DRN-4420725

The complaint

Mr D complains that Monecor (London) Ltd, trading as OvalX, unfairly closed his spread betting position and incorrectly advised him that the shares couldn't be sold.

Mr D would now like OvalX to recompense him for the $40,000 that he says he's lost because of their actions.

What happened

For a number of years, Mr D held a spread betting position in Global Ports plc, amounting to around 70,000 shares; those shares were later suspended from trading on the London Stock Exchange (LSE). In February 2023, Delo Group, one of the major shareholders in Global Ports, announced their intention to acquire the company. Mr D has explained that OvalX weren't aware of this development, so he took it upon himself to contact a market participant and explained to them that he held a spread bet position worth 70,000 shares. Mr D states that the market participant agreed to purchase those Global Ports shares from OvalX at $2.00 per share, a loss of 50% from Mr D's entry price of $4.00 per share.

After highlighting the arrangement that he'd come to with the market participant, OvalX sold 50,000 of his 70,000 position. However, OvalX stated that they were unable to sell the remaining 20,000 shares. OvalX went on to explain that the remaining shares were being held as a hedge and were held with a bank, who I shall call Firm A, who had a relationship with their hedging broker, Maybank. OvalX stated that Firm A refused to sell or move the 20,000 shares to another broker to facilitate a sale.

OvalX were informed that the market participant's offer to pay $2.00 per share would expire on 11 April 2023, but despite their best efforts, OvalX said that Firm A wouldn't approve the sale or movement, resulting in the instruction being withdrawn because the deadline elapsed. On 13 April 2023, OvalX informed Mr D that they would be closing his remaining position (20,000) at zero.

Shortly afterwards, Mr D decided to formally complain to OvalX. In summary, he said he was unhappy that they'd failed to sell all of the 70,000 shares. After reviewing Mr D's complaint, OvalX concluded they were satisfied that they'd done nothing wrong. They also said, in summary, that as third parties hadn't approved the movement or sale of the remaining 20,000 shares, OvalX were unable to settle the transaction by the market participants' deadline. In addition, OvalX said that in their opinion, they had made all reasonable efforts in attempting to resolve the issue but the outcome was outside of their control. OvalX also pointed to the 'force majeure' clause in their terms and conditions which they felt covered this event.

Mr D was unhappy with OvalX's response, so he referred his complaint to this service. In summary, he repeated the same concerns which were that he didn't think it was fair that he'd suffered a loss because OvalX had failed to sell the Global Ports shares prior to the deadline. He went on to say that he was unconvinced by OvalX's reasons about why they

couldn't sell the remaining shares and said that he wondered whether OvalX had actually sold these shares and made a profit of $40,000.

The complaint was then considered by one of our Investigators. He concluded that OvalX hadn't treated Mr D unfairly and that from what he'd seen, OvalX had made all reasonable efforts to facilitate the sale.

Mr D, however, disagreed with our Investigator's findings. Unhappy with that outcome, he 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 D 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 OvalX acted fairly and reasonably when processing the Global Ports share sale for Mr D.

My role is to consider the evidence presented by Mr D and OvalX 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. And, having done so, I'm not upholding Mr D's complaint and whilst I'm not sure I can add a great deal more than our Investigator has already set out - I'll explain why below.

I've looked very closely at all of the submissions made by both parties, and in reaching my conclusion, I've also listened to the telephone call that Mr D had with our Investigator on 26 January 2024, where he set out the wider background to his complaint. Having listened to that telephone discussion, I wanted to acknowledge that I very much recognise Mr D's strength of feeling about this matter and I do appreciate the financial impact that he says this issue has had on his family.

