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: [2023] QIC (RT) 2

IN THE QATAR FINANCIAL CENTRE

REGULATORY TRIBUNAL

Date: 17 May 2023

CASE NO: RTFIC0004/2023

PATRICK BAERISWYL

Appellant

v

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

Respondent

DECISION

Before:

Sir William Blair, Chairman

Justice Sean Hagan

Justice Dr Muna Al-Marzouqi

DECISION

Introduction

1. This appeal arises from a Decision issued by the Qatar Financial Centre Regulatory Authority (the '**Respondent**') dated 19 September 2022 (the '**Decision**'). In the Decision, the Respondent concludes that Mr. Patrick Baeriswyl (the '**Appellant**') failed to meet his regulatory responsibilities and contravened a number of Anti-Money Laundering and Counter Financing of Terrorism ('**AML/CFT**') Requirements set forth in the relevant AML/CFT Rules ('**AML/CFTR**')[1]. The Decision imposes a financial penalty of QAR 728,000.00 (USD 200,000.00) and also prohibits the Appellant from carrying out any function in the Qatar Financial Centre ('**QFC**') for an indefinite period. [2]

2. The Appellant filed an appeal against the Decision on 17 November 2022. The Respondent filed its Response on 14 December 2022. The Appellant has not filed a Reply to that Response.

3. The Appellant and the Respondent informed the Tribunal on 8 February 2023 and 24 January 2023, respectively, that they were content to have the matter resolved by the Tribunal without a hearing. On 21 February 2023, the parties were directed that any further material (including documentary material and any witness statement(s)) on which the Appellant or the Respondent wished to rely should be filed with the Registry no later than 16.00 on 21 March 2023 following which the Tribunal would give its decision on the Appeal. No material other than that already provided was filed by the Appellant. The Tribunal is satisfied that the matter can fairly be resolved on the papers[3].

Background

[1] Decision Notice, paragraph 3.1.
[2] Decision Notice, paragraph 1.1(a) and (b).
[3] Documentary disclosure was made by the QFCRA in the course of the decision-making process which culminated in the Decision Notice the subject of the appeal.

4. From 19 August 2016 to 27 March 2018 (the '**Relevant Period**'), the Appellant was the Senior Executive Function ('**SEF**') and Director of Horizon Crescent Wealth LLC, a limited liability company incorporated in the QFC on 4 February 2015 ('**HCW**').[4]

5. Following an investigation that began on 22 February 2018, the Respondent issued a Decision Notice to HCW on 11 March 2019 (the '**HCW Decision Notice**') imposing significant financial penalties on the company based on its conclusion that, during the period from December 2016 to February 2018, HCW had contravened a number of regulatory requirements of the QFC, including a number of AML/CFTR requirements. HCW appealed this Decision to the Tribunal, which dismissed the appeal on 9 March 2020. HCW sought permission to appeal the Tribunal's decision to the Appellate Division of the Qatar International Court (the '**Court**'), and the Court refused the application for permission to appeal on 9 June 2020.

The Appellant's Alleged Contraventions

6. In its Decision, the Respondent concludes that the Appellant, in his role as a director, member of senior management and SEF of HCW, failed to meet his regulatory obligations and contravened the two regulatory requirements relating to AML/CFT.[5] Specifically:

    i. He failed to ensure that HCW's policies, procedures, systems and controls appropriately and adequately addressed the requirements of both the Anti-Money Laundering Law[6] and the Anti-Money Laundering Rules[7], thereby contravening AML/CFTR 1.2.1.

    ii. He failed to ensure that HCW developed, established and maintained effective AML/CFT policies, procedures, systems and controls, documents those policies, at all times have an experienced and effective MLRO and ensure that money laundering and terrorist financing risk

[4] Minutes of Director's Resolution dated 19 August 2016.
[5] Decision Notice, paragraph 3.1.
[6] Anti- Money Laundering Law No. 4 of 2010.
[7] Anti-Money Laundering and Combating Terrorist Financing Rules 2010, Version 7, effective 1 January 2106 to 31 March 2017 and Version 8 effective 1 April 2017 to 31 January 2020.

were taken into account in the day-to-day operations of the company, thereby contravening AML/CFTR 2.2.2.

The Appellant's Appeal

7. In his Appeal, the Appellant states that "*as an owner and Director*" of HCW "*he did not fail to meet his regulatory obligations and did not contravened* (sic)" the specific AML regulatory requirements cited in the Decision.[8] In that context, he asserts that any contravention of the AML/CFT requirements was the responsibility of the former Chief Executive Officer of HCW (the '**former CEO**'), who he states was the MLRO.[9] Finally, the Appellant asserts that, by virtue of article 209 of the Qatar Civil Code (Law No. 22 of 2004), it is HCW – and not the Appellant – who should be held exclusively liable for any unlawful acts.

