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

IN THE CIVIL AND COMMERCIAL COURT

OF THE QATAR FINANCIAL CENTRE

APPELLATE CIRCUIT

2 August 2012

CASE NO: 01/2012

SEIFELDIN ABDELKAREEM	**Applicant**
v	
QFC REGULATORY AUTHORITY	**Respondent**

JUDGMENT

Members of the Court:

President Lord Woolf

Deputy President Sir David Keene

JUDGMENT

Introduction

1. This is a judgment of the Qatar International Court given by the President, Lord Woolf and Deputy President, Sir David Keene on an application for permission to appeal by Mr. Seifeldin Abdelkareem ("the Applicant"). The application is in respect of a decision of the 7th May 2012 of the QFC Regulatory Tribunal ("the Tribunal") (Chairman Michael Thomas QC, Francois Gianviti and Laurence Li) given in Case No 03/2011 (*Seifeldin Abdelkareem v QFC Regulatory Authority*).

2. That decision of the Tribunal dismissed the Applicant's appeal, (the "1st appeal") and upheld the QFC Regulatory Authority's ("the Authority") findings that the Applicant had contravened a number of the QFC's Principles of Conduct for Approved Individuals ("AI Principles") and Articles of the Financial Services Regulations ("FSR Articles") ("the contraventions"). The Tribunal also upheld the financial penalty imposed upon the Applicant by the Authority of US$100,000 and a Prohibition Order prohibiting the Applicant from "performing any function for, or being employed by, any Authorised Firm in the Qatar Financial Centre." No time limit was specified for the duration of the Prohibition Order.

3. The Applicant seeks permission to make a further appeal ("2nd appeal") pursuant to Article 8 paragraph 3(d) of the QFC Law No (7) of 2005 and Article 35.2 of the QFC Civil and Commercial Court Regulations and Procedural Rules (the "Rules"). Article 35.2 provides, so far as relevant:

> "35.2. The Appellate Division Court shall in addition have power to hear appeals from determinations and decisions of the Regulatory Tribunal as set out in Article 8(3) of the QFC Law, but only:

35.2.1 .....if there are substantial grounds for considering that a judgment or decision is erroneous and there is a significant risk that that decision will result in serious injustice; and

35.2.2 with the permission of the President of the Court or with the permission of two of the judges".

4. The provisions of Article 35 impose a significant restriction on the power of this court to grant the required permission. This is not surprising in the case of a further appeal from an expert or specialist tribunal to this less specialised appellate court of more general jurisdiction. For the same reasons this Court in deciding whether to grant permission has to take into account that any appeal if permission is granted, at least in the normal way, will not involve a rehearing of witnesses so this court will not normally be able to depart from the Tribunal's findings as to the truthfulness of witnesses.

5. The Applicant was not represented at the hearing of the 1st appeal or this application and was not present at either hearing, but took part by telephone. However, for this application he prepared a document which clearly set out his arguments in support of his application for permission and in so far as this was necessary he was able to develop his arguments further at the hearing. In his Notice of Appeal the Applicant contends;

   (a) As to the alleged "contraventions" the Tribunal primarily relied on determinations in respect of an "Undisclosed Account", PIIB return and verbal information given to a QFCRA member of staff regarding the Bank's capital position without explaining how these determinations supported a finding that the Applicant had contravened the specified AI Principles and FSR Articles;

   (b) The Tribunal upheld the QFCRA's decision on the basis that the Applicant knew of the "Undisclosed Account" without properly defining that account or considering that that account went beyond the scope of his responsibilities;

(c) The Tribunal ruled on charges that were not part of the QFCRA's case against him;

(d) The Tribunal lacked jurisdiction to determine an allegation that the Applicant had breached Article 85(2) of the FSR Articles.

(e) The financial penalty of US$100,000 is unjust.

6. The Authority was represented by Mr. Ben Jaffey of the English Bar. He prepared a response to the Application in writing which was helpful to us and for which we were grateful. He also took part by telephone during the hearing of the Application.

