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

IN THE QATAR INTERNATIONAL COURT
APPELLATE DIVISION

Neutral Citation: [2022] QIC (A) 6
(on appeal from [2021] QIC (RT) 6)

4 August 2022

CASE No: CTAD0001/2022

BETWEEN:

NIGEL PERERA

Applicant/Appellant

v

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

Respondent

JUDGMENT

Before:
Lord Thomas of Cwmgiedd, President
Justice Chelva Rajah SC
Justice Laurence Li SC

ORDER

1. The application for permission to appeal on ground 2 is allowed, but the appeal is dismissed.

2. There be no order as to costs.

JUDGMENT

1. The appellant who has a background in financial services joined an insurance intermediary then known as International Financial Services (Qatar) LLC (IFSQ). IFSQ was authorised to conduct insurance mediation at the Qatar Financial Centre. The appellant was chief executive officer holding a senior executive function and an executive governance function as part of senior management.

2. The respondent (the QFCRA) conducted an investigation into IFSQ's compliance with the duties placed on firms by the Anti-Money Laundering and Combating of the Financing of Terrorism Rules (AML/CFT Rules) in respect of risk assessment and due diligence and the failure to remediate the breaches. IFSQ admitted various contraventions and the QFCRA issued a decision imposing a financial penalty on IFSQ in July 2019.

3. On 20 September 2020 an investigation was commenced against the appellant in respect of the obligations owed by him as chief executive officer in respect of the contraventions and the failure to remediate. On 5 April 2021 the QFCRA issued a decision notice imposing a financial penalty of QAR 273, 000 on the appellant and a prohibition from performing a controlled function in the QFC for a period of three years. The appellant appealed to the Regulatory Tribunal against that decision.

4. The full background to the decision made by the QFCRA in respect of the appellant is set out in the judgment of the Regulatory Tribunal (Sir William Blair, Justice Gopal Subramanium and Justice Muna Al-Marzouqi) given on 30 December 2021. In essence, although it was not contented that the appellant's conduct lacked integrity or was reckless, two matters formed the basis of the case against him:

(1) He had, in breach of Principle 2 set out in the Individual (Assessment, Training and Competency) Rules 2014, failed to act with due skill, care and diligence in remediating the failures in respect of the AML and CFT Rules.

(2) He had, in breach of Principle 4 of the Individual (Assessment, Training and Competency) Rules 2014, failed to deal with the QFCRA in an open and cooperative manner and had provided information that was incorrect and misleading.

The proceedings before the Regulatory Tribunal

5. On 30 December 2021, the Regulatory Tribunal allowed the appeal on the second matter for the reasons given at paragraphs 43-52 of its judgment. It accepted that the appellant had made an honest mistake rather than setting out to mislead. However, it refused the appellant's appeal on the first matter.

6. No appeal is made to this court against the decision of the Regulatory Tribunal in upholding the decision on the first matter.

7. The appellant also appealed to the Regulatory Tribunal in respect of the sentence imposed on him. The Regulatory Tribunal upheld the suspension, but, consistent with its decision to allow the appeal on the second matter, reduced the penalty, by substituting a penalty of QAR 136,500 in place of the penalty of QAR 273,000. No appeal was made to this court in respect of the financial penalty as substituted.

8. The appellant sought permission to appeal to this court in relation to the sentence of suspension. He did so on two grounds:

(1) That the period of suspension was excessive.
(2) The QFCRA and the Regulatory Tribunal had no power to suspend the appellant for the same breach in respect of which a financial penalty had been imposed.

9. By Order dated 31 March 2022 we adjourned the permission application on the second ground to a rolled-up hearing, but refused permission on the first ground for reasons to

be given in the judgment on the second ground. A hearing pursuant to that Order was held on 19 June 2022 in which the proceedings were hybrid, part being conducted online; the hearing was also live streamed.

10. We will consider the second ground first.

Ground 2: Is it permissible to impose a financial penalty and a period of suspension in respect of the same breach of the regulations?

