



CODE OF CONDUCT

MAHAHMAHAH

(Complainant)

and

MAHASAKMAHASAK

(First Respondent)

and

MAHFID AND COMPANY ADVOCATES AND LEGAL CONSULTANTS

(Second Respondent)

**CODE OF CONDUCT DECISION 2 OF 2022
DECISION OF THE ASSISTANT REGISTRAR DELVIN SUMO**

Summary of the Complaint

1. On 17 and 24 October 2021, Ms MahahMahah (“Ms Mahah” or the “Complainant”) sent an email setting out a formal complaint (the “Complaint”) against Mr MahasakMahasak (“Mr Mahasak” or the “First Respondent”) and Mahfid and Company Advocates and Legal Consultants (“Mahfid & Co.” or the “Second Respondent”) (jointly, the “Respondents”).
2. In short, the Complainant’s Complaint is made in relation to the DIFC Courts’ Small Claims Tribunal case (the “SCT Case”). The SCT judgment was handed down by the then SCT Judge Maha Al Mheiri on 4 February 2021, following which, Ms Mahah lodged a Complaint against the Respondents alleging that they failed to manage the Complainants’ case in terms of legal and jurisdictional matters, breaching the DIFC Court’s Order No. 4 of 2019 Mandatory Code of Conduct for Legal Practitioners in the DIFC Courts (the “Code”).

3. The Complainant raised similar allegations against the Respondents with the Government of Dubai Legal Affairs Department (the “DLAD”) and the Complaint was consequently dismissed by the DLAD on 9 May 2022. For the purposes of this Complaint, I will limit the discussion of the matter in so far as it pertains to the DIFC Courts, in accordance with the Code.

Complaint – Procedural History

4. On 17 and 24 October 2021, Ms Mahah made the Complaint to the Registrar in the form of an email. On 24 and 25 October 2021, the DIFC Courts’ Registry (the “Registry”) forwarded the Complaint to the Respondents, pursuant to Paragraph F-35 of the Code, requesting for a written response to be submitted to the Registry by 24 November 2021.
5. On 26 October 2021, Mr Mahasak responded to the Complaint by way of an email sent to the Registry (“Mr Mahasak’s Response”).
6. On 29 November 2021, Ms Mahah replied to the Response filed by Mr Mahasak by way of a letter sent to the Registry (“Ms Mahah’s Response”).
7. On 3 March 2022, the Registry wrote to Mr Mahasak asking him whether he intended to request the appointment of independent assessors (“Assessors”), pursuant to Article F-36 of the Code.
8. On 3 March 2022, Mr Mahasak wrote to the Registry that his preference was for the Complaint to proceed to the Registrar for determination, rather than invite the appointment of Assessors. Furthermore, Mr Mahasak noted that his response does not reflect Mahfid & Co.’s view on the matter.
9. On 15 March 2022, in order to ensure a fair process, the Registry wrote to Mahfid & Co. requesting for a response regarding the appointment of Assessors, to which it responded that a similar complaint had been filed with the DLAD and it was facing difficulty in determining the jurisdiction over the Complaint.
10. Thereafter, the Registry conducted various phone calls and email correspondence with the relevant department within the DLAD in order to understand the progress of the Complaint.

Since the DLAD intended to progress the Complaint, the Registry's view was to stay the determination of the Complaint pending the issue of a decision by the DLAD.

11. On 2 June 2022, the Registry wrote to the parties, informing them of the issuance of the DLAD's decision on this matter and that the Registry would now proceed to issue its decision. The Registry further invited the Second Respondent to submit its response to the Complaint by 10 June 2022.
12. On 7 June 2022, Mahfid & Co. wrote to the Registry, submitting a response by email to the Complaint. Mahfid & Co. confirmed that it adopts Mr Mahasak's response dated 26 October 2021.

