



MALTA

**QORTI TAL-APPELL**  
(Sede Inferjuri)

**ONOR. IMĦALLEF**  
**LAWRENCE MINTOFF**

Seduta tas-7 ta' Ottubru, 2022

Appell Inferjuri Numru 156/2021 LM

**Alexander Bhebe (Passaport Bulgaru nru. 385873370)**  
(*'l-appellant'*)

**vs.**

**AKFX Financial Services Limited (C 60473)**  
(*'l-appellata'*)

**Il-Qorti,**

**Preliminari**

1. Dan huwa appell magħmul mir-rikorrent **Alexander Bhebe (Passaport Bulgaru nru. 385873370)** [minn issa 'l quddiem 'l-appellant'] mid-deċiżjoni tal-Arbitru għas-Servizzi Finanzjarji [minn issa 'l quddiem 'l-Arbitru'] mogħtija fit-30 ta' Novembru, 2021, dwar il-każ 064/2020 [minn issa 'l quddiem 'id-deċiżjoni appellata'], li permezz tagħha ddecieda li jiċċhad l-ilment tiegħu fil-konfront tas-

soċjetà intimata **AKFX Financial Services Limited** [minn issa 'l quddiem 'is-soċjetà appellata'], filwaqt li kull parti giet ordnata tħallas l-ispejjeż tagħha ta' dawk il-proċeduri.

## **Fatti**

2. Il-fatti tal-każ odjern jirrigwardaw il-limiti allegatament imposti mis-soċjetà appellata fuq id-depożiti li seta' jaffettwa l-appellant fil-kontijiet tiegħu fil-perijodu bejn 27 ta' Frar, 2020 u 10 ta' Marzu, 2020, u d-dewmien tagħha sabiex issib soluzzjoni għal din il-problema skont il-metodu magħżul minnu sabiex jaffettwa l-imsemmija depożiti, li sarraf f'telf għalih.

## **Mertu**

3. Ir-rikorrent ppreżenta lment quddiem l-Arbitru fis-7 ta' Lulju, 2020, fejn issottometta li peress li s-soċjetà appellata kienet naqset milli tiegħu azzjoni immedjata u deċiżiva, filwaqt li kienet ukoll għaddietlu informazzjoni falza u kontradittorja, huwa kien tilef ammont sostanzjali ta' flus. Għalhekk huwa talab lill-Arbitru għal kumpens fl-ammont ta' €14,769.55 sabiex jagħmel tajjeb għat-telf soffert minnu.

4. Is-soċjetà intimata wiegħbet fit-23 ta' Lulju, 2020 fejn sostniet li fil-fehma tagħha l-appellant ma kien dovut l-ebda kumpens għat-telf allegatament soffert minnu.

## **Id-deċiżjoni appellata**

5. It-Tribunal ikkunsidra s-segwenți sabiex wasal għad-deċiżjoni tiegħu:

***“Further Considers:***

***Preliminary***

**Allegations directed towards GKFX**

*In his Complaint Form and attachment made thereto, the Complainant repeatedly referred to GKFX and often directed his various allegations specifically towards GKFX. The Service Provider has not contested such a matter during the proceedings of this case and actually replied to all the allegations as directed by the Complainant towards GKFX.*

*The Arbiter notes that, in his complaint and during the hearing of the 6 October 2020, the Complainant indicated that a transfer had occurred of his GKFX account to AKFX. (fn. 15 A fol. 4 & 40)*

*It is furthermore noted that, as part of the documentation presented in his Complaint, the Complainant submitted a ‘Comparison Table’ which table listed a regulated entity with the name of ‘GKFX Financial Services Ltd’ using the trading name ‘GKFX’ regulated by the FCA (UK) and another regulated entity with the name of ‘AKFX Financial Services Limited’ having the trading name ‘AKFX and GKFX Europe’ regulated by the MFSA (the Malta Financial Services Authority) (fn. 16 A fol. 14).*

*The said table further included a note outlining that the client had ‘two options to either: (1) transfer your GKFX UK account to AKFX or (2) close your GKFX UK account’ (fn. 17 Ibid.) Hence, the statements made by the Complainant that ‘GKFX transferred to AKFX’ (fn. 18 A fol. 4) and ‘I was transferred from GKFX to AKFX’ (fn. 19 A fol. 40) are to be seen in this context.*

*It is further noted that the website of AKFX (as indicated on the MFSA’s website) is <https://www.gkfx.eu>. (fn. 20 <https://www.mfsa.mt/financial-services-register/result/?id=5048>)*

*The said website in turn includes the following note:*

*‘GKFX is the registered trademark of AKFX Financial Services Limited, which is ultimately subject to the same ownership and control of other businesses forming part of the Global Kapital Group. AKFX Financial Services Limited is authorized and regulated by the Malta Financial Services Authority ...’. (fn. 21 <https://www.gkfx.eu>)*

***For the sake of clarity and avoidance of doubt, the Arbitrator is, in the circumstances of this case, hereby determining that the various allegations directed by the Complainant in his Complaint towards 'GKFX' are clearly intended and attributed to 'GKFX Europe', that is, against the Service Provider and are thus being construed accordingly for the purposes of this Complaint.***

*This is also given that from the proceedings of this case, it has clearly emerged that the dispute subject of this Complaint relates to the trading account held by the Complainant with AKFX and the way AKFX acted in respect of such account.*

### ***The Merits of the Case***

***The Arbitrator will decide the complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case. (fn. 22 Cap. 555, Art. 19(3)(b))***

