

**The Danish Financial Complaint Board**

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[Translation]

Case no. 102/2021 /PM

**DECISION**

of

20 December 2021

**COMPLAINANT:**

**RESPONDENT:**

Finansiell Stabilitet (Københavns Andelskasse)

**SUBJECT OF COMPLAINT:  
EXPLANATORY TEXT:**

Reversal of payment – Funds transfer, reversal of payment  
Claim for reversal of payment made to third-party bank  
account. Absence of customer relationship between  
complainant and bank.

**COMPOSITION OF THE  
COMPLAINT BOARD:**

Bo Østergaard, Jesper Claus Christensen, Karin Duerlund,  
Morten Bruun Pedersen, Anna Marie Schou Ringive.

**DATE OF MEETING:**

8 December 2021

## **Introduction**

Claim for reversal of a payment made to a third-party account with Københavns Andelskasse. The absence of a customer relationship between the complainant and Københavns Andelskasse.

## **Facts of the case**

The complainant, who resides in Italy, was a customer of a foreign bank, P. The complainant was not a customer of Københavns Andelskasse.

The complainant has stated that he was contacted by S1 and S2, companies providing investment advice and investment services. On 25 February 2018, as instructed by S1 and S2, the complainant transferred EUR 25,000 to an account -028 with Københavns Andelskasse. The amount was to be invested. The complainant has produced a transfer receipt from P for the transfer of EUR 25,000 to account no. -028 with Københavns Andelskasse for the benefit of an account holder, S3.

On 13 September 2018, Finansiell Stabilitet assumed control of Københavns Andelskasse under the Danish Act on Restructuring and Resolution of Certain Financial Enterprises.

After the transfer, the complainant tried in vain to make S1 and S2 repay the amount, realising that he had been the victim of fraud.

On 1 September 2020, the complainant contacted Finansiell Stabilitet and demanded that the payment of EUR 25,000 be reversed. He pointed out, among other things, that, at the time of the transfer, several warnings against S1 and S2 had been posted on the internet by others who had been defrauded.

Finansiell Stabilitet denied liability for the complainant's loss and advised him to make the claim against S1 and S2.

On 15 September 2020, the complainant contacted Finansiell Stabilitet anew and demanded that the payment be reversed. Finansiell Stabilitet maintained its denial of liability and rejected the complainant's claim.

## **The parties' claims and defences**

On 22 February 2021, the complainant brought the case before the Complaint Board, claiming that Finansiell Stabilitet (Københavns Andelskasse) be ordered to reverse the payment of EUR 25,000 to him.

Finansiell Stabilitet (Københavns Andelskasse) has filed its defence, pleading for a decision in favour of the respondent.

### **The parties' arguments**

The **complainant** has stated, among other arguments, that he has been the victim of fraud and that he transferred the amount to S1 and S2 on false assumptions.

Københavns Andelskasse should have warned its customers against sending money "offshore" to businesses they did not know and about the risk of not being able to have the payment reversed in the event of fraud.

Københavns Andelskasse failed to perform Know Your Customer (KYC) and Anti-Money Laundering (AML) reviews of the payee as prescribed by the Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism. It is evident that S1 and S2 were never investigated in detail by Københavns Andelskasse.

His claim for reversal of the payment due to fraud is also supported by a statement from the Financial Ombudsman Services.

He had no investment experience, and he lost his entire savings of EUR 25,000, which he was supposed to live off later in life.

Furthermore, the complainant has made the following additional statement regarding the negligence of Københavns Andelskasse:

"They did not alert me to a potential scam or fraud, exhibiting that there was no issue with the recipient - hence, Københavns Andelskasse went ahead - and transferred the funds. To add insult to injury - and to their CRIMINAL behavior, if they would have performed a simple online search on [S1/S2] - they would have seen all the warnings, bad reviews and alerts!

As these transactions have been authorized and executed by Københavns Andelskasse - this means they are directly involved in fraudulent activity and it is unreasonable to off load any responsibility and make the claim that the due diligence should have been mine and/or that it was my sole responsibility (i.e. the same way it is inconceivable that Københavns Andelskasse would transfer money to a terrorist organization and/or money laundering operation).

...