Details of the Complaint

The Complaint

13. Ms Mahah sought Mr Mahasak's legal services in relation to various matters occurred between Ms Mahah and Malcolm (the "Club").
14. Ms Mahah's claim was dismissed by the SCT in light of an arbitration clause in the "Membership and Club Rules and Regulations" (the "Club Rules"). Ms Mahah communicated this to Mr Mahasak by telephone on the evening of 4 February 2021. Ms Mahah submitted that she was never referred to or was aware of such Club Rules as she had not seen any such Club Rules until this was submitted by the Club during the SCT Case.
15. Ms Mahah submits that Mr Mahasak had never requested from Ms Mahah to view the Club Rules or any other type of contract between her and the Club. While Ms Mahah agrees that there was no contract concluded between the Club and herself, she submits that at no point in time did Mr Mahasak ask her to provide a copy of the Club Rules for his review.
16. Ms Mahah further submits that:

"As a matter of fact, the first thing any lawyer will do is ask for the agreement or contract governing the relationship between the claimant and respondent. Mr. Mahasak never asked me to provide him this. I am not a lawyer, and I hired the services of Mr. Mahasak

to provide me with the advice necessary for my case. The advice I received was not correct and his advice (admitted already by him) to resort to the DIFC Courts was the sole reason why I lost the case”.

17. Ms Mahah then sought to appeal the SCT decision to the Court of First Instance (the “CFI”) without recourse to legal advice by Mr Mahasak or Mahfid & Co., and the decision was handed down by Justice Lord Angus Glennie on 3 May 2021. In short, the appeal was dismissed on the basis that a contract was made by conduct between the parties and the dispute that arose between the parties should be resolved by arbitration, pursuant to the arbitration clause contained in the Club Rules.
18. Mr Mahah submits that the reason she was unsuccessful in her SCT claim is not due to lack of merit, rather the wrongful advice received from Mr Mahasak, who she submits failed to properly advise her on the appropriate forum for the filing of her claim against the Club. She further submits that she had approached Mr Mahasak for legal advice due to the fact that he was also a member of the Club and that he should have had or had been aware of the Club Rules. Ms Mahah goes on to say the following:

“I would like to highlight the fact that Mr. MahasakMahasak at the club I raised this case against and we both were members of the capital club, and as a lawyer he must have had the contract of membership and find out the jurisdiction of my case but he didn't ! the least he could have done was to get his own contract and find out what's the right court to approach”.

19. Ms Mahah argues that if Mr Mahasak had provided proper legal advice on the matter of jurisdiction, Ms Mahah would have succeeded in her claim, saved time and effort, and would have avoided unnecessary expenditure in court fees and legal fees. Therefore, Ms Mahah requests that an investigation take place against the Respondents in accordance with the Code.

The Response

20. Mr Mahasak submitted that, on 27 October 2020, Ms Mahah met with him to discuss the issues between Ms Mahah and the Club. Assessing the jurisdiction of the claim, Mr Mahasak advised Ms Mahah that, since the Club was registered in the DIFC, the DIFC Courts would have jurisdiction over the claim.

21. Mr Mahasak submits that he requested that Ms Mahah provide him with all relevant information regarding her date of joining the Club, who she interacted with and any contract that was signed between Ms Mahah and the Club.
22. The documents Ms Mahah provided to Mr Mahasak did not refer to a contract concluded between Ms Mahah and the Club, nor any Club Rules. Mr Mahasak submits that he verified the Club's website for the aforementioned but found none.
23. Mr Mahasak further submits that:

"I had explained to Ms AlMahah the way in which the DIFC Courts worked and the difference between the Court of First Instance and the Small Claims Tribunal. I additionally explained the cost implications as well as the fact that legal representation was not allowed by the Small Claims Tribunal as it was meant to be informal, to keep cost reasonable and to only allow court fees and not legal costs to be recoverable (save where a party has acted unreasonably)".
24. Mr Mahasak submitted that Ms Mahah opted for the SCT to hear her claim, taking into consideration the cost implications in the event that she does not succeed in her claim. Mr Mahasak further submits that from 22 December 2020 onwards, Ms Mahah acted on her own as legal representation is not allowed in SCT proceedings.
25. Mr Mahasak submitted that Ms Mahah contacted him on 4 February 2021 informing him that the SCT dismissed her claim in light of the arbitration clause set out in the Club Rules.
26. Mr Mahasak declines any knowledge of the Club Rules and the arbitration clause therein despite his own membership with the Club. This was not brought to his attention by Ms Mahah, nor was Mr Mahasak able to verify these Club Rules when he reviewed the Club's website.
27. Mr Mahasak further submits that Ms Mahah's insinuation that Mr Mahasak would have additional information than that provided by her was incorrect. Mr Mahasak asserts that he did not have access to any helpful information from the Club or from Ms Mahah's provided documents in regard to the Club Rules.
28. Mr Mahasak submits that the appeal submitted by to the CFI on 20 April 2021 was done without input from the Respondents.

