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

9 December 2010

CASE NO: 08/2010

IN THE MATTER OF THE
WINDING UP OF AL MAL BANK LLC

ALI HARUN JAHA GULED

v

AL MAL BANK LLC (IN LIQUIDATION)

JUDGMENT

Members of the Court:

Justice Dohmann

Justice Lord Cullen

Justice Sackville

ORDERS

1. The Court makes the following directions pursuant to art 95(1) of the *QFC Insolvency Regulations*:

   (a) The payment of QR 72,000 made to the Applicant on 15 October 2009 was not made on account of the two months' (special payment) bonus to which the Applicant was and is entitled.

   (b) The Liquidators should pay the Applicant his entitlement to the two months' (special payment) bonus, save for the sum of QR 72,000.

   (c) The Liquidators should withhold the sum of QR 72,000, pending the determination referred to in (d) below.

   (d) The Liquidators should determine whether the sum of QR 72,000 should be set off against the two months' (special payment) bonus to which the Applicant is entitled, on the ground that the payment of QR 72,000 was made to the Applicant without the authority, actual or ostensible, of the Bank or the CEO of the Bank.

   (e) In making the determination referred to in (d), the Liquidators should take into account any evidence submitted by the Applicant and his responses to any information sought by the Liquidators pursuant to art 147 of the *Insolvency Regulations*.

2. The Court makes no order as to the costs of the matters dealt with in this judgment.

JUDGMENT

THE COURT:

THE APPLICATIONS

1. By his Application Notice dated 31 October 2010, the Applicant seeks a direction from this Court under art 95(1) of the *QFC Insolvency Regulations 2005* (No 5 of 2005) ("*Insolvency Regulations*") that the Liquidators of the Al Mal Bank LLC ("*Bank*") pay him a total of QR 117,000 by way of "*additional base pay*", without deduction, and that the transmission costs of such payment be at the expense of the Liquidators.

2. By their response dated 12 November 2010, the Liquidators seek:

   (a) the Court's direction as to whether a QR 72,000 "*discretionary bonus*" paid to the Applicant on 15 October 2009 forms part of the two months (special payment) bonus which is payable to all employees, or whether this payment should be treated as having been an additional discretionary bonus;

   (b) an order that the Liquidators' costs of dealing with this matter, as well as their costs of employing the payment method required by the Applicant, should be payable by him;

   (c) a direction that the Applicant comply fully with the Liquidators' requests pursuant to Article 147(1) of the *Insolvency Regulations*.

   The reference in subparagraph (c) to the "*Liquidators' requests*" is to certain questions the Liquidators put to the Applicant, to which he purported to respond on 1 November 2010.

REASONING

3. Both parties have attached a great deal of material to their submissions. It is not necessary to refer to all that material.

4. The Applicant was the Chief Operating Officer of the Bank from 1 January 2009 until 31 March 2010, when his employment was terminated.

5. As a result of this Court's judgments of 16 August 2010 (*In the Matter of Al Mal Bank (In Liq); Tamir Omara v Al Mal Bank, Case 01/2010*) and 14 October 2010 (*In the Matter of Al Mal Bank (In Liq); Peter Stockwell and Jeffrey Wofford v Al Mal Bank, Case 07/2010*) all the Bank's employees, including the Applicant, were and are entitled to receive the two months (special payment) bonus referred to in Section 5.2 of the Bank's Human Resources Policies and Procedures Manual ("*Manual*"). As the second judgment explained, the two months (special payment) bonus was payable in June and December of any given year, and was to be pro-rated if the employee's employment ended before the expiration of the relevant six months period.

6. It follows that the Applicant was entitled as of right to receive the special payments due in June and December 2009. He was also entitled to receive a pro-rated bonus for the period from 1 January 2010 until the termination of his employment on 31 March 2010. These amounts have never been paid to the Applicant.

