



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

Neutral Citation: [2023] QIC (RT) 1

IN THE QATAR FINANCIAL CENTRE
REGULATORY TRIBUNAL

Date: 17 May 2023

CASE NO: RTFIC0003/2023

JEAN-MARC MANTEGANI

Appellant

v

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

Respondent

DECISION

Before:

Sir William Blair, Chairman

Justice Sean Hagan

Justice Dr Muna Al-Marzouqi

DECISION

Introduction

1. This appeal arises from a decision issued by the Qatar Financial Centre Regulatory Authority (the ‘**Respondent**’) dated 19 September 2022 (the ‘**Decision**’). In the Decision, the Respondent concludes that Mr Jean-Marc Mantegani (the ‘**Appellant**’) failed to meet his regulatory responsibilities and contravened a number of Anti-Money Laundering and Counter Financing of Terrorism (‘**AML/CFT**’) Requirements set forth in the AML/CFT Rules (the ‘**AML/CFTR**’).¹ The Decision imposes a financial penalty of QAR 1,092,606.00 (USD 300,000.00) and also prohibits the Appellant from carrying out any function in the Qatar Financial Centre (‘**QFC**’) for an indefinite period.²
2. The Appellant filed an appeal against the Decision on 13 November 2022. The Respondent filed its Response on 12 December 2022, and the Appellant’s Reply was filed on 5 January 2023. The Appellant filed a Statement of Financial Hardship on 5 December 2022, giving reasons why he was unable to pay the financial penalty specified in the Decision.
3. The Appellant and the Respondent informed the Tribunal on 24 January 2023 and 5 February 2023, respectively, that they were content to have the matter resolved by the Tribunal without a hearing. On 21 February 2023, the parties were directed that any further material (including documentary material and any witness statement(s)) on which the Appellant or the Respondent wished to rely should be filed with the Registry no later than 16.00 on 21 March 2023 following which the Tribunal would give its decision on the Appeal. No material other than that already provided was filed by the Appellant. The Tribunal is satisfied that the matter can fairly be resolved on the papers³.

Background

4. According to the Decision, on 14 October 2016, the Appellant was appointed as the Money Laundering Reporting Officer (‘**MLRO**’) of Horizon Crescent Wealth LLC, a limited liability company incorporated in the QFC on 4 February 2015 (‘**HCW**’). In

¹ Decision Notice, paragraph 3.1.

² Decision Notice, paragraph 3.4 and 3.5.

³ Documentary disclosure was made by the QFCRA in the course of the decision-making process which culminated in the Decision Notice the subject of the appeal.

addition, he was appointed as Chief Operations Officer and Head of Compliance of HCW on 1 February 2017, and became a Director of HCW on 8 March 2017.⁴

5. Following an investigation that began on 22 February 2018, the Respondent issued a Decision Notice to HCW on 11 March 2019 (the '**HCW Decision Notice**') imposing significant financial penalties on the company based on its conclusion that, during the period from December 2016 to February 2018, HCW had contravened a number of regulatory requirements of the QFC, including a number of AML/CFTR requirements. HCW appealed this Decision to the Tribunal, which dismissed the appeal on 9 March 2020. HCW sought permission to appeal the Tribunal's decision to the Appellate Division of the Qatar International Court (the '**Court**'), and the Court refused the application for permission to appeal on 9 June 2020.

The Appellant's Alleged Contraventions

6. In its Decision, the Respondent concludes that, during the period of 14 October 2016 and 27 March 2018 (the '**Relevant Period**'), the Appellant, being the MLRO and member of senior management of HCW, had failed to meet his regulatory obligations and had contravened a number of regulatory requirements relating to AML/CFT.⁵ Specifically:
 - i. He failed to ensure that HCW's policies, procedures, systems and controls addressed the necessary AML/CFT requirements, thereby contravening AML/CFTR 1.2.1.
 - ii. He failed to ensure that HCW adopted the required risk-based approach to AML/CFT, thereby contravening AML/CFTR 1.2.2.
 - iii. He failed to ensure that HCW's Customer Due Diligence was appropriate, thereby contravening AML/CFTR 1.2.3.

