

The Ombudsman's Case of the Month

April 2015

An email, a screenshot or an instant messaging record are all evidence that could be determinant in settling a dispute, especially when dealing with binary options¹ and Forex trading² companies.

With an increasing number of websites offering binary option trading in gold, oil or currencies, there are unfortunately many individual investors who dream of making the quick and easy profits promised by these companies. I am therefore regularly contacted by investors who have lost all of the money they invested and would like to get redress. Although these companies do not refuse the principle of mediation³, they are reluctant to cooperate, knowing that proof of abuses suffered by customers are difficult to report. However, when the customer has been able to keep screenshots, "chat" ⁴records, or, in some cases, recordings of telephone conversations, these are highly useful pieces of evidence to corroborate the statements of events. I am therefore able to use these elements in negotiation to negotiate the compensation that I consider is owed to the customer.

The facts

Mr S, a recent retiree, is looking for an investment that will provide him with a regular, additional income. On the mass market websites that he visits, there are many advertisements claiming that significant profits can be made by trading on the markets. Whether taking advantage of the soaring price of precious metals or the falling price of oil, or even the initial public offering of large companies, there are plenty of unmissable opportunities. Though some pictures showing a man with a wad of notes in his hand standing in front of a sports car leaves Mr S somewhat perplexed, he finally clicks on one of these ads that directs him to a site where he leaves his contact details.

At the beginning of December 2014, Mr S was thus contacted by someone who introduced themselves as a customer advisor from a major online trading site. This person extols the possibility of making huge profits with binary trading, which lets you increase your profits by investing a small amount at the start and, he adds, Mr S will receive daily statistics and indicators to help him know which product to invest in.

Hooked, Mr S agrees to pay €1,000 by credit card. He is then contacted on a very regular basis, either by telephone or by chat on his instant messaging system. The advisor tells him of opportunities he shouldn't miss and appears to be very precise on the transactions Mr S should carry out. Mr S, who has no financial knowledge, follows the advice to the letter. Reassured by his advisor's promises and by the amount of his initial deposit which he sees grow considerably on his online account, he agrees to make an additional payment of €5000.

Quickly, the profits turn to losses. The advice turns out to be disastrous, and in January 2015, all €6,000 invested has been lost. No-one answers Mr S's telephone calls and no response is given to his written claims. Mr S understands that he should not have believed in the fine promises of his advisor.

He contacts me asking me to intervene in the hope of recovering all or part of the amount lost.

The analysis

To start with, I checked the licence of the company implicated in order to intervene as the Ombudsman. It appears that the company was recently licensed by Cyprus, a European Union member state.

¹ The binary option is a financial instrument derivative used to bet on the change in an underlying asset (raw material, currency, share, etc.)

² Speculation on the foreign exchange market, accessible to the general public.

³ If the company is not licensed, I cannot intervene. In this case, the facts are likely to be considered as criminal in nature, and will be transferred to the Public Prosecutor, in accordance with statutory regulations.

⁴ Records of conversation on an instant messaging system.

However, on examining this licence (European passport), it is clear that the company is not licensed to provide investment advice services in France, in other words to provide personal recommendations⁵ to its customers.



I then questioned the company on the nature of the recommendations that it provided to its customer. I also requested that it provide me with the telephone recordings of the conversations between the advisor and Mr S.

The company told me that a technical incident had prevented the conversation being recorded. It stated that in any case, the clauses of the agreement accepted by Mr S stipulated that any details or information provided by an advisor could not be considered as investment advice.

I informed Mr S of the importance of providing me with any item or evidence to corroborate his statements. After a great deal of searching, Mr S found that his instant messaging system had kept a record of the conversations. He also found old emails sent by his advisor.

On reading a copy of these conversations, I noted that his advisor specifically mentioned the asset that Mr S should invest in, the trading direction, as well as the amount. In the emails sent by the advisor, two have the same type of instructions. I considered these suggestions to be sufficiently serious and consistent as to consider them as personal recommendations provided by the advisor to Mr S.

I therefore contacted the company a second time, providing the copy of these conversations and the two emails. After following up several times, the company replied that it was not responsible for the information disclosed by this advisor who, it told me, had since been dismissed. However, without providing further explanations, it offered to fully reimburse the amount lost by the customer.

The recommendation

Although the answers provided by this company are highly unsatisfactory, the proof kept by the customer, most definitely contributed to producing this reimbursement offer. I, therefore, recommended Mr S accept it and I was able to verify that the €6,000 had indeed been paid into his personal bank account 2 weeks later.

The lesson to be learned

Given that in 50% of cases received, the company is not licensed, I cannot initiate a mediation procedures and I am obliged to send the case to the Public Prosecutor.

For those companies that are licensed, keeping material proof can be decisive in enabling me to recommend and obtain compensation.

But remember that trading on binary options and Forex sites is extremely risky and almost always produces a pure loss.

Read more

[The AMF Ombudsman](#)

⁵ In accordance with Article D321-1-5 of the Monetary and Financial Code "the service of investment advice is defined as providing personalised recommendations to a third party, either at his request or at the initiative of the company providing the advice, concerning one or several transactions relating to financial instruments".