

Heading:

Multiple complaints about failure of on line trading platform to return investments.  
Complaints upheld for each.

A v J [2013] FDRS July 2013

## 1. Issue

The Customer has a trading relationship with the Scheme Member. The Customer states the Scheme Member has failed to return customer funds, and seeks an order from FDR that those funds be released immediately.

## 2. Jurisdiction

I am satisfied that Financial Dispute Resolution (FDR) holds jurisdiction to consider this complaint.

## 3. Position of the Parties

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### Applicant's position

The Customer's position is that he has funds of 66,342.64 Euro invested with the Scheme Member. The Customer states that despite multiple requests, the Scheme Member has failed to return those funds. The Customer's position is that those funds should be returned without delay.

### Scheme Member's position

FDR has raised the complaint with the Scheme Member, seeking the Scheme Members comment. The Scheme Member has not disputed that

it holds the funds as stated by the Customer, nor has any defence been raised for not reimbursing the funds as requested in this specific case.

The Scheme Member has advised FDR that it was in the process of securing finance to settle claimed accounts. However, no evidence has been provided to FDR confirming that funding has been secured.

In the absence of any explanation from the Scheme Member, FDR is not able to determine the position taken by the Scheme Member in this case.

#### **4. Discussion**

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The facts alleged by the Customer have not been disputed by the Scheme Member. The Customer states that the Scheme Member holds the Customer's funds, which the Customer states are eligible to be returned.

Despite multiple requests from the Customer, those funds have not been released, hence the Customer's complaint to FDR.

The Scheme Member has not disputed the facts stated by the Customer, and equally has provided no explanation as to why those funds have not been reimbursed.

Given the complaint has not been disputed by the Scheme Member, and following consideration of the complaint file held by FDR, I accept the facts stated by the Customer. I also accept the Customer is eligible to have those funds reimbursed. The result must be that FDR upholds the Customer's complaint, and orders that the Scheme Member reimburse the Customer's funds immediately.

The Financial Service Providers - Reserve Scheme Rules 2010 (the Rules) require at Rule 50 that FDR notify the Advisory Body<sup>1</sup> of any systemic issues which FDR identifies. There are very concerning features of this complaint, which I find require that the Advisory Body be notified.

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<sup>1</sup> The Government is yet to appoint an Advisory Body. Therefore, the Financial Service Providers - Reserve Scheme Rules 2010 hold that in the absence of an appointed Advisory Body, that any notification be provided to the Minister of Consumer Affairs (New Zealand Government).

Rule 51 of the Rules requires that FDR notify the Regulatory Body of complaints regarding serious misconduct. On the evidence available, there are strong grounds to reach a finding that serious misconduct has occurred in relation to the failure to return this Customers funds, or to provide any explanation to adequately justify those funds being held by the Scheme Member.

I note that on 16 May 2013, the Registrar of the Financial Service Provider Register, notified FDR of an intention to deregister the Scheme Member, on the grounds that they have been removed from the New Zealand Companies Register.

The Scheme Member as well as the Customer, now have a final opportunity to provide FDR with comment in this case.

## **5. Proposed Decision**

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The proposed decision from this complaint is as follows:

- a. The Customers complaint is upheld.
- b. The Scheme Member is ordered to reimburse the funds held for the Customer immediately.
- c. FDR is to notify the Minister of Consumer Affairs immediately of this case, on the basis that it would appear to be a systemic issue with this Scheme Member.
- d. FDR is to notify the Financial Markets Authority of this complaint, and the outcome of this complaint. In particular, the regulator is to be advised that FDR considers that serious misconduct appears to have occurred with respect to failure to return or account for customer funds.

## **6. Parties Comments**

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The proposed decision as set out above, was provided to both Customer and the Scheme Member.

The Customer has advised that the proposed decision is accepted. At the time of issuing this final decision, I have received no comment from the Scheme Member, as to whether this complaint is accepted.

The most recent communication received from the Scheme Member (not specifically in relation to this complaint), was an email on 25 August 2013, stating;

*"This is just a quick confirmation I am receiving your emails and an update I have had an increase in communication with the company over the last week and they are actively working to deal with all investors and recover investments, it has taken longer than anticipated and there is still work to be completed, however once I have full confirmation I am happy to sign all the outstanding documents and agreements and look at finalising everything."*

## **7. Final Decision**

As noted above, the proposed decision has been accepted by the Customer. No comments have been provided by the Scheme Member which would suggest that any variation to the proposed decision should be made; therefore the proposed decision is confirmed as the final decision in this matter.

Mr R Woodhouse  
FDR Scheme Adjudicator

July 2013