

Heading:

Decision concerning alleged manipulation of sale price -Forex trading platform -
Complaint upheld

A v F [2013] FDRS Jan 2012

1. Issue

The matter before FDR relates to a dispute brought by [number] Customers of the Scheme Member in relation to a liquidation of positions. In particular, the Customers have alleged that The Scheme Member has manipulated the sale price for the positions, which has resulted in a considerable loss compared with the sale price the Customers consider should have been applied.

While the [number] Customers have individual accounts, their complaint is brought on the same grounds, and they are jointly represented by Mr [Representatives name]. All of the Customers have requested the complaints to be heard concurrently, hence only one combined decision from FDR is provided.

2. Background

The Customers have a trading relationship with The Scheme Member.

On 24 May 2012, at about 23:59:10 (GMT+3), the Customers opened long positions with the Scheme Member for Australian / US Dollar cross.

The Customer states that at about 23:59:30, those positions were closed at 0.97450 when the stop-out had been reached, and the actual liquidation price then fell significantly to 0.97000.

The Customers have subsequently brought a complaint to FDR, on the basis that The Scheme Member had unreasonably manipulated the liquidation price, to the Customers' detriment.

3. Position of the Parties

Customers' position

The Customers' position is that The Scheme Member has manipulated the price for its advantage. Simply put, the Customers reject that there could reasonably have been a 44.5 pip gap between the price displayed at stop out, and the liquidation price. The Customers have sought confirmation from The Scheme Member as to the actual price from The Scheme Member [Location] to establish that the liquidation was made at the appropriate level.

Scheme Member's position

The Scheme Member's position is that the Customers' accounts were highly leveraged, and that the positions were closed on the best available rate, which at that time was from The Scheme Member [Location], which was 0.9700.

The Scheme Member considers it to be irrelevant what the rates of other providers were on any particular occasion, as the trade is made based on the Scheme Member's liquidity pool.

The Scheme Member considers the liquidation was made consistently with the relevant terms and conditions, and the complaint should therefore be dismissed.

4. Jurisdiction

I am satisfied that FDR holds jurisdiction to consider this complaint, and jurisdiction is not disputed by the parties.

5. Proposed Decision

The issue and background are set out above.

To consider this complaint, FDR has obtained an independent expert opinion from [name], a lecturer in Finance and Economics at [Name] University. That opinion is found at appendix 1.

[Name]'s opinion is that reported market rates using an independent source (Thomson Reuters), supports that the Customers' positions have been liquidated at a significantly unfavourable rate.

I accept there will be some fluctuations in market rates between various providers. I also accept that the exact rate a liquidation will occur is that set by the broker - The Scheme Member in this case.

However, I have little difficulty in concluding there ought to be a material similarity in price determined by a Scheme Member in an individual case, and that of the market generally. In this case, the evidence would suggest that the actual and general rates are materially different.

The Scheme Member has not in my view adequately explained why the best price they could obtain (The Scheme Member [Location]) was so different to the market price in general.

If I were to apply a strict interpretation of the terms of the agreement between the Customers and The Scheme Member, I would dismiss the complaint.

However, in considering this complaint, I must apply the Financial Service Provider - Reserve Scheme Rules 2010. Rule 25 sets out the "basis for final decisions under reserve scheme", and holds:

"(1) A scheme adjudicator must make any final decision on a complaint in light of what is fair and reasonable in all the circumstances and having regard to-

- (a) the law; and*
- (b) relevant industry codes of practice; and*
- (c) good industry practice*

(2) However, the scheme adjudicator is not bound to give effect to strict legal rights or obligations or to legal forms or technicalities."

Accordingly, I "must" make a determination on the basis not of strict technicalities, but on what is fair and reasonable in the circumstances.

In this case, I accept the opinion provided by the independent expert, [name], that the liquidation occurred at an unfavourable rate. Finding as I do that The Scheme Member has not adequately justified why the rate applied was so significantly out of step with the market in general, I find that the strict contractual provisions should not be applied. Rather, the outcome should be based on what is fair and reasonable.

For those reasons, I uphold the Customers complaints to FDR.

6. Proposed Outcome

The proposed outcome for this complaint is as follows:

On the basis of Rule 26 of the Financial Service Providers (Reserve Scheme Rules) 2010, FDR directs that The Scheme Member redress the Customers' loss, by applying a more favourable rate than that previously applied in this case.

The rate applied could be reached in a number of ways. I would invite the parties to propose a more favourable rate to be applied, and the reason that rate is proposed. In my final decision, based on responses from the parties, I will fix the rate that a recalculation must be based upon.

7. Final Decision

My proposed decision, and the expert advisors opinion (appendix 1 below), has been provided to both parties who provided final comments. Those final comments, as well as my proposed decision was then provided to [expert advisor], with a request that he consider that material and provide any final expert opinion. {Expert adviser} advised that he had no further comment to make, and stood by his earlier opinion.

[Name - representative] for The Scheme Member submitted that the rates applied are tied to its particular liquidity pool, rather than the market in general. As I noted in my proposed decision, I accept that is

the case, in that the actual rate applied will be that set by the Scheme Member. However, I remain un-persuaded that the rate applied should be vastly different to the market in general. It could of course be worse (for the Customer) than the market in general. The Scheme Member has a duty to carefully manage its customers funds, which in my view, would require the Scheme Members to ensure it's liquidity pool would be broadly reflective of market rates in general.

[Scheme Member representative] also noted that a detriment would apply to the Scheme Member from the proposed order, effectively it would be out of pocket from the order, given the trades have already taken place. I accept that may well be the case. However that would be the inevitable outcome of an adjudicated outcome against the Scheme Member.

Considering the parties replies, I can see no reason to depart from the outcome indicated in the draft decision.

In that draft decision, I asked the parties to propose a rate which should be applied, being a rate more favourable to the Customers. What I was seeking, was the parties to effectively suggest a rate which would 'meet in the middle', between the rate applied, and rate which the Customer considered should have been applied.

In response, the Customer has proposed what is effectively compensation for all profit deemed to have been lost applying general market rates.

The Scheme Member proposed a rate of 0.97350 be applied. On balance, I consider that rate to be fair, and does in my view strike a middle ground.

Accordingly, I direct the Scheme Member recalculate the Customers account, applying the rate of 0.97350.

Mr R Woodhouse
FDR Scheme Adjudicator

January 2013