

Heading:

Profit from forex trading not released by provider. No defense. Complaint upheld.

A v S [2015] FDRS Jan 2015

Issue

The dispute relates to the Complainant's alleged loss when trading with the Scheme Member on 21 July 2014.

On the day in question, the Complainant was trading in online forex trading when the profit made on the trade was not reimbursed by the Scheme Member, after the Complainant requested a withdrawal from his account.

The Complainant considers that he has suffered a loss of profit made in the amount of \$1,620.00USD due to the actions of the Scheme Member, which he demands the Scheme Member should reimburse.

Background

The Complainant and Scheme Member have an online trading relationship, governed by an online agreement between the parties.

On the day in question, the Complainant was forex trading via the Scheme Member's online platform, but the profit made on the trades were not reimbursed by the Scheme Member - after the Complainant requested a withdrawal from his account.

After the Complainant's request for the withdrawals, the Scheme Member advised that withdrawals usually take between 24 to 48 working hours to be effected; unless it is under investigation, in which instance it would take longer. After several further requests from the Complainant there was no further response from the Scheme Member regarding the withdrawal request. To date, the Complainant has not received the withdrawals.

The Complainant has subsequently brought a complaint to FDRs, on the basis that he was not satisfied with the Scheme Member's lack of explanation, and seeking that he be reimbursed for his loss i.e. profits made on the day of trading.

Positions of the Parties

The Complainant's Position

The Complainant has provided evidence of the trade in question and the amount of his loss suffered. He therefore considers he is entitled to be reimbursed by the Scheme Member for his loss.

Scheme Member's Position

The Scheme Member has failed to provide any response or submissions.

Proposed Decision

I have perused the available information and have taken note of the case made by the Complainant.

The FDRs scheme was designed with consumer protection in mind. My role as Adjudicator is to consider matters in light of what is provided for in the contract and general law. However, when considering this, I am not bound by strict legal forms or technicalities, and must also consider that which is 'fair and reasonable'.

Is the Scheme Member responsible for the Complainant's loss?

From the limited information available, I cannot find any substantiated reason why the Scheme Member could have refused reimbursing the Complainant with the profits he had made, when the withdrawal request was made.

The Complainant has provided a spreadsheet of the trades on the day in question, and proof of the amount of his loss. The Scheme Member has not provided any evidence to challenge the accuracy of the information provided by the Complainant.

Therefore, without any contrary evidence, I must find that the Complainant has proven his case on the balance of probabilities.

Proposed Outcome

If no further information can be provided by the Scheme Member or any further clarity on the issues raised, the current view taken by FDRs in this case is that the Complainant's case is upheld.

Final Decision

I have recorded above FDRs' proposed decision, which was provided to both the Complainant and the Scheme Member.

The Complainant provided his written acceptance of the proposed decision on 24 January 2015.

I have received no response from the Scheme Member.

Discussion

The proposed decision as recorded above is that the Complainant, based on the available evidence, was likely to be successful. Both parties were also given the opportunity to provide further information.

The primary reason FDRs reached that view was that on the evidence available, it had been established that the Scheme Member had more than likely not acted in accordance with the contractual provisions set out in the agreement between the parties, and there was sufficient evidence to support that the Scheme Member's actions were not fair and reasonable.

Despite having the opportunity, the Scheme Member has not provided any evidence to contradict the Complainant's case.

The applicable onus of proof used by FDRs is the accepted standard of the balance of probabilities. That means, in the Complainant's case, the evidence must show it is more likely than not that the Scheme Member had not acted in accordance with the provisions of the agreement between the parties, and also that it had not acted reasonably and fairly.

When considering the available evidence and the lack of any contrary evidence provided by the Scheme Member, there is sufficient evidence to show that the Complainant's loss resulted from the actions by the Scheme Member.

FDRs must therefore conclude the claim from the Complainant has been sufficiently proven (and not refuted by the Scheme Member), and the complaint to FDRs is upheld.

Accordingly, the Scheme Member is directed to reimburse the Complainant's loss suffered in the amount of \$1,620.00USD.

Mrs E Vögel
FDRs Adjudicator

January 2015