

**In the name of His Highness Sheikh Tamim bin Hamad Al-Thani,  
Emir of the State of Qatar**

**IN THE CIVIL AND COMMERCIAL COURT  
OF THE QATAR FINANCIAL CENTRE  
FIRST INSTANCE CIRCUIT**

**16 July 2013**

**CASE NO: 01/2013**

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

**AL MAL BANK (IN LIQUIDATION)**

**Applicant**

**v**

**KASHIF MEHMOOD CHAUDHRY**

**Respondent**

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**JUDGMENT**

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**Members of the Court**

**Justice Cullen**

**Justice Dohmann**

**Justice Gibson**

## ORDERS

The Court makes the following order:

The respondent's unsecured claim in the amount of QAR 210,736.85, which was made on 5 April 2013, in the liquidation of Al Mal Bank LLC is not valid.

## JUDGMENT

### **Introduction**

1. On 6 June 2010 the Court made an order for the winding up of the Al Mal Bank LLC ("the Bank"), pursuant to Articles 77(2) and 78(1)(A) of the QFC Insolvency Regulations, and appointed Joanne Kim Rolls and Steven John Parker, who were insolvency practitioners in RSM Tenon, to act as Joint Liquidators ("the Joint Liquidators"). The Bank had been incorporated on 3 December 2008, and on the 16 August 2009 it had been authorised to commence regulated business activities.
2. On 5 April 2013 the Joint Liquidators received from the respondent, a former employee of the Bank, a claim in the liquidation amounting to QAR 210,736.85. On 8 April 2013 the Joint Liquidators by email rejected his claim. As the respondent disputed the rejection of his claim, the Joint Liquidators on 9 April 2013 presented this application to the Court under Article 95(1) of the Insolvency Regulations for the Court to determine whether he was permitted to submit the claim. This judgment sets out the Court's determination.

### **Factual background**

3. In the Bank the respondent held the post of First Vice President, Compliance from 1 March 2009. The QFC Regulatory Authority ("the Authority") had approved his having the function of overseeing compliance. By reason of such approval he was required by the QFC Financial Services Regulations to

adhere to the principles and requirements set out in the Individuals Rule Book. They included Principle 2: “to act with due skill, care and diligence in carrying out” the compliance function, and Principle 4: “to deal with the Authority in an open and co-operative manner and disclose appropriately to the Authority any information of which the Authority would reasonably require notice.”

4. In 2010 the Authority carried out an investigation of the Bank in regard to certain matters. That investigation was extended to include an investigation into the respondent. On 24 March 2010 the Bank, subject to the consent of the Authority, entered into an agreement with the respondent to indemnify him in respect of legal fees incurred by him in connection with the investigation. The indemnity agreement (“the indemnity”) is set out below in paragraph 8.
5. On 28 March 2011 the Authority issued a Decision Notice to the respondent, citing a contravention by him of Principles 2 and 4 of the Individuals Rule book, and of Article 84(2)(a) of the Financial Services Regulations, which provides: “Without prejudice to the generality of Article 84(1), for the purposes of these Regulations a Person contravenes a Relevant Requirement if he knowingly or recklessly provides to the Regulatory Authority any information which is false, misleading or deceptive or conceals information where the concealment of such information is likely to mislead or deceive the Regulatory Authority”. The Authority decided to impose on the respondent a financial penalty of US\$ 20,000, and to prohibit him from performing the compliance oversight function in the QFC for a period of 12 months.
6. On 5 August 2009 the respondent had submitted to the Companies Registration Office a form notifying it of an increase in the Bank’s paid up capital in accordance with a special board resolution dated 30 July 2009. He attached a certified copy of a minute of the board meeting. No such board meeting had taken place, and the signatures of the directors had been forged. The Authority accepted that the respondent did not know that the signatures had been forged, but maintained that in preparing and submitting a copy of the minute he ought to have known that the minute was false and misleading. On that basis the Authority held that he had contravened Article 84(2)(a) (in that

he ‘recklessly provided false minutes to and misled the Authority’), and that he breached Principle 2 (in that he failed to act with due skill, care and diligence), and Principle 4 (in that he failed to deal with the Authority in an open manner).

