

UFFIĊĊJU TAT-TRIBUNAL GĦAL  
SERVIZZI FINANZJARJI  
ĊENTRU MALTI TA' L-ARBITRAĠĠ  
33, TRIQ NOFSINHAR,  
VALLETTA VLT 11



MALTA

OFFICE OF THE FINANCIAL  
SERVICES TRIBUNAL  
MALTA ARBITRATION CENTRE  
33, SOUTH STREET,  
VALLETTA VLT 11

Dr. Nicholas Valenzia LL.D.  
Chairman

Dr. Joseph Azzopardi LL.D  
Membru

Mr Robert Ducker B.Sc. (Hons) Financial Services (UMIST), ACIB  
Membru

FST 01/24

Mr Joseph Grioli, Mr Sandro  
Bianco, Mrs Lyn Farrugia  
Gaskell, Ms Kimberly de  
Thomas and Mr Ray  
Strafrace

vs.

Malta Financial Services Authority

Today 27<sup>th</sup> November 2024,

The Tribunal

Having seen the appeal application lodged by Mr Joseph Grioli, Mr Sandro Bianco, Mrs Lyn Farrugia Gaskell, Ms Kimberly de Thomas and Mr Ray Strafrace (the 'Appellants'), wherein the Appellants;

1. Referred to the issuance of Warning Letters by the Malta Financial Services Authority ('MFSA') dated the 27th March 2024 informing each appellant Director that it had taken note of the civil lawsuit filed by the Consumer Financial Protection Bureau ('CFPB');

2. Contested the issuance of the Warning Letters in terms of Article 21 of Chapter 330 of the Laws of Malta, on the basis of the Authority's:
  - a. Failure to apply the principles of Natural Justice;
  - b. Manifestly unfair treatment of the Directors;
  - c. Misapplication of Guidance on the Fitness and Propriety Assessments and Abuse of MFSA's discretion.

Having seen the reply of the MFSA wherein it was stated:

1. That preliminarily no appeal lies from a Warning Letter issued by the Authority and consequently the Tribunal does not have jurisdiction to hear and decide on this appeal on the basis of the proviso to Article 21 (9) of Chapter 330 of the Laws of Malta;
2. That the appeal should be rejected on the basis of lack of jurisdiction of the Tribunal;
3. That in relation to the merits, the appeal of the Warning Letters is unfounded and should be rejected with costs;
4. That the Authority was justified in issuing the Letter since it acted on information acquired from legal proceedings and the Order which could seriously impact the integrity of the Appellant Directors;
5. That the Order emphasised that the payday lending operation were subject to U.S federal and/or state law and thus the operations carried out in the U.S violated the specific legislation of that jurisdiction which was of concern to the Authority since the directors of the Maltese institutions had an obligation to ensure that operations carried out in the U.S should be carried out in a sound and prudent manner which is in conformity with the applicable legislation.

By virtue of a decree of this Tribunal dated the 24<sup>th</sup> July 2024, it was noted that the Chairperson of this Tribunal had previously been engaged by one of the Appellants in the appeal, Sandro Bianco, on matters of a civil nature and even though such matters did not relate in any way to the role of the appellant in the present case the Chairperson, Advocate Ian J. Stafrace abstained and the appeal was adjourned for the Tribunal to be alternatively presided.

Having seen the submissions of the MFSA wherein it was stated:

1. That the submissions are limited to the preliminary plea filed by the MFSA regarding the lack of jurisdiction of the Tribunal;
2. That in relation to the Appellants appeal on the basis of Article 21 of Chapter 330 of the Laws of Malta, the Warning Letters do not constitute a Decision for the purposes of Chapter 330 and hence no appeal shall lie from the said Warning Letters;
3. That the Letters are warning letters and shall not be considered decisions for the purposes of Article 21 of Chapter 330 of the Laws of Malta in view of the fact that no penalty was imposed, and the Authority limited itself to issuing a warning, in terms of law no appeal lies from such warning;

4. That for these reasons the appeal should be rejected on the basis of lack of jurisdiction of the Tribunal.

Having seen the submissions of the Appellants, in response to the MFSA's submissions, wherein it was stated:

1. The submissions are being made in response to the Note of Submissions filed by the MFSA and with regards to the preliminary plea filed by the Authority on the lack of jurisdiction of the Tribunal to hear this appeal in terms of Article 21 of Chapter 330 of the Laws of Malta since the proviso to Article 21 (9) provides that:

*“no appeal shall lie from any decision imposing a penalty not exceeding two hundred and thirty-two euro and ninety-four cents (€232.94) and from any reprimand, warning or other similar disciplinary sanction or measure”*  
(emphasis added by Appellants)

2. That in response to the Authority's first submission on the fact that the Warning Letters do not constitute a decision for the purposes of Chapter 330, the Appellants held that the Authority's administrative act of issuing the Warning Letters resulted from a formal and structured decision-making process within the authority;
3. That the wording of the letter itself states that 'the Authority has decided the issue';
4. That the issuance of a letter by an administrative authority such as the MFSA is always a result of a decision taken by that Authority;
5. That in the absence of any such definition under Maltese Law or jurisprudence to support this definition the legal focus should be on the nature of the act in questions and how that act should be treated within our legal framework;
6. That the performance by the MFSA of its legal and regulatory functions should be treated as "administrative acts" which are defined in the Administrative Justice Act, Chapter 490 of the Laws of Malta;
7. That the Warning Letters cannot be said to be "*intended for internal organisation or administration within the said public administration*" and that they had a direct and material impact on the rights, liberties and interests of the individuals concerned;
8. That the definitions of "administrative acts" are further underpinned by the definition applied by the Council of Europe;
9. That the letter issued by the Authority informing director that a certain matter has impinged on their integrity and may affect the director's 'fit and proper' status to hold a position which requires regulatory approval is a grave matter, not merely a 'note in the file';