Background Facts (as established by the Tribunal)

7. The hearing before the Tribunal lasted for 5 days and the Tribunal delivered a detailed decision. The Tribunal set out the facts which can be summarised as follows: from the 29th June 2009 to the 26th November 2009, the Applicant was the Chief Financial Officer ("CFO") of the Al Mal Bank ("Al Mal"). He was responsible for, amongst other things, "the financial accounting within Al Mal Bank, QFCA reporting, maintaining and monitoring Al Mal Bank's liquidity position and optimising the returns of Al Mal Bank's assets available for investment." His duties and responsibilities included providing "accurate and timely financial analysis" to "ensure adequate financial and internal controls…for all financial activities" and to "supervise the preparation of the necessary returns required to be submitted to the QFCRA."

8. In order to carry out the 'Finance Function' at Al Mal, the Applicant had to be approved by the Authority and this happened on the 12th August 2009. Rule 2.1.7 of the Authority's Individuals Rulebook ("INDI") defines the 'Finance Function' as "having responsibility for ensuring that an Authorised Firm complies with the Regulatory Authority's prudential requirements"

9. The Authority alleged that the Applicant had, whilst performing the Finance Function for Al Mal:

(a) contravened AI Principles 1 (Integrity), 2 (Due Skill, Care and Diligence), 4 (Relations with the Regulator), and 5 (Management and Compliance);

(b) contravened Article 84(2)(A) of the FSR Articles ("knowingly or recklessly providing false, misleading or deceptive information to the Authority"); and

(c) procured, or was otherwise knowingly concerned in, the contravention by Al Mal of Article 84(2)(A) of the FSR and of Principle 13 (Relations with Regulators) of the Principles for Authorised Firms set out in section 2.1 of the Principles Rulebook.

10. The Authority's case against the Applicant was in summary fourfold. The Authority alleged that:

(a) the Applicant was aware that Al Mal had an account with Doha Islamic Bank which was not reflected in Al Mal's accounting books and records;

(b) the Applicant was involved in the preparation of a prudential return (the "September Return"), submitted to the Authority in 2009, that contained false information as regards Al Mal's paid up share capital;

(c) the Applicant provided false information to the Authority about Al Mal's capital position during a telephone conversation with an officer of the Authority (a Mr. Busari) on the 2nd November 2009; and

(d) the Applicant failed to make proper enquiries to inform himself of Al Mal's true financial and capital position, or to notify the Authority of those matters.

The Undisclosed Account

11. There is no doubt that that the Undisclosed Account which is referred to in the Notice of Appeal existed. The issue was whether and when the Applicant knew about it. The Tribunal heard evidence from the Finance Manager, Ms. Hussain, whom the Applicant had himself appointed and who reported directly to him. She gave evidence that she had become aware of the existence of the account and had brought it to the attention of the Applicant on several occasions. The first related to a fax, dated 15th September 2009, the content of which revealed the existence of an Al Mal account with Doha Islamic Bank which Ms. Hussain stated she knew nothing about. She showed the Applicant this fax and stated that the Applicant told her that he would raise it with the Chief Executive Officer, Mr. Omara. The second occasion was in October 2009 when, at Ms. Hussain's request, an officer at Doha Islamic Bank faxed her an account statement. This, she said, she showed to the Applicant who once again stated that he would raise it with Mr. Omara. The third occasion, according to Ms. Hussain, was when the Applicant asked for the account number. She sent the information to him in an email dated the 21st October 2009. Ms. Hussain also stated that she recalled asking the Applicant on a "couple of other occasions" whether she should monitor the account or include it in Al Mal's financial records. The Applicant, she said, stated that he would get back to her.

12. Although the Applicant did not dispute receiving the email of the 21st October 2009, he challenged the overall truthfulness of Ms. Hussain's evidence, attributing to her motives of greed, self-interest and personal animosity, as well as bad memory. By contrast, the Tribunal considered Ms. Hussain's testimony as "balanced, careful and reliable" and a "thoroughly honest and convincing witness".

13. The Tribunal heard her evidence. We cannot conceive that if there were to be an appeal this Court would disturb that conclusion. The Tribunal also noted, inter alia, that there was undisputed documentary evidence to the effect that the Applicant knew about the undisclosed account. As a consequence of the above, the Tribunal concluded that the

Applicant knew about the undisclosed account as early as the 8th July. On their view of the evidence the Tribunal could not come to any other conclusion.