### ***Facts of the Case and Other relevant Aspects***

*The following are the pertinent facts and other relevant aspects as emerging from the proceedings of this case:*

i. Deposits - *According to the 'Deposit and Withdrawal Report' covering the period from 01 January 2019 to 6 March 2020 that was presented by the Service Provider, the Complainant made various deposits in the year 2019 of 1000, 2000, 3000 or 4000 (£) each. (fn. 23 A fol. 27)*

*According to the same statement, the Complainant made no deposits in January 2020, but made a withdrawal of 4,000 (£) on 15 January 2020.*

*The statement further indicates a number of deposits made by the Complainant in February 2020 of £300 each - twice on 3 February 2020, twice on 27 February 2020 and another deposit of £300 on 28 February 2020. A further deposit of £300 was done on 6 March 2020.*

ii. Payment process referred to by AKFX - *During the proceedings AKFX stated that the Complainant 'made deposits into his trading account at the Company via Safecharge Limited ... Safecharge Limited has established a limit of STG 500 daily deposit limit ...'. (fn. 24 A fol. 24)*

*The Service Provider provided an extract from the website of Sofort.com (fn. 25 A means of payment) which included reference to 'Safecharge Limited', '£500' and that 'The amount exceeds the limit of Sofort in the specified period'. (fn. 26 A fol. 28)*

iii. Email communications exchanged between the parties - *The following email communications involving payments were presented by the parties to the case:*

- a) *Email from Complainant dated 4 February 2020 - The subject of this email sent by the Complainant to AKFX's support and to AKFX's payments section, was titled 'sofort problem'. (fn. 27 A fol. 29 – The Complainant's email was not reproduced in full) As indicated above, the Complainant had, a day earlier on 3 February 2020, done two deposits of £300 each (that is, the maximum indicated limit subject to this complaint).*
- b) *Email from AKFX dated 4 February 2020 in relation to the 'sofort problem' – AKFX provided the Complainant with the 'bank details for bank wire transfer'. (fn. 28 A fol. 29)*
- c) *Email from AKFX dated 28 February (2020) - AKFX informed the Complainant that 'our payments team have concluded their investigation. They contacted the card processor company and there is no issue or limit from their side'. (fn. 29 A fol. 14)*

*In the said email, it was further noted by AKFX that 'As you clearly stated, there is a 300 GBP daily limit on your card. If you wish to deposit more, then you will need to have this limit removed from your card. Once removed, then you will be able to deposit any amount you wish ...'. (fn. 30 Ibid.)*

- d) *Email from AKFX dated 6 March (2020) – AKFX's official stated to the Complainant inter alia that 'Finally I do have an update with regards to the deposit limit. It transpires that there was a limit placed by the payment processor. We have spoken to them and requested to raise the limits. They will be raising the limits to the equivalent of €5,000 (Euros). Larger transactions will have to be handled via a bank transfer. I am still awaiting a call to confirm that this has been completed ...'. (fn. 31 A fol. 13)*
  - e) *Email from AKFX dated 10 March (2020) - In its email of 10 March 2020, AKFX confirmed to the Complainant that 'We have received an update from the Payments Team. The limits have now been raised to 5,000 Euros per card per day. This is the new limit for all clients if a larger amount is required to be deposited then this can be done through a bank wire transfer.' (fn. 32 Ibid.)*
- iv. Trading history report - The trading history of the Complainant over the period 1 January 2020 to 27 February 2020 (presented by the Service Provider) indicates inter alia the following (fn. 33 A fol. 30):*
- *as at 01.01.2020 the Complainant's 'Balance' of £54,657.09;*
  - *constituted a 'Floating P/L' of (-£11,532.29) and 'Equity' of £43,124.80. He had a 'Used Margin' of 22,218.34 and a 'Free Margin' of 20,906.46;*

- *as at 31.01.2020 his 'Balance' of £52,551.65 constituted a 'Floating P/L' of (-£35,357.89) and 'Equity' of £17,193.76. He had a 'Used Margin' of 33,278.71 and a 'Free Margin', of (-16,084.95);*
- *as at 27.02.2020 his 'Balance' of £53,691.31 constituted a 'Floating P/L' of (-£36,366.85) and 'Equity' of £17,324.46. He had a 'Used Margin' of 30,688.61 and a 'Free Margin', of (-13,364.15).*

### **Final Observations**

- a) *Negative Free Margin – Further to general searches undertaken over the internet, it is noted that various educational webpages relating to forex trading include explanations of the term 'Free Margin'.*

*Free Margin was, for example, explained in one such webpage as follows:*

*'In its simplest definition, Free Margin is the money in a trading account that is available for trading. To calculate Free Margin, you must subtract the margin of your open positions from your Equity (i.e. your Balance plus or minus any profit/loss from open positions)...'* (fn. 34 <https://www.forextime.com/eu/education/forex-videos/what-is-free-margin/>)

*It was further explained that Free Margin is important as it 'is there to withstand any negative price fluctuations in your open trades and to open new leveraged trades. It increases with profitable positions and decreases with losing positions.'* (fn. 35 *ibid.*)

*As to the question of a 'safe level of margin' for forex trading it was, for example, explained that 'In forex trading, any Margin Level above 100% is considered healthy. It's calculated as the ratio of your Equity to the Margin you're using for open positions, using the formula: (Equity/Used Margin) x 100', with a good level of margin being described as 'Anything above 100% is considered healthy. If your trading account drops below that level, it's best to top up your deposit.'* (fn. 36 *ibid.*)

*Hence, a margin level below 100% indicates that one is low on funds and would affect whether the trader is allowed by the broker to open new positions.* (fn. 37 <https://traders-trust.com/en/blog/article/what-is-margin-level/>)

***As to the Complainant's level of Free Margin, it is noted that the Complainant's Free Margin turned negative and remained so as from 21***

**January 2021 onwards as reflected in the Trading History Report for 01.01.2020 to 27.02.2020. (fn. 38 A fol. 30)**

- b) Low Margin Levels over a prolonged period - Table A below includes an overview of the Complainant's Margin Level at different dates.

