Heading:

Decision concerning 1) funds transfer and 2) failure of Stop Loss – Forex trading platform – Complaints not upheld

A v D [2012] FDRS August 2012

1. Issues

Complaint 1

The first complaint relates to The Customer's requests of a withdrawal of his funds on 6 March 2012 for USD$300.00 back to his credit card. The Customer believes that USD$200.00 of this amount was received more than eight days late having only received it on 28 March 2012. The Scheme Member however is of the view that two payments were made to The Customer – one of USD$200.00 and one of USD$100.00 both transfers were made on 6 March 2012 (the same day as the withdrawal request was made).

The Customer believes that The Scheme Member misled him about the payment, and due to this he and his bank invested a lot of time to trace the money, which was not sent on the date mentioned i.e. 6 March 2012. The Customer is requesting compensation for the waste of his time and the stress that arose due to such action.

Complaint 2

The second complaint relates to The Scheme Member's 'Execution Policy' not being implemented with regard to stop loss[1] and stop outs[2]. The Customer contends that he observed that during stop loss/stop out time The Scheme Member's spread[3] became wider

[1] Stop loss – position closure is carried out at the price less profitable for the client than the current price at the moment of setting the order.

[2] Stop out – server generated compulsory position closure order (without agreement and preliminary notification of the Client in case of lack of funds for opened position maintenance).

[3] Spread – the point difference between the bid and ask price.

and due to that all his trades closed on a loss. At that stage, he noted that the spreads were up to 6 pips[4]. He also noted that two days before this happened The Scheme Member had a problem with its server and that this could also have influenced the situation. The Customer's complaint relates to The Scheme Member's closure of his order numbers: 2489379, 2493598 and 2496299.

The Scheme Member's position is that spread values at the moment of closing those orders were 1.1, 1.2 and 0.9 points, respectively. The Scheme Member also noted that there were no errors of any kind during execution of those orders and that as an experienced trader The Customer should have known that The Scheme Member's spreads are not fixed, like many other brokers. Spread widening on news or huge market moves is common.

The Customer requests that his account be reactivated and he be credited those funds, which became lost due to The Scheme Member's execution i.e. USD$1,000.00.

2. Jurisdiction

I find that the matter falls under regulation of the Rules and 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

I set out the background to these complaints as follows:

- The Customer is an experienced trader who has been in the market for the last two years. He held an account with The Scheme Member. As part of this, The Customer signed a Client Agreement, with The Scheme Member's General Business Terms annexed thereto, when he commenced trading with The Scheme Member. The relevant parts will be dealt with more specifically below.

- It seems that this dispute commenced when The Customer was trading on 6 March 2012. On that day, The Customer sent an email to The Scheme Member advising that he could not do any trading as it looked like there was some big technical problem with the

[4] Pip – a unit of less significant rate/The smallest increment of change in a foreign currency price either up or down.

server. The Customer also noted having seen huge spreads of 6 pips, and that a few times he was stuck in a loss position due to these errors. The Customer does not expand on what these errors were.

- On 7 March 2012, The Customer received an email from […] The Scheme Member (NZ) support team informing him as follows:

> Due to technical problem you might have problems connection to the trading server. At the moment the issue is solved.
>
> Please let us know if any of your trades suffered from connection outage.

- On 8 March 2012, The Customer sent an email to The Scheme Member's Complaints Department noting that he has no doubt that The Scheme Member's 'Execution Policy' and actual execution is different. He noted that he did not accept the closure of the order numbers: 2489379, 2493598 and 2496299. He observed that during stop loss/stop out time the spread became wider and due to that all his trades closed on a loss. He also mentioned the problem with the server that The Scheme Member had two days before where the spread became 6 pips.

- On the same day, The Customer received a reply noting that as an experienced trader he should have known that The Scheme Member's spreads are not fixed.

- On the following day, The Customer sent a reply explaining that on 6 March 2012, The Scheme Member's spread on EURUSD was more than 6 pips, but he was not informed of this.

- The Scheme Member contends that a spread of 6 points is possible and that there were no errors of any kind during execution of those orders.

I will broadly summarise the situation that applies based on the information provided by The Scheme Member. These are short fragments of **tick** history, containing the market prices at the moment of opening and closing:

Order Number 2489379 opening:	1.3255	1,32561
Order Number 2489379 closing:	1.32539	1.3255
Order Number 2493598 opening:	1.32436	1.3245
Order Number 2493598 closing:	1.32450	1.32462
Order Number 2496299 opening:	1.32419	1.32430
Order Number 2496299 closing:	1.32263	1.32272

4. Position of the parties

The Customer's position

The Customer's position as set out in the complaint file is as follows:

- The Customer believes that The Scheme Member mislead him about the withdrawal payment and due to this he and his bank invested a lot of time to trace the money, which was not sent on the date mentioned i.e. 6 March 2012.

