

When suspicion is not enough

Background

This case involved the cancellation of online trading and withholding of customer funds for an alleged breach of obligations on the part of the customer.

An online investment company (the provider) seized a deposited amount and cancelled trades that it deemed to be suspicious. The provider claimed the trades were not done on a manual basis but through an auto-trade function. This function it claimed allowed the investor to “*catch market price delays during important economic news.*” The provider alleged the investor used phishing practices, through organised cloud servers with special additional terminals installed on different servers to benefit from delays. The online investment company refused to release any of these funds or profits made to the investor. It held the money in trust and said it was busy doing its own investigation. The provider also stopped communicating with the investor which left him frustrated.

Next steps

More than five months later, the internal investigation had not been completed and the investor approached Financial Dispute Resolution Service (FDRS) to lodge a complaint. The complaint was accepted and both parties were given an opportunity to make submissions. The dispute could not be resolved through mediation and the investor asked that the matter be adjudicated.

Adjudication

After considering the terms of the contract and the submissions made by both parties, the FDRS adjudicator issued a proposed decision. The investor accepted the proposed decision. The provider did not accept the decision, but failed to provide any further information.

The adjudicator proceeded to issue a final decision. In his final decision the adjudicator found there was nothing in the terms of agreement which prohibited the customer from exploiting any system delay (even though he could not make a finding that this had occurred). The adjudicator also found there was no provision requiring the customer to only engage on the platform from a specific country, not to use cloud servers or refrain from using auto-trading.

Outcome

In the end the adjudicator determined that the provider had to refund the deposited funds and the profit from the cancelled trades to the sum of \$10,699.51.