**Based on the information available from the Trading History Report it is clear that the Complainant's Margin Level fell below the 100% benchmark as far back as from 21 January 2020 (when the Free Margin turned negative) and consistently remained below the said benchmark in the ensuing days including, and up to, 27.02.2020.**

As indicated in Table A below, the Margin Level fell even to 52% in end January and beginning February 2020, prior to the start of the disputed period.

**Table A – Overview of the Margin Level at specific dates**

<b>Date</b>	<b>Equity</b>	<b>Used Margin</b>	<b>Margin Level %</b>
01.01.2020	43,124.80	22,218.34	194
21.01.2020	34,477.26	35,405.64	97
31.01.2020	17,193.76	33,278.71	52
02.02.2020	17,191.97	33,278.71	52
14.02.2020	28,095.12	31,334.98	90
27.02.2020	17,324.46	30,688.61	56

**Whilst throughout February 2020, there were times when the margin level had improved, it is noted that, nevertheless, the Complainant's margin level remained consistently below the deemed 'healthy' benchmark of 100% as indicated in Table B below.**

**Table B – Margin Level throughout period of neqative Free Margin**

<b>Date</b>	<b>Equity</b>	<b>Used Margin</b>	<b>Margin Level %</b>
21.01.2020	34,477.26	35,405.64	97
22.01.2020	32,443.22	34,993.62	93
23.01.2020	33,662.36	34,332.19	98

24.01.2020	33,404.79	34,604.06	97
26.01.2020	33,402.40	34,604.06	97
27.01.2020	28,266.08	34,604.06	82
28.01.2020	29,452.06	34,024.37	87
29.01.2020	28,916.17	34,024.37	85
30.01.2020	23,849.86	34,024.37	70
31.01.2020	17,193.76	33,278.71	52
02.02.2020	17,191.97	33,278.71	52
03.02.2020	23,546.07	33,278.71	71
04.02.2020	27,480.76	33,044.39	83
05.02.2020	29,478.59	33,044.39	89
06.02.2020	30,042.05	32,873.25	91
07.02.2020	26,541.48	32,873.25	81
09.02.2020	26,539.93	32,873.25	81
10.02.2020	27,072.30	32,284.87	84
11.02.2020	28,307.21	31,657.14	89
12.02.2020	31,491.08	31,657.14	99
13.02.2020	28,340.38	31,334.98	90
14.02.2020	28,095.12	31,334.98	90
16.02.2020	28,093.92	31,334.98	90
17.02.2020	28,921.54	31,334.98	92
18.02.2020	27,081.34	31,334.98	86
19.02.2020	28,527.64	31,224.81	91
20.02.2020	24,753.77	30,943.17	80
21.02.2020	22,778.18	30,943.17	74
23.02.2020	22,776.92	30,943.17	74
24.02.2020	21,544.86	30,943.17	70
25.02.2020	18,803.01	30,943.17	61
26.02.2020	16,625.56	30,943.17	54
27.02.2020	17,324.46	30,688.61	56



**Whilst the Complainant disputed the losses and lost trading opportunities over the period 27 February 2020 to 10 March 2020, it is clear from the above that his margin levels had deteriorated much earlier, as far back as end January/beginning of February 2020.**

- c) Prior awareness of issues with usual payment method – **It transpired that the Complainant had already experienced beforehand (in early February 2020) certain limitations as to the amount of deposit that he could make through his chosen payment method.**

*The Complainant did two deposits of £300 each on 3 February 2020, which amount reflects the £300 deposit limit (applicable over the contested trading period of 27.02.2020 to 10.03.2020).*

**The deposits of £300 each in early February 2020 further correspond with the time when the Complainant raised the 'sofort problem' with the Service Provider on 4 February 2020 (at which point he was provided with the bank wire transfer details). (fn. 39 A fol. 29)**

*As the Complainant himself stated in his Complaint,*

*'I managed to speak to someone who worked for AKFX and they did not resolve the issue but in that time my margin improved and I was able to continue trading but in late February I experienced the same issue again'. (fn. 40 A fol. 4)*

**Hence, a few weeks prior to the disputed trading period of 27.02.2020 to 10.03.2020, the Complainant already had certain awareness that there were certain issues with his chosen payment method.**

- d) Inaction to improve margin levels earlier and to increase deposits through other means – **It is further noted that despite the Complainant was consistently below the 100% Margin Level throughout end January and during the whole month of February 2020, and he was seemingly aware of certain problems with his usual deposit method as far as in early February 2020, he still did not do any additional deposits to improve his margin and only intervened with further additional deposits when his margin level fell again around 50% in late February 2020 (27.02.2020), using his chosen payment method.**

*The only additional deposits made by the Complainant during the contested trading period (of 27.02.2020 to 10.03.2020) were minor deposits of £300 each, twice on 27 February 2020, on 28 February 2020 and on 6 March 2020. (fn. 41 A fol. 27)*