The Tribunal's Analysis

8. In his Appeal, the Appellant describes his relationship with HCW as being that of "*owner and Director*". In fact, the documentary evidence demonstrates that, during the Relevant Period, he was also the SEF.[10] Accordingly, although he did not become CEO until the former CEO appears to have departed in August 2017, as SEF he had responsibility for the management of HCW during the entirety of the Relevant Period. As stated in the QFC Authority General Rules, the SEF is "*the function of having overall responsibility alone or jointly with one or more individual for the conduct of the whole of the business of a Licensed Firm*"[11] Moreover, during his interview, the Appellant acknowledged that, as a matter of practice, he did exercise this management responsibility. For example, he stated that the former CEO "*reported*" to the Appellant during the period prior to the former CEO's departure in August 2017. [12] He also acknowledged that he read and "*checked*" the required AML/CFT reports that had been prepared by the former CEO and the MLRO[13].

[8] Appeal, paragraph 2.1
[9] Appeal, paragraph 3.1
[10] Minutes of Director's Resolution dated 19 August 2016.
[11] QFCA Rule 11.3.1(A).
[12] 8 September 2021 Interview Transcript, page 4, lines 12-13 and page 9, line 15.
[13] 8 September 2021 Interview Transcript, page 21, lines 17-21

9. Given the Appellant's formal and actual management responsibilities, we concur with the Respondent's conclusion that, during the Relevant Period, the Appellant was a member of senior management within the meaning of the AML/CFTR and, therefore, had specific responsibilities in the AML/CFT area. As noted above, in the Decision, the Respondent concludes that the Appellant failed to fulfill these responsibilities in two areas. Although both are closely related, we will deal with each in turn.

10. First, there is the question of whether the Appellant contravened AML/CFTR 1.2.1, which required him to ensure that HCW's policies, procedures, systems and controls appropriately and adequately addressed the relevant AML/CFT requirements. At the outset, we would note that, in the HCW Decision, the Respondent had based its conclusion regarding HCW's contravention of this AML/CFT requirement by relying, in part, on evidence that basic AML/CFT requirements had not met when specific HCW clients were onboarded. As noted by the Tribunal when it dismissed HCW's appeal, HCW had not challenged the Respondent's characterisation of the facts that gave rise to the determination of HCW's liability.[14]

11. During his interview, the Appellant was also confronted with the circumstances of the onboarding of specific clients and struggled to explain how the onboarding process conformed to AML/CFT requirements. One example relates to the onboarding of a client from Africa who was the son of the president of an African country. [15] Notwithstanding this family relationship, the Appellant did not treat the client as a "*politically exposed person*" requiring enhanced due diligence. The Appellant was of the view that this was not necessary because the client himself was not a government official, did not have a diplomatic passport and was running a private – rather than public – company.[16] However, the failure to treat the client as a "*politically exposed person*" requiring stricter scrutiny is in direct contravention of AML/CFTR 1.3.6 (1), which provides that:

[14] As noted in the Tribunal's Decision, "*HCW offered no meaningful explanation or response, it did not deny RA's summary of the facts. It did not point to any existing evidence or seek to adduce new evidence to contradict the RA's case*" *Horizon Wealth LLC v Qatar Financial Centre Regulatory Authority, 9 March 2020* [2020] QIC (RT) 1, page 7 (*https://www.qicdrc.gov.qa/case-nos-2-and-4-2019-2020-qic-rt-1.*)
[15] *Horizon Wealth LLC v Qatar Financial Centre Regulatory Authority*, pages 6-7.
[16] 8 September 2021 Interview Transcript, page 47, lines 11-16.

> *a politically exposed person (PEP) means an individual who is, or has been, entrusted with prominent public functions. Unless the context requires otherwise, a reference to a PEP in these rules includes a family member of the PEP or a close associate of the PEP* (emphasis added).

12. The second contravention cited in the Decision Notice is obviously closely related to the first: a firm cannot have effective AML/CFT policies, procedures, systems and controls in place unless it has a dedicated and qualified MLRO to ensure that these measures are developed and consistently applied in practice. In the case of HCW, no such MLRO was in place. During his interview, the Appellant acknowledged that the MLRO in place (anonymized as Mr B in the Decision Notice) was not "*as appropriate as … for this job*". [17] When asked why HCW would hire an MLRO that did not have adequate qualifications, the Appellant responded by saying that HCW's business was only a "*small operation*" and that the MLRO was being supported by the former CEO.[18] While the Appellant also acknowledged that HCW had intended to replace the MLRO because of his lack of qualifications, it never did so because of other pressing matters.[19]

13. Perhaps the most compelling evidence regarding the MLRO's lack of qualifications is to be found in the interview of Mr B himself, who was the MLRO during the Relevant Period. When asked about the overall systems and methodology relied upon by HCW to mitigate AML/CFT risk (which directly relate to the alleged contraventions regarding "*policies, procedures, systems and controls*"), Mr B did not challenge the assessment that they were deficient; indeed, he "*guessed*" that they were probably *not* adequate. Rather, and rather remarkably, he claimed that he did not have the knowledge to make that assessment - given his lack of a background in compliance – and that, in any event, he had relied completely on the former CEO for these purposes:

> *QFCRA: Could you explain the business risk assessment and the threat assessment methodology at HCW? In your view, what was it about? How was it?*
>
> *Appellant: Do you mean by the procedure of basically assessing the KYC of the clients?*

[17] 8 September 2021 Interview Transcript, page 8, lines 18-19.
[18] 8 September 2021 Interview Transcript, page 9, lines 1-3.
[19] 8 September 2021 Interview Transcript, page 8, lines 25-27.

QFCRA: Yes, correct, yes.

Appellant: And ranking the risks, correct?

QFCRA: Yes, yes.

Appellant: Yes. Well, it was very basic but, as I said, because there was lack of investment and support from the management. I... it's [former CEO] you know. It's basically, you know, that he is so full of... I mean he knows how to run a business in Qatar, a fully regulated business, who should provide enough tools and skills in order to make the business robust.

QFCRA: All right. Was the risk assessments and all this methodology at HCW QFC compliant? Was it in accordance with the QFC law in your opinion?

Appellant: In my opinion, I'm not able to judge whether we were matching or not. I guess not.

QFCRA: You guess no.

Appellant: Well, you know, I... I don't know. I don't have enough knowledge.[20]

14. As noted earlier, the Appellant argues that article 209 of the Qatar Civil Code precludes the Appellant from being held responsible for any violations of laws or regulations relating to AML/CFT on the grounds that it is HCW, as the employer, who "*shall be responsible for damages due to the unlawful act of such employee, provided that such act occurred during the course and scope of his employment*." The effect of article 209 is that companies are liable for the wrongdoing of their employees when committed during performing their tasks, and an injured person may file a lawsuit against the company or the employee or both of them. The compensation is claimed only once, either from the employee or the company or 50% from both. This provision of the Qatar Civil Code is, as noted by the Respondent, not applicable to this case. It deals with civil liability as between employee and employer. Further, article 18 of the QFC Law No. 7 of 2005 addresses the interaction between the QFC Laws and Regulations, on the one hand, and Qatar's other laws (including the Qatar Civil Code), on the other hand. As stated in article 18 (3):

The <u>QFC</u> Laws and <u>Regulations</u> shall apply to The Contracts, Transactions and arrangements conducted by The entities established in, or

[20] 23 August 2021 Interview of Mr. B, page 22.

operating from The QFC, with parties or Entities located in The QFC or in the State but outside the QFC, unless the parties agree otherwise.

15. Accordingly, both AML/CFTR 1.2.1 and AML/CFTR 2.2.2, which impose personal responsibility on members of senior management for failing to ensure that HCW comply with AML/CFT Requirements are applicable and controlling in this case. It cannot be doubted that personal liability on management may be imposed even though the company is also held liable, as indeed has been recognised in Tribunal decisions (e.g. *Nigel Perera v Qatar Financial Centre Regulatory Authority* [2021] QIC (RT) 6, at paragraph 8).

16. Accordingly, and in light of the above analysis, the Tribunal agrees with the Respondent that the Appellant contravened both AML/CFTR 1.2.1 and AML/CFTR 2.2.2. Moreover, taking into account the considerations set forth in the Enforcement Policy Statement, the Tribunal considers that the penalties imposed by the QFCRA in this case – an indefinite prohibition on future functions within the QFC and a financial penalty of USD 200,000.00 – to be entirely appropriate for the following reasons. First, ensuring a robust application of the AML/CFTR is critical to ensuring continued public confidence in the QFC. Second, in this case, the failure of the Appellant, as SEF, to ensure that HCW had a qualified MLRO in place is particularly problematic given the central role that the MLRO plays in ensuring that policies, procedures, systems and controls relating to AML/CFT are in place. In this case, it may be that the serious deficiencies with respect to HCW's AML/CFT controls were directly attributable to the MLRO's lack of competence. Third, the penalties imposed in this case are broadly in line with precedents. Finally, and perhaps most importantly, as a matter of deterrence, it is important that the QFC sends a clear signal that the SEF is ultimately responsible for ensuring that adequate AML/CFT controls are in place and the importance that it attaches to the AML/CFTR generally.

Conclusion and Disposition

17. It follows from the above that the Appellant's appeal is dismissed. In accordance with the usual practice in the Tribunal, there will be no order as to costs.

By the Regulatory Tribunal,

[signed]

Justice Sean Hagan

A signed copy of this Decision has been filed with the Registry.

Representation

The Appellant was represented by Sami Abdulla Abushaikha, of Abushaika Law (Doha, Qatar).

The Respondent was self-represented.

DIGITALLY SIGNED AND VERIFIED
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