7. On 23 May 2011 the respondent appealed against the Authority’s decision to the QFC Regulatory Tribunal, which on 7 May 2012 upheld the decision of the Authority.

### **The indemnity**

8. This was signed by the respondent and the chairman of the Bank, and was in the following terms:

“Subject to the consent of the QFCRA (if required) the Bank hereby agrees to indemnify you and keep you indemnified from and against all legal fees that you may suffer or incur by reason of the investigation subject to the following:-

1. The Bank reserves the right to appoint any and all lawyers on your behalf, subject to your agreement;
2. You must keep the Bank informed as to the full extent of any and all information coming to your attention in connection with the investigation;
3. You have not committed any fraud or other illegal acts in connection with the Bank or the matters under investigation;
4. The lawyers fees may only arise from:
  - a. advising you about your legal rights under QFC Laws in relation to the process of the investigation;

- b. interviewing you initially for a reasonable time, but in any case no more than three hours;
  - c. perusing the documents that relate specifically to the allegations against you and the other documents that your lawyer establishes to the bank's satisfaction are necessary to provide you with fair and reasonable advice;
  - d. discussing strategies relating to the matter with the Bank's lawyers;
  - e. attending with you during interviews by the QFCRA;
  - f. undertaking and appearing in any appeal against the decision of the QFCRA and undertaking the necessary related work (including taking your further instructions) unless the Bank has reasonable grounds to believe that the appeal may not be successful;
5. Your lawyer providing the information and advice that the Bank may require from time to time in connection with the matters in paragraph 4;
6. This indemnity is limited to the legal costs that you incur and does not apply in respect of any financial penalty that the QFCRA may impose on you.

Any breach of the above conditions shall render the indemnity granted herein void”.

**Procedure in regard to the respondent's claim of QAR 210,736.85**

9. On 13 May 2011 the Joint Liquidators had sent an email to the respondent noting that the investigation into him had been completed and seeking confirmation that the sum of QAR 26.545 was his final claim in the liquidation, and giving him notice that, as the investigation had been completed, the indemnity was formally terminated. By reply on the same date

the respondent had confirmed that QAR 26,545 was his final claim in the liquidation.

10. In his email of 5 April 2013 the respondent referred to the indemnity and stated: “There are some additional legal costs as part of the investigation and appeal into myself which were not provided to yourselves earlier. Kindly please find the same attached herewith for your reference and advice of the reimbursement process”. Enclosed were notes of barrister’s fees incurred between 19 July 2011 and 30 January 2012, and fees of solicitors (Wong Partnership LLP) between 3 January and 27 February 2012, all in connection with his unsuccessful appeal to the QFC Regulatory Tribunal, amounting to a total of QAR 210,736.85.
11. In their application to this Court the Joint Liquidators maintained that the respondent had not complied with paragraph 2 of the indemnity. They stated that they were aware of his appeal to the Regulatory Tribunal only when the Authority advised them of this on 7 February 2012, and that they had heard nothing from him until they received his email of 5 April 2013. With reference to paragraph 4(f) of the indemnity, they stated that the Bank was not consulted before the appeal and they were not aware of any grounds that the respondent would have had to appeal.
12. On 15 April 2013 the application by the Joint Liquidators came before the Court. The respondent, who had been served with a copy of the application and had notice of the hearing, did not appear. In an email the day before the hearing the respondent had informed the Registrar that he was currently in his native village (in Pakistan) attending to family matters. He would therefore not be in a position to attend the hearing. He added that he had very limited access to the internet and telephone in that region.
13. At the hearing brief submissions were made by Ms Rolls for the Joint Liquidators in answers to questions from the Court. The Court then made an order that, while it was minded to hold that the indemnity was invalid as a basis for the respondent’s claim, in that he had failed to keep the Bank

informed as to the full extent of information coming to his attention in connection with the investigation, and had failed to consult the Bank in regard to his appeal, it had decided, notwithstanding the absence of the respondent and any response by him to the terms of the application, not to proceed forthwith to give judgment but to afford him the opportunity to show cause why it should not give judgment in accordance with the view which it had in mind.