*Additional deposits were not made for the reasons explained by the Complainant in his complaint – namely, in view of: the limit of £300 on his chosen payment method; given that he did not want to opt for an international bank transfer as he claimed delays with respect to the clearance of international bank transfers which he said could take up to 5 business days; and given that he was waiting for the Service Provider to quickly solve the matter for him to proceed with his chosen payment method as he would have been unable to deposit through his debit card payment if his funds had already left his account had he done a bank transfer. (fn. 42 A fol. 8)*

***The Arbiter noted that the Complainant, however, ultimately had other payment options at his disposal including SEPA bank account payments, as indicated by the Service Provider, which payments are processed rather promptly.***

***Accordingly, the argument made by the Complainant that bank wire transfers could have taken up to 5 business days is not really considered a satisfactory or sufficient reason for the Complainant for not taking action himself during the 10-day period (from 27.02.2020 to 10.03.2020) and pursue other payment options that were clearly available to him and communicated earlier. (fn. 43 Such as in the email of the Service Provider of 4 February 2020).***

***This is even more so when considering the context of the circumstances in question, including the urgent situation arising in view of the deteriorating margin positions during the disputed period; his consistent prior low levels of margin throughout the whole of February 2020 as outlined above; and his previous awareness of the difficulties which arose in early February 2020 regarding his chosen method of payment.***

e) Trading approach involving certain risks – *Having considered the submissions made during the case and the voice recordings of the lengthy telephone conversations held between the Complainant and the Service Provider, it is furthermore noted that the Complainant himself chose to only deposit funds into his account when needed, instead of opting to have a higher or more prudent equity level in place to cater for deteriorating margin positions.*

***Whilst the Complainant had every right to adopt such approach and the Service Provider had, in turn, the obligation to provide him with ‘the means or resources’ to promptly deposit money into his account as mentioned by the Complainant, (fn. 44 A fol. 9) however, it has to be acknowledged that such an approach came with its own risk, namely, of having the position closed earlier than wanted in case where the equity ended up not being at the adequate levels.***

***It is considered that the Complainant took upon himself such risk.***

***Ultimately, the Arbiter decides that he is not in a position either to award a compensation on the Complainant's presumption that his trades would have not ended up in loss, (had he undertaken additional deposits), and/or that the Complainant would have realised profits including on new trading positions. There are no reasonable assurances on the mentioned hypothetical situations, which can neither be verified nor can they be assumed on the basis of the historical trading performance. Even if past trading performance was always positive, (which is not the case as per the trading history report), it is a well-known concept that past performance is no guarantee for future results."***

## **L-Appell**

6. L-appellant ħass ruħhu aggravat bid-deċiżjoni appellata tal-Arbitru, u fl-20 ta' Diċembru, 2021 intavola appell, fejn qed jitlob lil din il-Qorti sabiex tħassar u tirrevoka l-imsemmija deċiżjoni appellata, u tilqa' l-ilment tiegħu, filwaqt li tiċhad l-eċċezzjonijiet tas-soċjetà appellata, bl-ispejjeż taż-żewġ istanzi kontra s-soċjetà appellata. Jgħid li l-aggravji tiegħu huma s-segwent: (a) l-Arbitru għamel apprezzament żbaljat tal-provi; (b) id-deċiżjoni appellata ma kinitx motivata sewwa; u (ċ) l-Arbitru naqas milli jiddeċiedi skont il-para. (b) tas-subartikolu 19(3) tal-Kap. 555 tal-Liġijiet ta' Malta.

7. Is-soċjetà appellata wiegħbet fid-29 ta' Marzu, 2022, fejn issottomettiet li l-aggravji tal-appellant huma frivoli u vessatorji u d-deċiżjoni appellata hija ġusta, u għalhekk timmerita konferma għal dawk ir-raġunijiet li hija tfisser fir-risposta tagħha.

### **Konsiderazzjonijiet ta' din il-Qorti**

8. Din il-Qorti ser tgħaddi sabiex tikkunsidra l-aggravji mressqa mill-appellant, u dan fid-dawl tal-konsiderazzjonijiet magħmula mill-Arbitru fid-deċiżjoni appellata, u tas-sottomissjonijiet ippreżentati mis-soċjetà appellata.

9. Meta jispjega l-ewwel aggravju tiegħu, l-appellant jissottometti li fejn hemm żewġ verżjonijiet kontrastanti, l-Arbitru kellu jikkonsidra li l-verżjoni tiegħu kellha mis-sewwa, u dik tas-soċjetà appellata kienet mimlija inkonsistenzi, konflitti, u saħansitra spjegazzjonijiet illogiċi għall-aħħar. Madankollu l-Arbitru naqas milli jagħti piż xieraq għall-fatt li s-soċjetà appellata kienet tatu informazzjoni falza u konfligġenti. Jgħid li din kienet fil-bidu attribwiet lill-bank il-limitu impost fid-depożitu, iżda iktar tard gie nformat li kien hemm limitu ta' depożitu ta' £300 għal kull ġurnata, tant hu hekk li l-*account manager* tiegħu rreferih għal metodi ta' pagamenti oħrajn. Fil-fatt huma qalulu b'seba' metodi alternattivi ta' pagamenti, iżda meta aċċessa l-kont tiegħu huwa kien sab tlieta biss, li kollha kellhom limitu ta' £300 għal kull ġurnata, u l-problema tal-limitu baqgħet ma ssolvietx, tant li huwa baqa' jinsisti li s-soċjetà appellata kellha tgħolli l-limitu tad-depożitu. Irrizultalu minn *forex comparison websites* li l-limiti kienu anki sa \$5,000 kull ġurnata, u sab li l-limitu ta' £300 kull ġurnata li nformah bih l-*account manager* kien iktar limitat minn dak li kien qed jiġi applikat lil haddieħor. Jirrileva li fil-passat f'ċirkostanzi simili, huwa ma kien sab l-ebda diffikultà li jagħmel depożitu f'ammont ta' madwar £4,000, u dan saħansitra meta l-margini u l-*equity* tiegħu kienu baxxi. Jikkontendi li kien hemm ukoll dewmien min-naħa tas-soċjetà appellata meta din wiegbitu lura, u b'hekk giet injorata l-urgenza tas-sitwazzjoni. L-appellant