The September (PIIB) Return

14. On 29th October 2009, Al Mal submitted to the Authority the September Return that it required for the period from July to September 2009. The return recorded cash and liquid assets of US$25,728,000 and stated the bank's ordinary share capital to be US$27 million. Al Mal's true share capital position was in fact only US$15 million. It was agreed evidence that the extra US$12 million, provided in the Return, comprised:

    (a) US$6,213,238 in Al Mal's account, when the sum actually belonged to its intended holding company Al Sadd derived from subscriptions for shares in Al Sadd; and

    (b) US$5,786,762 held in Al Sadd's account, which also actually belonged to it as money received from subscriptions of shares in that company.

15. There were two drafts of the September Return which Ms. Hussain said she had prepared under the Applicant's instructions and supervision. As regards the US$6,213,238 and the US$5,786,762 (both of which featured in the second draft of the Return), the Applicant admitted that he knew about the provenance and nature of the sums, and about their inclusion in the final Return, but still raises two defences.

    (a) As regards the US$6,213,238, the Applicant contends that he genuinely believed it contributed to Al Mal's share capital as it was in Al Mal's account. The Tribunal rejected that explanation on the basis that, in addition to being the CFO, the Applicant also held office as the company secretary. He was, therefore, responsible for maintaining Al Mal's share register and issuing share certificates. For whatever reason, he did not do so. But given his responsibility, coupled with the fact that he did not know (as he should) whether Al Sadd had been registered

as holding shares and had been issued share certificates for the US$6,213,238, the Tribunal concluded that the Applicant could not have genuinely thought that the sum had been duly contributed to Al Mal's share capital.

(b) The Applicant further argued that it was permissible, or at least arguable as a matter of accounting practice, to treat both sums as part of Al Mal's capital. He stated that Al Sadd held, or was entitled to hold, 100% of Al Mal's share capital and had no other business of its own. When investors subscribed for shares in Al Sadd, they were "really" subscribing for shares in Al Mal. Thus, as a matter of "substance over form", monies paid for subscriptions for shares in Al Sadd were effectively Al Mal's capital and could be treated in Al Mal's accounts.

16. The Tribunal rejected that explanation, stating that they were "not persuaded that a professional accountant and financial controller with the Applicant's knowledge and experience (including in the financial services industry) would seriously accept, let alone rely on, such a line of reasoning." We agree.

17. The Tribunal also found, as regards the US$5,786,762, the Applicant himself accepted that this should not have formed part of Al Mal's ordinary capital. It was due to this acceptance that he refused to sign the Return, leaving Mr. Omara to sign it himself. The Tribunal found that the Applicant's approach in this respect was "both artificial and extremely irresponsible". The Tribunal found that what the Applicant had done amounted to no more than "an attempt to avoid personal liability (by not putting his name to the Return) while also to avoid arousing the Authority's interest in what he knew to be a problem (by keeping quiet about it)."

18. The Applicant relied on a number of Weekly Returns he had submitted to the Authority between August and November 2009 which he asserted in evidence "should have alerted the Regulatory Authority to the fact that materially different capital amounts were being reported to it." (i.e. as between the Weekly Returns and the September Return).

19. The Tribunal found that, regardless of the Weekly Returns, the Applicant could not make light of the gravity of the false inclusion of the US$5,786,762 in the September Return and his knowledge of it. The Tribunal concluded that the Applicant knew that the September Return contained inaccurate and misleading information but was content for it to be submitted as long as his signature did not appear on it. This was a view to the Tribunal were entitled to come and on appeal we could not disturb it. At the hearing before us the applicant advanced similar arguments before us. By so doing he betrayed a complete disregard for the integrity and ethical standards required of an official of a bank holding the positions which he held.

November Conversation

20. Mr. Busari of the Authority reviewed the September Return. By the time he did so, Al Mal had informed the Authority that it had increased its share capital to US$60 million. Mr. Busari noticed the discrepancy between this and the figure shown in the September Return, i.e. US$27 million.

21. It was agreed evidence that a telephone conversation took place between Mr. Busari and the Applicant on the 2nd November 2009 and that that conversation involved a discussion, amongst other things, about Al Mal's share capital position.

