

Heading:

Decision concerning alleged failure to execute request for withdrawal of funds -
Forex trading platform - Complaint not upheld

A v L [2014] FDRS Dec 2014

1. Issue

Whether the Scheme Member is liable to reimburse Customer funds, totalling around USD\$49,688.00. That is on the basis of an alleged failure on the part of the Scheme Member to execute a request to withdraw funds in mid September 2012.

2. Background

I summarise the background as follows:

- The Customer opened an 'e-wallet' with the Scheme Member in January 2012, to which two accounts were assigned.
- Funds were credited to account 383101 on 17 and 29 February 2012, totalling USD\$51,000.00.
- The Customer traded with the Scheme Member between 23 February 2012 and 28 May 2012.
- In mid-September 2012 the Customer had trouble logging in, and contacted the Scheme Member accordingly. The Scheme Member provided instructions on how to recover the passwords by way of email dated 13 September 2012. Subsequent emails reflect a continued inability to access the account. The last email from September 2012 in relation to resolving the issue logging in, is from 18 September 2012 timed 2:19pm, and was from the Scheme Member to the Customer.
- The next communication between the Customer and Scheme Member, as FDRS can see, was then not until June 2013.
- Importantly, on either 14 or 18 September 2012, the Customer requested a withdrawal of his funds totalling around USD\$49,000.00. On the FDRS file is an automated email dated 14 September 2012 at 3:32pm, which included a hyperlink to the Scheme Member website and stating, "*use this link to activate your withdrawal transaction*".¹

¹ I note for completeness that the Customer appears to dispute that a withdrawal request was made on 14 September 2012, and has stated to FDRS that "*we did withdraw ... the money on Sept 18. 2012. After we received last*

- There is a second email on file from 14 September 2012, at 3:57pm, which states that the transfer had been rejected, and provided a link to its 'Back office' system to provide reasons for the rejection. The Scheme Members representative has advised FDRS the rejection was because there was:
"Insufficient free margin. (i.e. those funds on the trading account which can be used to open a new position - calculated as equity less margin that has already been used to open a position".
- The Customer raised a complaint to the Scheme Member, and then to FDRS, claiming that his funds should have been released back in mid-September 2012.

3. Position of the Parties

Customer's position

The Customer's position is that any trades should have been closed on or about 14 or 18 September 2012, and that the Scheme Member was wrong in keeping the positions open which resulted in the funds being dissipated.

The Customer states that he thought the funds were in the process of being released in September 2012, and on that basis had not pursued the matter further at the time.

In relation to the problems logging onto the account, the Customer submits that he had followed the password recovery instructions, but that it did not resolve the problem.

The Customer states that his phone number had been provided to the Scheme Member, and also that he had tried telephoning [Scheme member name], but was not able to get connected.

Scheme Member's position

The Scheme Member is represented by [Representative's name], of [Law firm name]. Mr [Representative's name], provided a written reply to FDRS on 28 July 2014, stating that the reason the Customer could not be reimbursed the USD \$49,000.00 was as follows:

"The transfer was rejected on the basis that several positions were current and were therefore supported by margin requirements (i.e. the amount of funds required to be

email from Fx Open . Easy to remember, as the Sep 18th is our fathers birthday. Not 14th of another day". As I understand matters, the email recorded above from 14 September 2012 were in fact supplied to FDRS by the Customer.

maintained in the trading account to support a customer's position using leverage) - i.e essentially the complainant needed to close his positions in order to fix the financial results and made funds available so the transfer request could be processed.

The Customer ignored this and the positions remained current until 29 December 2012 when due to an unsuccessful trend the positions were closed as per the company's stop out procedure in accordance with the company's terms of business...

The account balance after that stop out execution was USD\$3,882.16 - this amount was withdrawn by the complainant on 19 December 2012"

Simply put, the Scheme Members position is that the USD\$49,000 could not be reimbursed because the Customer had lost those funds as a result of adverse trading prior to 19 December 2012, when the stop-out level was reached. The Scheme Member considers it has complied with the terms and conditions which it was bound.

The Scheme Member submits that it had done everything reasonably required on 18 September 2012 to inform the Customer on how he could recover his password, and that ultimately it was only the Customer who could have actioned that password recovery for security reasons. The Scheme Member also states that a phone number had been requested from the Customer, and furthermore that the Customer could have telephoned the Scheme Member and used 'phone dealing' to close the account.