- The Customer does not accept closure of order numbers: 2489379, 2493598 and 2496299, and believes that The Scheme Member manipulated the spreads during stop loss/stop out time. This resulted in The Customer's trades being closed causing him to make a loss.

- The Customer lost USD$1,000.00 in three days, which he believes was due to a system error stop out.

- The Customer contends that the 'execution policy' of The Scheme Member has not been implemented with regard to stop loss and stop out.

The Scheme Member 's position

I understand The Scheme Member's position to be:

- The Scheme Member 's terms, annexed to the client agreement, sets out the obligations that rests on its clients/users, as well as the fact that its spreads are not fixed (those terms are set out below).

- The Scheme Member contends that the executions in The Customer's case were performed without error at actual market prices. Spreads that can be calculated by these prices are 1.1/1.1, 1.4/1.2 and 1.1/0.9 points, opening/closing, for each of these three orders, respectively.

- The Customer filed the complaint about trades/orders that he opened and closed on 8 March 2012. The Customer never wrote to The Scheme Member about the stop outs that happened on 6 March 2012 when there was a network problem, and the alleged spread that had gone to 6 pips on EURUSD and AUDUSD. Therefore, the internal procedure of dispute resolution did not take place.

- The Scheme Member believes that its terms and regulations have not been breached. The Scheme Member believes the spread did not cause The Customer's stop outs, but rather his own trading decisions led to stop outs that triggered orders closing.

- It also noted that the terms, annexed to the client agreement between The Scheme Member and The Customer, were accepted by him when he commenced trading with The Scheme Member.

5. Relevant Terms

The Scheme Member's General Business Terms (Appendix 1 to the Client Agreement between The Scheme Member (Company) and Client read:

Clause 1.2(c)

> The spread is not fixed and may be changed depending on market conditions…

Clause 1.3(c)

> The Company establishes a spread for each instrument in the contract specifications. The spreads shown on the Company's website are standard (average) spreads. The size of the standard spread may increase/decrease depending on market volatility. The company shall be entitled to alter the amount of the spread without prior written notification to the client.

Clause 7 - Adjustments

Clause 7.1

> Determination of any adjustment or amendment of the size, value and/or number of the transaction (and/or of the level and size of any order) shall be at the Company's absolute discretion and shall be conclusive and binding upon the Client.

Clause 14 - Withdrawals or transfer of funds from trading account

Clause 14.11

Withdrawal of funds from a trading account is held within 3 working days. Herewith the Company has a right to reject a Client's withdrawal or to prolong the processing of a withdrawal if there are opened orders on a Client's account.

Clause 14.12

If the funds sent via bank transfer are not deposited in the Client's trading account within 5 business days, the Client shall have the right to apply to the Company for an investigation of the transfer. The Company may send the document confirming the fact of transferring funds.

Clause 14.3

If the funds sent via e-transfer do not hit the account of the Client within 2 business days, the Client shall have the right to apply to the Company with request to make an investigation of the transfer. The Company may send the screenshot confirming the fact of the transfer.

Clause 15 – Method of withdrawals

Clause 15.1

The Client may send the request for withdrawal via bank transfer of currency. In the cases of using bank card as depositing method, the first withdrawal is made by refunding of the initial deposit amount. In the cases of profit withdrawal remained after refund to the credit card, the Client's fund are to be withdrawn by bank wire. The Company shall undertake to send funds to the Client's bank account in accordance with the details stated in the request for withdrawal. The Company shall not be responsible for the period of bank transfer.

Clause 15.3

Client may send request for funds withdrawal from the trading account with other funds transfer means. The Company shall undertake to send funds to the Client's bank account in accordance with the details stated in the request for withdrawal. The Company shall not be responsible for the period of the bank transfer.

Clause 18 - General provisions

Clause 18.5

> The spread is not a fixed value, its size is determined depending on the market situation. The average size of the spread is shown in the contract specification on the Company's website.

Clause 22 - Stop out

Clause 22.1

> The Company is entitled to close the Client's open positions 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.

Clause 22.4

> If a Stop Out execution has resulted in the negative equity of the Client's trading account it will be compensated so as to bring Equity to $0.

6. Proposed Decision

I have set out the background to both complaints above, which for the most part is not disputed.

However, there is a significant area of disagreement relating to whether The Scheme Member's 'Execution Policy' was implemented with regard to stop loss and stop outs. The Customer believes the spreads were up to 6 pips, whereas The Scheme Member believes that they were 1.1, 1.2 and 0.9.

In considering this complaint, I have identified three broad questions, which I will consider in turn.

