

Before the Arbiter for Financial Services

Case ASF 097/2022

BR and IN

(the Complainants)

vs

Bank of Valletta p.l.c. (C 2833)

Sitting of 20 February 2023

The Arbiter,

Having seen the complaint¹ whereby the Complainant states that since 2016, she had opened a personal bank account number 40022493817. The bank account was a joint bank account with her husband, IN.

At the date of the complaint, approximately €84,000 were held in the account.

Since October 2021, the Complainants had asked the bank to close the account and transfer to them the money held in the account.

After various requests made by the Complainants to the Bank, without receiving an answer, the Complainants wrote an intimation letter to the Bank through their lawyer. The first intimation was dated 9 December 2021. After a lack of response from the Bank, another letter was sent on 7 June 2022.

The Complainants further state that they felt frustrated having their money blocked and frozen by the Bank without giving them any reason whatsoever.

The Complainants state that since their account is frozen, they cannot make any debit transactions, they cannot withdraw, purchase or make any other transfer of money from their account.

¹ Pages (Pgs.) 3-4

The Complainants further submit that a bank account can only be frozen when there is a court order resulting from a precautionary or executive warrant or if there is an order from a criminal court. They stated that the Bank cannot unilaterally freeze an account without being authorized by law or by court order, and can only make use of their client's money, and make a profit from it but ultimately has the duty to return the funds to its rightful owner.

The Complainants also felt aggrieved because the Bank did not even give them a reason for freezing their account or even giving them a warning before such action.

The Complainants conclude that even after the freezing of the account they were not given a reason for the freezing of their account.

The Complainants are requesting the Arbiter to order the Bank to allow the Complainants the use of their account, to close it and transfer to them the money held in the account.

Having seen the reply where in substance the Bank stated:

*'The Bank reiterates its position already stated in its reply email of 20 June 2022 addressed to the Complainants' legal counsel.'*²

*The Bank respectfully submits that it is legally precluded from acceding to the Complainants' request and also legally precluded from disclosing why.'*³

Having heard the Complaints,

Seen all the documents,

Further Considers

The Arbiter has to decide the complaint by reference to what, in his opinion, is fair, just and reasonable in the particular circumstances and substantive merits of the case.⁴

² P. 9

³ P. 25

⁴ 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 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.

In this case before the Arbiter, the Bank has not made a single reference to any legal provision which sanctioned its action of blocking the client's account.

Moreover, in the above-mentioned judgement, the Court stated that funds in a client's account are the property of the client, and the Bank can only use them, and make a profit on them but, ultimately, it has the duty to return the funds to their rightful owner.⁵

⁵ *World Water Fisheries Ltd vs Bank of Valletta plc*, First Hall, Civil Court, 29 September 2020

On the basis of the above-mentioned principles, the Arbiter wants to underline that a bank cannot unilaterally block and freeze the assets in a client's account unless sanctioned by law or contract. The Bank did not indicate on what **legal or contractual basis** it blocked the Complainant's account.

The bank did not provide any contractual reason for its action.

Neither did the Bank prove that it had a court order sanctioning the freezing of the account or that it had reasonable suspicion of money laundering or the financing of terrorism.

In this respect, while the Arbiter is fully aware that financial institutions have to comply with certain requirements in relation to anti-money laundering and countering financing of terrorism, **it is highly important that these measures are applied in a fair and reasonable manner, and do not go beyond the limits of those requirements.**

From the facts of the case, it results that the Complainants had opened the Bank account in 2016:

'I had an account at the Bank of Valletta plc since 2016'.⁶

The Bank did not find any irregularity with the account till 2021. For five years the account was active, and it was only in October 2021 that the Bank refused to transfer the money held in the account to the Complainants.⁷

The Bank did not respond to the various requests by the Complainants to get their money back and ignored them completely:

'In December 2021, a second request was made to the bank, but the bank did nothing about this. There was no response from the bank. Even when the lawyer intervened there was no response. Between 2021 and July 2022, the last time we made the request we sent several emails to the bank and even in that case there was no response.'⁸

The Bank did not prove before the Arbiter that the Complainants were acting in an illegal manner or that it had specific concerns about their activity. During

⁶ Declaration by the Complainant during the hearing of the 25 October 2022, p.26

⁷ *Ibid.*

⁸ *Ibid.*

these proceedings, the Bank simply said that it cannot state the reason for the freezing of the account because it is precluded by law.

However, the Arbiter cannot simply dismiss a legal complaint made before him on such a generic statement.

The Arbiter has to decide on the proofs brought before him. If he had to act otherwise, he will be leading the way for abuse, and a Bank can simply ignore its legal and contractual obligations entered into with *bona fide* clients, simply by making vague statements not substantiated by evidence.

Conclusion and Decision

For the above-stated reasons, the Arbiter decides that the complaint is fair, equitable and reasonable in the particular circumstances of this case,⁹ and is upholding it as long as it is compatible with this decision.

Therefore, in accordance with Article 26(3)(b)(c)(i) of Chapter 555 of the Laws of Malta, the Arbiter orders Bank of Valletta plc to close the Complainants' account merits of this case and transfer the money deposited in such account to the Complainants.

With legal interest at the rate of 8% per annum on the sum deposited in the account from the date of this decision till the date of the effective transfer of money to the Complainants, as ordered above in this decision.

The legal expenses of this case are to be borne by the Service Provider.

**Dr Reno Borg
Arbiter for Financial Services**

⁹ CAP. 555 of the Laws of Malta, Art. 19(3)(b)