29. Mr Mahasak, in his submissions, refers to the allegation put forward by the Complainant as a means to “import knowledge that he did not possess” and pointed out that the loss of Ms Mahah’s SCT Case was due to her misunderstanding of the procedures that took place in the SCT. Furthermore, she misconstrued Mr Mahasak’s role as a legal advisor and relied on Mr Mahasak’s personal knowledge of the Club Rules and the arbitration clause to assist her claim, when in fact, Mr Mahasak’s advice was contingent on Ms Mahah’s production of all documents between her and the Club.
30. Therefore, Mr Mahasak strongly refutes all the allegations contending that there had been no breaches of the Code.
31. Mahfid & Co.’s Response assert, in their response dated 7 June 2022, that Mr Mahasak acted appropriately, reasonably and in line with the Overriding Objectives of the Rules of the DIFC Courts throughout Mr Mahasak’s retainer with Ms Mahah. Mahfid & Co. further submits that:
- “This matter has already been considered and dealt with by the DLAD who handed down their judgement on 27 May 2022 finding that Mr Mahasak acted properly at all times and provided Ms AlMahah with the required level of service in accordance with his instruction.”
32. Mahfid & Co., in their submissions, refer to UAE Law Article 92 of the Civil Procedures Law (Federal Law No. 11/1992), contending that the DIFC Courts should not re-adjudicate the Complaint, relying on the principle of ‘Res Judicata’, as it has already been litigated by the DLAD and judged on its merits.
33. Mahfid& Co. assert that the principle should be applied in this case as Mr Mahasak and Mahfid& Co. have been cleared of any misconduct that was alleged upon the Respondents by Ms Mahah in her Complaint. Furthermore, Mahfid& Co. argues that relitigating the same complaint would be seen as an abuse of process and will result in the same result.

Findings and Decision

34. The Complainant claims that the Respondents have breached the Code but fails to refer to the relevant provisions of the Code that she submits the Respondents have breached.

Nevertheless, in order to ensure that there has been no abuse of process, the Registry has assessed the Complaint based on the submissions of the parties. On behalf of the Registry, I am tasked with determining whether the Respondents, on the balance of probabilities, have breached the Code. This is pursuant to paragraph 38 (A) of the Code which states that:

“The Court, acting through the Registrar, the Chief Justice...or any nominee of the Chief Justice, may impose the following sanctions upon any Practitioner found on a balance of probabilities to have committed a breach of the Code [of Conduct]:

- private admonition;
- public admonition;
- suspension from the Register of Practitioners for a period of time not exceeding 3 years; and
- removal from the Register of Practitioners.”

35. The question for determination before me is whether Mr Mahasak and Mahfid & Co. failed to defend and protect the interests of Ms Mahah by providing her with incorrect legal advice and have therefore breached the Code.
36. To be found in breach of the Code is a serious matter. The Code imposes significant sanctions on practitioners found in breach – sanctions which could permanently damage a practitioner’s career. If a practitioner is found to be in breach, these sanctions are necessary in order to ensure that a high standard of professional practice is maintained at all times.
37. In review of the submissions made by the parties, I find that Mr Mahasak has provided proper legal advice to Ms Mahah on the matter of jurisdiction. Mr Mahasak, in his submissions, clarifies that his advice revolved around the information provided by Ms Mahah regarding the contractual relationship between her and the Club. In the absence of the Club Rules being provided to the Respondents by the Complainant, Mr Mahasak advised Ms Mahah to proceed with her claim in either the SCT or the CFI and provided her with a cost-benefit analysis if the claim was heard in the SCT, which Ms Mahah found to be acceptable.
38. Furthermore, Ms Mahah’s contention that Mr Mahasak, being a member of the Club, would possess knowledge of the Club Rules and therefore the arbitration clause that governs dispute resolution for the Club, is unfounded. It is the responsibility of the Complainant to provide its legal advisor with all the relevant information and documents in order to obtain

proper legal advice. Nevertheless, Mr Mahasak also took appropriate steps to obtain any references to the Club Rules by examining the Club's website before advising Ms Mahah on how to proceed with her claim.

39. Having regard to all of the materials before me, I do not consider, on the balance of probabilities, that the Respondents have breached the Code. Therefore, the Complaint is dismissed.

40. In accordance with the Code, there will be no order on costs of the Complaint.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 20 June 2022
Time: 10am