

## Before the Arbiter for Financial Services

**Case No. 138/2020**

**NF (the Complainant)**

**vs**

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

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

**Sitting of the 19 October 2021**

**The Arbiter,**

**Having seen the complaint whereby the Complainant in essence submits that:**

The Bank had closed his account in May 2020 without explanation. The only reason given to the Complainant was that he was above *'their risk threshold'*, a point which the Bank was unwilling to clarify.

Prior to closing the account, they had frozen the same account for more than three months also without any explanation. This *'strained'* the flow of more than \$100,000 of his money costing him a substantial amount in lost earnings in the stock market and in interest. It has also caused him *'dozens of hours of added labour and aggravation'*.

Additionally, he alleges that he has more than \$70,000 in a third-party account which is currently stranded because of a *'closed loop'* policy.

*'The policy requires money to be withdrawn only to the source of funding which in my case is BOV'*. There has been no shift in his behaviour to trigger BOV's actions.

The constant theme in BOV's communication to him is that they are *'unable'* to say or do anything.

BOV has shown a habit of not addressing basic questions and has shown little interest in requesting specific information from him which might clear up any issues they might have.

Currently, he has more than \$50,000 directly in his account which are still *'locked'*. BOV is refusing to allow him to withdraw it until he signs a consent to have his account closed. Stating that knowing how BOV has operated with him over the past 10 years, he refuses to do so.

As a remedy, he states that knowing how he should have invested his money, he estimates a loss of about \$25,000 as a result of the lost availability of funds, as he timed:

*'the DJIA's overreaction to Covid-19 perfectly buying at below 20,000 albeit selling a bit prematurely at 23500'.*

Afterwards he could *'safely earned about 1% interest on average at a high yield savings account.* But he concedes that *'speculative lost earnings like this are impossible to prove'*, however, he wanted to drive home that the *'cavalier'* behaviour of BOV can have heavy consequences.

He also requested that BOV reinstates his account so that he can at least withdraw his money. As a minimum, BOV should justify their actions and should not be allowed to continue *'some clandestine norm of action with no accountability to the rights of the public'*.

**Having seen the reply by the service provider which states that:**

The Bank humbly submits that the Complainant's requests should not be acceded to for the reasons outlined below:

1. Complainant failed to submit documentation legitimately requested by the Bank in line with its regulatory obligations in their original form for the Bank to be able to transfer funds held within the Complainant's accounts with the Bank. As is evident through the correspondence as exchanged with the Complainant and attached as **Doc. BOV1**, particularly,

the Bank's email of the 11 May 2020 and that of 29 May 2020, the Bank requested the Complainant to submit the following:

- i. a duly filled in '*FATCA Bank Form*';
- ii. a duly filled in '*Application for Payment Order Outwards*';
- iii. a copy of the Complainant's passport certified by a legal professional, accountancy professional or a notary.

As is also evident through the same correspondence as exchanged with the Complainant and attached as Doc. BOV1, the Complainant failed to submit this documentation. Had the Complainant filed the requested documentation, the Bank would have released the funds in question and, as explained in the said correspondence, proceeded with closing the accounts held by the Complainant with the Bank.

2. The Bank did not cause any damages to the Complainant. Any damages purportedly suffered by the Complainant were suffered by the Complainant due to the Complainant's failure in providing the documentation as per (i) to (iii) above. In any case, and *ex admissis*, the damages purportedly suffered or rather, which could have been purportedly suffered by the Complainant, are speculative in nature and the Bank ought not to be held liable for the same.

The Bank reserves its right to bring forth any witnesses and/or any further documentary evidence in support of its defence and to make oral and written submissions.

With costs.

**Having heard the parties**

**Having seen all the documents**

**Considers**

**The Arbiter has to decide the complaint with reference to what in his opinion is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.<sup>1</sup>**

The Complainant's main issues raised in his complaint are the following:

1. That the Bank closed his BOV account in May 2020 without any explanation;
2. The length of time taken by the Bank to communicate with him;
3. That the Bank blocked his account and also refused to allow him to transfer money from a third-party account (matchbook account) because of a '*closed loop*' policy which requires money to be withdrawn only to the source of funding which, in his case, is BOV.
4. That he has more than \$50,000 in his account which is also '*locked*' and the Bank will only release them on condition that he consents to have his account closed.

On the other hand, the Bank holds that:

1. The Complainant failed to submit documentation legitimately requested by the Bank in line with its obligatory obligations in their original form to be able to transfer funds held within the Complainant's accounts with the Bank.
2. The Bank did not cause the Complainant any damages because, firstly, he refused to forward to the Bank the requested documents in their original form and, secondly, the losses purportedly suffered by the Complainant are speculative in nature.