issottometta li dan kien jikkostitwixxi negligenza u servizz mhux skont is-sengħa u l-arti, li wasslu sabiex ma jzidx il-margini tiegħu u ma jagħmilx profitti, iżda anki li jsofri telf sostanzjali. Madankollu d-deċiżjoni appellata naqset milli tikkonsidra dan kollu. Min-naħa tagħha s-soċjetà appellata allegat fost affarijiet oħra, li kien hemm il-limiti fuq il-margini mposti mil-ligi u mill-MFSA. Qalet li kien hemm ukoll limiti mposti minn Safecharge Limited, imma huwa qatt ma ġie debitament imwissi dwarhom mill-*account manager* tiegħu meta huwa kien avviciinah bil-problema, jew saħansitra rċieva l-informazzjoni tard u wara diversi risposti ħziena. L-appellant isostni li kien konfligġenti u anki stramb il-fatt li l-limitu tad-depożitu min-naħa tas-soċjetà appellata għola wara li naqas il-perijodu ta' volatilità fl-10 ta' Marzu, 2020. Jikkontendi li dan kien juri li n-nuqqas kien min-naħa tas-soċjetà appellanta li l-limitu ma ġiex mgħolli fil-ħin l-aktar opportun. Jgħid li jekk tassew il-kwistjoni kienet tirrigwarda *margins*, dan ma kienx iseħħ għaliex f'dak il-mument huwa kien qed jagħmel aktar telf minn meta talab għaż-żieda tal-limiti tad-depożiti. L-appellant hawn jagħmel riferiment għas-sezzjoni 12 tat-*terms of business* li tagħmel riferiment għalihom is-soċjetà appellata, u sostna li b'hekk fiż-żmien li huwa talab żieda fil-limiti, is-soċjetà appellata kellha tkun aktar disposta li żżid il-limiti, imma saħansitra lanqas tat *due notice* kif kienet tenuta tagħmel skont it-*terms of business*. L-appellant jirrileva li waħda mill-motivazzjonijiet tal-Arbitru sabiex wasal li jiċċad l-ilment tiegħu, kienet li huwa kien diġà qed jagħmel telf. Jgħid li huwa min-naħa tiegħu kien qed jikkontendi li kieku mhux għall-inkompetenza, għan-negligenza u għan-nuqqas t'azzjoni min-naħa tas-soċjetà appellata, huwa kien iżid il-margini tiegħu u jagħmel profitt, u dan minkejja li huwa kien qed jagħmel telf li huwa kien jasal sabiex inaqqsu. Barra minn hekk hawn il-kwistjoni kienet

dwar *floating loss* u mhux telf realizzat, tant li meta huwa kien ħadem iċ-ċifra konservattiva tal-kumpens mitlub, huwa kien ħadem fuq l-*equity* ta' dak iż-żmien, jiġifieri £17,324.46. Isostni li jekk huwa kellu l-fakultà li jiddepożita l-fondi, l-imsemmija *equity* ma kinitx tinzel għal £3,554.91, iżda tibqa' l-istess. Madankollu s-soċjetà appellata kkawżatlu telf ta' £13,769.55. Jirrileva li l-Arbitru naqas għal kollox milli jqis li wieħed qed jitkellem fuq perijodu ta' volatilità li ma jseħħx ta' spiss, u fejn huwa kellu l-opportunità li jagħmel profitt sostanzjali. Iżda meta huwa ħadem profitt ta' £1,000 fuq l-*equity* rizzultanti fis-27 ta' Frar, 2020, huwa kien qed ikun konservattiv għall-aħħar. Isostni li ma kinitx minnha l-allegazzjoni tas-soċjetà appellata li l-profitt li huwa kien ser jagħmel kien *unrealised*, għaliex li kieku hija aġixxiet kif kellha tagħmel, huwa ma kienx isofri telf ta' £14,769.55. Dwar it-tieni aggravju tiegħu, li d-deċiżjoni appellata mhijiex motivata tajjeb, l-appellant jissottometti li l-konsiderazzjonijiet tal-Arbitru fir-rigward ta' *negative free margin* u *low margin levels*, ma kellhom qatt jolqtu b'mod negattiv lit-talbiet tiegħu. Jibda billi jissottometti li l-fatti kif espost minnu ma ġewx ikkontestati b'mod kredibbli. Jirrileva li s-soċjetà appellata qatt ma spjegat għaliex id-depożiti kienu ġew limitati, u lanqas għaliex hija bdiet taġixxi b'mod konfligġenti, għaliex ir-risposti tagħha kienu tardivi tassew meħud in konsiderazzjoni l-volatilità, u għaliex minkejja r-regoli kollha ċċitati fl-10 ta' Marzu, 2020, ż-żieda fil-limitu tad-depożitu saret xorta waħda. Għalhekk kien jidher sew li l-aġir tas-soċjetà appellata kien proprju dak li wassal għat-telf tiegħu. Dwar l-osservazzjoni tal-Arbitru li fi Frar 2020 huwa kien diġà esperjenza ċerti limitazzjonijiet fuq l-ammont tad-depożitu li seta' jeżegwixxi, l-appellant jispjega li huwa kien għamel kuntatt mas-soċjetà appellata proprju f'dan iż-żmien, iżda dan ma setax