7. It is common ground that the Applicant was paid a "*bonus*" of QR 72,000 by the Bank on 15 October 2009. The Applicant says this was a discretionary annual bonus paid under Section 5.3 of the *Manual* which he deserved, given his efforts on behalf of the Bank. The Liquidators say the payment was undeserved, as well as unauthorised, there being no Board minute to support it. Section 5.3 of the *Manual* expressly provides that any annual bonus payment must be "*approved by the Board of Directors*".

8. The Applicant relies on the authority for payment given by Mr Nazim Omara, the then Chief Executive Officer ("*CEO*") of the Bank, by email dated 15 October 2009 to the Bank's administration manager, Ms Rania Saab. The email asked Ms Saab to:

> "*Pl[ea]se prepare a payment of 1 month salary to Ali Harun as bonus payment*".

However, the Applicant does not suggest that the Bank's Board approved payment of the bonus.

9. The direction sought by the Liquidators is that the bonus paid to the Applicant on 15 October 2009 forms part of the two months (special payment) bonus to which he is otherwise entitled. There is, however, no evidence that the sum of QR 72,000 was paid to the Applicant in October 2009 by reference to the non-discretionary two months (special payment) bonus which would have been due in June 2009 (QR 46,800) or which would have become due in December 2009 (also QR 46,800). There is simply no basis on the material before us to conclude that the Applicant has already received payment of part of the bonus to which he was entitled as a matter of right.

10. The Liquidators contend (at [23] of their written submissions) that the Applicant, having received a "*discretionary bonus*" is now seeking a further discretionary bonus. The Liquidators err: what is sought by the Applicant is the two months' (special payment) bonus. This is not a discretionary payment, but a payment to which the Applicant is entitled as of right.

11. The Liquidators also rely upon the Applicant's end of service Settlement Agreement, contained in a "*Schedule of Final Settlement*" dated 15 March 2010. In this Schedule, the Applicant acknowledged that the settlement was "*full and final*" and that he had "*no further claims*" on the Bank.

12. The difficulty with the Liquidators' reliance on this acknowledgement is that neither party to the "*Settlement*" was aware that all employees, including the

Applicant, were in fact entitled to the two months' (special payment) bonus, as declared by this Court on 16 August 2010. In our view, the Liquidators were right not to raise a "*full and final settlement*" argument against any of the other employees who signed a Schedule of Final Settlement. None of them could be taken to have intended to sign away an unknown, but valuable, right; nor has it been or is it suggested that any of them received legal advice.

13. The question is whether the Applicant's position is different, because he knew that he had received an annual discretionary bonus, the value of which was close to that of the two months' (special payment) bonus. However, we do not see how this can be so. It is perfectly feasible that an employee such as the Applicant could be paid a discretionary bonus in addition to the two months' (special payment) bonus. Indeed, that possibility is clearly contemplated by the *Manual*.

14. It is clear enough that what the Liquidators are really seeking is a direction that they are entitled to set off the sum of QR 72,000 paid to the Applicant as a discretionary bonus against his entitlement to the two months' (special payment) bonus. The Liquidators' case in this regard is that the payment of the discretionary bonus to the Applicant was undeserved and was not authorised in the manner required by Section 5.3 of the *Manual*.

15. Ordinarily, we would not be disposed to make directions enabling the Liquidators to withhold the sum of QR 72,000 from the Applicant, given that they have not sought a direction from the Court in those terms. There are, however, particular circumstances in this case suggesting that the Court should provide an opportunity to the Liquidators to test whether the Applicant was entitled to the discretionary bonus paid to him in October 2009.

16. First, there is no evidence that the Board of Directors of the Bank approved the payment of the discretionary bonus to the Applicant. On the contrary, in documentation relied on by the Liquidators, the then Chairman of the Bank, Dr Ali Al Marri, claims that Mr Nazim Omara, the CEO, acted without the authority of the Board which, in any event, never met. In the absence of

approval by the Board, it would seem that Mr Nazim Omara lacked actual authority to approve payment of the discretionary bonus to the Applicant.

