

## Before the Arbiter for Financial Services

**Case ASF 010/2021**

**PF (the Complainant)**

**vs**

**Trust Payments (Malta) Limited**

**(C 56013)**

**(Trust Payments or the Service Provider)**

**Sitting of the 14 June 2022**

**The Arbiter,**

**Having considered in its entirety, the Complaint filed by the Complainant,<sup>1</sup>**

Where, in summary, the Complainant claimed to have been contacted by *Finantik* (having domain name [www.finantik.com](http://www.finantik.com), owned by *ProStar*), a forex broker that offered attractive investment through stocks, and claiming that funds will be deposited into an investment account in his own name.

Deposit was made through *Ask4Bit* which, eventually, (as per details on the bank statement), resulted to be the merchant; with the Service Provider acting as the 'acquiring bank' in respect of the transaction in question.

The Complainant claimed that he then realised that *Finantik/ProStar* was not regulated by the FCA (UK) and was also blacklisted by CONSOB in Italy. The website [ask4bit.com](http://ask4bit.com) has also been shut down completely.

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<sup>1</sup> Page (P) 2-23

The Complainant insisted that the Service Provider should have never engaged with either *Ask4Bit* or *Finantik*; and, if a proper due diligence was made, it should have realised that this was a scam.

The Complainant also referred to a letter of complaint,<sup>2</sup> addressed to Trust Payments by his legal advisors, whereby, *inter alia*, the following was submitted:

- That the Complainant accessed the internet-based platform <https://www.finantik.com>, owned and operated by *ProStar* and being referred to as the merchant, whereby the latter claimed to be a financial investment firm dealing with regulated financial tools, with its officers and employees being presented as experienced financial brokers;
- That there were concerns relating to the activity of the merchant, and Trust Payments was asked for assistance and support as it was believed that the issues raised could under some circumstances also affect its business operations;
- That the complainant had accessed the internet-based platform of the merchant <https://www.finantik.com>. No contract was provided through the platform, but the '*... terms and conditions contained in the site are intended to govern the relationship and responsibilities of the parties. Therefore, all information on the web-site is relevant for determination of the services and the rights and obligations of the parties.*'<sup>3</sup>
- 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 also being presented as experienced financial brokers. But, from further investigations, it resulted that the merchant was not licensed to offer regulated financial tools and to provide financial advice to third parties. In fact, warnings, and citations for lack of licence were issued against the same merchant.
- That the merchant's claims as a financial broker were a clear example of '*misrepresentation of the Merchant*','<sup>4</sup>

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<sup>2</sup> P. 9-16

<sup>3</sup> P. 10

<sup>4</sup> *Ibid.*

- That on the 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 ...*',<sup>5</sup> and, eventually, the disputed transactions were withdrawn from his account;
- That there was an alleged '*misinterpretation of the service*'<sup>6</sup> in view of the fact that the investment account ordered by the complainant was not provided and it did not keep his money on that account;
- That, considering the service was '*not as described*' involves '*possible fraud*';<sup>7</sup>
- That, after finding out that he was misled by the merchant, he cancelled his account on the merchant's website and requested the return of his money, which however was, '*... tacitly refused ...*'.<sup>8</sup>
- 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 measure against money laundering*
  - d) '*Possible theft/fraud committed.*'<sup>9</sup>

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;<sup>10</sup> the possible neglect of the payment service

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<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> P. 11

<sup>10</sup> *Ibid.*

provider's duty to actively prevent fraud and abnormal payment patterns;<sup>11</sup> and the possible neglect of the legal provisions for measures against money laundering.<sup>12</sup>

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

*'... Trust Payments to either retrieve my monies from their client ask4bit or in the alternative, to reimburse me for my painful loss of 10,000.00 USD.'*<sup>13</sup>

**Having considered Trust Payment's reply**<sup>14</sup> whereby the Service Provider disputes the Complainant's allegations on the basis of two main criteria.

Primarily, Trust Payment declared that in such instances, there is a relationship between the cardholder and the merchant, and the former with the issuing bank, thus implying that, *there is no direct relationship between the payment processor and the cardholder*, in this case, the Complainant.

Moreover, it was submitted that following the identification of the transaction in question, it transpired that the transaction made by the Complainant's credit card was authorised by the issuing bank, processed with full authentication under the relevant protocols and, resultantly, was fully secured.

The Service Provider explained the standard industry process whereby in case of a transaction dispute, the cardholder should first attempt to settle such dispute with the merchant and, should this fail, the issuing bank should be advised of the matter.

In case the issuing bank considers the claim made by the cardholder as valid, then a formal chargeback process will be initiated by the same bank. Should the chargeback be accepted by the merchant, the transaction will be debited from the latter's account and credited to the cardholder.

However, if an outcome to the dispute cannot be agreed upon, the issuing bank may refer the case to the payment network's arbitration process for investigation, and the case will be decided in favour of one of the parties.

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<sup>11</sup> P. 12

<sup>12</sup> P. 13

<sup>13</sup> P. 3

<sup>14</sup> P. 29

Trust Payments concluded that, despite being advised to contact his issuing bank (following communications with the merchant resulting to be unsuccessful,) the Complainant did not refer the matter to the issuing bank, which means that no chargeback attempts have been made.

**Having heard the parties and seen all the documents and submissions made,**

**Considers:**

The Arbiter notes that the Complaint mainly relates as to whether Trust Payments had carried out a proper due diligence process of *Ask4Bit* or *Finantik*; obtaining the necessary KYC documents, and following anti-money laundering rules. This would have resulted in the understanding that the merchant is a scam.