jikkostitwixxi *“prior awareness”*. Madankollu l-problema ma kinitx għadha solviet ruħha sas-27 ta’ Frar, 2020 u lanqas sal-10 ta’ Marzu, 2020. Barra minn hekk, jgħid li l-Arbitru naqas milli japprezza li l-metodi ta’ pagamenti alternattivi kellhom il-limiti tagħhom ukoll, kemm fuq id-depożitu u kif ukoll fuq iż-żmien tal-ipproċessar, li għalhekk kienu jhalluh fl-impossibilità li jieħu azzjoni u jaħtaf il-*window of opportunity*. Dwar l-osservazzjoni tal-Arbitru li huwa kien addotta *“trading approach involving certain risks”*, l-appellant jissottometti li din ma setgħetx tiggustifika l-aġir konfligġenti u negliġenti tas-soċjetà appellata, li gie kompletament skartat mill-Arbitru. Imbagħad l-appellant jgħaddi sabiex ifisser l-aħħar aggravju tiegħu, li l-Arbitru naqas milli jiddeċiedi skont il-para. (b) tas-subartikolu 19(3) tal-Kap. 555. L-appellant jissottometti li meħuda in konsiderazzjoni l-ewwel żewġ aggravji tiegħu, isegwi li d-deċiżjoni appellata ma tirrispettax dak li tirrikjedi l-ligi. Fid-dawl tal-provi miġjuba, l-Arbitru kellu raġonevolment jikkonkludi illi l-aġir tas-soċjetà appellata wassal proprju għat-telf soffert minnu. Imma minflok l-Arbitru kkonsidra l-volatilità tas-suq u n-nuqqas ta’ garanzija ta’ profitt mill-investment, liema argumenti skont l-appellant huma validi sa ċertu punt meta wieħed jitkellem f’termini ġeneriċi, iżda li ma jistgħux ikunu ta’ ebda konfort għas-soċjetà appellata meta huwa ċar li kien proprju l-aġir, traskuraġni u negliġenza tas-soċjetà appellata li wassal għad-dannu soffert minnu. Huwa hawn jagħmel riferiment għal dak li qalet din il-Qorti fis-sentenza tagħha fl-ismijiet **Carmelo u Carmen Baldacchino vs. Crystal Finance Investments Ltd**<sup>1</sup> deċiża fil-11 ta’ Novembru, 2020 sabiex jissostanzja l-argument tiegħu.

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<sup>1</sup> App.Inf.58/2018LM.

10. Is-soċjetà appellata twieġeb billi tissottometti li d-deċiżjoni appellata hija ġusta u għaldaqstant timmerita konferma. Hija tiċhad bil-qawwa kollha li hija kienet għaddiet informazzjoni falza u konfligġenti lill-appellant. Tispjega li kien ġie stabbilit li kwalunkwe limitu ta' depożitu mpost fuq l-appellant ma kienx sar min-naħa tagħha, tant li fl-4 ta' Frar, 2020, jiġifieri tliet ġimgħat qabel il-perijodu li fih l-appellant jilmenta li huwa seta' jagħmel xi qligħ, hija kienet ipprovdiet dettalji bankarji sabiex huwa seta' jiddepożita iktar mil-limiti mposti minn terzi, ossija Safecharge Limited. L-appellant b'hekk seta' jinqeda bis-sistema SEPA fejn it-trasferimenti jiġu proċessati fi żmien jum, u għalhekk huwa kellu mezzi oħrajn a dispożizzjoni tiegħu sabiex jilħaq l-għanijiet tiegħu, u dan ikkonfermah huwa stess fix-xhieda tiegħu u ġie rikonoxxut mill-Arbitru. Għaldaqstant mill-provi kien irrizulta b'mod ċar u inekwivoku li hija kienet tat lill-appellant soluzzjoni suffiċjenti sabiex huwa jinvesti kif xtaq. Imbagħad ma kienx irrizulta li l-informazzjoni li qagħad fuqha l-appellant kienet waħda falza jew konfligġenti, jew li hija b'xi mod imxiet b'neliġenza lejha. Tispjega li skont l-investigazzjoni li hija kienet wettqet, irrizulta li kienet proprju Safecharge Limited inkarigata mill-appellant stess sabiex tittrasferixxi fondi mill-kont bankarju tiegħu għal dak tagħha, li kienet imponiet il-limiti fuq id-depożitu. Għalhekk ma kien hemm l-ebda negliġenza min-naħa tagħha, fejn hija saħansitra baqgħet tinvestiga l-problema sakemm sabet soluzzjoni skont ix-xewqa tal-appellant, u dan anki fejn hija ma kellha l-ebda obbligu li tagħmel dan peress li ma kinitx hija li mponiet il-limiti. Is-soċjetà appellata ssostni li l-appellant jittanta li joskuraha billi jikkontendi li s-soluzzjoni nstabet hekk kif il-perijodu ta' volatilità spicċa, billi jissuggerixxi li hija b'hekk għamlet gwadan. Tirrileva li meta l-limiti fuq id-depożitu żdied għal \$5,000, dan sar minn



