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

Neutral Citation: [2021] QIC (RT) 4

IN THE REGULATORY TRIBUNAL
OF THE QATAR FINANCIAL CENTRE

12 October 2021

Case No. 2 of 2011

BETWEEN:

NAZIM OMARA

Appellant

v

QATAR FINANCIAL CENTRE
REGULATORY AUTHORITY

Respondent

DECISION OF THE REGULATORY TRIBUNAL

Before:
Sir William Blair, Chairman
Justice Laurence Li S.C.
Justice Muna Al Marzouqi

DECISION

1. This is the Tribunal's decision in respect of the Qatar Financial Centre Regulatory Authority's application of 2 June 2021 for an order for substituted service under Article 14.1 of the Qatar Financial Centre Regulatory Tribunal Regulations and Procedural Rules ('the Rules') of its Amended Response to the appellant's Appeal Notice.

2. The background is the failure of Al Mal Bank LLC which went into liquidation on 6 June 2010. Regulatory proceedings were brought by the QFCRA against the senior managers, including the appellant, Mr Nazim Omara, who was the bank's CEO. In the case of the appellant, the Decision Notice was issued by the QFCRA on 28 March 2011.

3. The Appeal Notice was filed on 29 May 2011. It was concerned to ask for a stay pending criminal proceedings that had been brought against him. The QFCRA Response was filed thereafter (the copy provided to the Tribunal is undated) . The appeal was stayed on 31 October 2011 under Article 25 of the Qatar Criminal Procedures Code because of the criminal proceedings.

4. On 4 July 2018, the appellant was acquitted of all criminal charges brought against him.

5. On 26 October 2020, the QFCRA filed an Amended Response which it said reflected the findings in the criminal proceedings in the light of which a number of allegations including that of fraud were abandoned. No new or amended Decision Notice has however been issued.

6. Also on 26 October 2020, the QFCRA applied to lift the stay on the appeal.

7. The appellant no longer lives in Qatar, which gave rise to the application for substituted service made on 2 June 2021 which is the subject of this decision. It is supported by a witness statement by Mr Andrew Lowe (Director of Enforcement at the QFCRA) dated 2 June 2021. In it, Mr Lowe explains the steps that had been taken to serve the appellant. In summary, he says that service by email showed that his Yahoo account was still live,

albeit there was no response. He says that there was also a discussion with the appellant's previous lawyers which indicated he was in fact aware of the application to remove the stay.

8. Under normal circumstances, this application would cause no difficulty. It is the appellant's appeal, and it is up to the appellant to pursue it. The Rules in article 10.5 state that "an appeal notice must state the full name and address of the appellant (including post, telephone, fax, and where possible, email details) …". The reason is to ensure the ability to communicate with the appellant. These were not given in the present case. There were emails from the appellant at his Yahoo address to the Registry, but the last of these was in 2019. When the applications of 26 October 2020 were emailed by the Registry, the email bounced back.

9. However, the Tribunal considered that in the exceptional circumstances of this case, where the case is so stale and the appellant has been acquitted of criminal charges, the QFCRA should do more to show that it had sought to bring its applications to revive the proceedings to the appellant's attention.

10. On 14 July 2021 the Tribunal directed the QFCRA as follows:

> "The Tribunal is considering the QFCRA's application for substituted service. It draws the attention of the QFCRA to Art 12.4 of the Tribunal's Rules of Procedure, Arts 10 and 11 of the Civil & Commercial Procedures Law of Qatar, and the discussion of service in *Boulbadaoui v QFCA* [2021] QIC (RT) 1 ("the essential consideration is that a Decision Notice is given in a way which effectively brings it to the attention of the subject"). Its preliminary view is that further steps are required to justify an order for substituted service than have been taken to date. In that regard, it notes the enquiries that have been made of the Central Bank of Sudan, which presumably means that the QFCRA believes that Mr Omara is to be found in Sudan. It requests the QFCRA to make further proposals to show that an "appropriate way" of serving him with the application will be adopted taking all the circumstances into account including the time that has passed since the stay was imposed. Advertising the application in both Qatar and Sudan should be considered. The steps to be taken can include continuing notification of the lawyers who have represented Mr Omara in the past. In addition, a copy of the amended Response should be sent to the lawyers by registered post."

11. On 16 September 2021, a further witness statement was filed by Mr Lowe stating that on 26 July 2021, the QFCRA contacted the Sudanese Embassy in Qatar to inquire about the whereabouts of the appellant, but despite follow up no response was forthcoming. On 31 August 2021, the QFCRA published a notice in the two most wide-spread newspapers in Qatar, one in English and the other in Arabic to bring to the appellant's attention the fact that the QFCRA was trying to contact him in relation to these proceedings. On 1 September 2021, the QFCRA served by registered post the Amended Appeal Response and the Application to Remove the Stay on Proceedings on the law firm previously acting for the appellant. On 4 and 7 September 2021, the QFCRA published the notice in *Al-Rakoba*, said to be a wide-spread Arabic newspaper in Sudan. The notice was also posted on the newspaper's Facebook page. However, there has been no contact by the appellant, and his whereabouts remain unknown to the QFCRA.

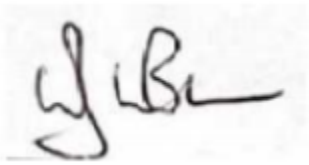
12. It is apparent that all reasonable steps have been taken to bring these applications to the appellant's attention. The Tribunal considers that the QFCRA is entitled to the order for substituted service which it seeks, and to have the stay lifted. The appeal should be capable of decision on the papers. The QFCRA will however have to satisfy the Tribunal that it has fully taken the result of the criminal acquittals into account, and that it is appropriate to issue a revised Decision by way of Amended Response. The QFCRA should also consider whether permission to amend the Response is required under the Tribunal Rules Article 16. The QFCRA should continue to copy all relevant matter including this decision to the appellant's email address, and to his previous lawyers.

Decision

(1) The QFCRA's application of 26 October 2020 to lift the stay on the appeal is allowed.

(2) The QFCRA's application of 2 June 2021 is allowed. The appellant is deemed to have been served with these proceedings.

By the Regulatory Tribunal,



Sir William Blair, Chairman

Representation:

The appellant did not participate in the proceedings and was not represented.

The respondent was represented by Mr Andrew Lowe.