DRN-4465422

The complaint

Mr L complains that he tried to buy some shares on FinecoBank SPA's platform, but as a result of a technical error he couldn't do so. He say that given the share price, he would've bought and sold those shares at a profit, and therefore FinecoBank has caused him a financial loss.

What happened

On 25 August 2021, at around 9pm, Mr L tried to buy 45,000 shares in a company called Salesforce, but the order wasn't executed. He tried again on 26 August 2021 at around 2.30 and 2.42pm, but both these orders were queued and subsequently cancelled by Mr L before they could be executed.

When Mr L's orders were queued, he raised the issue with FinecoBank at around 4pm, and a few minutes later was told that the issue that had caused the queueing of his orders had been resolved. Mr L did not end up buying the shares after this but raised a complaint.

FinecoBank looked into Mr L's concerns, but didn't agree to pay the compensation Mr L asked for. In recognition of the inconvenience, it offered him some commission free trades. Mr L remained unhappy and referred his complaint to this service.

One of our investigators looked into Mr L's complaint but didn't think it should be upheld. In summary, she said the first order wasn't executed because he had placed it after the market in New York had closed. Whilst she acknowledged FinecoBank's system clearly suffered from a problem on 26 August 2021, this was resolved fairly quickly. She said the fact Mr L never ended up buying the shares meant that the loss he was claiming was hypothetical, and not something this service would compensate for. She said that if Mr L had bought the shares after receiving the email to say the technical problem had been resolved, he would still have had an opportunity to make a gain – but he chose not to take that risk.

Mr L didn't agree. He gave a hypothetical scenario which he said was similar to his. He said that whether he 'bought any share or not after the system error was resolved is irrelevant'. He said that the fact he wasn't able to trade when he wanted stopped him making a gain or a loss. He accepted that when he wanted to trade that was only speculative, but now with the pricing data, it isn't speculative that he would've made a gain. He concluded by saying that FinecoBank didn't fulfil its contractual liability to provide a functioning platform, which he said resulted in his loss of investment income – and for that he should be compensated.

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.

Having done so, I'm sorry to disappoint Mr L, but I agree with the investigator and for broadly the same reasons. The issue with Mr L's claim is that the principle of investing requires a return that's commensurate, usually, with the risk that's been taken. Mr L is asking for compensation for an investment loss he hasn't suffered, because he never bought the asset

– so he never took any risk. Furthermore, even if I thought there should be some compensation, what Mr L is asking for is not in my view fair and reasonable, for the following reasons:

- The initial order to buy shares wasn't executed because he placed it after the market was closed. His second order, had it been executed, would've bought the shares at a price of around 271, which was very near the high of the day.

- Charts I've consulted on-line for the following day appear to show a significant drop in this share price – this would either suggest Mr L would've made a loss, or would've potentially held on to the shares for longer. Given that Mr L never bought the shares, neither of these questions can be answered. Mr L would not have known at the time how the share price would move, and I'm not persuaded using hindsight is fair.

For these reasons I'm not persuaded it would be fair and reasonable to ask FinecoBank to compensate Mr L for a hypothetical investment loss – and one which, on balance, may not have materialised even if Mr L's second purchase had gone through.

I would also add that whilst there is an expectation that trading platforms are fit for purpose, and allow consumers to buy and sell assets without interruption, there will be occasions when that isn't possible. In circumstances such as Mr L's, a key consideration is the length of any disruption and how quickly a firm puts matters right. It seems to me that in this case, the disruption was short lived – and yet once Mr L was notified that the platform was trading normally, he did not proceed with his transaction.

I note that FinecoBank has offered Mr L some commission free trades, and whilst I hope this is an offer it'll still honour, I'm not persuaded it would be fair and reasonable to award Mr L any compensation or make any money award.

My final decision

For the reasons I've given, I don't uphold Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 9 January 2024.

Alessandro Pulzone
Ombudsman