



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 (C) 1

IN THE REGULATORY TRIBUNAL
OF THE QATAR FINANCIAL CENTRE

12 July 2020

CASE No. 2 of 2019

BETWEEN:

HORIZON CRESCENT WEALTH LLC

Appellant

v

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

Respondent

COSTS ASSESSMENT

Before:

Mr Christopher Grout, Registrar

JUDGMENT

Introduction

1. Ordinarily, proceedings before the Regulatory Tribunal ('the Tribunal') will not result in the awarding of costs, irrespective of whether the appeal is successful. This is unlike the position before the Court where the normal rule is that the unsuccessful party to litigation bears the costs of the successful party. However, Article 24.1 of the Regulations and Procedural Rules of the Tribunal permit the Tribunal to make an award of costs 'if it considers that justice so requires'.
2. The present case is such a case. At paragraph 128 of its Decision, dated 9 March 2020 and reported at [2020] QIC (RT) 1, the Tribunal ordered the Appellant to pay one half of the Respondent's costs in this appeal. It is unnecessary to recite the reasoning for this (as to which see paragraphs 99-130 of the Tribunal's Decision); suffice it to say that the rationale for doing so related to the Appellant's non-compliance with Directions of the Tribunal.
3. As the Parties were unable to agree the appropriate amount of costs, the Respondent filed an application, on 11 May 2020, asking for a costs assessment to be undertaken. I gave the Appellant 14 days in which to file a response, indicating that I would conduct the costs assessment on the papers (i.e. without an oral hearing) unless either party advanced cogent reasons as to why an oral hearing should take place. Neither party has sought an oral hearing; indeed, the Appellant has not filed anything at all in response to the application.
4. The final point to note by way of introduction is that the Appellant sought permission to appeal the Decision of the Tribunal. Permission was, however, refused by the Appellate Division of the Court in a judgment dated 9 June 2020, reported at [2020] QIC (A) 2.

The Need for a Hearing

5. I am afforded a ‘wide discretion’ as to the procedure to be adopted when undertaking a costs assessment.¹ Ordinarily, such assessments will be undertaken on the papers, i.e. without the need for an oral hearing. In this case, neither party has sought an oral hearing. Although it is regrettable that the Appellant has not filed any submissions in response to the application, I am satisfied that it is appropriate to undertake the costs assessment on the written material provided to date.

The Principles to be Applied

6. Ordinarily, for costs to be recoverable, they must be reasonable. In *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (C) 1 I laid down the principles to be applied when assessing ‘reasonable costs.’ At paragraphs 10-12 I said:

“How is the issue of reasonableness to be approached? In my judgment, in order to be recoverable costs must be both reasonably incurred and reasonable in amount. If they are not then they are unlikely to be recoverable.

I have identified the following (non-exhaustive) list of factors which will ordinarily fall to be considered when assessing whether or not costs have been reasonably incurred by a party and, if they have, whether they are also reasonable in amount:

- (a) Proportionality;*
- (b) The conduct of the parties (both before and during the proceedings);*
- (c) Efforts made to try and resolve the dispute without recourse to litigation (for example through Alternative Dispute Resolution);*
- (d) Whether any reasonable settlement offers were made and rejected; and*
- (e) The extent to which the party seeking to recover costs has been successful.*

¹ *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (F) 2, at paragraph 21. That principle was not interfered with by the Appellate Division of the Court in the same case in its judgment dated 11 September 2017.

When considering the proportionality factor, the following (again non-exhaustive) factors are likely to fall to be considered:

- (a) In monetary or property claims, the amount or value involved;*
- (b) The importance of the matter(s) raised to the parties;*
- (c) The complexity of the matter(s);*
- (d) The difficulty or novelty of any particular point(s) raised;*
- (e) The time spent on the case;*
- (f) The manner in which work on the case was undertaken; and*
- (g) The appropriate use of resources by the parties including, where appropriate, the use of available information and communications technology.”*

7. Those principles were, upon review by the First Instance Circuit of the Court, approved.² Although such principles were established in the context of litigation before the Court, there is no reason why they should not equally apply to cases before the Tribunal.

