



Financial Services Ombudsman Scheme

Summary of the determination issued 3rd October 2015 in respect of a claim for financial loss resulting from the miss-sale of a structured financial product

Complaint made to the Scheme

The complainant, an Isle of Man resident, alleged he had been advised to invest in a complicated financial product which was described as an alternative to Building Society deposits and to have guaranteed his capital. The "counterparty" through which the investment was made was Lehman Brothers which became insolvent shortly after the investment was made and the complainant lost a substantial part of his investment.

The structured product was one of the derivative investments invented in the early years of the 21st century to attract investment. It was linked to stock market performance. It was underwritten by an American (in this case) investment bank.

The complaint was made in 2009. It took many years to come to determination, in part, at least, because the Complainant made a complaint to the UK FOS and the IoM Complaint was put on hold pending determination in UK.

Summary of the complaint

The Complainant stated that the product had been miss-sold for the following reasons:

- (a) the risk profile of product did not match Complainant's risk profile;
- (b) limited, wrong, or misleading product information was supplied to the Complainant in advertisements and at meetings and both before and after (during cooling off period) the investment was made into the product;
- (c) the Supplier sold outside its licence;
- (d) no warning given that there could be loss;
- (e) the complex nature of, and risks relating to product were not explained by the Supplier to Complainant; and
- (f) the Supplier had been negligent or fraudulent.

Summary of the Supplier's Response

The Supplier advised that:-

- (a) the risk profile of the product was in line with that of the Complainant;
- (b) the Complainant was an experienced and sophisticated investor and of sufficient experience to understand and accept the complexity and risks of the product;
- (c) the complainant had invested in similar products on three occasions previously without any advice from Supplier or anyone else;
- (d) the advert was neither misleading nor relied upon;

- (e) there was no duty on Supplier to check on financial strength of the counterparty or Provider;
- (f) the Supplier was entitled to rely on the risk rating provided by the Provider; and
- (g) they deny any negligence or fraud.

Summary of findings

The Adjudicator found that:-

1. The Complainant invested £100,000 into a Meteor structured product which was invested with Lehman Brothers as Counterparty.
2. The Complainant was an experienced and sophisticated investor who was able to, and did, investigate, analyse, and understand complicated investment data himself.
3. The Complainant did not rely on the advert (whether or not it was misleading or contained misrepresentations) as he had long discussions subsequent with the Supplier before purchasing the product from the Provider.
4. There were prominent warnings in all of the literature, not just hidden small print, of the possible risk of loss of capital if the Provider counterparty became insolvent. Indeed the Complainant had himself invested larger sums previously with a different Provider into similar structured "guaranteed products" and had encashed it in circumstances to avoid or limit loss and give a lower base starting point for capital gains, and reinvested. In all cases identical warnings as to counterparty risk were highlighted prominently.
5. Whilst it was regrettable that the Supplier sold outside its licence; that had been dealt with by the Regulator and no financial penalty imposed. This breach of regulations did not contribute to the investment decision or loss.
6. The advert and all publicity material and prospectus all were silent as to the identity of the Counterparty but alleged a specific level of credit rating. Unbeknownst to the Supplier and the Complainant, but known to the Provider, the Counterparty had its credit rating reduced by one level between the investment decision being made and the funds being sent to the Provider. The Provider failed to draw this to the attention of Supplier or Complainant. It was not the duty of the Supplier in the circumstances to check this. (Note that the UK FOS had said in cases involving the same provider and counterparty that the responsibility generally lay with Supplier and not the Provider – however there were distinguishing features in this Complaint).
7. There was no evidence of fraud or negligence.

Award

The complaint was not upheld.