⁴ Decision Notice, paragraph 5.12. According to the Employment Agreement dated 1 February 2017 between Appellant and HCW, the Appellant's title was Chief Operating Officer (COO) and Head of Compliance. In the 22 February 2018 Interview of the Appellant by the QFCRA, the Appellant stated that he had four functions: COO, Head of Compliance, MLRO and a Director of HCW's Board (22 February 2018 Interview Transcript, page 4-5.

⁵ Decision Notice, paragraph 3.1.

- iv. He failed to ensure that HCW maintained and provided documentary evidence of its compliance with AML/CFTR, thereby contravening AML/CFTR 1.2.6.
- v. He failed to ensure that HCW developed, established and maintained effective AML/CCFT policies, procedures, systems and controls, documents those policies, at all times have an experienced and effective MLRO and ensure that money laundering and terrorist financing risk were taken into account in the day-to-day operations of the firm, thereby contravening AML/CFTR 2.2.2.

The Appellant's Appeal and Reply

7. In his Appeal and Reply, the Appellant takes two positions, which are somewhat at odds with each other. On the one hand, he asserts that, *“as his role as director, MLRO and member of the senior management of HCW, he did not fail to meet his regulatory obligations and did not contravene[d] the following Relevant Requirements”*.⁶ In that context, he denies having contravened each of the specific AML/CFTR requirements identified in the Decision Notice, listed above.⁷ On the other hand, he asserts that the founder and former CEO of HCW was the *“acting MLRO”*⁸ and *“did all the [Know Your Customer Investigation] at the time it was proven and documented during the QFCRA investigation acting as CEO and MLRO role”*.⁹ Indeed, consistent with the assertion that he did not perform any AML/CFT or compliance role, the Appellant goes as far to say that HCW and its shareholder *“should be liable for the failure to hire a qualified compliance officer”*.¹⁰ As will be discussed below, these latter admissions only serve to underscore - rather than mitigate - the failure of the Appellant to perform his regulatory responsibilities. Finally, the Appellant asserts that, by virtue of article 209 of the Qatar Civil Code (Law No. 22 of 2004), it is HCW – and not the Appellant – who should be held exclusively liable for any unlawful acts.

The Tribunal's Analysis

⁶ Appeal, paragraph 2.1.

⁷ Reply, paragraph 4.1.

⁸ Appeal, paragraph 2.2.

⁹ Reply, paragraph 1.5(g).

¹⁰ Reply, paragraph 1.5(c).

8. In its 9 March 2020 decision to dismiss HCW’s appeal referred to above, the Tribunal noted that HCW had not challenged the Respondent’s characterisation of the facts that gave rise to the determination of HCW’s liability.¹¹ Similarly, in this proceeding, the Appellant does not take issue with the Respondent’s summary of the facts set forth in the Decision Notice regarding the deficiency of HCW’s AML/CFT controls. Rather, and consistent with the statements in its Appeal and Reply, the Appellant asserts that he exercised nominal - but not effective - responsibility over all AML/CFT matters.
9. For example, during the Relevant Period, the Appellant submitted a number of reports to the Respondent in his capacity as the MLRO and Compliance Officer, including the Q19 Report covering AML/CFT issues for the period of 2017. During his 23 August 2021 interview, the Appellant, while admitting that he had signed the report, asserted that it had been prepared by the former CEO, who effectively directed the Appellant sign it:

QFCRA: Okay, so did you verify the information of the reports, the information given in the report?

Appellant: I read it, yes

QFCRA: So was it accurate? Was it correct?

Appellant: I was not familiar with doing these things, right, so clearly I had to rely on [former CEO].

QFCRA: All right, so did you check the information there? Was it correct?

Appellant: As I say, you know, I relied on [former CEO], right? “You write the report, okay. He said, “You have to sign here”, you know. I did it, okay, so... and you tell me its correct, and I ‘ll sign.

QFCRA: All right. So [former CEO] prepared, you read it, he said everything is correct, you relied on him and you signed?

Appellant: Exactly.¹²

¹¹ As noted in the Tribunal’s Decision, “HCW offered no meaningful explanation or response, it did not deny RA’s summary of the facts. It did not point to any existing evidence or seek to adduce new evidence to contradict the RA’s case” *Horizon Wealth LLC v Qatar Financial Centre Regulatory Authority*, 9 March 2020 [2020] QIC (RT) 1 (<https://www.qicdrc.gov.qa/case-nos-2-and-4-2019-2020-qic-rt-1>).