The Bank also stated in its reply that '*had the Complainant filled the requested documentation*', the Bank would have released the funds in question and closed the accounts held by the Complainant with the Bank.

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<sup>1</sup> Chapter 555 of the Laws of Malta (CAP 555), Article 19(3)(b)

### ***Further Considerations***

The first issue that the Bank raises is that the Complainant failed to submit the **originals** of:

- i. *'a duly filled in "FATCA Bank Form";*
- ii. *a duly filled in "Application for Payment Order Outwards";*
- iii. *a copy of the Complainant's passport certified by a professional, accountancy professional or a notary.'*<sup>2</sup>

On the other hand, the Complainant stated that he gave all the documents and data requested by the Bank in a timely manner and it was the Bank that procrastinated and froze and closed the accounts without any warning.

### ***Timeline of Events***

23 December 2019 - funds that came into the client's account were blocked because they were not supported by documentation.<sup>3</sup>

February 2020 - The Complainant asked the Bank to transfer funds from his BOV account to his US account.<sup>4</sup>

13 February 2020 - Bank informed client that funds which were credited on the 23 December 2019 were blocked because they were not supported by documentation. Also stated that his accounting balance was less than he wanted to transfer. Gave him information how he could make transfers.<sup>5</sup>

13 February 2020 - Complainant asked why they needed documents after so many years and what documentation they needed.<sup>6</sup>

14 February 2020 - Bank explained they needed invoices, statements, etc., for the credit entry mentioned above.<sup>7</sup>

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<sup>2</sup> Pg. 57

<sup>3</sup> Pg. 74

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

<sup>5</sup> Pg. 7

<sup>6</sup> Pg. 8

<sup>7</sup> Pg. 9

15 February 2020 - Client attached screenshot of the transaction so that BOV could verify it was himself who made it.<sup>8</sup>

15 February 2020 - Bank requested proof to understand the business relationship originating the transfer of funds into his account.<sup>9</sup>

17 February 2020 - Complainant provided information that the transaction was a Matchbook transaction.<sup>10</sup>

Few Days later - The AFC (Anti-Financial Crime Department of BOV) replied to the Branch that there was no issue with the transactions with Matchbook, but they needed to understand more the Complainant's financial background and the Bank asked for the source of wealth.<sup>11</sup>

24 February 2020 - Bank requested the source of wealth.<sup>12</sup>

24 February 2020 - Complainant sent a very long email giving details about his source of wealth; also attached documents. Also provided a very detailed email with his US Income Tax Returns.<sup>13</sup>

At this point, the Bank decided to terminate the relationship with client.<sup>14</sup>

4 April 2020 - Bank informed client that a letter dated 30 January 2020 requesting important information to update his records was not yet answered.<sup>15</sup>

4 April 2020 - Client replied that he had sent it on the 14 March 2020 (copy attached at pgs. 19 & 20).<sup>16</sup>

Client asked why his money was held by the Bank.<sup>17</sup>

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<sup>8</sup> Pg. 10

<sup>9</sup> Pg. 11

<sup>10</sup> Pg. 74

<sup>11</sup> Pg. 75

<sup>12</sup> Pg. 13

<sup>13</sup> Pg. 75; Pg. 14

<sup>14</sup> Pg. 75

<sup>15</sup> Pg. 18

<sup>16</sup> Pg. 21

<sup>17</sup> Pg. 22

30 April 2020 - Bank informed client that Bank was still looking into the matter and will inform him in due course.<sup>18</sup>

30 April 2020 - Client asked what '*due course*' meant.<sup>19</sup>

4 May 2020 - Client informed Bank that he had filed a complaint with the Arbiter.<sup>20</sup>

5 May 2020 - The Bank informed client that his case was still being handled by Bank officials and would inform him in due course.<sup>21</sup>

11 May 2020 - The Bank informed client that since he did not hold an economic activity or residence connection with Malta, they were closing his accounts.

The Bank needed the following documentation to be able to transfer the balance held in both accounts: FATCA Bank Form and Application for Payment Order Outwards for both Euro and USD accounts, together with the following data: Beneficiary Name and Address (must be Yourself); IBAN No/Account No.; Beneficiary Bank and Branch Address; Beneficiary Bank Swift Code. Certified copy of passport. The Bank requested the documentation to be in original.<sup>22</sup>

11 May 2020 - Client responded by commenting that after three months of saying nothing, the Bank decided to close his account and asked for an explanation why they were closing his account.<sup>23</sup>

15 May 2020 - Bank informed client that the Bank cannot continue to provide him with banking services because his profile did not fall within the Bank's risk appetite and requested the information requested on the 11 May 2020 to transfer his account balance.<sup>24</sup>

15 May 2020 - Complainant stated that he had no problem in filling the paperwork requested but needed '*contextualisation*' regarding the closing of the account.<sup>25</sup>

