

Heading:

Decision concerning delay in electronic funds transfer to Forex trading platform -
Complaint not upheld

A v C [2012] FDRS May 2012

1. Issue

This complaint relates to a dispute between the Customer, and the Scheme Member (a provider of an online Forex trading platform). In particular, The Customer made an electronic transfer of funds to the Scheme Member. There was a delay in those funds reaching his trading account. That resulted in the Scheme Member closing out positions on the basis of an insufficient available margin. The Customer is seeking a 'reopening' of those positions.

2. Jurisdiction

There is no dispute between the parties that Financial Dispute Resolution ("FDR") holds jurisdiction to consider this complaint. I am entirely satisfied that there is jurisdiction for FDR to consider this matter.

Part 3 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 ("FSP(RDR) Act") relates to dispute resolution, and requires that a financial service provider be a member of an approved dispute resolution scheme, or the Reserve Scheme. In this case, The Scheme Member is a member of Financial Dispute Resolution (FDR), being the Reserve Scheme.

3. Background

I set out the background to this complaint as follows:

- The Customer resides [overseas], and trades with The Scheme Member I assume the Customer was trading in CFD's online. While there is little information regarding the trading undertaken on the dispute file, that aspect of the Client / Scheme Member relationship is not in dispute.
- During that trading relationship, I understand that The Customer made a total of 7 transfers of funds via 'Moneybookers e-wallet'. There were no problems with the first 6 transactions, however the dispute has arisen with respect to the 7th transfer, which occurred on 28 April 2011.
- The Scheme Member states that it received The Customer's deposit at 10:49pm on 28 April 2011 (outside its usual trading hours), and that the deposit was credited to the Customer's trading account the following morning at 8:59am.
- I understand that some time between 10:49pm on 28 April 2011, and 8:59am on 29 April 2011, that the Customer's positions were closed when equity in the trading account fell below the stop out level for the open positions. The Customer states that his loss is \$2,543.76. I have no information regarding the details surrounding the closure of the positions, or the actual time it occurred. I presume therefore that aspect of the background is also not in dispute.
- The parties were unable to resolve the dispute directly, and therefore The Customer raised his complaint with FDR. An attempt to resolve the dispute was made via Conciliation. Unfortunately that process proved unsuccessful, and therefore this matter has proceeded to Adjudication. I note however Conciliators settlement recommendation which is:

"I recommend that The Customer withdraws his complaint, because

- *It seems clear that the Scheme Member has not breached any of the terms in its client agreement with the Customer, and*
- *I do not consider the Customer has put forward sufficient evidence of his claim that the Scheme Member has created the delay for its own purpose."*

- The Customer has declined to accept the Conciliator's recommendation, and has provided further comments by email. Those include:
 - The email from Moneybookers contained his correct email address.
 - The Customer considers the delay in crediting the trading account is the Scheme Member's fault.
 - There had not been previous difficulty with spelling of the Customer's name, delaying the crediting of his trading account.

4. Position of the Parties

Applicant's position

The Customer's position as set out in the complaint file is as follows:

- Some 6 earlier deposits had been made in the same way as the deposit on 28 April 2011. All of those earlier deposits appeared in the trading account in less than two hours.
- The Customer has sought a return of the closed positions.
- Given the market operates 24 hours per day, there should be an instant ability to credit the trading account. It was the intention of the Customer by making the deposit, to have those funds credited to his account immediately.

Scheme Member's position

I understand the Scheme Member's position to be:

- The deposit made via Moneybookers was deposited into the nominated account at 22:49pm on 28 April 2012, and that deposit was credited to the Customer's trading account at 8:59am the following business day, being 29 April 2011.

- The Scheme Member's position is that the deposit was made within its terms and conditions, and particularly clause 4.12, that:

"Funds will be credited to a Client's Account within one business day, but no later than at the end of the transaction day after the funds were credited to the Company Account, or upon receiving an 'internal fund transfer request' if the funds are being transferred from another of the Client's Accounts open within the Company."

- As a consequence of the funds not reaching the trading account before the equity reached the stop out level, the Scheme Member closed the open positions, as it was able to do under clause 6.2 of the terms and conditions:

"...reserves the right to close the client's open positions without the consent of the client of any prior notification if the client's equity position fall below the stop out level..."

- The terms and conditions are published on the Scheme Member's website.
- The Scheme Member does not have staff available in its office on a 24 hour basis. The Scheme Member advised:

"Usually the procedure of automatic or manual processing during working hours of the Payment department of [Company name] takes no more than one hour. As the Payment department of [Company name] does not work 24/7, we include a 'delay clause' to the [Company name] Regulations in order to allow crediting to the client's accounts of those client payments, which are not suitable for automatic processing. This happened in respect of the payment of [Customer name]."

The Scheme Member advised the payments department only operates during normal business hours of 9:00am to 6:00pm (GMT

+4), and that payments made during those hours are typically credited to the trading account within around 1 hour.

- The payment could not be credited automatically as there was not an identical match between the Customer's name as it appeared on the transaction from Moneybookers, which had the Customer's name spelt with a Polish letter (the 'i' in [name] was crossed). That did not match the spelling of the Customer's name within the Scheme Member's System.
- The Customer needed to agree to accept the Scheme Member's terms and conditions with each trade undertaken.

