

Heading:

Decision concerning alleged price manipulation Forex trading platform - Complaint upheld

A v G [2013] FDRS Feb 2013

1. Issue

There are two complaints in this matter, which are in essence the same, but occurred on two different occasions. These relate to a spike in the FX EUR/CHF (exchange rate between Euro and Swiss Franc) chart, which resulted in a stop out (liquidation of trading account), because of insufficient margin (funds) in the complainant's account.

The complainant contends that the stop out caused him to suffer a loss. He believes that if the Scheme Member had not refused to re-open his position (trading account) then he could have hit a take profit level (the fund value in his account), which would have resulted in a profit.

The complainant acknowledges that in terms of the agreement between the parties, the Scheme Member has the right to close orders without prior notice, if the stop out level is reached. However, the complainant believes that the stop out would not have occurred with real market prices. The complainant alleges fraudulent price manipulation by the Scheme Member.

The Scheme Member's position is that the actions taken were in accordance with the Scheme Member/Complainant agreement Appendix 1, paragraph 22.1 and associated regulations. These provisions allow the Scheme Member to close a client's open position (trading account) without the client's consent or any prior notice, if a client's account balance reaches a stop out level.

Further, the Scheme Member denies that there is any merit in the complainant's allegation of price fixing. The Scheme Member had checked the tick history and found no problems with the quotes given (that the currency values accorded with actual trade values at the time).

2. Jurisdiction

I find that Financial Dispute Resolution ("FDR") holds jurisdiction to consider this complaint. There is no issue between the parties with respect to FDR's jurisdiction in this case.

3. Background

The complainant has a FX (foreign exchange) trading account with the Scheme Member trading in Euro and Swiss Franc.

On 6 August 2012, a spike in the EUR/CHF chart occurred causing a stop out, due to insufficient margin in the complainant's account resulting in an alleged loss of €5,603.61.

On 3 September 2012, a further spike occurred causing a stop out and an alleged loss of €1,439.02.

While the complainant accepts that the Scheme Member has the right in terms of the client agreement to close an open position without his consent if the account balance reaches stop out level, he believes that the Scheme Member had manipulated currency values, so as to cause to stop out of his orders.

The complainant has subsequently brought a complaint to FDR, on the basis that the Scheme Member had unreasonably manipulated to stop out his orders.

4. Positions of the parties

Complainant's position

The complainant's position is that the Scheme Member has manipulated the FX prices for its own advantage. The complainant rejects that there could reasonably have been a 60 pip (percentage in point) gap on 6 August 2012; and an 18 pip gap on 4 September 2012 between the prices displayed at stop out, and the real market prices.

The complainant believes that this stop out would not have occurred with real market prices and that the Scheme Member had manipulated the prices.

Scheme Members position

The Scheme Member's position is that the actions taken were in accordance with the Scheme Member Client Agreement Appendix 1, paragraph 22.1 and associated regulations.

These provisions allow the Scheme Member to close a client's open position without the client's consent or any prior notice, if a client's account balance reaches a stop out level. This is pointed out on the company's website.

The Scheme Member contends that there were no irregularities as alleged by the complainant and refers to FXCM (foreign exchange capital markets) as a reference point for the day of trading on 3 September 2012, which had a 1.19925 low on EUR CHF for the day in question.

The Scheme Member considers that the quotes at which the orders were executed were actual market quotes presented to all the major market participants at that time. The tick history has also been checked and no problems were found with the quotes given.

The Scheme Member considers that the complainant has made a serious allegation of price fixing against the Scheme Member without providing anything to substantiate those allegations.

5. Relevant Terms

The Scheme Member's general business terms (Appendix 1 to the client agreement) between the Scheme Member and the complainant reads at paragraph 22.1:

The Company is entitled to close the client's open position without the consent of the client or any prior notice if the client's account balance reaches stop out "level" which is pointed out on the company's website and depends on the account type.

6. 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 appended as Appendix 1.

Transaction on 6 August 2012

[Independent experts name]'s opinion is that reported market rates using an independent source (Thomson Reuters), supports that given the dynamics of the market at the time, the rate obtained for this transaction appears reasonable, and the stop out was consistent with standard industry practice.

Considering the factual history and available evidence, I am satisfied that the stop out and rate obtained for this transaction was fair and reasonable in the circumstances.

Accordingly, I find that the complainant has not established that his contention is correct. There is no evidence that there occurred manipulation on the Scheme Member's part causing the complainant's stop out in this transaction. The loss incurred was as a consequence of market volatility at the time.

This complaint is dismissed.

