

complaint

Mr I, on behalf of Mrs I, complains that comments made by Hargreave Hale Limited (“HH”) to Mrs I’s CFD account provider (“A”) caused A to close out an open position on Mrs I’s account at a substantial loss. Mr I says that had it not been for the comments made by HH, A wouldn’t have closed Mrs I’s open position out at the time that it did (being before 9.00am). Instead, A would have allowed him to 2.00pm to take ‘corrective action’ and what he would have done is close out the position manually – before 2.00pm – at a ‘higher’ price. Mr I estimates Mrs I’s loss, as a result of HH’s comments to A, to be in the region of £105,000.

background

This complaint was considered by one of our adjudicators who came to the view that it shouldn’t be upheld. In summary she said:

- She thought the comments made by HH to A didn’t cause A to close out Mrs I’s position. Nor did the comments amount to a breach of confidentiality.
- HH had taken reasonable steps to contact Mr I and to make him aware that he needed to take urgent and immediate action to avoid Mrs I’s position being closed out.
- Whether or when to close Mrs I’s position was a matter for A and not HH.

Mr I didn’t agree with the adjudicator’s findings. Briefly he said:

- HH owed Mrs I a fiduciary duty and it caused panic by making untrue comments about Mrs I having positions open elsewhere to close (or unwind).
- He had previously always been given until 2-3pm to meet a margin call.
- It wouldn’t have been physically possible for him to meet the margin call immediately in any event.

The adjudicator responded to Mr I’s comments. Briefly she said:

- Although A may previously have allowed Mr I until 2-3pm to meet margin calls A was entitled (as set out in its terms and conditions) to insist that a margin call be met immediately.
- Mr I was made aware by HH, before its comments to A about which Mr I is complaining, that it was A’s intention to close Mrs I’s position imminently and that A was able to do so “*at their demand*”.
- HH’s comments to A, whether incorrect or a breach of confidentiality, weren’t the cause of A closing out Mrs I’s open position. This decision (in principle at least) had already been made by A before these comments were made, as demonstrated by the calls between HH and A, and HH and Mr I.

Mr I still didn't agree so the matter has been passed to me for review and decision.

my findings

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. However, having done so, I agree with the adjudicator. There's also not a great deal I can add to what's already been said.

It is clear that Mr I has very strong feelings about this complaint. He has provided detailed submissions in support of his view, which I've read and considered in their entirety. However, I trust that Mr and Mrs I will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised by Mr I in detail, but to set out my conclusions and reasons for reaching them.

First I make no finding on whether A had the right to close out Mrs I's position when and in the manner that it did, something that I appreciate Mr I has strong views about. This is because I'm simply considering to what extent, if any, HH's comments caused A to do what it did, in full or in part.

I've listened to the call recording between HH and A in which Mr I says HH provided information that was incorrect, information that Mr I says caused A to close out Mrs I's position.

But having considered this call in its entirety, and against the other calls made between Mr I and HH, HH and A, and in light of what A has said on this matter, I'm satisfied that HH's comments, whether correct or not, had no bearing on A's decision to close out Mrs I's position.

Before these comments were made, HH left a number of messages for Mr I to contact it urgently because A was looking to close out Mrs I's position. This leads me to conclude that the decision to close had already been taken by A unless urgent and immediate corrective action was taken by Mr I which, for whatever reason, he didn't do.

Secondly, before these comments were made, HH was able to make contact with Mr I to explain the urgency of the matter and his need to take urgent and immediate action to avoid Mrs I's open position from being closed. Again this leads me to conclude A had already taken the decision to close Mrs I's position unless urgent and immediate corrective action was taken by Mr I. Furthermore Mr I agreed, at the end of this call, to call HH back in five minutes with his proposal to avoid Mrs I's position from being closed out and, in my view, in the full knowledge that this was as much time as A was likely to allow him to put a proposal forward.

I accept that that HH doesn't dispute it made comments to A that were untrue (and possibly constituted a breach of confidentiality). But in summary I find that these comments didn't cause the loss Mr I (on behalf of Mrs I) is claiming. And given that HH has apologised for making these comments I find that it needs to do nothing more.

my final decision

My final decision is that I don't uphold Mrs I's complaint and I make no award.

I appreciate Mrs I will be disappointed by my conclusions. My final decision, however, represents the last stage of this service's dispute resolution procedure. Mrs I doesn't have to accept my decision and if she doesn't do so, she (or Mr I on her behalf) will be free to pursue legal action against Hargreave Hale Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 10 July 2015.

Peter Cook
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