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: [2020] QIC (F) 12

IN THE CIVIL AND COMMERCIAL COURT

OF THE QATAR FINANCIAL CENTRE

FIRST INSTANCE CIRCUIT

20 September 2020

CASE NO 4 of 2020

BETWEEN:

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

Applicant

v

HORIZON CRESCENT WEALTH LLC

Respondent

JUDGMENT

Before:

Justice Frances Kirkham

Justice William Blair

Justice Rashid Al Anezi

ORDER

1. The Court orders that, pursuant to Article 59(4) of the Financial Services Regulations, the Financial Penalty of QAR 30,000,000 in the Decision Notice dated 11 March 2019 issued to the Respondent is a debt payable to and recoverable by the Applicant;

2. Pursuant to Article 10.4.9 of the Regulations and Procedural Rules of the Court, the Court orders payment of interest at the rate of 5% on the judgment debt from the date of this judgment until the date of payment; and

3. This judgment may not be enforced without the permission of the Court.

JUDGMENT

1. The applicant, QFCRA, is the Regulatory Authority of the Qatar Financial Centre. The Respondent, Horizon Crescent Wealth LLC (HCW), was licensed to undertake permitted activity in relation to the administration of trusts.

2. On 11 March 2019, as a result of an investigation under Article 50(1) of the Financial Services Regulations ("FSR"), QFCRA issued to HCW a Decision Notice pursuant to Article 71 of the FSR. That Decision Notice imposed a financial penalty on HCW of QAR 30,000,000 (US$ 8,241,758.24) and required HCW to pay the costs of the investigation of QAR 830,024 (US$ 228,028.57). Pursuant to Article 71(5) FSR QFCRA gave HCW 60 days in which to pay the financial penalty, dating from the date of the Decision Notice.

3. On 23 March 2019 QFCRA began correspondence with HCW to try to reach agreement as to the costs of the investigation. HCW has not responded.

4. On 8 May 2019 HCW filed their appeal against the Decision Notice to the QFC Regulatory Tribunal.

5. On 9 March 2020 the Regulatory Tribunal dismissed the appeal and, in addition, ordered HCW to pay 50% of the Regulatory Tribunal's costs in the appeal, to be agreed or determined by the Tribunal in the absence of agreement between the parties.

6. On 29 March 2020 QFCRA applied to this Court for orders:

    (a) that the financial penalty accompanying the Decision Notice of 11 March 2019 is a debt payable to and recoverable by QFCRA; and

    (b) for payment by HCW of interest on the financial penalty.

7. On 31 March 2020 the Court directed that QFCRA's application be copied to two persons claiming to be beneficiaries of trusts administered by HCW on behalf of those beneficiaries.

8. On 23 April 2020 Fieldfisher for the two beneficiaries wrote to the Court stating that it would be improper in all the circumstances for the Court to grant QFCRA's application at present. They reminded the Court that HCW's accounts had been frozen. Those accounts contain funds of mixed origin, including money which HCW accepts it holds on trust for the two beneficiaries (and which HCW has admitted amount to about US$ 7.979m). The beneficiaries claim to have a proprietary claim over the frozen funds. Any order requiring HCW to pay the financial penalty should be made only after the beneficiaries have had the opportunity to trace their funds in equity. The beneficiaries would be prejudiced if the Court were to grant QFCRA's application now.

9. In response, QFCRA stated that its application was only for permission to enforce the financial penalty as a debt; it did not intend to seize funds to which it was not entitled. In dealing with this application the Court would not be deciding ownership, rights or proprietary interests over the funds the subject of the freezing order.

10. Fieldfisher maintained their objection, submitting that the beneficiaries should be permitted, first, to pursue their proprietary claim; they were hampered in their efforts to do this because of refusals to disclose to the beneficiaries the bank statements and records of HCW which were in QFCRA's possession.

11. On 10 May 2020 the Court gave Fieldfisher, on behalf of the beneficiaries, permission to file any further submissions and permitted QFCRA and HCW to file any further submissions. None was received from HCW. QFCRA filed detailed submissions on 24 May 2020.