Safecharge Ltd u mhux minnha kif ġie allegat mill-appellant. Is-soċjetà appellata tgħid li l-appellant min-naħa tiegħu kkonsidra li kieku ma kienx hemm limiti fuq id-depożiti, huwa mingħajr dubju seta' jagħmel qliegħ abbażi tal-volatilità li kien hemm. Izda s-soċjetà appellata tgħid li huwa sewwa magħruf li l-volatilità ma kinitx taċċerta qliegħ bla riskju lill-investitur, u għall-kuntrarju din iżżid ir-riskju tal-investment. Tgħid li jekk l-appellant kien ċert dwar id-direzzjoni tas-suq, huwa seta' tal-inqas jagħlaq il-*positions* tiegħu biex itaffi t-telf, iżda mhux hekk għamel u ppermetta t-telf ta' kapital. Dwar it-tieni aggravju tal-appellant, is-soċjetà appellata tissottometti li dan kellu kull opportunità matul Jannar u Frar 2020 sabiex iżid il-*margin* tiegħu, u b'hekk jassigura li l-kont tiegħu jkun kapitalizzat biżżejjed sabiex jimmanuvra l-investimenti kif xtaq hu. Tgħid li dan ifisser li l-Arbitru kien korrett fid-deċiżjoni appellata. Tgħid li l-appellant anki jiskarta għal kollox il-fatt li huwa kien ilu sa mill-bidu ta' Frar 2020 infurmat mis-soċjetà appellata b'soluzzjoni ta' kif huwa seta' jaqbez il-limitu ta' depożitu u jagħmel ċert li l-kont tiegħu jkun kapitalizzat suffiċjentement sabiex huwa jkun jista' jagħmel l-investimenti li jixtieq, u jaħtaf l-allegata *window of opportunity*. Izda dan m'għamlux, u l-agir kellu jitqies b'ħala wieħed imprudenti li għalih huwa biss responsabbli l-appellant stess. Fir-rigward tat-tielet aggravju tiegħu, is-soċjetà appellanta tgħid li anki jekk wieħed isib li l-limiti fuq depożitu kienu riżultat ta' xi problema fil-pjattaforma tas-soċjetà appellata, kellu jiġi kkunsidrat li huwa l-obbligu tad-danneġġjat li jagħmel dak kollu raġonevoli biex inaqqas id-danni, u dan l-appellant m'għamlux billi skarta s-soluzzjonijiet li offrietlu s-soċjetà appellata sabiex jittrasferixxi l-fondi li xtaq hu, u billi naqas milli jagħlaq l-investimenti li kellu meta l-aċċess għall-kont tiegħu kien dejjem miftuħ.

Għaldaqstant l-appellat kellu jwieġeb għal għemilu skont il-prinċipju *nullus commodum capere potest de injuria sua propria*.

11. Il-Qorti tgħid li kuntrarjament għal dak li qed jippretendi l-appellant, l-Arbitru ddecieda sew, anki *ai termini* tal-para. (b) tas-subartikolu 19(3) tal-Kap. 555. Wara li spjega l-fatti rilevanti għall-każ odjern, u anki diversi aspetti oħra, kif dawn kienu rriżultaw matul il-proċeduri quddiemu, l-Arbitru għadda sabiex għamel is-segwenti osservazzjonijiet imsejsa fuq l-imsemmija fatti, u li l-Qorti tqis jikkontradixxu għal kollox l-argumenti miġjuba in sostenn tat-tliet aggraji tal-appellant: (a) spjega dak li kien ifisser '*free margin*' u dak li huwa seta' jikkonstata minn *webpage* partikolari dwar l-importanza tiegħu. Irrileva li livell ta' margini inqas minn 100% kien juri li l-fondi naqsu, u dan imbagħad seta' jkollu effett fuq jekk in-negozjant kienx ser jiġi permess mis-sensar (broker) li jiftaħ *positions* oħra. Osserva li l-livell tal-'*free margin*' tal-appellant kien żviluppa f'wieħed negattiv u baqa' hekk mill-21 ta' Jannar, 2020 'il quddiem kif muri mit-*Trading History Report* għall-perijodu bejn l-1 ta' Jannar, 2020 u s-27 ta' Frar, 2020; (b) ikkonstata dak li kien jirriżulta fir-rigward ta' livelli baxxi ta' margini għal tul ta' żmien, billi spjega korrettement li skont l-informazzjoni meħuda mit-*Trading History Report*, kien ċar li l-livell tal-margini tal-appellant kien niżel għal inqas mill-*benchmark* ta' 100% sa mill-21 ta' Jannar, 2020, meta l-*free margin* tbiddel għal wieħed negattiv, u saħansitra baqa' hekk sas-27 ta' Frar, 2020. B'riferiment għall-informazzjoni murija f'*Table A*, l-Arbitru qal li l-livell tal-margini waqa' saħansitra għal 52% fl-aħħar ta' Jannar u fil-bidu ta' Frar 2020 qabel il-perijodu in kwistjoni, u għalkemm il-livell xi kultant żdied, dan dejjem baqa' inqas mill-100% ikkonsidrat bħala 'healthy'. Għalhekk tajjeb jgħid

