

**In the name of His Highness Sheikh Tamim bin Hamad Al-Thani,
Emir of the State of Qatar**

**IN THE CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE
FIRST INSTANCE CIRCUIT**

14 July 2015

CASE NO: 03/2015

SIMON SMITH

Claimant

v

INTERNATIONAL FINANCIAL SERVICES (QATAR) LLC

Defendant

JUDGMENT

Members of the Court:

**Justice Dohmann
Justice Al Sayed
Justice Rajah**

ORDER

- 1. The Defendant do pay to the Claimant QAR 72,330 in relation to retained commissions which have fallen due.**
- 2. It is declared that the Claimant is entitled to payment by the Defendant of retained commissions which fall due at the end of 13 months of their respective retention as no longer being liable to a potential clawback.**
- 3. The Defendant do pay the Claimant interest at the rate of 5% on the sum of QAR 72,330 from the date of this judgment until payment.**
- 4. There is no order in relation to the submissions made by the parties.**

JUDGMENT

1. The parties have agreed that the Court should determine this matter on the papers, without the need for an oral hearing.

The Dispute

2. The Claimant (“Mr Smith”) brought his claim on 22 March 2015, seeking payment of commissions due to him from the Defendant (“IFS”) in the sum of QAR 159,200. IFS served its response to the claim on 3 May 2015, denying that any sums were due to Mr Smith, disputing his calculations and as a matter of principle relying upon the QFCRA Rules, Ch. 2, Pt 2.2, CTRL 2.27.
3. On 28 May 2015 we directed that both parties submit further statements of case by 11 June 2015 with a view to narrowing the issues both as to the figures and as to their respective position with regard to the applicability of CTRL 2.2.7 to outstanding commissions.
4. Both parties submitted their further statements in due time, and as a result, there is now no dispute as to what figures fall to be considered by the Court, subject to the applicability of CTRL 2.2.7 contended for by IFS. It is now common ground that Mr Smith’s claim is for QAR 66,926; that QAR 55,790 of his commissions were retained as remaining “on risk”; but it remains in dispute as to whether IFS can pay nothing at all as it contends by reference to

CTRL 2.2.7. In addition, Mr Smith now seeks the additional sum of QAR 5,404 which, he says, came “off risk” at the end of June 2015 (and would therefore fall to be deducted from the QAR 55,790 still retained by IFS).

The Contract and the QFCRA Rules

5. IFS engaged Mr Smith as a “Consultant” under the terms of a contract dated 13 June 2010 (“the Contract”). By its clause 17 this Court expressly has jurisdiction. Mr Smith’s tasks were to sell insurance and unit trust policies, and he was entitled to percentage commissions as set out in clause 6 (A) and Schedule 1 to the Contract. Clause 7 (B) of the Contract provided that

“The Consultant shall indemnify the Company in respect of any liabilities or costs incurred by the Company, or claims or demands made by any Person against the Company howsoever arising from the provision of his services hereunder.”

Clause 6 (B) and Schedule 1 provided for a 15 % ACCOUNT RETENTION: 15 % was to be deducted from all commission payments and held for thirteen months to indemnify IFS against any potential commission clawbacks by reason of events such as the cancellation of a financial product sold by Mr Smith. Schedule 1 expressly provided that

“In the event of termination of employment, the outstanding indemnity position will be calculated at the applicable termination date. The Consultant

will be provided with an itemised schedule of commission withheld, including a timetable of the expected unwinding of each indemnity position. The Company will release to the (former) Consultant commission withheld, according to the subsequent unwinding of indemnity positions, on a monthly basis, until such date as all indemnity period has expired.”

6. Mr Smith left his position in July 2012 and has since then attempted in vain to receive payment in respect of commissions which should no longer be retained, there having been no clawback event, i.e. such commissions are no longer “on risk” (of clawback).
7. IFS, apart from correctly deducting amounts referable to one justified clawback case (which Mr Smith has accepted), submit that under CTRL 2.2.7 (3) the firm is obliged to establish a remuneration policy “which must permit a performance-based component of a person’s remuneration”, which can be “deferred or reduced (including to zero) if necessary – (i) to protect the firm’s financial soundness ... (ii) to respond to significant unexpected or unintended consequences of the firm’s activities”.
8. In the Court’s view it is plain from the wording of CTRL 2.2.7 (3) quoted above that the rule is concerned with a remuneration component in the nature of a bonus. The sums claimed by Mr Smith are, however, part of his earned commissions which were retained by IFS under the contractual scheme we have summarised. Mr Smith is entitled to receive, and IFS is obliged to pay him, the sums retained if, after 13 months after the date of the relevant

retention such sum is no longer subject to a potential clawback. CTRL 2.2.7 (3) has no application to this matter.

9. Accordingly, we order IFS to pay to Mr Smith the sum of QAR 66,926, the sum due when the claim was issued, together with the further sum of QAR 5,404 which fell due at the end of June 2015, resulting in a total of QAR 72,330. Further, we declare that Mr Smith is entitled to be paid the remainder of the sums retained by IFS which fall due at the end of 13 months of their respective retention as no longer being liable to a potential clawback.
10. We order interest at the rate of 5% on the sums adjudged due from the date of this judgment until payment.
11. We make no order for costs in relation to the submissions made by the parties.

By the Court,

B Dohmann

B. Dohmann
Justice of the Court



Representation:

This matter was determined on the written submissions of the Claimant, Mr Simon Smith, and of Mr Christopher Ivinson, Chief Executive Officer, for the Defendant, without the need for an oral hearing.