10. That the fact that the Authority chose to issue a letter to the directors, in itself, elevated the Authority's 'concern' to the status of a formal notice';
11. That whatever the nature of the notice might be, once it was issued, any one of the Appellants who is applying for any new directorships/regulated positions in the future, will need to disclose the existence of the letter;
12. That all the Appellant's livelihood is derived from the regulated financial services industries;
13. That the Authority's submission that the Warning Letters do not constitute a "decision" is untenable both in fact and at law;
14. That in response to the Authority's second submission the Appellants held that whilst there is no controversy in the text of Article 21 of Chapter 330 of the Laws of Malta in the sense that "*no appeal shall lie from any decision imposing a penalty not exceeding two hundred and thirty-two euro and ninety-four cents (€232.94)*, it should be similarly uncontroversial that the facts of the present case do not involve any appeal from a decision relating to the imposition of any pecuniary penalty imposed by the Authority;
15. That the appeal is based on the Authority's administrative acts that resulted in a decision that impinged on the appellants rights, liberties and interests;
16. That more relevant to the case at hand is the second limb of Article 21 (9) which provides that no appeal shall lie "*from any reprimand, warning or other similar disciplinary sanction or measure*";
17. That according to the Appellants this exclusion does not apply to the case at hand and could have never been intended by the legislator to have that effect;
18. That the Financial Services Tribunal was established by virtue of the Malta Financial Services Act with the intention of having it perform the functions of a specialised administrative tribunal, covering a wide range of special laws regulating financial services in Malta;
19. That Article 469A provides that no action for judicial review of administrative action may be brought under that provision "*where the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is provided for in any other law*";
20. That according to the Appellants they were faced with two options either (i) filing the present appeal with the Financial Services Tribunal in terms of Article 21 of the MFSA Act, or (ii) filing a case for the judicial review of administrative action under 469A, with the risk of having it thrown out on the basis of the consideration that the appropriate remedy should be sought by way of appeal to the Financial Services Tribunal;

21. That in the view of the Appellants' the remedy available under the MFSA Act is the appropriate channel for redress, specifically based on the subject-matter of the appeal, and the challenging of the proper application of the applicable rules by the MFSA.
22. That it is the Financial Services Tribunal that possesses both the jurisdiction and competence to consider the basis on which this appeal is founded, being rights, liberties and interests that are largely viewed within the appellants' involvement within the Maltese financial services industry;
23. That whilst it is clear to the Appellants that the Tribunal cannot exercise jurisdiction where it is legally impeded to do so, it is their view that the Warning Letters do not constitute a "*reprimand, warning or other similar disciplinary sanction or measure*" as intended by Article 21 (9) of Chapter 330 of the Laws of Malta;
24. That the Warning Letter served to advise the individuals concerned that, on the basis of the information in the Authority's possession, the Authority had decided to make a "file note" in their regard for future consideration;
25. That such action cannot be said to constitute a reprimand or an administrative or disciplinary measure. Indeed, the Authority had explicitly, albeit verbally, provided this specific assurance to the Appellants following the issuance of the Warning Letters;
26. That the Appellant's submit that the Authority's secondary and alternative submission that the letters represent formal "Warning Letters" as intended by Article 21 (9) is untenable in fact and at law;
27. That based on these observations the Appellant's submit the following concluding considerations (a) if there is any doubt as to whether or not the exclusions to Article 21 (9) of the MFSA Act apply to the case at hand, an exhaustive assessment of the facts should be undertaken by the honourable Tribunal, based on a careful discernment of the evidence submitted by the parties; and (b) without prejudice to the submission set out in the immediately preceding paragraph (a) above, if this honourable Tribunal is of the view that its jurisdiction over the case at hand is excluded by the provisions of Article 21 (9) of the MFSA Act, the appellants humbly request the Tribunal to give clear and specific reasons and also the grounds on which its decision is based, in accordance with the provisions of Article 3(2)(h) of the Administrative Justice Act (Chapter 490 of the laws of Malta), enabling the appellants to pursue alternative redress for their grievances, including but not limited to the remedies available to them in terms of Article 469A of the Code of Organization and Civil Procedure.

That the Tribunal having taken note of the aforementioned application, responses and submissions hereby decides that:

1. The Tribunal notes that Article 21 (9) of the Malta Financial Services Authority Act, Chapter 380 of the Laws of Malta clearly and explicitly outlines the limited grounds upon which one may appeal to the Tribunal:

(9) The question for the determination of the Tribunal shall be whether, for the reasons adduced by the appellant –

(a) the competent authority has, in its decision wrongly applied any of the provisions of this Act, or any regulations issued thereunder;

(b) the decision of the competent authority constitutes an abuse of discretion or is manifestly unfair:

Provided that the discretion of the competent authority may not, so long as it has been exercised properly, be queried by the Tribunal:

Provided further that **no appeal shall lie** from any decision imposing a penalty not exceeding two hundred and thirty-two euro and ninety-four cents (€232.94) and **from any reprimand, warning or other similar disciplinary sanction or measure.**

On the basis of the above, the Tribunal rejects the Appellant's Appeal of the 26<sup>th</sup> April 2024.

Costs of this appeal are to be borne by the Appellant.



Dr. M. Valenzi

Illegale e Arbitrario.