

# **Dubai Court of Appeal rejects a DIAC award due to arbitrator's breach of due process.**

## **Kluwer Arbitration Blog**

May 5, 2016

Ashraf El-Motei (Motei & Associates)

*Please refer to this post as: Ashraf El-Motei, 'Dubai Court of Appeal rejects a DIAC award due to arbitrator's breach of due process.', Kluwer Arbitration Blog, May 5 2016, <http://arbitrationblog.kluwerarbitration.com/2016/05/05/dubai-court-of-appeal-rejects-a-diac-award-due-to-arbitrators-breach-of-due-process/>*

---

Motei & Associates was instructed by the Respondent in recent legal proceedings between two parties (details for which must remain confidential) before the Dubai Courts in relation to the ratification of an arbitral award issued by the Dubai International Arbitration Centre (DIAC).

### **Appeal Court's rationale**

An arbitrator is under an obligation to give the parties a reasonable opportunity to present their case. Failure to do so gives legal grounds for the annulment of the resultant arbitral award.

### **Facts of the Case**

In the above case, the Claimant company, a supplier of construction material, entered into an agreement with the Respondent, a subcontractor, in which they agreed to settle any disputes arising in relation to the agreement through arbitration in accordance with the DIAC Rules.

The Claimant claimed that the Respondent failed to perform its contractual obligations and initiated arbitration proceedings pursuant to the DIAC Rules. In finding for the Claimant, the sole arbitrator ordered the Respondent to pay the Claimant damages and legal fees for breach of contract, amounting to USD 12, 369, EUR 63, 536 plus interest and costs. The Claimant initiated ratification proceedings before the Dubai Court of First Instance.

### **The Dubai Court of First Instance's decision**

Before the Court of First Instance, the Respondent challenged the ratification action, requesting the annulment of the award on the grounds that the Respondent was not granted a reasonable opportunity to present its case. Respondent argued that:

1. The Claimant had erroneously stated Respondent's name in both the request for arbitration and its statement of claim. As a result, the Respondent had never been properly notified, and was therefore unaware of, the arbitration proceedings.
2. On realizing such error, the arbitrator issued a procedural order to rectify the name of the Respondent and re-notify it with the correct name.
3. Immediately upon being notified of the arbitration proceedings, the Respondent, on 27 December 2011, through its manager, has responded and requested the arbitrator to be granted time to appoint

a lawyer and submit its statement of defense.

4. On 6 January 2012, the arbitrator dismissed the Respondent's request, and rendered his award. In the award, the arbitrator stated that "the Respondent's request for time was submitted without an official power of attorney", a fact that the Respondent contested in the proceedings. The court considered that the arbitrator, based on the submitted trade license, should have, at the least, given the Respondent the opportunity to appear before him and present his authority, taking into account the date on which the Respondent has been officially notified of the proceedings, and the date of issuing the award.

The Court of First Instance dismissed the Respondent's arguments, and ordered the enforcement of the arbitral award.

### **The Court of Appeal**

On the Respondent's appeal, the Dubai Court of Appeal ruled that the arbitral award was null and void because the arbitrator had failed to observe the adversarial principle ("principe du contradictoire") that gives the parties the right to present their case fairly. The Court of Appeal further found that the rejection of the Respondent's request was made on baseless grounds without legal justification. As such, under Article 216 of the UAE Civil Procedures Law, the Court of Appeal overturned the prior Court's decision and set aside the award, ordering the Claimant to pay all court and legal fees for both sets of court proceedings. In this regard, in order to recognise and enforce an arbitration award under domestic law in the UAE, such award must be legally valid and free of any flaws.

No appeal was filed by the Claimant before the Court of Cassation within the legal time limit, hence, the above Court of Appeal judgment became final and subject to no further appeal.

This case demonstrates that the local courts in the Emirate of Dubai accord fundamental importance to, and respect for, the right of due process in international arbitration, as guaranteed under Article 216 of the Civil Procedure Law. The equivalent ground for a foreign award sought to be enforced under the New York Convention is Article V(1)(b). Merely because the parties have agreed to resolve a dispute outside of the national courts does not mean that either party is deemed to have waived its rights to participate in the proceedings and to put forward its case, and by disregarding such fundamental right, the arbitral tribunal runs the risk that its award shall not be enforced.

Another interesting question that this case raises is whether the Claimant may seek some sort of redress against the sole arbitrator for failing to respect the fundamental right of due process, and therefore acting negligently in the process of rendering the award. Under the DIAC Rules, however, it would seem that the arbitrator would be protected from such action, as Article 40 of such Rules provides that Article 40 of the DIAC Rules provides that: "No member of the Tribunal or of the Executive Committee, nor the Centre and its employees, nor any expert to the Tribunal shall be liable to any person for any act or omission in connection with the arbitration."