12. HCW applied for permission to appeal the decision of the Regulatory Tribunal. On 9 June 2020 permission to appeal was refused by the Appellate Division.

13. At the Court's invitation, on 27 July 2020 QFCRA filed detailed submissions as regards its claims for interest. None was provided by HCW.

14. In addition to the orders which QFCRA seek as regards payment of the financial penalty and costs, as stated in its submissions dated 27 July 2020 it also seeks orders in relation to the payment of interest, calculated on a simple basis:

    a. in respect of the period from 10 May 2019 to the date of the judgment debt at the rate of 5% per annum; and

    b. in respect of the period from the date of the judgment debt until the date of receipt by QFCRA of full payment at the annual rate of 8%.

Jurisdiction

15. FSR Article 59(1) provides:

> *"If the Regulatory Authority considers that a Person has contravened a Relevant Requirement, it may impose on it a financial penalty, in respect of the contravention, of such amount as it considers appropriate."*

FSR Article 59(4) provides:

> "*Any penalty that is not paid within the period stipulated by the Regulatory Authority may on application to the Tribunal* [i.e. this Court] *be recovered by the Regulatory Authority as a debt.*"

16. The terms of Article 59(4) were considered by the Court in *QFCRA v First Abu Dhabi Bank P.J.S.C.* [2020] QIC (F) 2. Aside from service (which is not relevant in the present case), the question considered by the Court was as to the role of the Court on an application under Article 59(4). It held that, though the application is not an administrative "rubber stamp" (paragraph 22), judicial scrutiny is limited (paragraph 26), at least in the case where the financial penalty has not been scrutinised by any appellate body. In the present case, HCW have had their opportunity to raise all issues on the appeal to the Regulatory Tribunal and again on their application to the Appellate Division for permission to appeal. This Court agrees with the approach taken in *QFCRA v First Abu Dhabi Bank P.J.S.C.*, and considers that it is not appropriate for it now to enquire into the substance of the decision notice against HCW.

17. As noted, under FSR Article 59(4), the Court has the power to order that the financial penalty imposed on 11 March 2019 may be recovered by QFCRA as a debt. The Court concludes that QFCRA is entitled to an order to that effect, subject to conditions which protect any interest that the beneficiaries may have in the frozen accounts.

18. The question of interest is dealt with in the following section.

Interest

19. In *QFCRA v First Abu Dhabi Bank* (above) the Court ordered payment of interest without any detailed consideration of the principles applicable to interest. There is however no mention in the judgment of any suggestion by the amicus curiae that interest should not be awarded (the bank did not appear). In the event, the Court made an order that pursuant to Article 59(4) of the FSR, the financial penalty imposed in that

case (QAR 200,000,000) was "a debt payable to and recoverable by" the QFCRA, and that, "Pursuant to Article 10.4.9 of the Regulations and Procedural Rules of the Court, the Court orders payment of interest at a rate to be determined by the Registrar from the date that the application was filed, namely 9 September 2019". The order noted that Article 10.4.9 provides that the Court has the power to make "an order for the payment of interest".

20. In the present case, the QFCRA seeks interest in respect of the period from 10 May 2019 (which is 60 days from the date of the Decision Notice, that being the period allowed for payment) to the date of the judgment debt at a rate of 5% per annum, and in respect of the period from the date of the judgment debt, at the rate of 8% per annum, both on a simple (not compound) basis.

21. However, the question whether interest is payable at all on the debt, being in the nature of a financial penalty imposed by a regulator rather than a commercial debt, is a prior question. This was assumed in *QFCRA v First Abu Dhabi Bank* without discussion.

22. The QFCRA has filed detailed submissions primarily on the question of the proper interest rate to apply, but also on the approach as to enforcing a penalty through the courts, taking a comparative approach covering a number of jurisdictions including other international courts in the region, namely the DIFC Court and the ADGM Court. This assumes, the Court considers correctly, that the two questions are linked.

23. In Qatar, the interest system is not present unless it is the result of a prior agreement as in a contract between the two parties, such as the loan contract between bank and borrower. However, the claimant can claim compensation for delay in paying the debt caused by damage, such as if he missed a certain gain or suffered a certain loss, and can also request moral compensation for delay causing him pain, distress and inconvenience.

