



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

IN THE CIVIL AND COMMERCIAL COURT OF THE QATAR FINANCIAL CENTRE

**CASE NO: 07/2010
JUDGMENT NO: 1
14 October 2010**

IN THE MATTER OF AL MAL BANK LLC (IN LIQUIDATION)

**PETER STOCKWELL
JEFFREY P. WOFFORD
Applicants**

- and -

**AL MAL BANK LLC
Respondent**

Members of the Court:

**JUSTICE DOHMANN
JUSTICE LORD CULLEN
and
JUSTICE SACKVILLE**

**Last written submission
22 September 2010**

THE COURT ORDERS THAT:

Pursuant to Art 95 (1) of the QFC Insolvency Regulations, the Court determines the Questions submitted by the applicants as follows:

Question 1: Are the applicants entitled to the claimed (special payment) bonus due in June 2009 and December 2009 pursuant to cl 5.2 of the Manual?

Answer: Each applicant is entitled to a (special payments) bonus pursuant to cl 5.2 of the Manual, but not in the amount sought by him in his proof of debt.

Question 2: If the answer to Question 1 is no, are the applicants entitled to payment of the special payment bonus on a pro-rata basis, based on the number of months served by them?

Answer: Each applicant is entitled to the (special payment) bonus payable in June 2009 and December 2009 calculated, where appropriate, pro-rata by reference to the number of months each was employed during the six month periods ending, respectively, in June 2009 and December 2009. In addition, subject to [23] below, each applicant is entitled to the (special payment) bonus payable in June 2010, calculated pro-rata in the manner described above.

JUDGMENT OF THE COURT

1. On 16 August 2010, the Court gave reasons for determining two questions submitted to it by the liquidators of Al Mal Bank LLC ("the Bank") pursuant to Art 95(1) of the *QFC Insolvency Regulations: In the Matter of Al Mal Bank LLC (In Liquidation); Tamir Omara v Al Mal Bank LLC* (Judgment No. 2, 16 August 2010). The questions and the answers given by the Court were as follows:-

Question 1: Is the "two months (special payment) bonus" referred to in Section 5.2 of Al Mal Bank's Human Resources Policies and Procedures Manual ("the Manual") a fixed and binding obligation on the Bank to its employees, or is it a discretionary bonus falling within the scope of Section 5.3 of the Manual?

Answer: A fixed and binding obligation.

Question 2: If the "two months (special payment) bonus" referred to in Section 5.2 of the Manual is a fixed and binding obligation on Al Mal Bank to its employees, is the applicant entitled to it?

Answer: Yes.

2. Mr. Stockwell and Mr. Wofford ("the applicants") are former employees of the Bank, each of whom has submitted a proof of debt to the liquidators. Each applicant claims to be entitled to unpaid (special payment) bonuses that were due and payable in June and December 2009 pursuant to Section 5.2 of the Manual, which formed part of their respective contracts of employment. The liquidators have declined to accept the proofs on the ground that "*employees with less than one year's service will not qualify for any part of the bonus payment*".
3. Mr. Stockwell was a Senior Vice President and Head of Internal Audit of the Bank. His employment commenced on 6 May 2009 and was terminated on 20 April 2010.

He was therefore employed by the Bank for less than a year. Mr. Stockwell claims QR90,500 described in his proof of debt as:

“additional base salary payments for June 2009 (QR45,250) and December 2009 (QR45,250) not previously paid by [the Bank]”

4. Mr. Wofford's employment commenced on 17 May 2009 and was terminated on 10 January 2010. Accordingly, his period of service was also less than one year. Mr Wofford claims:

“QR63,300 for additional June (QR26,650) and December (QR35,650) [sic] base pay not paid by [the Bank]”.

5. The applicants have referred the following question to the Court for its determination:

Question 1: Are the applicants entitled to the claimed (special payment) bonus due in June 2009 and December 2009 pursuant to cl 5.2 of the Manual?

