

Before the Arbiter for Financial Services

Case No. 072/2020

TE (the Complainant)

vs

FXDD Malta Limited

as substituted by

Triton Capital Markets Limited

(C48817) (the Service Provider)

Sitting of 16 November 2021

The Arbiter,

PRELIMINARY

Change in name

The Office of the Arbiter for Financial Services ('OAFS') has discovered, through its own research, that in the year 2020, FXDD Malta Limited changed its name to Triton Capital Markets Limited ('the Service Provider'). This results from the records filed in 2020 with the Malta Business Registry relating to the change in name.¹

No notification was made by the Service Provider to the OAFS regarding such material development but after a communication from the OAFS of the 1 November 2021, the Service Provider confirmed the change in name and also that the Malta Business Registry issued the change in name certificate on 30

¹https://registry.mbr.mt/ROC/index.jsp#/ROC/downloadDocument.do?companyId=C+48817&filename=C+48817%2FC_48817_D62_0.pdf&archiveid=3829778&anonEmailAddress=&anonConfirmEmailAddress=

November 2020. For all intents and purposes, the records of this case have accordingly been updated to reflect the change in name of the Service Provider.

The Complaint

The Complaint was made by XXX as Director of TE in relation to the account number XXXXXXXX ('the Account') claimed to be held by TE with the Service Provider.²

The **Complaint** relates to the alleged numerous requests made by the Complainant to withdraw the funds held by TE from its account with the Service Provider. The Complainant submitted that the Service Provider did not allow the funds to be retrieved and that the Service Provider provided no reasons in this regard nor replied to the withdrawal requests.

The Complainant explained that, on behalf of TE, he attempted to retrieve all of the money held in the account. He stated that a redemption form was first submitted on the 8 August 2019, at which point the account held a balance of USD38,442.53.

The Complainant submitted that since the date of the redemption form, he received no information as to why the total amount held in the account could not be retrieved.

Moreover, two formal letters of complaint were sent to the Service Provider to which the Service Provider did not reply.

The Complainant submitted that he waited for almost a year to retrieve the funds held in the account. He further submitted that several other withdrawal requests were sent on numerous occasions, but all these requests were ignored with the Service Provider providing no feedback.

The Complainant's Request

The Complainant requested the retrieval of all the funds held in the account with the Service Provider as well as the reimbursement of the '*non-activity*' charges

² A fol. 4

applied on the said account. He further requested the funds to be transferred to the bank account held by TE at XXXX with account number XXXXXXXXXXXXX.³

Reply by the Service Provider

The Service Provider did not file a reply to the Complaint with the Office of the Arbiter for Financial Services. During the hearing of 6 October 2020, the Service Provider was informed by the Arbiter that it was contumacious as it did not file the reply.

The Service Provider was invited by the Arbiter to justify its contumacy⁴ but the Service Provider stated, during the same hearing, that *'although the Arbiter has invited the Service Provider to justify the contumacy, the law precludes the Service Provider from providing any additional information or reasons for being contumacious and, therefore, ... will be refraining from filing a note to justify the contumacy ...'*⁵

Having heard the Complainant and seen all the documents and submissions,

Considers:

The Merits of the Case

The Arbiter will 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.⁶

Background Information

TE - Employees/Activity

In the Complaint Form, it was explained that TE 'has no employees .. .and hasn't had any annual turnover since the year 2017'.⁷

³ A fol. 4

⁴ A fol. 32

⁵ *Ibid.*

⁶ Cap. 555, Art. 19(3)(b)

⁷ A fol. 4

A declaration dated 11 June 2020, signed by 'XXX', who was indicated as the '*Founder and owner*' of TE, was attached to the Complaint Form.⁸ The said declaration certified '*that TE, has had no employees since 2017*'.⁹

In a letter dated 16 July 2020, signed by XXX of XXXXXXXX (XXX) as Auditor, the following was, in essence, declared:¹⁰

- that the business purpose of TE was '*Financial Consulting and Advisory Services, as well as an investment company and capital rentier of real estate and other investments in general*';¹¹
- that TE (with number XXXXXXXXXXXX) was incorporated on XX June 20XX;
- that TE '*had income from its activities until June 2017*' where '*in 2017, while the company was active from January to June, it had income of CLP \$ 1XXX,XXX,XXX, which is equivalent to ... XXX,XXX.11 Euros as of July 2017 exchange rate*';¹²
- that from July 2017 till July 2020, TE, '*has not perceived or received any income, does not maintain investments of any kind, nor has it carried out its activity, having no accounting or financial movements*'.¹³

Therefore, for the purposes of Chapter 555 of the Laws of Malta, TE can be considered as a micro-enterprise.

With his Complaint Form, the Complainant attached two printouts of statements for '*Account: XXXXXXXX*' under the name of TE denominated in USD, as at 9 January 2020 and 30 April 2020.

The said documents both indicated no trades and a balance of '*38 412.53*' as at 9 January 2020 and '*38 382.53*' as at 30 April 2020 respectively with the statement of 30 April 2020 also showing a deduction of an '*Inactivity fee 2020Q1*' of USD30.¹⁴

⁸ A fol. 15

⁹ *Ibid.*

¹⁰ A fol. 18

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ A fol. 8 & 16

During the hearing of 3 November 2020, the Complainant explained *inter alia* that he '*opened a trading account with FXDD about 5 years ago...*',¹⁵ thus, around 2015.