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<sup>18</sup> Pg. 23

<sup>19</sup> Pg. 24

<sup>20</sup> Pg. 25

<sup>21</sup> Pg. 27

<sup>22</sup> Pgs. 28-30

<sup>23</sup> Pg. 31

<sup>24</sup> Pg. 32

<sup>25</sup> Pg. 67

20 May 2020 - Bank informed the client that it was unable to allow further transactions on his accounts and informed him that he should make alternative arrangements *'to channel the funds through a third-party financial institution.'*<sup>26</sup>

21 May 2020 - Complainant queried how could the Bank process one transaction regarding Matchbook account but cannot process the other one which was of the *'exact same type'*.<sup>27</sup>

21 May 2020 - Bank still requesting the FATCA Form and informs him that Bank was unable to allow further transactions on his account.<sup>28</sup>

### *The Nature of the Complaint and the Blocking of the Account/s*

The thrust of the complaint is that in May 2020 the Bank closed the complainant's account but preceding that, the Bank *'froze'* his account for more than three months and, also, refused to process a transfer of funds into his account on the 23 December 2019.

In its reply, the Bank states that the

*'Complainant failed to submit documentation legitimately requested by the Bank in line with its regulatory obligations in their original form for the Bank to be able to transfer funds held within the Complainant's accounts with the Bank.'*<sup>29</sup>

However, prior to this request, the Bank had already *'frozen'* the above-mentioned transaction and *'blocked'* the Complainant's accounts.

### ***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;

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<sup>26</sup> Pg. 68

<sup>27</sup> Pg. 69

<sup>28</sup> Pg. 71

<sup>29</sup> Pg. 57



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 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, make profit on them but, ultimately, it has the duty to return the funds to their rightful owner.<sup>30</sup>

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.

Although the parties make only scant reference to the nature of the Complainant's account, the Arbiter has no doubt that such an account is subject to Terms and Conditions that normally banks pass to their clients on the opening of the account. The Bank did not provide the Arbiter with these Terms and Conditions relating to the account and, consequently, did not prove that the

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<sup>30</sup> *World Water Fisheries Ltd vs Bank of Valletta plc*, First Hall, Civil Court, 29 September 2020

blocking of the account resulted from any contractual agreement entered into between the parties.

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 Complainant had been carrying the same activity for a number of years, and when the Bank asked for information regarding the transaction of the 23 December 2019, the Complainant provided the Bank with the origin of funds which was similar to other previous transactions carried out by the Complainant and which were acceptable to the Bank. The Bank did not prove before the Arbiter that the Complainant was acting in an illegal manner or that it had specific concerns about his activity.

**For the above-stated reasons, the Arbiter decides that the Bank did not act fairly, equitably and reasonably in freezing the Complainant's account.**

*Whether the Bank could refuse to transfer funds from the Matchbook account*

The Bank's position regarding its refusal to transfer the funds that were credited on the 23 December 2019, is not based on fair and reasonable grounds for the following reasons.

The Bank's witness, NNNN,<sup>31</sup> stated on oath that on that transaction the Complainant provided information that it was a Matchbook transaction and had asked the Anti-Financial Crime Department (AFC) of the Bank whether she could process that transaction.

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<sup>31</sup> Pg. 74

The AFC *'replied that there was no issue with the transactions with Matchbook,'*<sup>32</sup> but the Bank needed to understand more the Complainant's background.

However, the Complainant *'replied with a very long email giving us details about his source of wealth and attaching documentation which I forwarded to our department for their go-ahead to proceed. It was at that time that the Bank decided to terminate the relationship with Mr NF ...'*<sup>33</sup>

Moreover, the witness stated that: *'To summarise, I asked Mr NF for a source of funds in the first place and, eventually, for a source of wealth. He provided a very detailed email with his US income tax returns'.*<sup>34</sup>

Moreover, on cross-examination, the witness confirmed that the AFC did not object to this particular transaction:

*'Asked by the Arbiter if the transaction was approved or not, I say that it was not an issue with the specific transaction; it was more the source of wealth provided thereafter by the customer.'*<sup>35</sup>

Having considered thoroughly the evidence brought before him by the Bank, (or the lack of it), the Arbiter is not convinced that the Bank had any valid reason not to process the funds that were transferred to the Complainant's account on the 23 December 2019, because it results that:

1. The AFC did not object to that particular transaction;
2. When the Bank asked for more information on the source of wealth, the Bank's witness admitted that the Complainant sent very detailed information about his source of wealth;
3. The Bank did not provide the Arbiter with any **specific objection** to the source of wealth provided by the Complainant. In fact, the Bank's witness stated that:

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<sup>32</sup> Pg. 75

<sup>33</sup> *Ibid.*

<sup>34</sup> Arbiter's emphasis

<sup>35</sup> Pg. 75

*'Being asked if AFC department ... had concerns about the complainant's background and that was the reason for the complainant's transactions being blocked up, I say, no, that was after. That stage came after the transactions being blocked.'*<sup>36</sup>

The other Bank's witness<sup>37</sup> could only give information about what happened after the accounts were blocked; and the information given to her by the Branch was that the client's accounts were closed, and they needed the original of the documents referred to above in this decision in order to transfer the Complainant's funds to another bank.