6. In the event that the Court determines that the applicants are not entitled to the special payment bonus in full, the applicants refer a further question to the Court, as follows:

Question 2: If the answer to Question 1 is no, are the applicants entitled to payment of the (special payment) bonus on a pro rata basis, based on the number of months served by them?

7. The liquidators agree that it would be helpful for the Court to determine these questions, which are apparently of significance to at least two other former employees of the Bank. The Court proposes to determine the questions as the parties have requested.
8. The applicants filed written submissions in support their contention that they are entitled to receive the full amounts claimed in their proofs of debt. The liquidators

responded in writing and the applicants filed a joint response to the liquidators' submissions.

9. The Court indicated that it was in a position to hear oral argument on the referred questions in the week commencing 10 October 2010 after hearing other matters connected with the Bank. However, as the applicants were unable to be in Qatar for the hearing, the Court has taken the view that it is appropriate to determine the questions on the basis of the written submissions received from the applicants and the liquidators.
10. The contractual provisions relevant to the applicants' claims are identical, except for the amount of salary and other entitlements. The following account refers to Mr. Stockwell's contract of employment but, except for the amounts, applies equally to Mr. Wofford.
11. Article 7.1 of Mr. Stockwell's Employment Contract Agreement ("Agreement") was headed "*Remuneration (Benefits and Allowances)*". Mr. Stockwell was entitled to a "*Basic Salary*" of QR45,750 and to certain allowances and other benefits. Clause 7.1 provided that:

"The remuneration will be calculated on pro-rated basis for the first and last month of the calendar year of employment".
12. Clause 7.2 of the agreement provided that Mr. Stockwell would be paid monthly salary in arrears at the end of each month. Clause 7.2 also provided that payment:

"will include pay for each and every day of full month worked...".
13. Article 27 of the Agreement was as follows:

"Article 27: Entire Agreement

This Agreement, including all Schedules, Bank Policies, Rules and Regulations, Employee Handbook or Attachments hereto including the

references, constitute the entire agreement between the Parties with respect to the Employee's employment by the Bank in the Qatar Financial Centre and supersedes and renders null and void all prior or contemporaneous agreements or understandings whether oral and written.

The Bank Policies, Procedures, Rules, Regulations, Operational Requirements and Handbook in force will prevail to resolve all queries and/or dispute between the Bank and Employee.

14. The Manual included the following provisions:

"5.2 Compensation and Benefits

Policy

...

The monthly salary for employees comprises of two components:

- Basic Salary
- Allowances

The allowances paid by Al Mal are to guarantee the employee a certain standard of living, which [is] commensurate with his/her position in Al Mal bank.

Policy Statement

Compensation-Basic Salary

...

Employees will be paid 12 months base pay during the year and two months (special payment bonus).

...

Operating Procedures

Salaries and Allowances/Benefits

Basic salary and relevant allowance/benefits are paid to each employee at the end of each month. In addition to the 12 months basic salary employees

will be paid two additional months base pay in the form of special payment in the months of June and December (to equate to 14 months base pay per year).”

15. In its previous judgment, the Court said this (at [13]) about cl 5.2 of the Manual:

“Clause 5.2 of the Manual is unequivocal. Under the heading “Compensation – Basic Salary”, it states that employees will be paid 12 months base pay during the year and two months (special payment) bonus. **The clear intention is that this (special payment) bonus is to be treated as part of the employee’s “Basic Salary”.** The bonus, is therefore, payable as of right and is not subject to the exercise by the Bank of a discretion in the employee’s favour.” (Emphasis added.)

16. The previous judgment did not address the questions now presented for determination, since the particular employee whose contract of employment was considered in that judgment had been employed by the Bank for a period longer than twelve months. Nonetheless, the previous judgment is important. It establishes that the (special payment) bonus is treated by cl 5.2 of the Manual as part of the employee’s “Basic Salary” and is payable to the employee as of right.

17. Once it is accepted that the (special payment) bonus is to be treated as part of the employee’s Basic Salary, certain consequences follow. The Agreement (when read with the Manual):

- distinguishes between an employee’s entitlement to the base salary (which arises for each and every day of the full month worked) and the timing and mode of payment (in arrears at the end of each month); and
- does not impose any minimum period of service as a precondition to the employee’s entitlement to the base salary.