L-Arbitru fejn sostna li għalkemm l-appellant kien qed jilmenta minn telf u opportunitajiet mitlufa ta' negozju għall-perijodu mis-27 ta' Frar, 2020 sal-10 ta' Marzu, 2020, kien ċar mill-imsemmija informazzjoni li l-margini kien tbiddel għall-pożizzjoni agħar sa minn qabel, lejn l-aħħar ta' Jannar/bidu ta' Frar 2020; (ċ) f'din il-parti tad-deċizzjoni appellata, l-Arbitru jittratta l-kwistjoni li l-appellant fil-fatt diġà kellu esperjenza sa mill-bidu ta' Frar ta' ċerti limitazzjonijiet fir-rigward tal-ammont tad-depożitu li huwa seta' jagħmel tramite il-metodu tal-ħlas kif magħżul minnu stess. Il-Qorti tgħid li dan jirriżulta mid-dikjarazzjoni annessa mal-ilment ipprezentat mill-appellant kif ser jingħad aktar 'il isfel. Tikkonsidra wkoll li l-appellant hawn naqas milli jressaq prova konvinċenti li l-limiti kienu ġew imposti mis-soċjetà appellata stess, li tikkontendi li wara kollox kienet is-soċjetà Safecharge Limited li mponiet il-limiti fuq id-depożitu, liema soċjetà kienet ġiet inkarigata mill-appellant innifsu; (d) l-Arbitru mbagħad ikkonsidra n-nuqqas tal-appellant milli jieħu azzjoni f'waqtha billi jżid id-depożiti tiegħu, u dan għalkemm huwa kien waqa' 'l isfel mill-100% tal-margini matul l-aħħar ta' Jannar 2020 u anki matul ix-xahar kollu ta' Frar 2020, u milli jidher kien jaf diġà b'ċerti problemi li kien hemm bis-solitu metodu ta' depożitu, u dan sa mill-bidu ta' Frar 2020. Hawn il-Qorti tagħmel riferiment għal a fol. 7 tal-atti quddiem l-Arbitru fejn fl-ispjegazzjoni tal-ilment tiegħu, l-appellant jgħid li huwa kien ittanta jagħmel depożitu, iżda beda jirċievi twissija li kien hemm limiti ta' £300 fuq kull depożitu li seta' jsir f'gurnata waħda biss. L-Arbitru osserva li l-appellant baqa' ma ħax azzjoni sakemm il-livell tal-margini waqa' għal darb'oħra għal madwar 50% lejn l-aħħar ta' Frar. Innota li fil-fatt hawn l-appellant kien għamel erba' depożiti minimi ta' €300 kull wieħed minnhom. Iżda wara li ħa konjizzjoni tar-raġunijiet għal dak li offra l-appellant, l-Arbitru

osserva li l-appellant wara kollox kellu għażliet oħra ta' pagament inkluż is-SEPA, kif indikat mis-soċjetà appellata, u li l-Qorti tagħraf ukoll li seta' offra alternattiva aċċettabbli għall-appellant fejn il-pagamenti setgħu jsiru mill-ewwel; (e) fl-aħħar punt ittrattat, l-Arbitru jirrileva li l-appellant kien għażel huwa stess skont id-diskrezzjoni tiegħu li jagħmel depożitu ta' fondi fil-kont tiegħu skont in-neċessità, u dan minflok ma addotta livell ogħla u iktar prudenti sabiex jipprovdi għall-*positions* li kienu qegħdin jiddeterjoraw. L-Arbitru għaraf li l-appellant wara kollox kellu kull dritt li jimxi b'dan il-mod, u s-soċjetà appellata kienet tenuta tipprovdi bil-mezzi u bir-riżorsi sabiex huwa seta' mill-ewwel jeffettwa depożitu fil-kont tiegħu kif huwa kien fisser. Iżda l-Arbitru stqarr li din l-għażla gābet magħha r-riskju li l-pożizzjoni tingħalaq iktar kmieni minn dak mixtieq, fejn l-*equity* kienet tfalli l-livell adegwat. Ikkonsidra li kien proprju l-appellant li ħa fuqu dan ir-riskju. Għalaq billi stqarr li huwa ma kienx f'pożizzjoni li jagħti kumpens skont il-preżunzjoni tal-appellant li n-negozju tiegħu ma kienx ser jispiċċa f'telf u/jew li huwa kien ser jagħmel profitti, anki fuq il-*positions* il-godda. L-Arbitru tajjeb irrileva tgħid il-Qorti, li ma kien hemm l-ebda assigurazzjoni fir-rigward tas-sitwazzjonijiet ipotetiċi pprezentati mill-appellant, liema sitwazzjonijiet ma setgħux jiġu verifikati u lanqas seta' wieħed jassumihom skont l-andament fil-passat, anki jekk dan kien wieħed pożittiv. Fil-fatt il-Qorti tagħraf li hawn l-appellant juri ċertu ottimizmu, iżda dan mhux biżżejjed sabiex iwassal għal konvinċiment li huwa tassew garrab telf riżultat tal-aġir jew nuqqas tas-soċjetà appellata. Imbagħad l-Arbitru jgħid li r-raġuni għal dan hija li skont il-kuncett ferm magħruf, dan l-andament ma jistax iservi bħala garanzija ta' riżultati futuri. Il-Qorti tikkondividi b'mod sħiħ dawn il-

fehmiel tal-Arbitru, u filwaqt li tagħmel tagħha l-osservazzjonijiet tiegħu, tgħid li m'għandhiex iktar x'izzid mad-deċiżjoni studjata tiegħu.

### **Decide**

**Għar-raġunijiet premessi l-Qorti tiddeciedi dwar l-appell tal-appellant billi tiċċdu, u tikkonferma d-deċiżjoni appellata fl-intier tagħha.**

**L-ispejjeż tal-proċeduri quddiem l-Arbitru jibqgħu kif deċiżi, u dawk tal-appell odjern għandhom ikunu a karigu tal-appellant.**

Moqrija.

**Onor. Dr Lawrence Mintoff LL.D.  
Imħallef**

**Rosemarie Calleja  
Deputat Reġistratur**