

THE COMPLAINT

Mr B complains that American Express Services Europe Limited (“Amex”) will not reimburse him money he says he lost when he fell victim to a scam.

Mr B is represented by Refundee in this matter. However, where appropriate, I will refer to Mr B solely in this decision for ease of reading.

WHAT HAPPENED

The circumstances of this complaint are well known to all parties concerned, so I will not repeat them again here in detail. However, I will provide an overview.

Mr B says he has fallen victim to an investment scam involving the purchase of “*a number of pictures by the artist Miss Aniela*” (hereinafter the “Artwork”). Mr B says the company he purchased the Artwork from, Smith & Partner (“S&P”), was not legitimate. The payments concerned in this case were made to S&P using Mr B’s Amex credit card: £1,500 (11 January 2022) and £27,000 (14 January 2022).

Mr B disputed the above with Amex. He argued, in short, that he was entitled to reimbursement under the chargeback scheme and section 75 of the Consumer Credit Act 1974, on the grounds of misrepresentation and breach of contract. Unhappy with Amex’s response, Mr B raised a complaint, which he later referred to our Service.

One of our investigators considered the complaint and did not uphold it. As Mr B did not accept the investigator’s findings, this matter has been passed to me to make a decision.

WHAT I HAVE 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.

Having done so, I find that the investigator at first instance was right to reach the conclusion she did. This is for reasons I set out in this decision.

I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

Further, under section 225 of the Financial Services and Markets Act 2000, I am required to resolve complaints quickly and with minimum formality.

Was S&P a scam company?

The issue about whether S&P was a scam company is complex. Therefore, I will not be making a determination on this point. In any event, I am satisfied that Mr B’s complaint fails for other reasons.

Section 75 of the Consumer Credit Act 1974

(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor

...

(3) Subsection (1) does not apply to a claim—

a) under a non-commercial agreement,

b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000 ...

Terms and conditions

Below is a section from S&P's terms and conditions which Mr B provided Amex:

5. Products

...

5.6. The decision to purchase the Products is your own.

- *5.6.1. We do not make any promise or guarantee that the products will be appropriate for your needs or desires*
- *5.6.2. **We offer no guarantee as to the value of the Products [my emphasis added]** and you should be aware that any Product may decrease in value at any time after they have been purchased from Us.*
- *5.6.3. **We do not make any guarantee that we will be able to sell the products for you in the future if you ask us to [my emphasis added].** We do offer a resale service, but we will need to agree the terms of that specifically in the future if you wish to use this service and we agree to provide it.*

Has there been a misrepresentation and/or breach of contract?

Mr B argues that he has section 75 rights because S&P made false representations to him which induced him into entering a contract with S&P, where he suffered a loss as a result. Further or alternatively, Mr B argues that S&P breached his contract with them. To assess Mr B's arguments, I have considered, amongst other things, the terms and conditions set out above. Other than Mr B's testimony, the terms and conditions are the most reliable documentary evidence available which sheds some light about potential representations made and contract terms.

Mr B's arguments surrounding misrepresentation and breach of contract relate to, in short:

- The value of the Artwork.
- Resale of the Artwork for a profit or otherwise.
- Access to the Artwork.

Regarding value, I am not persuaded that there has been a misrepresentation or breach of contract in relation to this assertion. I say this because paragraph 5.6.2 of the terms and conditions state that S&P do not offer any guarantees as to the value of the Artwork. In fact, the terms go further and speak to the Artwork potentially depreciating in value. Therefore, having considered the terms and conditions, I cannot conclude that S&P made representations to Mr B which contradicted paragraph 5.6.2 in the way Mr B asserts. It follows that I am also not satisfied there was a breach of contract in relation to this point – indeed there is nothing in the terms and conditions which suggest S&P provided guarantees about the value of the Artwork.

Whilst there might be other evidence to demonstrate the Artwork was worthless, this does not prove that there has been a misrepresentation or breach of contract in the way Mr B has argued, as the terms and conditions do not support this proposition.

Regarding resale, I am not persuaded that there is a misrepresentation or breach of contract in relation to this assertion. I say this because paragraph 5.6.3 of the terms and conditions state that S&P neither offer a resale service nor make any guarantee that they will be able to sell the Artwork if asked – unless certain criteria is met, which I have not seen any evidence of. Therefore, having considered the terms and conditions, I cannot conclude that S&P made representations to Mr B which contradict paragraph 5.6.3 in the way Mr B asserts. It follows that I am also not satisfied there was a breach of contract in relation to this point – indeed there is nothing in the terms and conditions which suggest S&P provided unqualified guarantees about selling the Artwork.

Regarding access, I have not seen any persuasive evidence of Mr B attempting to access his Artwork and being unsuccessful.

The High Court handed down a judgment on 4 October 2024. This judgment followed a hearing regarding an application by liquidators of S&P to continue a freezing order against, amongst others, the former director and shareholder of S&P. Refundee has made reference to the liquidators. However, I cannot take the judgment into consideration. Whilst the liquidators may have made submissions about the Artwork, the hearing and following judgment were only concerned with the continuation of a freezing order. Further, the judge stated in his judgment that issues around the value of the Artwork and whether S&P were a scam company, were all matters for trial.

Chargeback

Chargeback is an entirely voluntary scheme, which means firms are under no formal obligation to raise a chargeback claim. The relevant scheme operator can arbitrate on a dispute between a merchant and customer if it cannot be resolved between them. However, such an arbitration is subject to the rules of the relevant scheme – so there are limited grounds on which a chargeback can succeed.

Given the terms and conditions mentioned above, I am not persuaded that there were reasonable prospects of a chargeback claim succeeding at the time.

Should Amex have intervened in Mr B's payments?

If it could be argued that Amex ought to have intervened in Mr B's payments, I am not persuaded such interventions would have made a difference in the circumstances. I say this because there would not have been information available at the time of the payments which would have caused Amex and/or Mr B cause for concern.

Conclusion

Taking all the above points together, I do not find that Amex has done anything wrong in the circumstances of this complaint. Therefore, I will not be directing Amex to do anything further.

In my judgment, this is a fair and reasonable outcome in the circumstances of this complaint.

MY FINAL DECISION

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 December 2025.

Tony Massiah
Ombudsman