22. Mr. Busari's evidence before the Tribunal was that, having identified the discrepancy, he called the Chief Compliance Officer, Mr. Chaudhry, who directed him to Ms. Hussain who, in turn, directed him to the Applicant. Mr. Busari said that the Applicant told him that he (the Applicant) had to ask Mr. Omara about it. There was a pause, during which Mr. Busari assumed that the Applicant spoke with Mr. Omara, and then the Applicant told him that the paid up capital at the time was US$27 million and that there was another US$33 million on fixed deposit with Doha Islamic Bank in the name of Al Sadd.

23. The Applicant accepted receiving a call from Mr. Busari and accepted speaking with Mr. Omara in order to get an answer which he then repeated to Mr. Busari. However, the

Applicant stated that Mr. Busari's query was only as to when Al Mal was going to increase its capital to US$60 million, to which he replied (having taken instructions from Mr. Omara), that there would be a board meeting at the end of November to increase the capital to such amount. The Applicant denied that Mr. Busari enquired about any discrepancy or that he had told Mr. Busari that the paid up capital was US$27 million with another US$33 million at Doha Islamic Bank in the name of Al Sadd.

24. The Tribunal again accepted the evidence of Mr. Busari as being truthful and observed that he was, in the Tribunal's opinion, a "reliable witness who had a good recollection of the relevant conversation." The Tribunal also noted that there was documentary evidence which supported Mr. Busari's evidence, part of which was a contemporaneous note written by Mr. Busari and signed by him, as well as Mr. Frew, the 'secondary supervisor', on the same day. The Tribunal rejected the Applicant's suggestion that this report had been made later, had been backdated, and then inserted into the Authority's internal files in order to cover up the Authority's failure to supervise the activities of Al Mal.

Knowledge of Other Matters

25. In addition to the above matters, the Authority alleged that the Applicant had knowledge of a number of other matters and that, as CFO and the person authorised to discharge the Finance Function, he should have made any necessary inquiries and notified the Authority of the same.

26. The Tribunal noted that there existed "a substantial body of documentary evidence to which [the Applicant] was privy" including information provided in the Minutes of various meetings as well as the content of a number of emails. The Tribunal concluded that the Applicant had knowledge of the matters stated in these various documents and took no steps to bring to the Authority's attention the true facts as to Al Mal's share capital.

27. Having found as it did, the Tribunal concluded that the Applicant did contravene the AI Principles and Articles as mentioned at paragraph 9 above. He knew, the Tribunal found, that the figures supplied to the QFC authorities were problematic and although he initially made enquiries to have access to the account statements, he failed to obtain them. He then chose to do nothing further. Instead, the Applicant had an active involvement in preparing the September Return and was fully aware that, when it was submitted to the Authority, it contained false and misleading information. He was, however, content for it to remain that way so long as his signature did not appear on it.

28. The Applicant attacks the factual findings made by the Regulatory Tribunal. However, the Applicant does not simply disagree with the findings, he also asserts that the Tribunal failed to relate its factual conclusions to the alleged contraventions of the Principles and Articles and, moreover, failed to explain what the elements of the various Principles and Articles are. We do not accept this. The findings to which we have referred above are fully justified by the evidence and have not been undermined on this application. The conduct of the Applicant relied on by the Tribunal demonstrates an attitude on the part of the Applicant wholly inconsistent with that required by the Principles and Articles in the interests of proper banking standards. The Applicant seeks to rely on the existence of certain sub accounts that were not the subject of any transactions but even if what he says about this is accurate it cannot excuse his conduct. It is no more than a smoke screen.

29. Generally with regard to the points the Applicant relied on before us it is important to remember the requirement in Article 35.2.2 that the decision should result in serious injustice for permission to appeal. Even if there was substance in the Applicants points they would have not created any risk of injustice. A good example of this is the Applicant's reliance on the fact the Tribunal found a contravention of Article 85(2) of the FSR when this had not been found to have been breached by the Respondents. However, it is clear the Tribunal's decision would have been identical even if the breach of that article had not been made. There was no injustice involved.