¹² 23 August 2021 Interview Transcript, page 24.

10. Similarly, with respect to customer due diligence, the Appellant claims to have relied entirely on the former CEO with respect to all AML/CFT issues, notwithstanding the fact that, as MLRO and the Chief Compliance Officer, he had primary responsibility in this area. For example, one of the relationships discussed extensively in both the Decision Note and the HCW Decision Note is HCW's relationship with Ms J, Ms K and Mr E (all names being anonymized). On 7 April 2017, HCW entered into a business relationship with Ms J and Ms K, who directed Mr E to transfer funds to HCW. During his interview, the QFCRA confronted the Appellant with the shortcomings of a number of the AML/CFT aspects of the client onboarding process, all of which relate to the alleged contraventions specified in the Decision Notice. First, there was the failure to conduct customer due diligence with respect to the identity of the clients. As noted in the HCW Decision Notice, Mr E was associated with a separate criminal investigation regarding money laundering. Second, there was the failure to make inquiries with respect to the source of the funds being transferred by Ms J and Ms K. Finally, there was a failure to implement a risk-based approach when assessing the profile of the clients (both Ms J and Ms K were both residents of a country that was classified as high-risk jurisdictions under the 2015 Corruption Perception Index).
11. During the interview, the Appellant challenged neither the facts nor the QFCRA's assessment of AML/CFT inadequacy with respect to these clients. Rather, he asserted that the entire onboarding process of these clients had effectively been conducted by the former CEO and that the Appellant had relied upon him for all aspects of the customer due diligence process, including the identity of the clients, the source of funds and the risk profile of the relevant jurisdictions.¹³ Indeed, the Appellant asserts that, for AML/CFT purposes, all of the clients were effectively onboarded by the former CEO until his disappearance in September 2017.¹⁴
12. Finally, when asked about the overall systems and methodology relied upon by HCW to mitigate AML/CFT risk (which directly relate to the alleged contraventions regarding "*policies, procedures, systems and controls*"), the Appellant did not challenge the assessment that they were deficient; indeed, he "*guessed*" that they were probably *not*

¹³ 23 August 2021 Interview Transcript, pages 11-21.

¹⁴ 23 August 2021 Interview Transcript, page 39.

adequate. Rather, and rather remarkably, he claimed that he did not have the knowledge to make that assessment - given his lack of a background in compliance – and that, in any event, he had relied completely on the former CEO for these purposes:

QFCRA: Could you explain the business risk assessment and the threat assessment methodology at HCW? In your view, what was it about? How was it?

Appellant: Do you mean by the procedure of basically assessing the KYC of the clients?

QFCRA: Yes, correct, yes.

Appellant: And ranking the risks, correct?

QFCRA: Yes, yes.

Appellant: Yes. Well, it was very basic but, as I said, because there was lack of investment and support from the management. I... it's [former CEO] you know. It's basically, you know, that he is so full of... I mean he knows how to run a business in Qatar, a fully regulated business, who should provide enough tools and skills in order to make the business robust.

QFCRA: All right. Was the risk assessments and all this methodology at HCW QFC compliant? Was it in accordance with the QFC law in your opinion?

Appellant: In my opinion, I'm not able to judge whether we were matching or not. I guess not.

QFCRA: You guess no.

Appellant: Well, you know, I... I don't know. I don't have enough knowledge.¹⁵

13. The Tribunal does not challenge the truthfulness of the representations made by the Appellant that he relied on the former CEO for purposes of ensuring that HCW was compliant with all AML/CFT requirements. However, from a regulatory perspective, this position is very problematic. As the MLRO, the Appellant had primary responsibilities in this area and was precluded from shifting these responsibilities to the former CEO or to any other individual. Moreover, in terms of his representation that he lacked knowledge with respect AML/CFT issues, the Appellant was aware – or

¹⁵ 23 August 2021 Interview Transcript, page 22.

should have been aware – of his duties and responsibilities as MLRO, as specified under AML/CFT 2.2.2 and, accordingly, was required to ensure that he possessed the competence to perform these functions.