18. Similarly the Agreement (when read with the Manual):

- is intended to distinguish between entitlement to the (special payment) bonus (which accrues according to the periods actually worked) and the timing and

mode of payment of the bonus (two additional months base pay in June and December); and

- does not impose any minimum period of service as a precondition to the employee's entitlement to the (special payment) bonus.
19. There is nothing in cl 5.2 of the Manual that suggests that an employee must serve a minimum period before becoming entitled to a (special payment) bonus. Clause 5.2 states that employees will be paid 12 months base pay during the year and two months (special payment) bonus. This provision is not intended to impose a minimum period of service as a precondition to entitlement to salary or to the (special payment) bonus. Otherwise, employees would be required to serve 12 months before receiving their base salary, a result that is plainly inconsistent with other provisions in the Agreement and the Manual. Equally, the provision is not intended to impose a minimum period of service as a precondition to entitlement to the (special payment) bonus. It merely indicates what will happen during each complete year of an employee's service with the Bank.
20. Clause 5.2 of the Manual, under the heading "*Salaries and Allowance/Benefits*" also records that in addition to the 12 months basic salary, employees will be paid two additional months base pay in June and December each year, to equate to 14 months base pay for a year. This provision, too, is intended to explain what will happen during each completed year of service. It simply does not address the case of an employee who serves for less than 12 months.
21. It follows from what has been said that the applicants were not required to serve for a minimum period of twelve months or, for that matter, six months before becoming entitled to the (special payment) bonus. This does not mean, however, that they were entitled to the full one month's bonus simply because they had been employed for some part of the period of six months prior to the month in which the payment of the bonus was to be made. It would be absurd, for example, if an employee who

worked for only one week during the period January to June in a particular year is entitled to a bonus of one month's base pay in June of that year.

22. The sensible reading of the Agreement is that an employee is entitled to a (special payment) bonus calculated on a pro-rata basis according to the period of service. If an employee, for example, has been employed for exactly three months of a six months period (say, January to June), he or she is entitled to be paid in June one half of one month's base pay. If the employee's period of service includes part of a month, the calculation should take account of that part of the month. This is consistent with the rather curiously worded pro-rata provision in cl 7.1 of the Agreement.
23. Neither applicant apparently seeks the (special payment) bonus in respect of his period of service after 31 December 2009. However, the same reasoning applies to the period of service after that date, even though the Bank was placed in liquidation on 6 June 2009. If it is not too late for the applicants to amend their proofs of debt, they are entitled to claim a pro-rata share of the (special payment) bonus that would have been payable to them in June 2010.
24. The liquidators have invited the Court to make an order that any amounts found to be payable to Mr. Wofford be frozen or paid into Court pending the filing of a counter-claim. The liquidators say that investigations are continuing and that Mr. Wofford's role "*could give rise to a potential counter-claim*". However, the Court does not consider that the possibility of a counter-claim, where no such claim has yet been formulated, provides a sufficient basis to deny Mr. Wofford payment of what is, in effect, base salary due to him.
25. The applicants seek an award of costs in their favour. There is nothing to indicate that costs have been incurred by the applicants, other than those that might have been charged by Mr. Wofford himself. Mr. Wofford has played a variety of roles in this litigation, not all of which are necessarily compatible. The roles include

employee of the Bank, witness in the proceedings and representative of various claimants (although not in his capacity as a lawyer). In these circumstances, it would not be appropriate to make an award of costs that essentially would be for Mr. Wofford's own benefit.

26. If Mr. Stockwell has incurred legal costs to a legal representative qualified to act on his behalf, other than Mr. Wofford, he is at liberty to renew his application for an award of costs, supported by suitable affidavit evidence.

27. The question should be answered as follows:

Question 1: Are the applicants entitled to the claimed (special payment) bonus due in June 2009 and December 2009 pursuant to cl 5.2 of the Manual?

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