

## Before the Arbiter for Financial Services

**Case ASF 071/2022**

**TW (the Complainant)**

**vs**

**BNF Bank p.l.c. (C 41030)**

**(the Service Provider/the Bank)**

### **Sitting of 14 March 2023**

The Arbiter,

**Having seen the Complaint**<sup>1</sup> whereby in summary and in substance the Complainant submits that since 2016 she had opened a Bank account in her personal name with the Bank's Fgura Branch. The account number is 4X16XXXXX and at the moment she has deposited in the account approximately €62,000.

Since October 2021, the Complainant has requested the Bank to close the account and transfer to her the funds deposited in the account.

In spite of the various attempts made by the Complainant with the Bank to release her funds, the Bank did not comply and did not proceed with the closure of the account and the transfer of funds.

The Complainant further submits that a 'frozen account' is only allowed if there is a Court Order '*resulting from a precautionary or executive warrant or because of an order by the criminal court*'.

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<sup>1</sup> Page(P) 4 *et seq*

The Complainant states that nothing of this happened and the Complainant is still asking why her account was frozen.

The Complainant further submits that since the funds deposited in the account is the sole property of the account holder, the Bank cannot unilaterally freeze the account and keep the money deposited in it. The Bank has a duty to return the money to its rightful owner. The Complainant explains that since the opening of the account, the Complainant had been carrying out the same activity, namely, the receiving of rent from the letting of her building in Fgura.

The Complainant is requesting the Arbiter to order the Bank to allow the Complainant to close account number 481688101 and transfer the funds held in the account to the Complainant.

**Having seen the reply of the Service Provider<sup>2</sup>** whereby in summary and in essence the Service Provider submits that:

On 4 January 2022, the Complainant was informed by the Bank that it was not in a position to initiate the process of releasing funds in her favour unless she held a meeting with the Financial Crimes Investigations Division of the Police Force. The same information was given to her authorised representative during a meeting held at the Bank's Fgura Branch on 8 June 2022 with the Bank's legal advisor. During the same meeting, the Complainant's representative was made to understand that *'it was being implied that the order to block Ms De Giovanni's account had come from the police.'*

The Bank further states that it had communicated to the Complainant all the necessary information and, accordingly, the Bank once again requested the Complainant to set a meeting with the Financial Crimes Investigation Division as instructed.

### **Further Considers**

The main issue in this complaint is the refusal by the Bank to release the funds pertaining to the Complainant held in account number 481688101. The Bank stated in its reply that they had instructions to tell the Complainant to contact

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<sup>2</sup> P 79

the Financial Crimes Investigation Division (FCID) before they could accede to her request.

### **The Complainant's Version**

During the hearing of 9 January 2023,<sup>3</sup> the Complainant explained to the Arbiter that she cannot understand why her bank account has been frozen for more than a year. She stated that she is an Italian lawyer, a European Citizen, and a European lawyer, and she absolutely does not have any criminal convictions.

On cross-examination, she admitted that she had been instructed by the Bank to visit the police following the blockage of her account. She received the communication to visit the police in June 2022. Asked whether she had physically visited the police, she said that her lawyer sent various emails to the police and the FCID did not respond. She did not go physically but asked for an appointment, but the FCID never responded to her emails.

### **The Service Provider's Version**

On behalf of the Bank, Dr Caroline Dimech stated<sup>4</sup> that the Complainant had gone to the Bank to withdraw funds in October 2021.

**However, because the Bank had been notified by Court Order precluding the Bank from releasing the funds, the Bank did not allow her to withdraw the funds.**

The Bank had also been in contact with the police and when the Complainant visited the Branch on 4 January 2022, the Branch Manager informed her that she had to go and visit the FCID and also gave her the FCID address. The Bank could not allow the Complainant to withdraw the funds because of the Court's Order.

The witness also stated that when she was requested by the Complainant to give her the reason why she could not withdraw her funds, the witness explained to her that she had to visit the FCID and also indicated the Inspector's name. She could not give her further information because she was precluded by law.

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<sup>3</sup> P 80-81

<sup>4</sup> Hearing of 17 January 2023, P 82 *et seq*

There is a Court Order and a 'Risk Communication' with the FCID. She further explained that the Court Order came from the Court and there are also discussions with the FCID. She is precluded from giving further details and one of the laws being referred to in this regard is the Prevention of Money Laundering Act.

Asked if she was aware that the freezing of the Complainant's account is causing the Complainant damages, the witness stated that the Bank is following a Court Order. The witness confirmed that the Court Order is still valid and did not expire.

### *Further Considerations*

**The Arbiter has to decide the complaint by reference to what, in his opinion, is fair, equitable, and reasonable in the particular circumstances and substantive merits of the case.<sup>5</sup>**

The Arbiter is obliged by law to consider each case on its **particular circumstances**. The Arbiter has already given a few decisions regarding the closure or freezing of bank accounts, but this case has its own particularities and will be decided on its specific facts.

### ***The Blocking or Freezing of the Account***

Frozen accounts do not permit any debit transactions. When an account is frozen, account holders cannot make any withdrawals, purchases, or transfers.

Normally, a bank is considered to have acted **legally, fairly and reasonably** if it freezes an account because:

1. There is a court order either resulting from a precautionary or executive warrant or because of an order by a criminal court;
2. The bank has reasonable suspicion that the actions of the account holder are fraudulent;
3. When banks are complying with laws and regulations for the combating of money laundering and the financing of terrorism;

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<sup>5</sup> CAP. 555, Art. 19(3)(b)

4. When the account holder passes away and an heir or an administrator to the deceased's estate has yet to be named.

The above list is not an exhaustive but an illustrative one.

In this respect, the Arbiter makes reference to a Maltese Court judgement decided by the First Hall Civil Court on the 29 September 2020, in the names of ***World Water Fisheries Limited vs Bank of Valletta plc.***

In that judgement, the Court held that a bank cannot unilaterally freeze an account without being authorised by law or by a Court's decision. As an example, the Court made reference to precautionary warrants as sanctioned by Chapter 12 of the Laws of Malta.

#### **Application of the said principles to the present case**

**Unlike other cases that the Arbiter has had before him, in this case, the Bank has clearly stated that it cannot release the Complainant's funds because it has a Court Order.**

In her complaint, even the Complainant stated that one of the reasons that can justify a Bank's refusal to release funds is when the Bank is acting on a Court Order.

In the Arbiter's opinion, the Bank has sufficiently proven that its action not to release the Complainant's funds is not capricious but because it is obliged to freeze the account through a Court Order.

In these circumstances, the Arbiter is convinced that the Bank is following the laws of the country and cannot be blamed for following the law.

The Arbiter also notes that the Bank acted fairly, and at the appropriate time informed the Complainant to visit physically the Financial Crimes Investigations Division and talk to a particular Police Inspector. However, instead of doing so, the Complainant only contacted the Police through emails for which she alleges that she did not receive a reply from the Police.

The Arbiter is of the opinion that it is in the Complainant's interest to act on the Bank's instructions to physically visit the Police and talk to the indicated Police Officer.

The Arbiter, being convinced that the Bank is freezing the Complainant's account on a Court Order, cannot conclude that the Bank has acted unfairly or unreasonably with the Complainant.

### **Decision**

**For the above-stated reasons, the Arbiter decides that the Bank's conduct was fair, equitable and reasonable in the particular circumstances of the case and cannot uphold the Complaint.**

**Without prejudice to any other legal remedies that the Complainant might have according to law.**

**Due to the novelty of this case, each party is to bear its own costs of these proceedings.**

**Dr Reno Borg  
Arbiter for Financial Services**