Complainants and the Service Provider have a common position.

1. That the Complainants are experienced and active foreign exchange traders.
2. That the Complainants chose to trade on an approved internet trading platform known as MT4 and had confirmed familiarity with the use of such platform.<sup>10</sup>
3. That the Complainants chose of their own accord not to use the default two-click procedure to confirm a trade and instead opted for the non-default one-click trading procedure even though they were fully aware

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<sup>8</sup> P. 129

<sup>9</sup> P. 124

<sup>10</sup> P. 125

that there is more risk in eliminating the trade confirmation by a second click.<sup>11</sup>

4. That the Complainant confirmed having read the user manual of the MT4 Trading Platform.

The areas where the parties disagree are principally the following:

- A. Complainants maintain that *“although MT4 trading system was not designed by FXDD, an open-source code allows users to change and adapt the software”*.

Complainants implied that the Service Provider could have re-programmed the system to the disadvantage of the user so that in their case the system *“closed an unsolicited position resulting in the loss”* subject of this Complaint.<sup>12</sup>

The Service Provider on the other hand maintains that MT4 is not open-source software. It is a proprietary software licensed by its owner MetaQuotes.<sup>13</sup> They also maintained that MT4 Terminal and MT4 Platform functioned correctly and there was no malfunction or tampering.<sup>14</sup>

- B. Complainants maintain that the **relevant order** was closed without his having given such order and this resulted in the loss subject of this complaint.<sup>15</sup> The Service Provider insists that the Order was executed by the Complainant. In his testimony at hearing of 24.05.2022, the Chief Technology Officer (CTO) of the Service Provider categorically stated that the Order in question *“came from IP address xx.xx.xx.xx and that is the same IP address which Mr RT had logged in with for other trades.”*<sup>16</sup>
- C. The Complainant also questioned other transactions in their account statements which appeared not correct or not properly explained but such explanation<sup>17</sup> was given by the CTO referred to in B. above and are not material to the findings of this case.

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

<sup>12</sup> P. 7

<sup>13</sup> P. 130

<sup>14</sup> P. 46

<sup>15</sup> P. 10

<sup>16</sup> P. 128

<sup>17</sup> P 129

Basically, the Arbiter must decide whether the Order closure resulting in the subject of this Complaint was actually executed (even if erroneously by the client while executing other trades not subject of the Complaint) or by the MT4 system through malfunction or as a result of manipulation of the system by the Service Provider.

In terms of Art 19(3)(b), the Arbiter is empowered to judge a complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.

The Arbiter finds that the probability of the Complainant having erroneously executed closure of the position in question has much greater credibility than the hypothesis of system malfunction, purposely or otherwise.

The Arbiter finds the evidence provided by the Service Provider that the order originated from the Complainants' terminal as compelling. No proof was presented by the Complainants that they did not originate the order; on the contrary, it was conceded that the relevant order came from their terminal.

No evidence was produced by the Complainants to support their assumptions that the Service Provider could have in some way manipulated the system or that the system had malfunctioned. On the contrary, the Service Provider has explained that the Expert Advisor used by the Complainants against their terms of business could have affected their terminal.

Given that it is a matter of a split-second click which the customer chose of his own free will and with full knowledge of the risks involved, the Arbiter thinks it is more probable that the Complainants made an erroneous click which caused the closure of the position to which the Service Provider had no control.

## **Decision**

The Arbiter does not find sufficient evidence that the loss subject of this Complaint can be attributable, even partially, to the Service Provider. Consequently, the Arbiter denies the Complaint and finds in favour of the Service Provider.

The Arbiter notes that in the process of attending to the Complaint, the Service Provider had admitted that their Customer Support could have provided more details for the customer to understand his position and offered a courtesy compensation of US\$10,000.



However, as this offer was made WITHOUT PREJUDICE and does not seem to have been accepted by the Complainant, it is a matter for the parties to decide whether renewal of such offer could form the basis of continued relationship in the interest of both.

Given the particular circumstances of this case, the Arbiter decides that each party is to bear its own costs.

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