14. Thereafter the respondent made a written submission dated 29 April 2013, to which the Joint Liquidators were invited by the Court to respond, including by giving further particulars and documentation. Ms Rolls responded by letter dated 12 June 2013, enclosing copies of emails and other documents. By letter to the respondent dated 17 June 2013 the Registrar invited him to make any further response that he wished. The respondent replied with a further written submission dated 30 June 2013, to which Ms Rolls replied by letter dated 1 July 2013.

15. It should be added that, at the direction of the Court, the Registrar wrote to the respondent on 13 May 2013 seeking information as to where he was currently residing; where he would be in the foreseeable future; and whether he would be able to participate in a video or telephone hearing if the Court were minded to arrange this. The respondent replied by letter dated 17 May 2013 repeating that he was currently residing in Pakistan at his ancestral village, Rahim Yar Khan, attending to family matters. He also stated that he would be residing there for “a couple of months”, moving back to Karachi at the end of August 2013. He added: “Note, that there is very limited Internet connectivity at this place and so if telephony. Therefore video- conference will not be possible at all whereas telephone conference would somehow be possible. There is disruption in telephone connectivity at times, which does hamper communication in this part of Pakistan”. In his letter to the respondent dated 17 June 2013 (referred to in the last paragraph) the Registrar informed him that the Court was minded, after receiving any further response, to determine the matter on the papers, i.e. without the need for any oral hearing.

### **The parties' submissions**

16. The submissions made by the respondent and by Ms Rolls in the exchanges to which the Court has referred above, in so far as they bear on whether the Joint Liquidators were aware of the respondent's appeal to the Regulatory Tribunal, can be summarised as follows.
  
17. In his submissions dated 29 April 2013 the respondent stated: "My claim submitted to the Liquidators on 11<sup>th</sup> May 2011 was not the full and final one. The Liquidators were aware of the appeal that I have put forth with the QFCRA's Regulatory Tribunal. I had also called the Liquidators offices in UK and spoke with Ms Jacquie de Bidaph [Senior Manager/Restructuring in RSM Tenon] regarding my claim and that I was expecting additional claims also. At that moment in time I had not yet received invoices from the lawyers appointed by the bank 'Al Mal Bank LLC', i.e. Wong Partnership LLC". The respondent also stated that Wong Partnership had been appointed by the Bank to provide him with legal services and assistance "since the inception of the investigation and appeals process". Therefore they "had been keeping Al Mal Bank LLC updated on all matter during the investigation and appeal process" in accordance with paragraph 5 of the indemnity.
  
18. In response Ms Rolls stated that at no time were the Joint Liquidators informed or approached by the respondent in regard to any proposed appeal to the Regulatory Tribunal. She submitted copies of all emails between her office and the respondent from 31 March 2011. Ms de Bidaph had confirmed that at no time had the respondent advised her of any future claims until he submitted his further claim on 5 April 2013. In her letter of 1 July Ms Rolls stated that Ms de Bidaph would certainly have advised her as an additional claim would have had an impact on the further distribution to unsecured creditors. The respondent's email of 5 April 2013 made no reference to a telephone conversation with her. Ms Rolls also stated in her letter that she confirmed that there was no correspondence in any form, either from or to the Wong Partnership, after the Authority's decision notice dated 28 March 2011,



apart from emails advising them of dividends in respect of a pre-liquidation claim.

19. Ms Rolls also drew the attention of the Court to an exchange of emails on 7 February 2012 between Ms de Bidaph and Mr Shaune Williamson, the Authority's Associate Director Enforcement, following a discussion of the indemnity before the Regulatory Tribunal on that date. Mr Williamson referred in his email to a statement by the respondent before the Tribunal that the indemnity was only for legal costs associated with the Authority's investigation and did not covers cost associated with his appeal. In reply Ms de Bidaph said that on 13 May 2011 the respondent had confirmed that his final claim in the liquidation was QAR26,545, which claim had been accepted. In response the respondent commented that Mr Williamson's email also stated that the respondent "has lodged a claim under the indemnity with the liquidator which has not been paid", and said: "This informs the court that I was awaiting the additional claims as promised to me by Ms Bidaph". Ms Rolls rejoined that it was hard to see how the respondent could have been awaiting additional claims on 7 February 2012 as no detail was provided to the Joint Liquidators prior to 5 April 2013.

