

Before the Arbiter for Financial Services

Case ASF 076/2022

ZG (C 7XXXX)

(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 Complaint¹ whereby in summary and in substance the Complainant submits that in 2016, the Complainant had opened a bank account with BNF Bank, Fgura Branch, being account number 5XXXXXXXXX.

The Complainant further states that it is a micro-enterprise since its income is less than €250,000 annually and employs less than 10 persons.

At the time of the Complaint, the Complainant had approximately €213,000 deposited in the account.

Since October 2021, the Complainant requested the Bank to close the account and transfer the funds to the Complainant, but the Bank did not comply.

In November 2021, the Complainant engaged a lawyer since it was not receiving any feedback from the Bank. Notwithstanding the lawyer's request to transfer

¹ Page(P) 4 *et seq*

the funds to the Complainant, the Bank continued with the freezing of the account.

The Complainant further submits that a frozen account is only allowed when the Bank has a Court Order to freeze the account resulting from a precautionary or executive warrant or because the order has been issued by a criminal court.

Since nothing of this has happened, the Bank cannot block the account. Funds in a deposit account are the property of the depositor and should be returned to it without hesitation.

The Complainant had been carrying the same activity for quite a long time and the Bank never queried its operations.

The Complainant is asking the Arbiter to order the Bank to close the Complainant's account and transfer the funds to the Complainant.

Having seen the reply² of the Service Provider, where it states that when WT, one of the Complainant's Directors, visited the Bank on 4 January 2022, she was advised to visit the Financial Crimes Investigation Division (FCID). The same information was given to the Complainant's representatives on 8 June 2022. During this meeting, the Complainant's representatives '*understood and informed*' that the order to freeze the account had come from the Police.

This clearly shows that the Bank always accommodated the Complainant's requests but had to act according to the applicable legislation and directives.

The Service Provider further submitted that in view of the current situation and the inaction of the Complainant's representatives following the meetings with the Bank, it was surprised that this Complaint has been filed against it when all the required instructions have been duly submitted to the Complainant, only to be outrightly disregarded.

The Bank once again requested the Complainant's legal representatives to set a meeting with the Financial Crimes Investigations Division as instructed.

Having seen all the documents and heard the parties.

² P. 90

Further Considers

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.³

The main issue in this complaint is the refusal by the Bank to release the funds pertaining to the Complainant held in account number 5XXXXXXXXX. The Bank stated in its reply that they had instructions to tell the Complainant to contact the Financial Crimes Investigation Division (FCID) before they could accede to its request, but the Complainant's legal representatives did not comply.

The Complainant's Version

The Complainant's representatives⁴ filed jointly a solemn declaration in which they reiterated the contents of the Complaint and also made reference to the Arbiter's decision in case ASF 072/2020, where the Arbiter had declared that it is the Bank's duty to communicate with the client promptly and in an adequate formal, comprehensive and clear manner to its requests; and a service provider could be held liable particularly in the absence of any explanations provided.

The Bank admitted in its reply that it had received a freezing order from the Financial Crimes Investigation Department but without giving any further explanation. On cross-examination, the Complainant stated that its representatives had tried to fix an appointment with the FCID as evidenced by emails, but the FCID did not give them an appointment.

The Complainant's representatives further reiterated that the account should no longer be blocked, and the Complainant receives its funds held in the account.

The Service Provider's Version

The Service Provider filed an affidavit⁵ by Dr. Caroline Dimech who *inter alia* stated that the Complainant's account was frozen '*for a lawful reason*'. She was

³ CAP. 555, Art 19(3)(b)

⁴ Mr Mario Iacone, Mr Vincenzo Coccozza and Ms. Simona De Giovanni

⁵ P 126

only authorized to state that the Bank received an order from a *‘competent authority’* and that the Bank also received a communication from Inspector Daniel Formosa from the FCID *‘where he instructed the Bank to specifically inform the judicial and legal representatives of the Company ... that they need to visit the FCID and speak to Inspector Formosa’*.

The Bank acted accordingly and informed the Complainant’s representatives to visit the FCID.

During the meeting of 8 June 2022, Mr. XX and Mr. XX, who appeared on behalf of the Company, the witness and Ms YY on behalf of the Bank, the witness informed them that the accounts had been blocked *‘following an order issued by a competent authority’*. She also reminded the Company’s representatives to *‘physically’* visit the FCID because they did not visit Inspector Formosa as communicated to them in January 2022.

The Bank could not provide the Complainant with further details as it was precluded from doing so due to legal impediments.

The witness confirmed that the Bank cannot allow the Complainant to withdraw its funds until the Company adheres to FCID instructions as received by the Bank and when any legal impediment is removed.

During the hearing of 6 March 2023, the Bank’s legal representative informed the Arbiter *‘that the account of ZG had been frozen because they are following a Court Order’*.⁶

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.⁷

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.

⁶ P. 133

⁷ CAP. 555, Art. 19(3)(b)

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;
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 judgment, the Court held that a bank cannot unilaterally freeze an account without being authorised by law or by a Court. 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 its 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's representatives to visit **physically** the Financial Crimes Investigations Division and talk to a particular Police Inspector. However, instead of doing so, the Complainant's representatives only contacted the Police through emails for which they state that they 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**