Therefore, this witness did not enlighten the Arbiter on whether the Bank was objecting to the source of wealth or to the Complainant's background.

The Arbiter notes that the most important witnesses, the AFC's officers, were not produced by the Bank. Therefore, the Arbiter cannot conscientiously believe that there was an issue with the Complainant's source of wealth or background.

The only evidence that the Arbiter has, as quoted above in this decision, suggests that the AFC did not have any issue with the Matchbook transactions. In fact, the AFC had informed the Branch that there was nothing irregular in Matchbook transactions; and it results that the Bank had processed numerous identical transactions in previous years.

**In this context, the Arbiter does not see any valid reason why the Bank did not process this transaction.**

### *The Transfer of Funds*

The Bank itself declared in its reply that it failed to transfer funds held within the Complainant's accounts because he failed to submit the originals of '*documentation legitimately requested by the Bank in line with its regulatory obligations*'.<sup>38</sup>

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<sup>36</sup> *Ibid.*

<sup>37</sup> Pg. 76

<sup>38</sup> Pg. 57

However, during the proceedings, the Bank did not state what these regulatory obligations are and did not even bring a single proof regarding such '*regulatory obligations*'.

The Arbiter has to decide on proofs and not on mere statements.

The documents mentioned by the Bank<sup>39</sup> in its reply were not in relation to the functioning of the accounts but rather to transfer the Complainant's funds into another bank's account after it had decided to close the Complainant's accounts. These documents were in fact passed by the Complainant through electronic means, but the Bank insisted on the originals.

In fact, the Bank's witness stated on oath that:

*'My role was to communicate to Mr NF what the branch needed in order to close the accounts. And it was made very clear that we needed these forms in original.*

*In fact, in my email of 11 May 2020, I made it very clear what the bank needed to close the account as communicated to me by the branch. We needed the FATCA Form; I asked for the Payment Order Outwards Form so that we would be able to send money as well as a copy of the authenticated I.D. card. It was made very clear that these forms be in original, as the bank always requests these forms in original. This was not the only time I requested this, but I repeated the request afterwards as well.*

*We received the FATCA Form by electronic means. We received it via email. We received the Payment Order Form to send the money but it had a condition which the bank did not accept. The condition was that he wanted us to send him the money but not close the account.'*<sup>40</sup>

The Arbiter understands the frustration shown by the Complainant in his emails to the Bank, but notices that in his email of the 20 May 2020,<sup>41</sup> he said that he was prepared to send the requested documentation once this arbitration is closed.

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<sup>39</sup> Apart from proof of origin of the 23 December 2019 transaction

<sup>40</sup> Pg. 76

<sup>41</sup> Pg. 37

Therefore, the Arbiter does not see any further dispute on this matter and, on the basis of reasonableness, believes that the Complainant should find no difficulty in sending the originals of the documents referred to in the Bank's reply and the data referred to in the Bank's email of the 11 May 2020.<sup>42</sup> In this way, the Bank would be able to comply with this decision and transfer the Complainant's funds to his indicated account with another financial institution.

### **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,<sup>43</sup> and is upholding it as long as it is compatible with this decision.

The Arbiter decides that for the reasons mentioned above in this decision:

- 1. The freezing (blocking) of the Complainant's account was not fair, equitable and reasonable and was not warranted by law or any court order as amply explained above;**
- 2. That the blocking of the transaction of the 23 December 2019 was not based on any reasonable or fair grounds as explained above;**
- 3. That, since the Bank has closed the client's account/s, it is obliged to transfer the funds in the Complainant's accounts to another account held with another financial institution.**

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:

- 1. Process the transaction of the 23 December 2019 referred to above in this decision and credits the Complainant with the amount indicated in the same transaction;**
- 2. Transfer the Complainant's funds to another account held with another financial institution indicated by the Complainant after the Complainant**

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<sup>42</sup> Pgs. 28-30

<sup>43</sup> CAP. 555 of the Laws of Malta, Art. 19(3)(b)

has sent the documents referred to above in the manner already explained in this decision.

3. With regards to the request by the Complainant for monetary compensation, the Arbiter has no proof of any actual loss made by the Complainant because his projections are merely speculative and is therefore rejecting it.

The costs of these proceedings are to be borne by the service provider.

**Dr Reno Borg**  
**Arbiter for Financial Services**