11. This issue arises under Article 59 of the Financial Services Regulation (version No 2) which became effective on 9 December 2010. It provided:

> "**Article 59 – Financial Penalties**
> …
> (2) The Regulatory Authority may not in respect of any contravention impose a financial penalty under this Article 59 in respect of any matter for which the Person has already been sanctioned by the Tribunal."

12. Because of the way the application for permission proceeded, it is necessary to set out the circumstances in which permission was sought.

The argument before the Regulatory Tribunal

13. Before the Regulatory Tribunal the appellant (who was represented under the QICRDC Pro Bono scheme by Mr Thomas Williams, Mr Umang Singh and Mr Ahmed Durrani of Sultan Al-Abdulla and Partners) argued that the wording of Article 59(2) was clear. It prohibited the Regulatory Authority from imposing a period of suspension in respect of the same breach of the Regulations in respect of which a financial penalty had already been imposed. The provision was a protection against double jeopardy as a period of suspension was a penalty.

14. In response to this the QFCRA (which was represented by Mr Ben Jaffey QC) argued before the Regulatory Tribunal that both a suspension and a financial penalty could be imposed for the same breach. It accepted that the suspension was a penalty but submitted that it was "carefully tailored." The QFCRA also relied on paragraph 10.20

of the Enforcement Policy Statement issued by the QFCRA under the Financial Services regulations in 2012:

> "In appropriate cases, the Regulatory Authority may take other action against a person in addition to imposing a restriction or prohibition. As indicated above, this normally includes withdrawing the person's authorisation or approval, as the case may be, but might also include imposing a financial penalty or public censure or applying for an injunction under article 63 (for example to prevent dissipation of assets or to restrain misconduct) or a restitution order under article 64."

15. The Regulatory Tribunal held that both a financial penalty and a period of suspension could be imposed:

> "19. The Tribunal rejects the submission on behalf of the appellant that where the regulator seeks to impose a prohibition order it cannot in addition levy a financial penalty. The scope and object of the two regulatory powers, it appears to the Tribunal, are clearly distinct and operate in different spheres. Article 59 of the Financial Services Regulations, on which the submission is based, is addressing financial penalties only. The effect of Article 59(2) is that the regulators may not impose a financial penalty in respect of any matter for which the person has already been sanctioned by way of a financial penalty (the reference to "the Tribunal" is in this context a reference to the Court: see Articles 8 and 9).
>
> 20. There is an important point of principle here. In financial regulation the imposition of a financial penalty is, as the term suggests, a means of penalising a regulated person for the conduct concerned and deterring similar contraventions. On the other hand, a prohibition order is primarily intended to protect the public (and the QFC and the financial system itself) where the regulated person's behaviour demonstrates a lack of fitness for a particular role or roles in a regulated firm – in this case, a senior executive role. Both sanctions are said to be justified in the present case, and such an outcome is specifically recognised in Enforcement Policy Statement 2012 paragraph 10.20."

The course of the appeal

16. The appellant sought permission to appeal on 27 February 2022 on the basis that, on the proper interpretation of the Financial Services Regulations, the Regulatory Tribunal was wrong.

17. In its written response to the application for permission to appeal filed on 20 March 2022 the QFCRA submitted that the suspension was not a penalty, but a protective measure as it could be imposed even if a person had not committed any contravention of the Regulations. The Regulations reflected best international practice.

> "3.15 The Appellant's submission is wrong in law. [This sentence was footnoted: The Court will be aware that the reference made in Article 59(2) of the FSR to "Tribunal" is in fact the Qatar International Court, and not the Regulatory Tribunal.] A Prohibition Order is not a sanction for a contravention. It is a protective measure taken in the public interest. For example, a Prohibition Order may be imposed to prevent a person commencing any work in the QFC, even if they have not committed any contravention or conduct requiring a sanction in the QFC. The purpose of Article 59(2) is to prevent true double jeopardy, not the imposition of a protective Prohibition Order and a Financial Penalty. Indeed, if the Appellant were correct, the consequences would be extraordinary. The Regulatory Authority would be required to elect between imposing a financial sanction for past misconduct or imposing a Prohibition Order to prevent any risk of further misconduct in the future. The more serious the misconduct, the less likely it would be that either a penalty or proper protective measures could be imposed."