The Submissions

8. The Respondent’s application seeks an award of costs in the sum of QAR 254,295.00 which represents 50% of the total costs it says it incurred in relation to this appeal (amounting to QAR 508,590.00). The Respondent submits that this amount is both reasonable and proportionate, taking into account, in particular, that,

“(a) The case was one of considerable importance and justified the instruction and attendance of leading counsel with specialist knowledge of financial services law. The litigation (which still continues) was complex and involved novel issues;

² *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (F) 2 at paragraph 20. The decision of the Court to approve those principles was not interfered with by the Appellate Division of the Court in the same case in its judgment dated 11 September 2017.

(b) The Regulatory Authority has minimised its own costs by not instructing an external law firm and by using its in-house legal expertise. If an external law firm had been instructed, costs would have been substantially higher; and

(c) The [Appellant's] conduct of the proceedings has directly resulted in the award of costs due to the continual failure to abide by Tribunal directions."

9. The application was supported by a witness statement of Andrew Lowe, dated 11 May 2020, which sought to particularise the costs sought under three heads: (a) in-house preparatory costs, (b) counsels' fees, and (c) other fees.

In-house preparatory costs

10. The in-house preparatory costs are split between 4 individuals, employed by the Respondent, who fulfil different roles: the Director of Enforcement (hourly rate of QAR 981 for 2019 and QAR 997 for 2020), a Consultant with the Enforcement Department (hourly rate of QAR 200 for the period 27 January to 25 April 2019 and QAR 209 for the period 26 April to 31 December 2019), an Investigator with the Enforcement Department (hourly rate of QAR 322 for 2019 and QAR 326 for 2020) and the Associate Director within the Enforcement Department (hourly rate of QAR 634 for 2019 and QAR 642 for 2020).
11. A spreadsheet, prepared by the Respondent, reveals that the total number of hours spent by these individuals comes to 226.9, with the majority having been occupied by the Director of Enforcement (173) and the Investigator (45.6). The work undertaken is not particularised in any meaningful way over and above 'prep hearing', 'reviewing appeal', etc. In monetary terms, this amounts to QAR 188,229.00.

Counsel's fees

12. The Respondent instructed two counsel, Mr. Ben Jaffey QC and Mr. Carmine Conte, both of whom are barristers in England and Wales.
13. The Respondent's liability for their respective fees appears to amount to QAR 274,907.31. The accompany fee notes do not explain what the agreed hourly rates were, nor do they detail how many hours each counsel spent performing various tasks. They do, however, provide a line by line account of the nature of the work invoiced for up to, and inclusive of, the hearing. It is to be noted that because, as at the date of the hearing, Mr. Jaffey QC was also representing another party (namely the Qatar Financial Centre Authority) in related proceedings involving the same Appellant, appropriate deductions have been made to reflect the fact that certain fees (and associated costs) were evenly split between the Respondent and the QFCA.

Other Costs

14. These primarily involve disbursements relating to both counsel- airfares in the sum of QAR 10,452.50 and QAR 20,905.00, a flight change cost in the sum of QAR 25.00, and hotel costs of QAR 1,440.00. Again, appropriate deductions have been made to reflect the fact that the QFCA bore responsibility for some of the disbursement costs associated with Mr. Jaffey's attendance.
15. There is also a claim for QAR 12,630.80 in respect of professional services rendered by KPMG seemingly in relation to obtaining a witness statement from someone in Panama in furtherance of the appeal proceedings.

Consideration and Conclusions

16. I have not had the benefit of any submissions from the Respondent. It is therefore unclear which, if any, of these costs they take issue with and why. In reaching a conclusion, I intend to apply a reasonably broad-brush approach whilst keeping firmly in mind the principles set out at paragraph 6 above.
17. Briefly, in relation to the Respondent's submissions, I observe as follows. First, I accept that this was a case of considerable importance- not only to the parties, but to the Qatar Financial Centre as a whole. It concerned, among other things, findings by the Respondent (which were upheld by the Tribunal) which involved serious breaches, by the Appellant, of anti-money laundering and combatting the financing of terrorism rules and regulations. The breaches were described by the Tribunal as 'egregious' and ones which 'ought to be met with requisite degree of consequences' (see paragraph 28 of the Decision). The wider impact of such conduct is best encapsulated by the Tribunal's observations at paragraph 34 of its Decision:

"Lest there be any doubt, AML/CFT failures are not victimless. The industry, the market, and the QFC all suffer. The public interest, and public confidence in the QFC, are also unfairly undermined."