4. Jurisdiction

I am satisfied this complaint does fall within FDR's jurisdiction to consider. That is not disputed by the parties.

5. Discussion

The question to be determined is whether the Scheme Member is liable to reimburse the Customer losses, on the basis that the Customer funds should have been released in mid-September 2012.

I find the evidence is not supporting the Customers claim to FDRS for the following reasons:

1. Irrespective of whether the withdrawal request was made on 14 or 18 September 2012, there is email evidence from the Scheme Member that the withdrawal request had been rejected (see email dated 14 September 2012, at 3:57pm). As I understand matters, that email was provided to FDRS by the Customer, and therefore the

Customer must have been put on notice that the withdrawal had been rejected.

In my view, a reasonable Customer would in those circumstances have made further efforts to contact the Scheme Member to pursue the withdrawal.

2. I am not persuaded that the Scheme Member was not contactable as proposed by the Customer. I have been provided with an email chain prior to and including 18 September 2012 in relation to the problems logging into the [Scheme Member name] system. There are a number of emails from the Scheme Member in that chain which show the Scheme Member was contactable and actively communicating with the Customer.
3. I am also not persuaded that the Scheme Member was not helpful in working with the Customer to gain access to the [Scheme Member name] platform. The last email I can see in relation to the problems gaining access, was from the Scheme Member. Therefore the action point was sitting with the Customer. There is no evidence that the Customer continued to contact the Scheme Member following 18 September 2012, if there were continuing problems logging in.

On the evidence available, my view is that while a withdrawal request was made (probably on 14 September 2012), that was rejected, and the Customer notified accordingly. I can see that the Customer had problems logging in, but I can also see that the Scheme Member worked with the Customer trying to resolve that problem. However the Customer then did not contact the Scheme Member until months later, by which time the Customer funds in credit had dissipated, due to trading losses.

In those circumstances, I am not able to see any failing on the part of the Scheme Member which would result in liability to pay funds to the extent of the account balance from 18 September 2012.

6. Proposed Decision

The proposed decision is to dismiss the complaint.

7. Customers reply

The Customer provided the following reply to the proposed decision.

The Customer noted that I had recorded a year wrongly in the background, which has been corrected on this final decision.

I summarise the Customers comments as follows:

- The withdrawal request was made on 18 September 2012, being the birthday of the Customers father, to withdraw USD \$49,688.62.
- [Scheme Member name] has a history of manipulating records.
- It is not clear whether the withdrawal on 18 September 2012 was actioned or rejected.
- There should have been no expectation the Customer would pursue the withdrawal.
- It has not been explained why the Customer could not access the Scheme Members platform, or why the platform did not display the correct amounts, or otherwise function properly.
- It has not been explained why the Customer was able to open two accounts when the Scheme Members policy only allowed for one.
- The Customer disagrees with the terms and conditions of the Scheme Member.
- There is a conflict of interest between Mr [Scheme Member's representative] and the Scheme Member.
- It is disputed that the Customer was advised of the rejected withdrawal request.
- It would make no sense that the Customer would not pursue the withdrawal of such a significant volume of funds.
- The reason there was no communication after 18 September 2014, was because the Customer thought the funds had been transferred to the e-wallet.

8. Scheme Members reply

Mr [Scheme Member's representative] provided a comprehensive reply, which again I summarise as follows:

- Issues relating to access of the e-wallet account is not a financial service.
- The Scheme Member did all it could to support the Customer with accessing the account (addressing the password problem), and it was only the Customer who could remedy and problem accessing the account for security reasons.
- On 14 September 2012 the Customer was notified by the Scheme Member that the withdrawal had been rejected, on the basis that there remained open positions. That notification was both via

the platform, and by email to the registered email address. To affect the withdrawal, the Customer first needed to close the open positions.

- It is agreed there was no discussion in the email communications following 14 September 2012 regarding the rejected withdrawal, on the basis that the Scheme Member had assumed the notification provided on 14 September 2012 had been noted by the Customer.
- The rule that there should be only one 'e-wallet' was introduced after the Customer had opened two accounts.
- The Terms and Conditions could have been reviewed by the Customer before signing up with the Scheme Member, and if he considered they were unfair, he could have elected not to sign up with this provider.
- One of the other customers referred to as considering the Scheme Member was an unethical trader, lodged a complaint with FDRS which had been dismissed.