14. As noted earlier, the Appellant argues that article 209 of the Qatar Civil Code precludes the Appellant from being held responsible for any violations of laws or regulations relating to AML/CFT on the grounds that it is HCW, as the employer, who “*shall be responsible for damages due to the unlawful act of such employee, provided that such act occurred during the course and scope of his employment.*” The effect of article 209 is that companies are liable for the wrongdoing of their employees when committed during performing their tasks, and an injured person may file a lawsuit against the company or the employee or both of them. The compensation is claimed only once, either from the employee or the company or 50% from both. This provision of the Qatar Civil Code is, as noted by the Respondent, not applicable to this case. It deals with civil liability as between employee and employer. Further, article 18 of the QFC Law No. 7 of 2005 addresses the interaction between the QFC Laws and Regulations, on the one hand, and Qatar’s other laws (including the Civil Code), on the other hand. As stated in article 18 (3):

The QFC Laws and Regulations shall apply to The Contracts, Transactions and arrangements conducted by The entities established in, or operating from The QFC, with parties or Entities located in The QFC or in the State but outside the QFC, unless the parties agree otherwise.

15. Accordingly, both AML/CFTR 1.2.1 and AML/CFTR 2.2.2, which impose personal responsibility on members of senior management for failing to ensure that HCW comply with AML/CFT Requirements, are applicable and controlling in this case. It cannot be doubted that personal liability on management may be imposed even though the company is also held liable, as indeed has been recognised in Tribunal decisions (e.g. *Nigel Perera v Qatar Financial Centre Regulatory Authority* [2021] QIC (RT) 6, at paragraph 8).

16. Accordingly, and in light of the above analysis, the Tribunal agrees with the Respondent that, as MLRO and a member of HCW's senior management, the Appellant failed to ensure that HCW adhered to the AML/CFTR requirements listed in paragraph 6 above.
17. Taking into account the considerations set forth in the Enforcement Policy Statement, the Tribunal considers that the penalties imposed by the QFCRA in this case – an indefinite prohibition on future functions within the QFC and a financial penalty of USD 300,000.00 – to be entirely appropriate for the following reasons. First, ensuring a robust application of the AML/CFTR is critical to ensuring continued public confidence in the QFC. Second, in this case, and particularly given his role as MLRO, the Appellant's failure had an important impact on the serious AML/CFT deficiencies of HCW, failures which are not seriously challenged by the Appellant. Third, the Appellant's conduct demonstrates a serious lack of both competence and judgement. Fourth, while the penalties are on the high end when compared with other disciplinary actions, they are not unprecedented. Finally, and perhaps most importantly, as a matter of deterrence, it is important that the QFC sends a clear signal regarding the importance that it attaches to the AML/CFTR generally and the role of the management and MLRO more specifically.
18. Finally, we have given consideration to the Appellant's Statement of Financial Hardship dated 5 December 2022, where he makes a number of representations as to why he is unable to pay a fine of USD 300,000.00. Under the Enforcement Policy Statement, consideration may be given to serious financial hardship when the person "*provides verifiable evidence that payment of the proposed financial penalty would cause them to suffer serious financial hardship.*"¹⁶ The principles and how they are applied are explained in *David Russell v QFCRA* [2020] QIC (RT) 2 at paragraph 71. As noted by the QFCRA in its Response, no verifiable evidence has been provided by the Appellant with respect to his financial hardship.¹⁷ Although the Appellant, in his Statement of Hardship, offered to provide his tax returns for the years 2020 and 2021, he has not done so, notwithstanding the fact that the Tribunal gave directions to the parties to provide the Tribunal with any additional materials on which they wished to

¹⁶ Enforcement Policy Statement, paragraph 6.48(b).

¹⁷ Response, paragraph 7.3(f)(ii).

rely for purposes of these proceedings. In short, a case of financial hardship has not been made out.

Conclusion and disposition

19. It follows from the above that the Appellant's appeal is dismissed. In accordance with the usual practice in the Tribunal, there will be no order as to costs.

By the Regulatory Tribunal,



[signed]

Justice Sean Hagan

A signed copy of this Decision has been filed with the Registry.

Representation

The Appellant was represented by Sami Abdulla Abushaikha, of Abushaika Law (Doha, Qatar).

The Respondent was self-represented.