18. As to the Respondent's assertion that it has minimised costs by relying on in-house expertise, that may be right. Whilst instructing external lawyers is quite often an expensive exercise, the counter point is that people who are specialists in the field are being instructed and so are able to spend less time considering and preparing a case than a lay person would. More importantly, they are able to identify and focus upon the important issues which should help in improving the efficacy of the litigation process. In the present case, each of the in-house personnel employed by the Respondent are experts in their respective fields. They are not, however, litigators. It is, therefore, at least arguable that any savings that may have been made by utilising in-house expertise are not as substantial as the Respondent considers them to be.

19. Nevertheless, I am prepared to accept that such costs, providing they have been reasonably incurred and are reasonable in amount, are recoverable (see, by way of analogy, the observations made in *Pinsent Masons LLP v (QFC Branch) v Al Qamra Holding Group* [2018] QIC (C) 1 concerning the position of self-represented law firms). The difficulty, in the absence of any agreed table of recoverable fees provided for by the QFC Law / Regulations, is in determining whether the hourly rates claimed are reasonable. They are, on any view, significantly lower than what would have been charged by external lawyers. I can reach this conclusion with confidence given the professional rates claimed in other cases I have dealt with. Whether the total number of hours spent is reasonable is a different matter which I shall return to below.

20. Finally, in relation to the Respondent's criticisms of the Appellant's conduct, these are undoubtedly justified and would, ordinarily, be a relevant consideration. However, it must be borne in mind that, in the context of the present case, the only reason a costs award was made in favour of the Respondent is precisely because of the conduct of the Appellant. It would be wrong to 'double count' this as part of the costs assessment.

21. Turning to the various heads of costs:

In-house preparatory costs

22. Having accepted that these are recoverable in principle and having accepted that the hourly rates are reasonable, the question is whether the total time expended on this litigation (and the associated cost) was reasonable. It seems to me that bearing in mind the nature of the litigation, including the voluminous material that needed to be prepared and reviewed, the hours spent preparing the case are reasonable. The associated total costs (QAR 188,229.00) seem to me to be reasonable and so, in accordance with the Decision of the Tribunal, the Respondent is entitled to recover 50%, namely QAR 94,114.50.

Counsel's fees

23. In the present case, the Respondent instructed two counsel to represent it at the appeal hearing. Both put in a not insubstantial amount of preparation time beforehand. I have given careful consideration as to whether the instruction of two counsel in this case was reasonable. I have come to the conclusion that it was. The case had a number of complex features and generated thousands of pages of material that needed to be reviewed and analysed. It was, even at the date of the appeal hearing, relatively unclear what the nature of the Appellant's case was, it having failed to respond to case management directions and particularise its case properly. Accordingly, those appearing for the Respondent had to prepare for a number of different eventualities. Although it is unclear what the hourly rates of the respective counsel were, the fee notes are detailed enough to allow me to come to the conclusion that the nature of the work undertaken by them was reasonable as are, with the exception of one minor adjustment, the fees claimed. For reasons which I explain below, I am not prepared to allow recovery of fees which have arisen as a result of requiring both counsel to travel to Doha and so I have made a slight reduction to reflect this. Accordingly, I have come to the conclusion that a reasonable amount in respect of counsels' fees is QAR 261,108.62. In accordance with the Decision of the Tribunal, the Respondent is entitled to recover 50%, namely QAR 130,554.31.

Other Costs

24. The Respondent chose to instruct counsel based abroad and incurred costs in bringing them to Doha. It seems to me that, in the context of the present case, these costs were not reasonably incurred. This was a submissions-based appeal; counsel could very easily have been accommodated over the video-link. Bringing them to Doha was the choice of the Respondent and one which it was entitled to make; the Appellant, however, should not be liable for the associated flight and hotel costs. Accordingly, the claim in this regard is refused.
25. There is insufficient information available to me to conclude that the costs associated as a result of the involvement of KPMG were incurred reasonably. Accordingly, this claim is also refused.

Conclusion

26. For the reasons given above, the Respondent's submissions in relation to its reasonable costs are successful, but only to the extent of QAR 224,668.81.

27. Accordingly, the Appellant shall pay to the Respondent the sum of QAR 224,668.81.

By the Court,



Mr. Christopher Grout
Registrar

