Financial Ombudsman Service

complaint

Mr P complains that Activtrades Plc closed a number of his positions and caused him a significant financial loss.

background to complaint

Mr P opened an account with Activtrades in November 2014. In December he began trading Contracts for Difference (CFDs) on a particular currency pair. Initially, these were profitable.

But on 9 December the market moved against him and he incurred significant unrealised losses. As a result, Mr P had insufficient margin left in his account and Activtrades closed Mr P's positions. This crystallised his losses.

Mr P complained – he didn't think Activtrades was allowed to close his positions and cause him to lose his money. He thought it could've opened up counter positions and allowed him to continue trading. He wanted his initial deposit of €13,000 to be refunded to him.

One of our adjudicators looked at his complaint. He didn't think it should be upheld. He said that the terms and conditions which Mr P agreed to when he opened his account allowed Activtrades to close positions when there was insufficient margin on the account. In particular, the terms said:

- Clause 19.2 said: *'when you open an account to trade contracts for difference we will set a level of margin for your account. You agree that we may close out your position automatically if your margin falls below a pre-agreed percentage of that level of margin'*; and
- Clause 19.3 said: *'you must maintain a margin to cover your position on intra-day trading (the Intra-day Margin) and, if you hold a position overnight, you must hold an overnight margin (the Overnight Margin).'*

He also said that the margin requirements were provided to Mr P in an email in November 2014, when Mr P opened his account. In this email, Activtrades said:

'In the case of a margin call the level of the "Trade Out" (automatic closure of your trading, beginning with the trade with the greatest loss, until the margin reaches the required level once again) is fixed at 30% of the margin level.'

The adjudicator said that it wasn't reasonable to expect Activtrades to have opened counter positions to Mr P in order to allow him to continue trading. He said that Activtrades provided an execution only service, which means that they wouldn't proactively open positions on Mr P's behalf, or provide him any advice about which positions to open or close. He said that this was clearly explained in the client agreement:

'We will not provide personal recommendations or advice on the merits of any specific investment transactions. We deal on an execution-only basis and do not advise on the merits of particular transactions. When giving instructions you must rely on your own judgement.'

Mr P didn't agree with the adjudicator:

- He didn't think it was enough for Activtrades to *'paste disclaimers on their homepage'* which said that his money was at risk or *'losses can exceed investments'*. Mr P said that Activtrades should *'tell customers explicitly how they can avoid those risks'*;
- He couldn't *'find a model calculation'* on Activtrades homepage which said how many *'lots'* he could buy, with how much money, and at what point a close-out would occur;
- That '*1 lot*' at Activtrades amounts to '*100 lots*' elsewhere – so the risk with Activtrades was 100 times higher than anywhere else. He was never informed of this;
- Activtrades profited from his losses and his inexperience;

The adjudicator didn't think these points changed his opinion. He considered that Mr P was made aware of the significant risks involved with CFD trading, and had agreed to assume those risks. He also didn't think that Activtrades was obliged to advise clients how to avoid those risks, nor that it had to explain to Mr P how its products differed from those of its competitors.

my findings

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 agree with the adjudicator and for essentially the same reasons.

I'm afraid that I have very little to add to what the adjudicator has already said. Mr P made other points after the adjudicators view about the applicability of EU or German law. I'm satisfied that these points aren't relevant to my decision about Mr P's complaint. I must decide this case based on what I consider to be fair and reasonable in the circumstances.

Although I've considered Mr P's comments, I'm sorry to tell him that I'm satisfied that Activtrades actions were reasonable.

When Mr P opened his account with Activtrades, he answered a number of questions in order to establish whether the account was *appropriate* for him. This process is explained in the client agreement which says that the appropriateness assessment is carried out by asking *'certain questions'* so that it can *'assess your knowledge and experience of the relevant product or service'*.

As part of this process, Mr P said that he had in the 5 years preceding the application:

- Traded daily in shares;
- Traded daily in Forex, CFD and spread betting;
- Traded monthly in futures and options
- Had savings of between €50,000 and €100,000;
- Had pre-tax income of €25,000.

As a result of these answers, Activtrades considered that the account was appropriate. I'm satisfied that this was reasonable.

And I'm satisfied that Mr P was made aware throughout the account opening process of the significant risks involved with CFD trading, including through a *Risk Disclosure Notice* which specifically drew his attention to the risks of margin trading. He chose to accept those risks.

Activtrades was obliged to make him aware of the risks of CFD trading, and establish whether the account was appropriate. It wasn't obliged to advise him on how to avoid the risks of CFD trading – assuming that avoiding these risks was possible.

As part of the account opening process, Mr P had to agree that he had read and understood the client agreement. This clearly sets out what will happen if a client's positions fall below the required margin. And I'm satisfied that the evidence I've seen shows that when he opened his account he was told that if his positions fell below 30% of the margin level, they would be closed automatically. This is what happened.

I don't think whether or not Activtrades made a profit from closing Mr P's positions is relevant. And I should add that the loss wasn't caused by Activtrades closing his positions. The loss was caused by the market moving against Mr P and the trades he had placed. It is entirely possible that if Activtrades hadn't closed Mr P's positions when it did, his loss could've been even greater.

my final decision

For the reasons I've given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 February 2016.

Alessandro Pulzone
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