24. As regards the Qatar national courts, a number of authorities are cited by the QFCRA. In Case 184 of 28 December 2010, a judgment of the Court of Cassation, the Court drew a distinction between compensatory interest and delay interest. The Court recognised that delay interest was due where a debtor was in breach of his obligation to make payment (in that case, repayments payable on a loan). Case 40 of 14 May 2013

also concerned payments due under a loan and guarantee, and it appears that the Court of Cassation awarded interest, but the rate does not appear from the report.

25. In cases 208 of 25 November 2014 and 142 of 9 November 2010, the Court of Cassation allowed also awards of interest, again on loans. The reasoning in Case 208 of 2014 is that: "*compensating the lender for the harm due to late payment of debts is the debtor's duty, taking into account the civil responsibility provisions and the usual bank practice which is considered general knowledge and does not require proof thereof*".

26. As regards the QFC courts, the cases show interest being awarded even where there is no contractual right to interest – see *Badri and Salem Elmeouchi LLP v Data Managers International Ltd* [2020] QIC (F) 3 (in respect of unpaid fees), and *Obayashi Qatar LLC v Qatar First Bank LLC (Public)* [2020] QIC (F) 5 (claim under a performance bond). Article 104 of the QFC Contract Regulations 2005 provides for interest on late payments under contracts, but the QFCRA accepts that these do not apply to the award of interest in respect of non-payment of a financial penalty (though it gives context, it is submitted, as to the rate of interest).

27. The comparative material cited by QFCRA shows that other courts (including the other international courts in the region) also commonly award interest on the basis that the purpose is to fairly compensate the recipient for being deprived of the money which it should have received.

28. As regards financial penalties, in Australia, New Zealand and Singapore, rather than impose financial penalties directly, regulators are normally required to bring proceedings for the imposition of such penalties before the courts. If the proceedings are successful, and the person subject to the penalty fails to pay, the regulator may recover the penalty "as though [it] were a judgment debt due" to the regulator – see in Singapore, s. 232(7) Securities and Futures Act (Cap 289). By inference, the judgment debt is subject to the same rules as to interest as any other judgment debt.

29. In the Hong Kong SAR, China, the regulator has direct power to order a financial penalty as has the QFCRA. It may apply to register the order with the court. Upon registration, "the order is to be regarded for all purposes as an order of the Court … made within its civil jurisdiction for the payment of money" (Securities and Futures

Ordinance (Cap 571) ss 194(5), 203E(4)). Again, by inference, the order for payment is subject to the ordinary rules as to interest on a judgment debt.

30. In the UK, again the regulator has direct power to order a financial penalty as has the QFCRA. Section 390(9) Financial Services and Markets Act 2000 provides that if any of the amount of a penalty payable under a final notice is outstanding at the end of the period stipulated for payment, the regulator giving the notice "may recover the outstanding amount as a debt due to it". That recovery process would be through the civil courts, and again the debt would be recoverable subject to the ordinary rules as to interest on a judgment debt.

31. The Court's conclusion on this issue is as follows.

32. In the present context, the Court considers that the recoverability of interest is a question of some difficulty. As is well known, in some jurisdictions interest may be awarded in all but exceptional cases. In other jurisdictions there may be an unwillingness to award interest at all e.g. if interest on unpaid sums is considered to be unlawful gain or illegitimate profit.

33. It is true that FSR Article 59(4) refers to the right of the Regulatory Authority to recover the penalty as a debt, but it is also true that not all debts are subject to interest. In this regard, it is important to refer to the prohibition of interest under the principles of Sharia law.

34. It seems clear that the QFCRA has no power itself to require the payment of interest on financial penalties which it imposes, even in the case of late payment. Normally, this question does not arise in the field of financial regulation, because most financial penalties are paid voluntarily on time. The regulator has sanctions if necessary, such as the withdrawal of authorisation in the case of non-payment. But cases do arise where there is default, either deliberate, or for some other reason, and such sanctions may be ineffective. It is in this situation that regulators may wish to have recourse to the courts, so as to be able to recover the penalty as a debt – that is the situation in the present case. Once the penalty becomes a judgment of the court, it may be expected that the ordinary rules as to the incidence of interest on court judgments apply.

