

FEDERAL ARBITRAZH COURT
FOR THE MOSCOW DISTRICT

RESOLUTION
No. KG-A40/5118-10

Moscow
26 May 2010

Case No. A40-24208/10-63-209

Operative part of the resolution announced on 25 May 2010
Full text of the resolution prepared on 26 May 2010

The Federal Arbitrazh Court for the Moscow District,
composed of
Presiding Judge Denisova N.D.
Judges: Strelnikov A.I., Nuzhnov S.G.,
being present at the hearing:
for the claimant, Bekeshenko E.A. (power of attorney of 8 January 2010), Subbot A.V. (power of attorney of 8 January 2010),
for the respondent, Kuvyatkina E.N. (power of attorney of 14 April 2010),
having examined at the hearing of 25 May 2010
the cassation complaint of OOO MedBusinessService-2000
against a ruling of 15 April 2010 on the recognition and enforcement of a foreign arbitral award
of the Moscow Arbitrazh Court
handed down by Judge Ishanova T.N.,
in Case No. A40-24208/10-63-209
following the application of Ansell S.A.
against OOO MedBusinessService-2000
for the recognition and enforcement of the foreign arbitral award of the Arbitration Institute of the
Stockholm Chamber of Commerce No. 016/2009 of 11 November 2009,

ESTABLISHED:

Ansell S.A. filed an application with the Moscow Arbitrazh Court for the recognition and enforcement of the foreign arbitral award of the Arbitration Institute of the Stockholm Chamber of Commerce No. 016/2009 of 11 November 2009.

By the ruling of the Moscow Arbitrazh Court of 15 April 2010, the award of the Arbitration Institute of the Stockholm Chamber of Commerce of 11 November 2009, rendered in Case No. 016/2009 in a dispute between the company Ansell S.A. and OOO MedBusinessService-2000, was granted recognition and enforcement; an enforcement writ was issued for the coercive enforcement of the abovementioned award.

The court based its judicial act on the absence of grounds for refusing recognition and enforcement of the foreign tribunal's award provided for in Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) and Articles 239 and 244 of the Arbitrazh Procedure Code of the Russian Federation.

Disagreeing with the ruling, the respondent OOO MedBusinessService-2000 filed a cassation complaint with the Federal Arbitrazh Court for the Moscow District requesting the cancellation of the abovementioned judicial act on the grounds that it is inconsistent with the rules of substantive and procedural law and the rendering of a new judicial act on the refusal to recognize and enforce the foreign arbitral award of the Arbitration Institute of the Stockholm Chamber of Commerce No. 016/2009 of 11 November 2009.

At the hearing, the representative of the respondent OOO MedBusinessService-2000 (the complainant before the court of cassation) maintained the arguments contained in the cassation complaint. The representatives of the claimant argued that the cassation complaint should not be granted for the reasons stated in the response.

Having examined the arguments of the cassation complaint and the case materials, having heard the representatives of the parties present at the hearing, and having verified, in accordance with Articles 284, 286 and 287 of the Arbitrazh Procedure Code of the Russian Federation, the correctness of the application by the court of the rules of substantive and procedural law, as well as the conformity of the conclusions made in the challenged judicial act with the established circumstances and the evidence available in the case, the court of cassation does not find any grounds for cancelling the ruling on the recognition and enforcement of the foreign arbitral award, for the following reasons.

The court established that the Arbitration Institute of the Stockholm Chamber of Commerce rendered award No. 016/2009 of 11 November 2009 ordering OOO MedBusinessService-2000 to pay to the company Ansell S.A. USD 342,984.99, plus interest on the amount of USD 274,715.60 at the rate of 0.05 percent per day from 1 February 2009 until the date of payment; SEK 733,500 and EUR 39,240 for the reimbursement of the arbitration expenses; EUR 32,655, of which EUR 26,124 correspond to fees and EUR 6,531 to the VAT; and SEK 39,804 for compensation of expenses, of which SEK 7,961 correspond to the VAT.

An arbitration agreement was reached by the parties in a contract of 9 April 2004. According to paragraph 8.1. of that contract, all disputes and differences that cannot be settled by an agreement of the parties must be submitted for examination to Arbitration in Stockholm, Sweden, under the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

The court rightly established that the parties reached an agreement to submit disputes to Arbitration in Stockholm, Sweden, and the interested party did not raise objections against the examination of the case by the designated arbitral tribunal (it filed a counterclaim and an answer). Thus, the foreign arbitral tribunal's award is not contrary to the public policy and fundamental principles of the Russian legislation.

The arguments of the complainant before the court of cassation point to the re-assessment of the circumstances established by the first instance court and the arbitral tribunal because the arbitral tribunal examined the issue of whether the dispute should be examined by this arbitral tribunal, as well as the question of the quality of the merchandise, the payment for which is the subject matter of this dispute.

The first instance court, guided by Articles 239, 241 and 244 of the Arbitrazh Procedure Code of the Russian Federation, taking into account the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Law of 7 July 1993 "On International Commercial Arbitration", came to the right conclusion that there are no grounds for refusing recognition and enforcement of the foreign tribunal's award. It thus granted recognition and enforcement of the foreign arbitral award of the Arbitration Institute of the Stockholm Chamber of Commerce No. 016/2009 of 11 November 2009.

The conclusions of the court on the application of the rules of law are consistent with the facts established and the evidence in the case at hand.

Unofficial translation

The court correctly applied the substantive and procedural rules of law.

On the basis of Articles 284 to 289 of the Arbitrazh Procedure Code of the Russian Federation, the court

RESOLVED:

The ruling of the Moscow Arbitrazh Court of 15 April 2010, rendered in Case No. A40-24208/10-63-209 on the recognition and enforcement of the foreign arbitral award of the Arbitration Institute of the Stockholm Chamber of Commerce No. 016/2009 of 11 November 2009, shall be upheld, and the cassation complaint shall be rejected.

Presiding Judge

N.D. Denisova

Judges

A.I. Strelnikov

S.G. Nuzhnov