5. Proposed Decision

As noted above, this dispute relates to the Customer's positions being closed when equity in the trading account fell below the minimum margin level required. The Customer's position is that the Scheme Member is at fault for not immediately crediting funds deposited to the trading account, so as to ensure there was sufficient a margin available.

Rule 6 of the Financial Service Provider - Reserve Scheme Rules 2010, defines what type of complaints can be considered by the Reserve Scheme. That includes that:

"A complaint may relate to an alleged breach of a contract, a statutory obligation, an industry code, or any other legal obligation or to an unfair practice..."

In the case of this complaint, I am unaware of any Statutory provision or industry Code which the Scheme Member may have broken.

I have carefully considered the contractual provisions under which the parties' commercial relationship exists. During the course of the complaint through FDR, the Scheme Member has set out a number of the contractual provisions which it considers are relevant. I have set those out above.

When I consider the facts provided, it would appear the Scheme Member's actions are consistent with those express contractual provisions.

I consider the effect of clause 4.12 is clear and unambiguous. Again that provision holds:

“Funds will be credited to a Client’s Account within one business day, but no later than at the end of the transaction day after the funds were credited to the Company Account, or upon receiving an ‘internal fund transfer request’ if the funds are being transferred from another of the Client’s Accounts open within the Company.”

The only interpretation that can reasonably be made of that clause, is that deposits are not made instantaneously to the trading account, but may take up to one business day, unless being transferred internally between trading accounts (which is not relevant in the current dispute). In this case, the funds were credited to the business account in a significantly shorter time than one business day.

I have carefully considered the history of the deposits provided by [Customer name]. As noted above, 6 deposits were made before the deposit on 28 April 2011. Those deposits appeared in the Customer’s trading account in less than two hours. However, it must be recognised that those deposits were made between the hours of 11:07am, and 3:08pm. The deposit which is at the centre of this dispute (the 7th deposit), was made according to the Customer, at 21:49pm. It is manifest that is outside normal trading hours.

The Customer made the entirely correct observation that while the office hours may be limited to ‘business hours’, the market trades outside those hours. The Customer’s point was that there should be an ability to credit funds over the course of that trading period. There is some merit to that view. However, it must be the case that The Customer entered into a contractual relationship with the Scheme Member on the basis of the notified terms and conditions. Those include, as mentioned above, that there may be a delay up to 1 business day in a credit being made to the trading account. Accordingly, even though the market is open outside normal trading hours, the Customer has accepted that credits might not be made instantaneously, by accepting the terms and conditions.

Furthermore, it must be recognised that in none of the 6 earlier deposits made by the Customer, was the credit made instantaneously. While some credits appeared in the trading account within minutes, some took over an hour.

Therefore, given the ability found in clause 6.2 to close open positions when available equity falls below the margin requirements, it would be at times good luck that the margins did not drop on open positions. That is after the earlier 6 deposits, and before the funds were applied to the trading account.

It must be the case that it would be open to the Customer to ensure there was a sufficient margin to weather any reasonably foreseeable downturn in the market, to ensure that the Customer's positions are not closed by the Scheme Member for insufficient equity to cover open margins.

However, given the Scheme Member's business is undertaken predominantly on-line, I do consider it is reasonable that the office hours are published on the Scheme Members website. That requirement would be entirely consistent with the obligations for disclosure found in the Financial Advisors Act 2008, in relation to contact details. I would like to receive further information from the Scheme Member as to whether office hours are found on the Scheme Member's website, prior to a final determination being issued. If that information is not already contained on the website, it is likely I would make a direction pursuant to rule 26(b)(i) of the Reserve Scheme Rules in my final decision that the information be provided.

Otherwise, while I have significant sympathy for the situation in which The Customer finds himself, I am likely to ultimately conclude in my final decision that no breach of any contractual obligation has occurred, nor of any relevant Statute or Code.

6. Final Decision

Following the issuing of the proposed decision, the Scheme Member provided a reply to FDR on 9 May 2012. The Scheme Member advised that they accepted the proposed decision.

As noted above, I requested further information from the Scheme Member with respect to the notification of its office opening hours. [Representative name] for the Scheme Member advised me that the office hours are displayed on the website, and provided a link to that information. I have viewed the Scheme Members website on the link provided, and I accept the

office hours are clearly displayed. I therefore find there is no remaining issue with respect to the notification of opening hours.

On 24 May 2012 I received a response from [Customer name]. The Customer declined to accept the proposed decision.

The Customer expressed the view that there was insufficient regulation in the financial market in New Zealand. I express no view on that comment, as the decision as to whether to provide additional regulation, is a matter for the Government to determine. As far as The Customer's complaint is concerned, the role of FDR is to consider whether there has been a breach of a contract, statutory obligation, industry code, any other legal obligation, or an unfair practice.¹ While I accept that The Customer does not agree with it, I have been unable to identify any such breach.

The Customer has not provided any further information or comment in his reply which would cause me to reach any different view as to what the outcome for this complaint must be.

Therefore, the final decision from FDR in this matter, is that the complaint is dismissed.

Mr R Woodhouse
FDR Scheme Adjudicator

May 2012

¹ Financial Service Provider - Reserve Scheme Rules 2010, rule 6.