Redemption Form

The Complainant presented a copy of the '*FXDD Global Funds Redemption Form*' signed by him and dated 8/8/2019 in respect of the said Account and amount of 38,442.53.¹⁶

Further formal requests for the withdrawal of all the money in his account amounting to USD38,442.53 were made in his formal letters dated 12 May 2020 and 26 May 2020 sent by the Complainant's lawyers to the Service Provider.¹⁷

Considerations and Decision

The Arbiter notes that the Service Provider did not file a reply and is therefore contumacious. The Arbiter offered the Service Provider the opportunity to justify its contumacy, but the Service Provider stated that 'the law' prevented it from filing a reply. However, the Service Provider did not explain any further and did not indicate to the Arbiter to what law was the Service Provider referring.

According to our Courts practice, contumacy has always been considered as a contestation and not as an admission of the claim. However, in this case the attitude taken by the Service Provider in not attempting to justify the contumacy and simply declaring that it is precluded to do so '*by law*' (without explaining any further to the Arbiter), can only be considered by the Arbiter as being tantamount to admission of the complaint.

However, the Arbiter will still consider whether the Complainant has managed to prove its case.

Since the Service Provider did not justify its contumacy and is therefore contumacious, the Arbiter can only refer to the facts as submitted by the Complainant.

¹⁵ A fol. 33

¹⁶ A fol. 9

¹⁷ A fol. 11 & 13

The Complainant's Version

The Complainant stated during the hearing of the 3 November 2020,¹⁸ that he was, at first, told by officials of the Service Provider that the money was on its way and *'were still in accounting'*.¹⁹ He further explained that after a month had passed, and had still not received the money, he was told that *'it was in Compliance, and they could not give me more information after that.'*²⁰

The Complainant explained that he kept calling the Service Provider *'... every week, every two weeks, and they kept telling [him] the same thing: that they were in Compliance and they would not tell me anything.'*²¹

He claimed that he tried to speak to supervisors and the Legal Department of the Service Provider regarding the situation, but he was not given *'any phone numbers or anything of that nature'*.²²

He further claimed that he had *'been hearing things that they were not doing very well financially and that they are doing this to other people as well'*.²³

The Complainant also *inter alia* pointed out, during the said hearing, that he was receiving a monthly statement which showed a deduction of USD30 from his account *'... every single month saying that it was an inactivity fee because the account was inactive'*.²⁴

He noted that he told the Services Provider *'Well let me activate the account, let me trade the account, let me move the account, while you figure out why you could not give me my money back'*, but that *'they could not do that either'*.²⁵

The Complainant further explained that the Service Provider has stopped sending him statements and that when he called the Service Provider recently the phones in the Malta office were disconnected.²⁶

¹⁸ A fol. 33-35

¹⁹ A fol. 33

²⁰ Ibid.

²¹ A fol. 33 & 34

²² A fol. 34

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

In its Complaint, the Complainant stated that the account number in question was 'Account: XXXXXXXXXXXX', and formal requests for the withdrawal of all the money in his account amounting to USD38,442.53 were made in his formal letters dated 12 May 2020 and 26 May 2020 sent by the Complainant's lawyers to the Service Provider.²⁷

The Complainant further stated that the Service Provider did not authorise the withdrawal, did not reply to his requests and charged him a fee for the 'non-activity' of the account when it was not his fault that he could not operate the account.

The Arbiter has no other version before him and, in the contumacy of the Service Provider, has no other alternative but to accept the Complainant's version.

The Arbiter would also like to make certain observations:

Firstly, a financial services provider is duly expected to communicate promptly and in an adequate formal, comprehensive and clear manner to requests received. It is considered as highly unprofessional for a financial services provider to ignore, and not reply to, requests made to it.

Furthermore, it is considered that any valid request made by a customer of a financial services provider, in respect of an account to which s/he is legally entitled to, should be promptly processed and satisfied by the Service Provider in line with the provisions and terms of the contract of service/product as applicable.

Unnecessary and prolonged delays which are not justified in terms of the said contract of service/product and/or in terms of law are not acceptable and a financial services provider would reasonably be expected to be held liable accordingly, particularly in the absence of any explanations provided.

In addition, it would not be considered as a fair and justified practice for a financial service provider to impose a non-activity fee in the circumstance where it is stalling the operation or closure of a trading account.

²⁷ A fol. 11 & 13

For all the above-stated reasons, the Arbiter, in the contumacy of the Service Provider and on the facts brought before him, decides that the Complaint is fair, equitable and reasonable in the particular circumstances and substantive merits of the case²⁸ and is upholding it.

Therefore, on the basis of Article 26(3)(c)(i) of Chapter 555 of the Laws of Malta, the Arbiter orders Triton Capital Markets Limited²⁹ to rectify the conduct complained of and its consequences, and close the Complainant's Account number XXXXXXXXX and transfer the amount of 38,442.53 US Dollars to XXXX account number XXXXXXXXXXXXXX as indicated by the Complainant in its complaint form, and to refund the Complainant with any 'non-activity' fees charged as explained in the Complaint.

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

**Dr Reno Borg
Arbiter for Financial Services**

²⁸ Chapter 555 of the Laws of Malta, Art. 19(3)(b)

²⁹ **As substituting FXDD Malta Ltd as explained in the preliminary part of this decision)**