



محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

In the name of His Highness Sheikh Tamim Bin Hamad Al Thani,
Emir of the State of Qatar

[2020] QIC (A) 2 on appeal from [2020] QIC (RT) 1

IN THE CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE
APPELLATE DIVISION

9 June 2020

Case Nos 5 and 6 of 2020 (on appeal from Case Nos 2 and 4 of 2019)

Between:

HORIZON CRESCENT WEALTH LLC

Applicant

v

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

AND

QATAR FINANCIAL CENTRE AUTHORITY

Respondents

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President
Justice Chelva Rajah SC
Justice Arthur Hamilton

ORDER ON PERMISSION TO APPEAL

1. Permission to appeal against the judgment of the Regulatory Tribunal on the decisions of the Qatar Financial Centre Authority and Qatar Financial Centre Regulatory Authority is refused.

JUDGMENT

1. In a written Application made on 3 May 2020, the Applicant seeks permission to appeal from the judgment of the Regulatory Tribunal (Justice Laurence Li SC, Justice Edwin Glasgow QC and Justice Gopal Subramaniam) given on 9 March 2020, [2020] QIC (RT) 1. In its judgment the Regulatory Tribunal dismissed the appeal of the Applicant against the decision of the Qatar Financial Regulatory Authority (RA) dated 11 March 2019 and the Qatar Financial Centre Authority (QFCA) dated 6 October 2019. The RA and the QFCA, as Respondents, in their submission dated 18 May 2020 contend we should refuse permission.
2. The Applicant is incorporated in the Qatar Financial Centre (QFC) and licensed by the QFCA to carry out the non-regulated activity of trust administration. It is not authorised to undertake any regulated activity, including that of the business of asset management.

CASE NO 2 OF 2019. THE DECISION OF THE RA

3. By its decision of 11 March 2019, the RA found that the Applicant (1) failed to put in place and follow the rules for anti-money laundering and combatting the financing of terrorism, (2) was carrying on the business of asset management, a regulated activity, without authorisation and (3) had provided information to the RA which was false, misleading or deceptive. The Applicant was accordingly in breach of a number of Regulations and Rules. The RA imposed a penalty of QAR 25 million for breach of the anti-money laundering and combatting the financing of terrorism rules and a penalty of

QAR 5 million for the other two matters. It ordered the payment of QAR 830,024 for the costs and expenses of the investigation.

4. The Applicant appealed to the Regulatory Tribunal on the basis that the findings of the RA were wrong. It contended that the funds transferred in were approved by the Qatar National Bank and for legitimate reasons. It had at all times complied with the regulations. The submissions did not address the specific findings made by the RA, even in response to a direction by the Regulatory Tribunal that they should set out their case. In a subsequent submission they contended that the Trust Regulations of the QFC were *ultra vires* and that the proceedings should be stayed until the decision of the final judgment of the criminal court.
5. The Applicant seeks permission to appeal the judgment of the Regulatory Tribunal in respect of the decision of the RA on the basis that:
 - a. The Applicant did not handle any money that was the proceeds of crime or tax evasion. It had procedures to combat money laundering and terrorist financing.
 - b. As a licensed trust company, the assets it held were its assets. It managed those assets as the trust company as it was fully entitled to do as the assets were its assets and not those of the beneficiaries. It therefore was not carrying on the business of asset management.
 - c. It had not provided the RA with any false or misleading information.
 - d. The proceedings had to be stayed under Article 25 of the Criminal Procedures Code. The trust Regulations were *ultra vires*.
 - e. The penalties imposed were excessive and unjust.
6. In our judgment there are no substantial grounds for considering that the decision of the Regulatory Tribunal in upholding the decision of the RA was erroneous and would result in substantial injustice, as set out in Article 35 (2) of the Qatar Financial Centre

Civil and Commercial Court Regulations and Procedural Rules and paragraph 27 of *Leonardo v Doha Bank Assurance Company* [2020] QIC (A) 1.

a. Anti-money laundering and combatting the financing of terrorism

- i. The Regulatory Tribunal was not in error in its findings in relation to the contravention of the anti-money laundering and combatting the financing of terrorism rules. The Regulatory Tribunal dealt clearly with the essentials of the breaches. Contrary to what is contended in the Application for Permission, it did not proceed on the basis that there had in fact been a dealing in funds unlawfully acquired abroad (whether in Venezuela or Costa Rica). The basis of its decision was that the Applicant had wholly failed to have regard to its responsibilities to put in place arrangements for due diligence before handling monies from abroad which were, on any view, highly suspect. That failure was illustrated by the three examples discussed in paragraphs 22-24 of the judgment of the Regulatory Tribunal. The Regulatory Tribunal carefully considered the case presented by the RA. No effective answer to that case was made by the Applicant. Although in paragraph 5.5 of the Application assertions are made that certain steps were taken, these assertions are of a most general kind and are not vouched. No explanation is given as to why these assertions were not made and, if true, vouched before the Regulatory Tribunal. What happened to the funds subsequently (diversion to Switzerland or theft) is irrelevant.
- ii. The penalty of QAR 25 million for this failure was substantial but penalties for such failures are, justifiably, high in modern times and this penalty was imposed by a Tribunal expert in the field. The means of an offender are a legitimate consideration; but no information as to the Applicant's means was placed before the Regulatory Tribunal. The assertions now made (paragraph 6.1.1 of the Application) as to the amount being excessive do not, even at this stage, provide any particulars of the Applicant's means. A bald assertion that this penalty (combined with that imposed for certain other failures) "may reach to

