

The complaint

Mr S's representative complains that Zodiac Partners Limited failed to identify that his underlying broker had not posted all of his executed derivative positions to his account statements. He went on to say that this resulted in him overtrading and creating losses on the new position that he shouldn't have been able to open.

Mr S would now like Zodiac to put him *'back into the financial position he would have been in should these breaches and negligence not occurred'*.

What happened

In January 2021, Mr S sent an instruction to Zodiac to open a position of 3,000 GNOGW 11.5 May 2021 Warrant for him. Zodiac executed the trade on Mr S's behalf, as his agent, trading via a channel set up by Alvar Financial and their prime broker, May Bank. As well as acting as the underlying broker, Alvar also acted as the custodian.

After receiving confirmation of the trade from his execution broker, Zodiac, a little over 10 minutes later, Mr S asked them to open an additional position for a further 10,000 warrants in GNOGW. Again, Zodiac confirmed the trade a short while afterwards.

Mr S's underlying broker, Alvar, also provided daily statements to him. Despite Mr S's request for the further 10,000 GNOGW warrants, the statements that Alvar issued to him failed to reflect his additional instruction.

On 23 February 2021, Mr S asked Zodiac to close his GNOGW positions. Following his instruction, Zodiac closed the full position of 13,000 GNOGW. It was only at this point that Alvar corrected Mr S's statements, and the point at which Mr S says that he then became aware that he held 13,000, rather than 3,000, GNOGW. Alvar attributed a loss of \$45,375 as a consequence of the further 10,000 positions Mr S held.

During the period from 26 January 2021 to 23 February 2021, Mr S opened a position in 3,000 Fiverr International. The position remains open, and Mr S has significant losses attributed to it.

In August 2021, the 3,000 and 10,000 GNOGW positions were deleted from Mr S's statement. This altered his account's equity by effectively hiding the c\$59,000 loss that he'd suffered. The error was subsequently corrected by the time Alvar issued a further statement to Mr S on 15 December 2021.

Shortly afterwards, Mr S decided to formally complain to Zodiac. In summary, he said he was unhappy that they had failed to identify that his underlying broker had provided regular, inaccurate statements to him. Mr S also said that he relied upon those statement to make his trading decisions.

After reviewing Mr S's complaint, Zodiac concluded that they were satisfied they'd done nothing wrong. They also said, in summary, that it was Mr S's responsibility to ensure the accuracy of his statements that are provided by third parties. They explained that they had carried out the instructions that Mr S had provided and therefore shouldn't be held accountable for the losses that followed.

Mr S was unhappy with Zodiac's response, so he referred his complaint to this service. In summary, he repeated the same concerns that he'd set out to Zodiac. In addition, he also raised a similar complaint to Alvar.

Both complaints to Zodiac and Alvar were then considered by one of our Investigators. He concluded, in summary, that Zodiac hadn't treated Mr S unfairly because the nature of the relationship that he had with Zodiac meant it was his responsibility to ensure the accuracy of the statements that had been provided to him by other parties and that it was Zodiac's responsibility to execute the orders asked of it, which they had done.

In an attempt to resolve the complaint, our Investigator set out a settlement proposal to Mr S and Alvar of splitting the \$45,375 GNOGW loss equally between them both (Mr S and Alvar).

Following receipt of our Investigator's settlement proposal, Alvar explained that they agreed with the recommendation. Mr S, however, disagreed with our Investigator's findings and rejected the proposed settlement offer. In summary, he said that he didn't believe it was fair to attribute the losses equally between himself and Alvar. In addition, he also said, in summary:

- That splitting the loss 50:50 wasn't proportionate to the errors that the parties had committed. He went on to say that he didn't believe it was reasonable to attribute more than 10% of the GNOGW losses to himself. He felt that some of those losses should be borne by Zodiac.
- He felt it inconceivable that Zodiac didn't have access to either May Bank's or Alvar's back-office systems that would have allowed them to check any positions that they had placed.
- He said that, in his opinion, Zodiac had a responsibility to ensure that any orders that had been placed had settled correctly.

Our Investigator was not persuaded to change his view as he didn't believe that Mr S had presented any new arguments that he'd not already considered or responded to. Unhappy with that outcome, Mr S then asked the Investigator to pass the case to an Ombudsman for a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have summarised this complaint in less detail than Mr S has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free

alternative to the courts. Instead, I will focus on what I find to be the key issue here, which is whether Zodiac should have done more to check that the statements that Mr S received were accurate and also, whether they should be held accountable for the losses that Mr S says that he suffered by the incorrect statements that he received.

My role is to consider the evidence presented by Mr S and Zodiac in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. Having done so, I'm not upholding Mr S's complaint - I'll explain why below.

Just because Alvar issued incorrect statements which Zodiac then didn't reconcile doesn't automatically follow that I'd just award the \$45,375 compensation that Mr S has asked for. I'd need to consider what other information Mr S had, his responsibilities in managing his account and whether or not this failing did, on the balance of probabilities, mean that Mr S sustained losses that he otherwise wouldn't have.

There's no dispute that Mr S was trading as an execution only client – this meant Zodiac was not responsible for advising him or managing his positions. He alone was responsible for deciding how much money to deposit, when to open trades and on what markets, monitoring those positions, and when to close them. So, despite what Mr S may have said in his complaint, Zodiac were not responsible for reconciling his statements.

Having looked at the terms of Mr S's agreement with Zodiac, it seems clear to me that it's the consumer's responsibility to ensure the statements they receive from the underlying broker are accurate – that means it's up to Mr S to check, and not Zodiac. I'm satisfied that this is covered in section 3 of Zodiac's terms where it states: *"You are responsible for the investment decisions that you make when you engage our services as an execution-only customer, accordingly we accept no responsibility for the monitoring of your portfolio"*. Moreover, I believe Zodiac make it clear that it's the consumers responsibility to check the information that they receive following any trades placed – this is covered in clause 4.3.2 where it says: *"It is solely your responsibility to regularly access and review the information set out in clause 4.3.1 to ensure that it corresponds with your own records"* (Clause 4.3.1 explains that once Zodiac have executed an order for the consumer, they will receive information from the broker setting out details of the transaction).

As I've already explained, Mr S asked Zodiac to open a number of positions for him on GNOGW. Zodiac executed those orders correctly and in a timely manner, they also confirmed that to Mr S at the time the positions were opened. It would however seem that the inaccurate statements were as a result of the electronic feed failing at some point between May Bank and Alvar. However, I can't hold Zodiac responsible for that.

I therefore can't conclude that Zodiac have done anything wrong and because of this, I'm not upholding Mr S's complaint.

My final decision

I'm not upholding Mr S's complaint and as such, I won't be instructing Zodiac Partners Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or

reject my decision before 7 May 2024.

Simon Fox
Ombudsman