20. The Court should add for completeness that in his submissions dated 30 June 2013 the respondent drew the attention of the Court to the fact that Ms Rolls had left RSM Tenon and was now working for Opus Restructuring LLP. He questioned her authority to sign her letter of 12 June 2013 as from RSM Tenon Restructuring. Ms Rolls responded, entirely correctly, that the appointment of herself and Mr Parker was unaffected by this change. Their appointment as Joint Liquidators was as individuals, who were qualified as insolvency practitioners, and not as partners of RSM Tenon. Both remain consultants of RSM Tenon and in that capacity remain authorised to sign letters in that name.

## Discussion

21. It is clear that the validity of the respondent's claim for QAR 210,736.85 depends on whether the Bank, in effect the Joint Liquidators, were aware of the respondent's intention to appeal to the Regulatory Tribunal, as he did on 23 May 2011. The plain implication of the wording of paragraph 4(f) of the indemnity, in the Court's view, is that the Bank should be in a position, in advance of the taking of an appeal, to form a view as to the prospects of this being successful, which it could not do in the absence of knowledge of the respondent's intention to appeal. Moreover, when paragraph 4(f) is read, as it should be, in the light of the indemnity as a whole, and in particular paragraph 5, which requires the respondent's lawyer to provide the Bank with the information and advice which it may require in connection with the matters in paragraph 4, there was an obligation on the respondent to cause the Bank to be informed of any proposed appeal..
22. This critical question of the Bank's awareness falls to be examined in the light of the written material which is before the Court, as the hearing of oral evidence on the matter is not a practical proposition.
23. The respondent has claimed that the Joint Liquidators "were aware of the appeal that I have put forth with the QFCRA's Regulatory Tribunal", but has given no detail as to when, by what means or in what circumstances they became so aware, despite the fact that he could have been in no doubt that the Joint Liquidators had informed the Court that they had been unaware of the appeal until 7 February 2012.
24. The respondent also claims that he had informed Ms de Bidaph that he was expecting additional claims, this being at a time when he not yet received invoices from his solicitors, the Wong Partnership LLC. The respondent's statement also does not refer to any particular date, but it could hardly be prior to Ms de Bidaph's email of 7 February 2012 which shows that the only claim in the liquidation of which she was aware was the final claim of QAR26,545, which the respondent had confirmed as being final on 13 May 2011.

25. The Court notes that the respondent lodged his appeal with the Regulatory Tribunal ten days after confirming that QAR 26,545 was his final claim. If he had been alert to the need to inform the Joint Liquidators of his intention to lodge an appeal, he would surely have insisted that it was not his final claim.
26. In the event he did not submit a further claim until his email of 5 April 2013, in which he referred to the attached fee notes as “some additional legal costs as part of the investigation and appeal into myself which were not provided to yourselves earlier”. As the Court has already stated, they comprised notes of barrister’s fees incurred between 19 July 2011 and 30 January 2012, and fees of Wong Partnership LLP between 3 January and 27 February 2012. The Court notes that the barrister’s fee notes acknowledged that payments had been made in July 2011 and January 2012, the latter perhaps in response to accounts rendered in December 2011. There appears to be nothing to explain why no amount was claimed by the respondent in the liquidation until 5 April 2013.
27. The Court has no reason to doubt that the Joint Liquidators have made a full disclosure of emails between them and the respondent after 28 March 2011, nor that there was an absence of any relevant communication between them and Wong Partnership LLP in that period.
28. In these circumstances the Court is satisfied that the Joint Liquidators were not aware of the respondent’s intention to appeal, and that neither he nor his solicitors gave notice to them of any claim in respect of legal fees incurred in connection with the appeal prior to his email of 5 April 2013. The Court regards the respondent’s statements to the contrary as being unreliable.
29. Accordingly the Court considers the respondent’s claim is not valid.

Representation:

The application was considered on the papers with written representations having been made by Ms Joanne Rolls (on behalf of the Joint Liquidators of the Applicant) and by the Respondent, Mr Kashif Chaudhry.

By the Court,



Christopher Grout  
Registrar of the Court