confiscate all the money received by HCW as Trustee” is not good enough. The suggestion at paragraph 6.1.2 that the breaches were “minor” completely misses the point.

b. Carrying on the regulated activity of asset management

i. In its Application for Permission to appeal the Applicant contended:

“HCW is a QFC licensed trust company. As such it is not subject to QFCRA asset management rules. In summary a client settles funds into a trust and the funds become the legal property of the trust company ... HCW did in fact manage such assets, in the sense the assets belonged to them.”

ii. Articles 23 and 25 of the Financial Services Regulations, prohibit asset management to be carried on by way of business, unless authorised. Article 25(1)(A)(i) of the Financial Services Regulations provides:

An activity is carried on by way of business if (A) the person who carries on the activity: (i) holds himself out to other persons as engaging in that activity...

iii. It is not disputed by the Applicant that it managed assets, but it contended it did so as a trustee of the funds and not by way of the business of asset management.

iv. The Regulatory Tribunal found at paragraphs 57-62 that the Applicant, in the marketing brochure issued by it, had held itself out as engaging in the activity of asset management under Article 25 (1) (A) (i) and not simply asset management in the course of the administration of a trust. The evidence set out in paragraphs 57-61 was sufficient for the Regulatory Tribunal to reach that finding on holding out.

- v. The Regulatory Tribunal was therefore entitled to find that the Applicant, when engaged in its activity of asset management, was carrying on the business of asset management and not asset management in the course of the administration of trusts. As it was doing so without authorisation, it was entitled to hold that the Applicant contravened Article 11 (2) of the QFC Law.

c. The provision of false and misleading information.

- i. The Regulatory Tribunal made clear findings on the provision of false and misleading information at paragraphs 63-65 of its judgment.
- ii. The bare assertion (paragraph 5.4.1 of the Application) that the Applicant did not give deceptive information, or conceal information, is clearly not a proper ground for an appeal by way of review.

d. The stay of proceedings

- i. Article 25 of the Criminal Procedures Code is concerned with the situation where an aggrieved party has the option under Qatari law of pursuing his claim either as an element of a criminal prosecution or as a claim before a civil court. There is nothing to suggest that there ever have been or are now pending any criminal proceedings in this matter.
- ii. The legal contentions that the appeal must be stayed under Article 25 of the Criminal Procedures Code are clearly without merit.

e. The Trust Regulations

- i. The Trust Regulations were on their face enacted by the Minister under the power conferred by Article 9 of the QFC Law. No basis is suggested for these being *ultra vires*. Nor is any basis suggested as to why the Qatar

Family Law (an enactment of domestic Qatari law) is incompatible with or should affect the exercise of the Minister's Regulation-making power in relation to the QFC.

- ii. The contention that the Trust Regulations were *ultra vires* is without merit. In any event it is unclear, even if the Trust Regulations were *ultra vires*, that this would assist the Applicant.

- 7. The application for permission to appeal against the decision of the Regulatory Tribunal in respect of the decision of the RA is accordingly refused.

Case No 4 of 2019. The decision of the QFCA

- 8. By its decision of 6 October 2020, the QFCA found that the Applicant had failed to hold client monies in segregated accounts, failed to identify client money received and breached various principles of fitness, properness, and proper conduct. It imposed a penalty of US \$280,000.
- 9. There are, in our judgment, no substantial grounds for considering that the decision of the Regulatory Tribunal in upholding the decision of the QFCA was erroneous and would result in substantial injustice.
 - a. There was ample evidence for the findings made by the QFCA which were not challenged on appeal to the Regulatory Tribunal.
 - b. The challenge to the decision on the basis that the Trust Regulations were *ultra vires* and the proceedings should be stayed under Article 25 of the Criminal Procedures Code are without merit for the reasons we have set out above.
 - c. As to the penalty (of QAR 280,000) imposed by the QFCA for contravention of the duties incumbent on the Applicant (as a licensed but not regulated body) in relation to the holding of client monies, this is wholly distinct from the other

penalties imposed. There is no duplication. There is nothing to suggest that the amount of this penalty was in the circumstances excessive.

10. The application for permission to appeal against the decision of the Regulatory Tribunal in respect of the decision of the QFCA is accordingly refused.

By the Court,



Lord Thomas of Cwmgieed

President