From what I've seen, the Global Ports stock was delisted from the LSE and Mr D's remaining 20,000 share position was closed out at a price of zero on 13 April 2023 and that's reflected on Mr D's statement that OvalX have shared with this service. This was a spread bet position where OvalX's hedging broker, Maybank, held 50,000 shares in a custody account and as such, they had control over the movements in and out of that specific account – and it seems that's why they had little trouble in facilitating the initial sale. However, the sale of the remaining 20,000 shares were more problematic because they were held as a SWAP position between Maybank and Firm A. As such, Maybank had to participate in a trade with Firm A. That subsequent transaction was subject to a different sign off process than what was needed for custody account transfers.

Whilst it would seem that OvalX were able to facilitate a partial sale of the position (50,000 shares), it would appear that despite their efforts, they were prevented from selling the remaining shares due to circumstances beyond their control – that is, the prime broker where the underlying shares were held didn't receive the internal approvals necessary within the timescales needed to facilitate the trade of those shares before a deadline expired shortly ahead of the shares delisting from the LSE. OvalX have shared the messages that they exchanged with the respective parties during their attempts to facilitate the transaction and from what I've seen, OvalX acted reasonably in their endeavours to try and resolve this for Mr D.

I've looked closely at Oval X's terms and conditions, and in section 6 clause 6.1 it states:

6.16 Notwithstanding anything to the contrary in this Agreement, if there is a Force Majeure Event, a Disruption Event or we determine that a Hedging Disruption has occurred, or may occur, (including a Hedging Disruption which is a result of any actual or imminent delay, disruption, suspension, or reduction in any payment or settlement in respect of any transaction or asset we deem necessary to hedge our Trade price risk, whether such Hedging Disruption arises directly or indirectly from the failure of a hedging counterparty to perform its obligations or otherwise), then in these circumstance we shall not be obliged to make payments to you to the extent our ability to do so is restricted by these events and you will be liable to us for any increased costs or expenses resulting from any such Hedging Disruption (including any costs of unwinding, establishing or re-establishing a hedge) and we may upon notification of such costs to you deduct them from your Trading Account(s) or demand payment of such costs directly from you.

In addition, in OvalX's Market Disruptions policy, it states (in section 10) that a 'disruption event' is any event which disrupts the trading of the underlying security or trading on the Exchange, including the suspension of or limitation of trading by reason of regulatory intervention. Section 10.3 of the policy goes on to state that 'in the event of a suspension of, or another disruption event relating to, the underlying market, we reserve the right to, but are not obligated to, value the relevant trade at zero'.

So, it would seem that OvalX was within its rights to close the trade out at zero under either of these sections of their relevant terms, both their Market Disruption or Hedging Disruption policies. However, Mr D says that he's unconvinced that OvalX didn't sell the remaining 20,000 shares and profit from them and he's also of the view that OvalX's use of the Force Majeure term above is unconvincing given the circumstances - but, I don't agree. From what I've seen of the evidence presented to this service, the sale of the shares couldn't be facilitated by the deadline set, and as such, this resulted in Mr D's remaining position being valued at zero. OvalX's terms allowed for this. But, I've seen nothing to persuade me that this was as a result of something that OvalX didn't do and it's for that reason that I've concluded that OvalX have treated Mr D fairly.

Even though OvalX rejected Mr D's complaint, they subsequently offered him $10,000 as a gesture of goodwill. OvalX say that offer wasn't an admission of any liability, and they are satisfied that they acted appropriately in the circumstances. OvalX went onto say that as their business is going through an orderly winddown, the aim of the offer was to try and resolve all outstanding complaints prior to their business operations ceasing but OvalX states that Mr D rejected that offer to bring matters to a close.

I contacted OvalX to understand if that offer was still available to Mr D but OvalX have stated that as he didn't accept their offer, it is no longer available. I do appreciate this will very much come as a disappointment to Mr D but because I've not seen anything to persuade me that OvalX treated him unfairly, I am not going to instruct OvalX to do anything to settle the complaint.

My final decision

I'm not upholding Mr D's complaint and as such, I'm not instructing Monecor (London) Ltd, trading as OvalX, to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 19 August 2024.

Simon Fox
Ombudsman