Penalty

30. The Applicant challenges the financial penalty of US$ 100,000 upheld by the Tribunal. He contends that it is arbitrary and unjust, relying on the approach adopted by the UK Financial Services Authority ("the FSA"). It is argued that, if one adopts the "five steps for penalties...in non-market abuse cases", as set out in section 6.5 B of the FSA's Decision Procedure and Penalties Manual (DEPP), the highest penalty possible would be US$ 42,000, being 40 percent of the applicant's income from Al Mal during the period of his employment by that bank. Since the Tribunal noted that the Applicant deprived no financial benefit from his conduct and since certain other serious features were not present, he submits that the penalty (if any) should be lower than US$ 42,000 and more in the region of US$ 20,000, which would still act as a significant deterrent to others.

31. We do not see that these arguments based on the FSA's DEPP have any merit sufficient to warrant permission to appeal. The Regulatory Authority has its own policies in respect of financial penalties, policies which refer to a range of appropriate considerations, and we can see no reason why it should be bound by guidelines produced for the different financial environment of the United Kingdom. As was said on behalf of the Respondent, the taxation position in the United Kingdom is quite different from that of Qatar. Moreover, even if the DEPP were to be used as a guide, it would not assist the Applicant. His attempt to apply the 40 percent criteria in the DEPP, para. 6.5 B. 2, solely to the salary he received during the months he was employed by Al Mal conflicts with the approach to be found in that paragraph. It is expressly said there that:

> "where the individual was in the relevant employment for less than 12 months, his relevant income will be calculated on a pro rata basis to the equivalent of 12 months' relevant income" (sub-para.(2)).

It would therefore be improper to confine any percentage calculation just to the earnings in the period the Applicant was with Al Mal. This argument cannot succeed.

32. In his oral submissions before us, the Applicant sought to provide some information as to his financial position. The Tribunal observed that he had failed to supply it with "concrete information" about his personal finance. This lack of information was something which the Regulatory Authority had itself remarked upon in its decision notice imposing the financial penalty. The Applicant accepts that he did not produce such information before the Tribunal. It follows that the Tribunal cannot be said to have erred by failing to take such information into account.

33. The Applicant tells us that he is now earning just under US$ 22,000 per month. His point is that this represents a reduction from his previous earnings while with Al Mal, but on the face of it, such a monthly figure does not indicate that the financial penalty of US$ 100,000 is unjust. He asserts that he has no shares or other assets, but produces no evidence to substantiate that assertion. He says that he could pay US$ 10,000 per month towards a penalty, and we shall return to the matter of time to pay in a moment, but nothing that we have heard persuades us that the total financial penalty of US$ 100,000 is unjust or arguably unjust.

34. No issue is raised as to the Tribunal's decision on the Prohibition Order. In those circumstances and for the reasons we have set out, permission to appeal against the Tribunal's decision on penalty is refused.

35. During the course of the hearing, there was a discussion as to whether the Applicant should be allowed time to pay the penalty of US$ 100,000. In the event, it was agreed between the parties that he should be allowed to pay by monthly instalments of US$ 10,000 per month, with the first payment being on 8 August 2012 and the remaining payments being made on the first day of each month thereafter, the full amount outstanding to become due and payable forthwith if there is any default as to a monthly payment. This agreement will therefore be reflected in The Order of this Court dismissing the application for permission to appeal.

36. This is the first application for permission to appeal a Decision of the Regulatory Tribunal and for that reason we have set out our reasons for not giving permission more fully than would normally be the practice. However there must be a limit on the indulgence that we can grant the Applicant and the short answer to this application is that manifestly it does not meet the test set by Article 35.2.

37. It may be of interest to note that the decision of the Tribunal was given on 7 May 2012. The Applicant applied for permission to appeal on 18 June 2012; the matter was heard yesterday on 1 August 2012 and the Judgment is given today, 2 August 2012. It is one of the ambitions of this Court to ensure expedition in the hearing and disposal of cases, because as is often said, justice delayed is justice denied, and we intend to ensure that justice is never denied in the Court because of any delay for which the Court is responsible.

Representation:

For the Applicant, Mr. Seifeldin Abdelkareem: Mr. Seifeldin Abdelkareem (Applicant in Person)

For the Respondent, QFC Regulatory Authority: Mr. Ben Jaffey (Counsel, Blackstone Chambers, UK)

Signed by:

President Lord Woolf, QFC Civil and Commercial Court, Appellate Circuit:

Sir David Keene, Deputy President, QFC Civil and Commercial Court, Appellate Circuit