However, the Arbiter notes that during cross-examination,<sup>15</sup> the Complainant stated *inter-alia* that he does not hold any contractual relationship with the Service Provider and does not consider himself to be a customer of the same provider.

In the Responsive Note of Submissions,<sup>16</sup> Trust Payments submitted that it is not the proper defendant to the Complaint in question. Following the declarations made by the Complainant himself, the Service Provider declared that the Complainant is not an eligible client, and it did not provide any financial service to the same Complainant.

Although in the note of submission no new defences could be raised, the question as to whether the Arbiter enjoys jurisdiction in a particular case is dictated by the provisions of Chapter 555 of the Laws of Malta whereby the Arbiter is obliged to investigate his jurisdiction.

In fact, Article 22(2) of the Act stipulates that:

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

Therefore, the Arbiter has to examine his competence.

**Jurisdiction of the Arbiter**

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<sup>15</sup> P. 33

<sup>16</sup> P. 70

In its reply,<sup>17</sup> the Service Provider submitted that:

*'As a payment processor, we do not hold a direct relationship with Mr. Shaikh (or any cardholder). These relationships are between the cardholder and the merchant and the cardholder and the Issuing Bank.'*

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

By virtue of Article 19(1) of Chapter 555 of the Laws of Malta ('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 customers**.'*<sup>18</sup>

### **Eligible customer**

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.'*

To decide whether the Complainant is an *eligible customer* as defined in the Act, the Arbiter will be considering the statements submitted by both the Complainant and the Service Provider, and their representatives, during the hearing of this case.

In his solemn declaration, the complainant declared that:

*'I have been contacted by one of the Forex brokers, Finantik, and on his website it was shown that he was regulated by FCA in UK. It was not suspicious at all.'*

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<sup>17</sup> P. 29

<sup>18</sup> Article 11(1)(a)

*Then, after that, I had deposited a small amount of money, around US\$500. I started my trading activity with them and there were no suspicious activities and I felt like these people were OK, regulated brokers.'*<sup>19</sup>

He claimed to have been eventually contacted by the same financial broker and was offered an investment of US\$10,000. By accepting a trading account, he was then instructed to make a withdrawal and then further deposits.

He stated that:

*'... They had only one method or deposits on their website. And it was through a different website, Ask4Bit, which is a merchant of Trust Payment Malta, that I made a deposit.'*<sup>20</sup>

It was immediately after placing such deposit that he realised that the trading account from *Finantik* had been closed. Even though the amount of \$10,000 was deposited in the trading account, he was stopped from trading. The Complainant submitted he could not recover the amount deposited.

The Arbiter notes that it was at that point in time that he became cognisant of Trust Payment's existence.

He stated that:

*'... payment was done to Ask4Bit and Ask4Bit is a client of Trust Payment Malta. My bank manager showed me that the payment was processed through Trust Payments Malta.'*<sup>21</sup>

The Complainant also declared that:

*'Being asked if I consider myself to be a customer or a consumer of Trust Payments Malta Limited, I say, no. I have no contractual relationship with Trust Payments Malta Limited.'*

*Being asked if Trust Payments Malta Limited ever offered to provide me a financial service, I say no. Being asked if I ever tried to seek provision of a financial service from Trust Payments Malta, I say, no.'*

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<sup>19</sup> P. 31

<sup>20</sup> *Ibid.*

<sup>21</sup> P. 32

*As far as I am concerned, I have no direct relationship with Trust Payments Malta Limited.’<sup>22</sup>*

The testimony given by Steve Grech, a representative of the Service Provider, also affirms that Trust Payments did not offer any service to the Complainant.

Steve Grech declared<sup>23</sup> that the only service offered by Trust Payments was that of a card acquirer which gives services to merchants to enable them to receive payments from their own customers via debit/credit cards.

He stated that with reference to the Complaint in question, the merchant, hence their customer, was a company registered and domiciled in Estonia called *Local Capital*, and operating under a trade name, also being their domain, *Ask4Bit.com*.

He further explained that:

*‘In this particular case, it seems that the transaction was done through a third party; so, Mr Shaikh was dealing with Finantik and, somehow, he was redirected to Ask4Bit to make a payment. But, it results that the funds did reach the Finantik accounts. So, our merchant of record did carry out his part of the function by passing the funds to Finantik.’<sup>24</sup>*

He confirmed, however, that,

*‘LocalCapital was the merchant acting for Ask4Bit platform that received the payments made by the client.’<sup>25</sup>*

Grech insisted that:

*‘... an acquirer’s relationship is with the merchant. So, an acquirer enables a merchant to accept card payments. It has no relationship with the cardholder. Asked again if the acquirer is part of the interface between the cardholder and the merchant, I say that is not correct. An acquirer just sits behind the merchant.’<sup>26</sup>*

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<sup>22</sup> P. 33

<sup>23</sup> P. 36

<sup>24</sup> P. 38

<sup>25</sup> P. 49

<sup>26</sup> P. 53



## **Determination of eligibility**

Considering the above and having reviewed the circumstances of the case in question, it is evident that there was no relationship between Trust Payments and the Complainant.

The Complainant was not even aware that the Service Provider did in fact exist. He became aware of Trust Payments upon contacting his issuing bank for a chargeback.<sup>27</sup>

The Arbiter has no proof that there was any contract and/or contact between the Complainant and Trust Payments prior to, or at the time the transactions in question took place. This was clearly declared and admitted by the Complainant himself.

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 Trust Payments, neither that Trust Payments *'has offered to provide a financial service'* to the Complainant, nor that the Complainant *'has sought the provision of a financial service from Trust Payments 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**

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<sup>27</sup> P. 32