

**Raiffeisen Property Management v. Double W AS,
Malynovskyy District Court of Odesa, Case No. 1519/6-1/11,
31 March 2011**

Yaroslav Petrov, Asters; Viktoriia Afanasieva, Asters

Headnote

In Raiffeisen Property Management v. Double W, the Malynovskyy District Court of Odesa partially refused the recognition and enforcement of the foreign arbitral award holding that the award ruled on matters beyond the scope of the arbitration agreement and that the subject matter of the dispute is non-arbitrable under Ukrainian legislation (31 March 2011)

Digest

Raiffeisen Property Management (the “Applicant”) filed a petition before the Malynovskyy District Court of Odesa (the “Court”) to recognize and enforce the arbitration award rendered on 23 February 2010 by the International Arbitral Centre of the Austrian Federal Economic Chamber with amendments of 10 June 2010.

The arbitration proceedings considered the following issues: (a) whether the agreements concluded between the parties are valid and legally binding and; and (b) whether they confirm shares ownership in the company. The arbitration tribunal recognized the loan agreement, share purchase agreement and the share transfer agreement concluded between the parties to be lawful and valid, and ordered Double W (the “Debtor”) to be solely liable for all the costs and expenses of these proceedings including the legal costs.

At the enforcement stage, the Debtor argued that the arbitral award is in breach of public policy because the disputes involved are considered corporate disputes under Ukrainian law and are not arbitrable. The Debtor also argued that it was not given sufficient notice of the arbitration proceedings.

The Court rejected the Debtor's arguments with respect to notice. The judge decided that notice cannot be considered insufficient due to formal inconsistency of addresses. Furthermore, the judge noted that the Debtor had filed a statement of defense in reply to the Applicant's statement of claim, therefore, the Debtor's argument of insufficient notice has to be rejected.

With regard to the public policy argument, the Court considered that although recognition and enforcement of the award itself will not be contrary to public policy, the Applicant's commencement of the arbitration proceedings with the above mentioned claims maybe considered as an abuse of procedural rights. In support of the Debtor's arguments, the Court found that firstly the corporate disputes are not arbitrable according to the Ukrainian law, and therefore, should have been filed before domestic commercial courts. Secondly, the Debtor had filed a claim before the commercial court on the subject matter related to the arbitration case.

The Court added that even if the subject matter of both the arbitral and court claims is not similar, the enforcement of the arbitral award would have prejudicial effect on the court proceedings. Finally, the Court noted that there is a presumption on the validity of an agreement in Ukraine, thus, a claim on recognizing the validity of an agreement is not at all subject to trial according to Ukrainian law.

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Jurisdiction

- Ukraine

Court

Malynovskyy District Court
of Odesa

Arbitrators/Judges

- A.I. Drishlyuk, judge

Case date

- 31 March 2011

Case number

- 1519/6-1/11

Parties

- Petitioner, Raiffeisen Property Management (Austria)
- Respondent, Double W (Ukraine)

Key words

- recognition
- enforcement
- arbitrability
- corporate dispute
- notification
- public policy

The Court based its judgment on article 5(1)(c) of the 1958 New York Convention and on article 36 of the Law of Ukraine "On International Commercial Arbitration." The Court partially refused recognition and enforcement of the award arguing that there were no legal grounds for the arbitration claim due to the absence of dispute between the parties, and because of the exclusive competence of domestic courts in such cases. It also added that affirmation of the agreement's validity makes the enforcement of the award simply impossible because there is no reference to the actions that must be enforced. However, the Court ordered the Debtor to pay arbitration costs and fees, except legal expenses.

Parties: Raiffeisen Property Management v. Double W, case no: 1519/6-1/11, Malynovskyy District Court of Odesa, Ukraine.

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The summary of the case file and full text of summarized court decision are available on:
<http://www.kluwerarbitration.com/CommonUI/document.aspx?id=KLI-KA-1143014>

Applicable legislation

- UNCITRAL Model Law
 - Ukrainian

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