18. After we had adjourned the application for permission to an oral hearing, the QFCRA served on 10 May 2022 in accordance with our Order of 31 March 2022 its written argument which had been prepared by Mr Ben Jaffey QC. That submission set out an argument (which it was accepted after the hearing before us) was never put before the Regulatory Tribunal. In summary it was contended that:

    (1) Articles 8 and 9 of the Financial Services Regulations contained specific definitions of "Tribunal" and of the body now known as the Regulatory Tribunal as used in the Regulations. In effect the Regulations defined "the Tribunal" to mean the Qatar International Court, and what is now "the Regulatory Tribunal" was defined as the "Appeals Body".

    (2) Using those definitions, Article 59(2) simply prohibited the Regulatory Authority from imposing a financial penalty on a person in respect of any matter for which that person has already been sanctioned by the Qatar International Court.

(3) So read, it was an entirely understandable provision which made clear that a person should not be subject to a financial penalty where that person had already received a sanction from the Qatar International Court.

(4) As the appellant had not been sanctioned by the Qatar International Court, the provision was of no application in the appeal.

Can the court take the new argument into account?

19. Mr Thomas Williams, on behalf of the appellant, submitted to us, following a written skeleton argument, that the QFCRA should not be permitted to make this submission as it had not been made to the Regulatory Tribunal and had not been raised by the QFCRA in its response to the application for permission to appeal. He referred us to a passage in the judgment of the Court of Appeal of England and Wales in *Singh v Das* [2019] EWCA Civ 360 where Haddon-Cave LJ giving the sole substantive judgment said at paragraph 15:

> "The following legal principles apply where a party seeks to raise a new point on appeal which was not raised below.
>
> First, an appellate court will be cautious about allowing a new point to be raised on appeal that was not raised before the first instance court.
>
> Second, an appellate court will not, generally, permit a new point to be raised on appeal if that point is such that either (a) it would necessitate new evidence or (b), had it been run below, it would have resulted in the trial being conducted differently with regards to the evidence at the trial (*Mullarkey v Broad* [2009] EWCA Civ 2 at [30] and [49]).
>
> Third, even where the point might be considered a 'pure point of law', the appellate court will only allow it to be raised if three criteria are satisfied: (a) the other party has had adequate time to deal with the point; (b) the other party has not acted to his detriment on the faith of the earlier omission to raise it; and (c) the other party can be adequately protected in costs *(R (on the application of Humphreys) v Parking and Traffic Appeals Service* [2017] EWCA Civ 24; [2017] R.T.R. 22 at [29]).

20. It was submitted that the appellant had suffered prejudice – if the QFCRA had advanced the argument under Article 59 (2) at the outset, he might have received different advice as to conduct of the appeal or the appeal might have been conducted differently. He could not be recompensed in costs as his representation was *pro bono*. The QFCRA should therefore not be permitted to advance the new argument.

21. It is clear from the facts of *Singh v Das* that the new point raised in that case would have required new evidential issues being raised on the appeal and the hearing before the lower court being conducted in a different way. The principles as applicable in the Court of Appeal of England and Wales as set out by Haddon-Cave LJ must be seen in that context. It is not necessary for us to delineate the applicable principles in this court. That is because in the present case we are concerned with the interpretation of legislation. Legislation must be interpreted in accordance with its ordinary meaning, irrespective of whether a particular way of interpreting has been advanced before the first instance court or whether it arises only during argument before this court.

22. In the present case it is necessary for the Court to decide what Article 59(2) means. It would be impossible for a court to say that it considers that Article 59(2) cannot be read in accordance with the definitions set out in the Financial Services Regulations, because that argument was not raised before the Regulatory Tribunal. It is our duty to interpret the Regulations in accordance with the usual principles of interpretation and whether the argument was or was not advanced at an early or earlier stage is irrelevant to the interpretation of legislation.