17. Secondly, there may be grounds (we say no more than that) for challenging the explanation given by the Applicant for the approval by Mr Nazim Omara of the discretionary bonus paid to him. Email exchanges referred to by the Liquidators in their submissions, on one view, cast doubt on the Applicant's explanation that he received the bonus because of his success in resolving problems with the implementation of a software system designed by a company called InfrasoftTech.

18. Thirdly, the Applicant has declined to answer questions put to him by the Liquidators in relation to a witness statement dated 1 April 2010 which he seems to have signed. In that statement, the Applicant (if he did indeed sign the statement) purported to confirm that he had seen a complete copy of an employment contract between Mr Nazim Omara and the Bank before Mr Omara was dismissed by the Bank on 17 November 2009. The statement was tendered on behalf of Mr Omara in his claim against the Bank for wrongful dismissal, in order to rebut the Liquidators' defence that the contract on which Mr Omara relied had been created only after he had been dismissed.

19. It is true that, as the Applicant has pointed out to the Liquidators, Mr Omara withdrew his wrongful dismissal claim. It is also true that the Applicant was ultimately not called to give oral evidence in the proceedings. Nonetheless, this Court has made findings in proceedings that were heard together with Mr Omara's claim that may cast serious doubt on the accuracy of the statement apparently signed by the Applicant.

20. Fourthly, if the Applicant is not entitled to rely on Mr Nazim Omara's actual authority to approve the discretionary bonus, he will need to rely on Mr Omara's ostensible authority as CEO of the Bank. Whether the Applicant is entitled to rely on Mr Omara's ostensible authority may depend on the Applicant's knowledge as to whether the payment was in truth justified.

21. In these circumstances, the Liquidators should be entitled to withhold the sum of QR 72,000 from the amount due to the Applicant in respect of the two months' (special payment) bonus until they are in a position to determine whether the Applicant was properly paid the sum of QR 72,000 as a discretionary bonus. They are entitled to require the Applicant to provide any information they reasonably require to determine that issue, including the answers to any questions they are entitled to ask pursuant to art 147 of the *Insolvency Regulations*. If the Applicant is dissatisfied with the Liquidators' decision in relation to the sum of QR 72,000, he may apply to the Court under art 95 of the *Insolvency Regulations* for a determination.

DIRECTIONS

22. The Court makes the following directions as to questions that have arisen in the winding up of the Bank:

(a) The payment of QR 72,000 made to the Applicant on 15 October 2009 was not made on account of the two months' (special payment) bonus to which the Applicant was and is entitled.

(b) The Liquidators should pay the Applicant his entitlement to the two months' (special payment) bonus, save for the sum of QR 72,000.

(c) The Liquidators should withhold the sum of QR 72,000, pending the determination referred to in (d) below.

(d) The Liquidators should determine whether the sum of QR 72,000 should be set off against the two months' (special payment) bonus to which the Applicant is entitled, on the ground that the payment of QR 72,000 was made to the Applicant without the authority, actual or ostensible, of the Bank or the CEO of the Bank.

(e) In making the determination referred to in (d), the Liquidators should take into account any evidence submitted by the Applicant and his responses to any information sought by the Liquidators pursuant to art 147 of the *Insolvency Regulations*.

23. We do not think it is necessary to make any directions as to the costs incurred by the Liquidators in paying the amounts due to the Applicant. Nor do we think it necessary to make any specific directions as to the Applicant's obligation to provide information to the Liquidators pursuant to art 147 of the *Insolvency Regulations*.

24. We propose to make no order as to the costs of the matters dealt with in this judgment. They were decided on the papers and both the Applicant and the Liquidators have had a measure of success.

Representation:

The Court dealt with the Application on written submissions. The last written submission was from the Liquidators and dated 12 November 2010.

For the Applicant: Mr. Ali Harun Jaha Guled (in person)
For the Liquidators: Ms. Joanna Rolls and Ms. Jacquie de Bidaph (RMS Tenon, London, UK)

DIGITALLY SIGNED AND VERIFIED
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