35. In the case of this Court, Article 10.4.9 of the Procedural Rules provides that the Court has the power to make an order for the payment of interest.

36. As already noted, the exercise of this power was assumed in the case of the financial penalty imposed in *QFCRA v First Abu Dhabi Bank*. (The case was remitted to the Registrar to assess interest which assessment is pending.) Whilst as a first instance decision it is not technically binding on this Court, it should in the Court's view be followed to avoid inconsistency on an important issue unless there is reason to suppose that it was wrongly decided.

37. As a matter of comment, if interest is not ordered, a party which (by definition) is not complying with the penalty continues to benefit from non-compliance, even after the penalty becomes a judgment of the Court.

38. That said, the QFCRA is not in the same position as a commercial party in which the grant of interest can be seen as compensation for an assumed need to borrow money to cover late payment of a debt owed to it.

39. On the other hand, failure to pay a penalty when due does have a financial impact on the QFCRA. This is explained by the QFCRA as follows:

> "The Regulatory Authority is a body corporate established by statute and owned by the State of Qatar (QFC Law No (7) of 2005 ("QFC Law No (7"), Article 8(1)). It has an independent budget (Article 8(5)) and is provided with funding by the State (Article 8(6)). Any "*Income surpluses (whether budgeted for or not) realized by the … Regulatory Authority*" may be retained by it, returned to the State, or applied to the repayment of indebtedness or to the creation of reserves (Article 14). Income surpluses include income from the imposition and recovery of financial penalties issued by the Regulatory Authority."

40. Whilst the Court was initially reluctant to award interest to a body which is an arm of the State and not subject to the commercial pressures faced by commercial

organisations, it is persuaded that it would be appropriate to follow the precedent set in the *QFCRA v First Abu Dhabi Bank* case. The QFCRA operates an independent budget, and one assumes must exercise budgetary discipline, and is entitled to use income surpluses to help finance its operations. The same broad principle referred to above seems to apply, namely that the award of interest serves as compensation for delayed payment.

41. Finally, in every case it is for the claimant to apply for interest if it wishes to do so – it is not for the Court to order interest of its own motion.

42. QFCRA applies for an award of 5% pa simple interest from 10 May 2019 to judgment date. 10 May 2019 is 60 days from the date of the Decision Notice, that being the period allowed for payment. However, in *QFCRA v First Abu Dhabi Bank* the Court ordered interest from the date the application was filed. The application in the present case was filed on 29 March 2020.

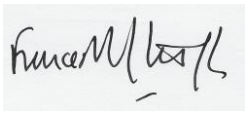
43. This Court respectfully considers that interest should be from the date of judgment on the application rather than from the date by which payment of the penalty was to be made or the date of the application to recover it as a debt. The reason is that the penalty is not converted into a "debt" until such judgment. As pointed out above, interest is not payable on the penalty *per se*. The commencement date of interest should therefore be from the date judgment is given on the application under FSR Article 59(4) permitting the Regulatory Authority to recover the penalty as a debt.

44. QFCRA applies for an award of 8% simple interest from the date of judgment until payment in full. Even if the Court had been of the view that pre-judgment interest is recoverable, it would not have ordered a different rate of interest in this case. A rate of 5% reflects current interbank overnight rates and commercial lending rates in Qatar. It is the appropriate rate in this case. QFCRA is entitled to interest at 5% on the judgment debt from the date of this judgment until the date of payment.

45. The Court has recently ordered QFCRA to disclose to the beneficiaries the HCW bank statements and records in its possession, appropriately redacted, to assist the beneficiaries pursue their proprietary claims. QFCRA accepts that the Court must ensure that, in granting this application, it does not prejudice any purported right to

monies or assets formerly in the possession, custody or control of HCW, or undermine or otherwise prejudice any purported proprietary claim which the beneficiaries may have over funds which have been frozen in the State of Qatar. Accordingly, the Court concludes that QFCRA may not enforce this judgment without the permission of the Court.

By the Court,



Justice Frances Kirkham

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