9. Customers final reply

The Customer was given the final right of reply, which again I summarise as follows:

- The Customer considers that some of the dates of emails noted by the Scheme Member were one day out.
- The Scheme Member could have done more to resolve the issue with the password.
- The Scheme Member could have telephoned the Customer to resolve the password problems.
- It is considered that the Scheme Member deliberately closed one of the e-wallet accounts.
- The Scheme Member may have altered important documents.

10. Further Decision

I agree with the view taken by [Scheme Member's representative], that there are two broad issues in this dispute, being access to the e-wallet account, and secondly the withdrawal.

However I do not agree with [Scheme Member's representative] that the issues relating to access of the e-wallet account, would not be a financial service. Given the nature of the online trading activity, being able to access the Scheme Members services, whether that be the

platform or account, is integral. I consider that accessing the e-wallet is part and parcel of the online trading product offered by the Scheme Member.

However having considered the further submissions as set out above, I remain of the view that the actions of the Scheme Member in working with the Customer to address the problem with accessing the e-wallet were reasonable. The emails provided to FDRS reflect that the Scheme Member was actively working with the Customer to address the problem. The final email in the chain was from the Scheme Member. I am satisfied reading those emails that the actions taken by the Scheme Member were appropriate. I have not been able to identify any breach by the Scheme Member in relation to the assistance provided to the Customer in relation to accessing the e-wallet.

In relation to the withdrawal, I find it is likely the withdrawal request was made on 14 September 2012. As noted in the proposed decision, the Customer has supplied an email to FDRS dated 14 September 2012, in which the Scheme Member advised the withdrawal had been rejected. The Customer has not adequately explained why he would have had such an email in his possession, if the withdrawal request was made on 18 September 2012.

The dating of the email of 14 September 2012 creates a rebuttable presumption that date was correct. I find the Customer has not presented any cogent evidence to prove that date was wrong.

The Customer submits that the Scheme Member had closed one of his e-wallet accounts. There is insufficient evidence supporting that to be the case. However even it were the case that of itself would not preclude the Customer accessing those funds. It can be accepted that if there were funds in an account which was closed, then those funds would be transferred to another account. Presumably if called upon, those funds could be accessed from the other account.

Finding that the Scheme Member had notified the Customer that the withdrawal had been rejected, the responsibility for pursuing the withdrawal then sat with the Customer.

Furthermore, as noted by the Scheme Member, there were open positions. The responsibility to close those positions sits with the Customer. Therefore the Customer should have known that the positions would need to be closed before a withdrawal could have been actioned.

The Customer has made allegations of misfeasance on the part of the Scheme Member, and provided references to allegations made by other customers. FDRS cannot accept bald allegations of that nature. If those customers considered they had been wronged by FXOpen, then they could lodge a complaint with FDRS just as this Customer had done.

Similarly, there is no evidence to support that the Scheme Member has altered any documents after the fact as alleged.

The Customer submits that the terms and conditions are weighted in favour of the Scheme Member. I make no finding on that submission, as I am not required to. I agree with [Scheme Member's representative] that it was open to the Customer to review those terms and conditions

prior to contracting with the Scheme Member. If the Customer considered the terms to be unfair, he had the option of not contracting.

The Customer submits there is a conflict of interest on the basis that [Scheme Member's representative] has a financial interest in the Scheme Member company. While no evidence has been presented supporting that allegation, even if there was, that would not be a conflict of interest. [Scheme Member's representative] is the representative of the Scheme Member company, he is not a representative of the Customer. It is not uncommon with FDRS complaints, that the Scheme Member be represented by an employee or owner of the company. The fact of such a close relationship would not pose conflict of interest.

In summary, I find the evidence supports a withdrawal request was made on 14 September 2012, and rejected by automated email from the Scheme Member. The onus then sat with the Customer to follow up on that rejection, but he did not appear to have addressed it at the time. There were open positions, which as a consequence of unfavourable trading activity, resulted in the Customers funds being dissipated. I find there is insufficient evidence that the loss of customer funds was the result of any wrong doing on the part of the Scheme Member.

11. Final Decision

The final decision of FDRS is to dismiss this complaint.

Mr R Woodhouse
FDR Scheme Adjudicator

December 2014