It's criminal and unjustifiable that Københavns Andelskasse is taking responsibility off their shoulders and offloading it to the client which is at their mercy (due to the client's innocence, inexperience and lack of knowledge) - it is obvious that Københavns Andelskasse has 'led the lamb to the slaughter' and there is no excuse for that. Københavns Andelskasse's behavior lacks professionalism, totally unregulated and sub-human. The public puts their total un-suspicious trust in Københavns Andelskasse by taking a leap of faith that they will protect their life savings and apparently they illegally and evilly have taken

advantage of their client's innocence and go against the pledge of the reason financial institutions were established in the first place.

...

I do not understand why Københavns Andelskasse is opposed to providing me with the funds that went to these criminals. When I authorized the payments - I did not know that the merchants are scammers, I discovered it later on ...”

**Finansiel Stabilitet (Københavns Andelskasse)** has stated, among other things, that Københavns Andelskasse did not act unlawfully as regards the transfer of EUR 25,000.

Københavns Andelskasse was solely the account-holding bank of S3.

As the complainant was not a customer of Københavns Andelskasse, Københavns Andelskasse was under no obligation to guide, warn or otherwise advise the complainant. It follows that Københavns Andelskasse did not disregard any obligations entitling the complainant to damages or reversal of payments.

Københavns Andelskasse is not obliged to reverse the payment of an amount without the consent of the account holder, S3. No such consent has been given.

The complainant's letters appear as general templates without reference to the specific case and are at times formulated as if the complainant had been a customer of Københavns Andelskasse, which is not the case. The complainant cannot rely on general statements about how fraudulent schemes cheat people, general views on fraudulent schemes, general views on KYC rules and reviews, etc., or the complainant's personal views.

The complainant has not substantiated that Københavns Andelskasse disregarded any obligation or acted in such a way as to provide a basis for a reversal of payment without the consent of the account holder, nor has it been substantiated that Københavns Andelskasse acted in such a way as to give rise to liability, and the complainant is therefore not entitled to receive damages. The conditions for damages are not satisfied.

Københavns Andelskasse was not able to ascertain from the deposit that an error had been made or that fraud had allegedly been committed, and Københavns Andelskasse could consequently not have acted differently.

Questions as to potential violation of anti-money laundering legislation fall within the remit of the police and not the Complaint Board.

The complainant cannot rely on a general statement by “the Financial Ombudsman”, and such a statement does not justify the reversal of payment or payment of damages of EUR 25,000.

The complainant has not contacted Københavns Andelskasse within the time limit for cancellation. The transfer was made on 25 February 2018, and the complainant contacted Københavns Andelskasse the first time on 1 September 2020. Accordingly, the complainant is not entitled to reversal of the payment of EUR 25,000 on those grounds either.

The complainant’s co-contractor is the investment companies S1 and S2 and not Københavns Andelskasse. The complainant should make the claim against S1 and S2.

If, contrary to expectations, Københavns Andelskasse is held liable in damages, the complainant displayed contributory negligence by not examining S1 and S2 prior to making the transfer, and any damages awarded should therefore be reduced.

The account holder being S3 and not S1 or S2 does not change this fact, as that should have prompted the complainant to examine the matter more thoroughly.

#### **Comments by the Complaint Board**

The complainant, who resides in Italy, was a customer of a foreign bank. The complainant was not a customer of Københavns Andelskasse.

The complainant has stated that he was contacted by S1 and S2, companies providing investment advice and investment services. On 25 February 2018, as instructed by S1 and S2, the complainant transferred EUR 25,000 to an account -028 with Københavns Andelskasse to an account holder S3.

After the transfer, the complainant tried in vain to make S1 and S2 repay the amount, realising that he had been the victim of fraud.

The complainant subsequently also requested Finansiell Stabilitet (Københavns Andelskasse) to reverse the payment.

The Complaint Board does not find that Finansiell Stabilitet (Københavns Andelskasse) was obliged to reverse the payment without having obtained the consent of the payee/account holder, S3.

Nor does the Complaint Board find that the complainant has substantiated that Finansiell Stabilitet (Københavns Andelskasse) is otherwise obliged to indemnify him for any loss suffered.

The Complaint Board does accordingly not find for the complainant.

**Decision of the Complaint Board**

The Complaint Board does not find for the complainant.

[Signature]

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