6.1 Is there sufficient evidence of manipulation of the spreads? If so, did this cause The Customer's stop out?

At clause 1.2(c) and 1.3(c) under The Scheme Member's general business terms, it is noted that the spread is not fixed, and the company shall be entitled to alter the amount of the spread without prior written notification to the client. It cannot be said that The Customer was not aware of this discretion. Having said that, it is The Scheme Member's contention that its records show that the spreads for the three order numbers were 1.1/1.1, 1.4/1.2 and 1.1/0.9 points opening/closing.

Apart from alleging that the spreads became 6 pips on EURUSD, The Customer did not provide me with any further evidence of the spread he alleges occurred and caused his stop out, and in turn causing his monetary loss. The Customer does not refer to a single clause in the terms annexed to the client agreement.

I have only been provided with the information from The Scheme Member.

Accordingly, I find that The Customer has not established that his contention is correct that there was manipulation on The Scheme Member's part causing his stop outs.

I am also not satisfied that The Customer has proven that there was sufficient evidence of a technical issue that could have caused his stop outs.

<u>6.2 Was the implementation with regard to the stop out/stop loss consistent with the contractual terms?</u>

I am entirely satisfied that The Scheme Member's terms provide it with the discretion to close the positions when the account balances reach stop out level. I consider the contractual terms to be clear and unambiguous to that extent.

In order for The Customer to have used The Scheme Member's services he needed to agree to its terms.

<u>6.3 Did The Customer suffer any loss with regard to the withdrawal request?</u>

It has been accepted between the parties that The Customer was refunded his withdrawal request in USD$300, however, the dispute relates to the timeframe in which The Scheme Member should have refunded the money. The Scheme Member provided a confirmation from Pay Online that two repayments were made to The Customer; one for USD$200.00 and one of USD$100.00 on 6 March 2012. The question is therefore whether The Customer provided any evidence of loss of money. In this case, I find that no such evidence has been provided and I therefore find that The Customer was not able to prove his case.

The Customer is requesting compensation for the waste of his time and the stress that arose due to The Scheme Member's action. The Customer did not establish any factual or legal basis for such a claim.

Conclusion

The contractual terms I find are determinative of this dispute.

There is insufficient evidence to support The Customer's case on a balance of probabilities. The Customer may wish to provide further comment as to these aspects in reply to this proposed decision.

The current view taken by FDR in this case is that The Customer's complaints are unlikely to be successful, on the basis that it has not been proven that The Scheme Member manipulated the spreads and in turn not implementing its execution policy correctly.

7. Proposed Outcome

Given my above findings, the proposed outcome is that both complaints be dismissed.

8. Final Determination

I have recorded above FDR's proposed decision, which was provided to both The Customer and The Scheme Member.

The Customer has provided further comments in reply to the draft noting that he is not accepting the proposed decision. He stated:

1. I suggest the pip data provide my [Scheme member name] for wrong execution should be verified by third party as that data is provide by [Scheme member name] and there are huge chances of its forgery. On the date of my stop out I also provide link to website which shows the common data for all the Liquidity but at that time that link is totally ignored ([website address])

2. Late payment of $200 impact is me badly. My home loan instalment come every 10th of the month for INR 8475/-. Due to late receipt of the money, my instalment bounce and its impact my credit history badly. I pay that money very late to my bank with interest and due to that it will reduce my chances of getting loan in future.

The Scheme Member in turn accepted the proposed decision in an email dated 23 July 2012.

I have considered these further comments.

Discussion

The proposed decision as recorded above is that The Customer, in the view of FDR, was unlikely to be successful.

The primary reason FDR reached that view was that on the evidence available, it had not been established that 1) The Scheme Member had manipulated its spreads causing The Customer's stop out; and that 2) The Scheme Member made late payment of the $200 and $100 withdrawal amounts to The Customer.

I accept that The Customer has a strong view that the information was incorrect and misleading, but that is not sufficient. I find that The Customer has provided insufficient contrary evidence. The Customer made no reference to the terms, specifically in relation to the spreads that are not fixed and circumstances in which stop outs can occur.

The Scheme Member has provided proof of payment of both amounts on 6 March 2012. The Customer has provided no contrary evidence other than to note that the payment of the $200 was late and impacted him badly.

The applicable onus of proof used by FDR is the accepted standard of the balance of probabilities. That means, in The Customer's case, the evidence must show it is more likely than not that The Scheme Member had manipulated its spreads, and not made payment timeously.

Possibility is insufficient. Probability is required. There is insufficient evidence The Customer's loss resulted from any actions by The Scheme Member.

For the reasons stated above, FDR must conclude the claims from The Customer have not been proven, and therefore both complaints to FDR must be dismissed.

Mrs E Vögel

FDR Adjudicator

August 2012