23. The fact that this argument was not raised before the Regulatory Tribunal or in the appeal until the submission made in May 2022 would obviously be a matter to be taken into account were the QFCRA to have sought the costs of the appeal or if the appellant sought to recover the costs incurred. However, as the QFCRA is not seeking costs and the appellant is represented under the *pro bono* scheme, the question of costs does not arise.

The meaning of Article 59(2)

24. In our view, the meaning of Article 59(2) is clear. It is a provision that protects a person being sanctioned by the Regulatory Authority by way of financial penalty if that person has been sanctioned by the Qatar International Court. It is a protection in such circumstances against double jeopardy through the imposition of a financial penalty by the Regulatory Authority. It is no wider and does not in any event extend to prevent the Regulatory Authority imposing a period of suspension.

25. It is clear that as a matter of general regulatory policy worldwide a financial penalty and a suspension can be imposed for contravention of regulatory principles in the financial markets. It is therefore not necessary to rely on paragraph 20 of the Enforcement Policy Statement for this purpose. Whether the statement, issued after the making of the Financial Services Regulations, can be an aid to the interpretation of the regulation, was not fully argued before us. We have some doubts but do not express a view.

26. Mr Thomas Williams advanced the argument that Article 59(2) should be read so that it applied to prevent the relevant body that at the time was dealing with the matter imposing both a financial penalty and a suspension; so read it would prevent double jeopardy arising. We cannot see how the words can bear that meaning. The meaning we have set out is clear on the language of the Article and there is nothing remotely impermissible in either the Regulatory Authority or the Regulatory Tribunal imposing both a financial penalty and a period of suspension for the same breach.

27. Although in all the circumstances we consider that we should grant permission to appeal, we dismiss the appeal. The Regulatory Tribunal was correct in the conclusion that the QFCRA could impose both a financial penalty and a period of suspension.

28. We would ask those responsible for the regulations in the QFC to consider amending Articles 8 and 9 of the Financial Services Regulations so that the terminology used accords with the well-established terminology and practice of referring to the court as the Qatar International Court and not to it as the Tribunal and referring to the Regulatory Tribunal as the Regulatory Tribunal and not the Appeals Body. Such a change should avoid the confusion that arose in this case.

Ground 2: Our reasons for refusal of permission to appeal against the length of the suspension

29. The essence of the submission of the appellant on the length of the suspension was that the Regulatory Tribunal should have halved the period of the suspension just as it had halved the penalty.

30. In its judgment the Regulatory Tribunal rejected that submission and held at paragraph 57:

> "The serious nature of the prohibition means that action will normally be taken by the Regulatory Authority only if it has particularly serious concerns. Compliance with the AML/CFT regulations is viewed as central to the protection and reputation of the QFC as well as to the protection of individuals. The Tribunal is satisfied that such concerns as regards the competence of the appellant were particularly serious. The prohibition imposed in the present case limited as it is to three years is proportionate. The appellant is not prohibited from carrying on a customer-facing function in a firm. If he wishes to return to senior management functions in due course he will have the opportunity to demonstrate his competence at that time."

31. In our view permission to appeal should not be given for an appeal from the Regulatory Tribunal where what is at issue is the amount of the financial penalty or the length of a period of suspension, absent exceptional or unusual circumstances. In such a case an applicant would have already had the opportunity of one appeal to the Regulatory Tribunal which has particular expertise in issues such as those relating to the amount of a penalty or the length of a suspension or other order. There must be some special reason for a second appeal.

32. In this case there was none. The Regulatory Tribunal had carefully considered the appropriate length of the period of suspension in its judgment and its judgment must stand.

By the Court

[signed]

Lord Thomas of Cwmgiedd
President

A signed copy of this judgment has been filed with the Registry

Representation:

The appellant was represented under the QICDRC Pro Bono Service by Mr Thomas Williams, Mr Umang Singh and Mr Ahmed Durrani of Sultan Al-Abdulla & Partners, Doha, Qatar.

The respondent was represented by Mr Ben Jaffey QC of Blackstone Chambers, London, UK.