

IN THE SMALL CLAIMS TRIBUNAL

(European Small Claims Procedure)

Adjudicator: Dr. Philip M. Magri

Sitting of Monday, 2nd March, 2020

Claim Number: 13/2019PM

Mikko Mansikkamaki

vs.

Shark 77 Limited (and its site 18bet)

The Tribunal,

Having seen the Notice of Claim filed by claimant whereby he alleges that *“18bet scammed me by closing my account with all the money last month. I was suddenly accused of having multiple accounts with more than 1000 euros as a pending withdrawal. Prior to this I had no withdrawal issues with them. A conversation I had last autumn shows that my intention was to find out whether or not I had an existing account as I knew multiple accounts were not allowed. An existing account was found and I had my e-mail changed to it in order to proceed with the gaming account which had long been inactive and was only using that one account ever since. I have had some e-mail exchange with them using my other e-mail address (omissis) presenting different name but that is not wrong and has nothing to do with multiple accounts sharing my ip”*. The

claim refers to the sum of “*around 1300 if my memory serves me well, the company did not give me info upon request*”

The Tribunal also notes that defendant company was duly served with the acts of the case on 4th September, 2019 and replied to the effect that complainant provided no explanation regarding what constitutes the basis of his claim and indicates an approximate amount as the alleged claim. Defendant company also contends that claimant previously filed a complaint with the Malta Gaming Authority (MGA) and this was rejected (as results from the document attached to the same reply and marked Doc. ‘A’).

The Tribunal:

Having seen that the claimant did not file any documents in confirmation of his claim.

Having seen the documents attached to the reply filed by the defendant company, namely the correspondence via email marked as Doc. ‘A’ and the report dated 22nd July, 2019 compiled by the 18bet Team.

Having therefore considered all evidence brought forward.

Having also considered that the Tribunal can adjudicate this case on the basis of the evidence produced and that therefore no oral hearing needs to be fixed;

Considers that:

Art. 562 of the **Code of Organisation and Civil Procedure** (Chapter 12 of the Laws of Malta) states that the burden of proving a fact falls, in all cases, on the party alleging it, saving where the law provides otherwise.

In addition, art. 559 of the same Code also imposes on the alleging party the obligation of producing the best evidence.

It is immediately clear from the notice of claim that the allegations made by claimant remain unsubstantiated by concrete evidence. The claim itself is drafted in an unclear

manner and from the wording used the Tribunal can only barely determine that claimant is seeking reimbursement of an unspecified amount which he believes was “scammed” from him by defendant company when the latter alleged that he was using multiple accounts. To this effect no evidence is furnished of the amount so allegedly scammed (to the effect that even in this regard claimant is unable to specify the exact amount being claimed by him (*around 1300 if my memory serves me well*), of the manner in which such unspecified amount was physically ‘scammed’ from him upon termination of his account by defendant. On the other hand, the defendant company submitted correspondence which indicates that claimant had filed an identical claim to the current one at the Malta Gaming Authority (via email dated 2nd July, 2019). The 18bet Team compiled a report whereby they confirm that “*as client claims himself, company was fully aware of his previous account which had become dormant long ago and as soon as he’d informed us, we closed the old one and left him with single active account*”. However, the same report continues to the effect that “*(c)ompany took actions towards his new account only when the system alarmed that one of the IPs the client used to log in his account (omissis) is used under other currently active account*”. He was duly informed of this breach of terms and conditions of use of the website as determined by the Anti-Fraud Department. Via email dated 13th September, 2019 Kristian Hans Cassar for Malta Gaming Authority informed the legal representative of defendant company that “*we have closed Mr. Mansikkamaki complaint on the 23rd July 2019 in favour of Operator*”.

Although the Tribunal is not necessarily bound by the Authority’s judgment given that the terms and references of the current procedure are different from those used by the Authority in regulating its operators, the Tribunal feels that, even in this case, the claimant has failed to satisfy the onus of proof which clearly burdens him in pursuing a successful claim. Not only did he fail to contradict the report filed by defendant to the effect that he was found in breach of its terms and conditions but, even more so, he failed to confirm how, when and what amount was ‘scammed’ from him by defendant company. What transpired clearly from these proceedings was that his account was

closed in view of a proven breach of the website's terms of use but no proof was provided that such termination led to funds belonging to the claimant being retained or withdrawn by the defendant company. No evidence was furnished of any amount held in the claimant's account when the latter was terminated and no evidence was also produced of any amounts retained, let alone of any scam, by defendant company as a consequence of such termination. Given that the burden of proof lies entirely on the claimant, the Tribunal can in such circumstances only reject the claim on the basis of lack of evidence substantiating the allegations made.

Thus, for the aforementioned reasons, the Tribunal upholds defendant's defence and rejects claimants' claim with all costs to be borne by claimant.

Dr. Philip M. Magri
Adjudicator