Transaction on 3 September 2012

[Independent experts name]'s opinion is that reported market rates using an independent source (Thomson Reuters), supports that there was no evidence of a rate dip occurring at the time of this transaction, and the stop out appeared to be irregular. It is also noted that the FXCM screenshot provided by the Scheme Member of the FX rate had a low for the day of EUR/CHF 1.19925. The stop out would therefore appear to have been unwarranted, as this rate was well below the minimum indicated market rates for the EUR/CHF at the time of the transaction. This caused the complainant to suffer a loss, which [Independent experts name] estimates would have been €1,790.09.

I accept there will be some fluctuations in market rates between various providers. I also accept that the exact rates that liquidation of currency will occur are that set by the broker – the Scheme Member in this case. However, the evidence suggests that the actual and general rates were materially different.

The Scheme Member has not in my view adequately explained why the best price obtained was so different to the market price at the time of the transaction. In fact, the Scheme Member acknowledges an FX rate of EUR/CHF 1.19925, which is higher than the liquidation rate of EUR/CHF 1.19891 provided by the Scheme Member.

Thomson Reuters and Global Financial Data showed a low for the day of EUR/CHF 1.20034. This clearly supports that the liquidation of the

complainant's position was unwarranted in light of the rate set by the Scheme Member.

If I were to apply a strict interpretation of the terms of the agreement between the complainant 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.

Further, because I have found that the Scheme Member has not adequately justified why the rate applied was at odds 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 second complaint to FDR.

7. Proposed Outcome

As noted by [Independent experts name], because there may be some variation in the outcomes realised in practice when rates are calculated, I propose the Scheme Member redress the complainant's loss, by applying a more favourable rate than that previously applied in this case.

The amended rate could be reached in a number of ways. I would invite the parties to propose a more favourable rate to be applied, and the

reasons for such suggestions. In my final decision, based on responses from the parties, I will determine the rate that any re-calculation must be based upon.

8. Final Decision

My proposed decision, and the expert advisors opinion (appendix 1), has been provided to both parties who provided final comments.

Transaction on 6 August 2012

The complainant provided a reply to the proposed decision on 18 January 2013 and confirmed that he accepted the proposal for this transaction.

The Scheme Member did not provide any further reply or comment to the proposed decision for this transaction. Therefore, in relation to this transaction, I confirm what I have previously proposed and dismiss this complaint.

Transaction on 3 September 2012

The complainant accepts the proposed decision for this transaction and proposes that the current market rate (1.2452) be used as liquidation rate to re-calculate his loss.

The Scheme Member strongly disagrees with the proposed decision for this transaction.

The Scheme Member contends that the Rules suggest that although a decision of the Adjudicator must be made in light of what is 'fair and reasonable' it must be primarily based on the law, relevant industry codes and practice and good industry practice.

The Scheme Member contends that the principles listed in section 1 are only slightly qualified by section 2 i.e. 'the scheme adjudicator is not bound to give effect to strict legal rights or obligations or to legal forms or technicalities'.

I disagree with this view. I would not regard section 2 as a 'slight' qualification. I would regard it as a 'significant' qualification.

Although as an Adjudicator I am primarily guided by the factors in section 1, I am not bound by such factors. It is clear that the intention of the legislature was to avoid prejudice to members of the public that might be

brought about by legal technicalities, and the unequal bargaining position that members of the public find themselves in when dealing with larger corporations. Such is the nature of consumer protection.

I accept the Scheme Member's contention that the complainant has to be held to the terms of the contract he entered into. However, it is implicit in the legal obligations of the Scheme Member that it also has a duty to carefully manage its customers' funds, and to provide liquidation rates that would be broadly reflective of market rates in general.

I am satisfied from the information that I have been provided with, read in conjunction with the expert opinion of [Independent experts name], that the Scheme Members liquidation rate (1.19891) was not generally consistent with the actual market on the day of trading.

The Scheme Member has provided no further evidence to disprove such a contention.

In my draft decision, I asked the parties to propose a rate which should be applied - being a rate more favourable to the complainant.

As noted above, the complainant has proposed that the current market rate of 1.2452 be applied. I received no proposal from the Scheme Member.

I remain un-persuaded that the rate applied should be significantly different to the market rate on the day. I therefore propose that the average market rate supplied By [Independent experts name] at 21h00 GMT on the 3rd of September 2012 be applied as the liquidation rate for the re-calculation of the complainant's loss.

Accordingly, I direct the Scheme Member re-calculate the complainant's account, applying the average rate between 1.20106 and 1.20178. On balance, I consider that rate to be fair, and in my view it strikes a middle ground.

Mrs E Vögel

FDR Adjudicator

February 2013