THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL

BEFORE H.E. JUSTICE OMAR AL MUHAIRI

BETWEEN

FRANCES

Claimant

and

FLERA BANK DIFC

Defendant

Hearing: 15 March 2015

Judgment: 24 March 2015

JUDGMENT OF H.E. JUSTICE OMAR AL MUHAIRI

UPON hearing the Claimant and the Defendant

AND UPON reading the submissions and evidence filed and recorded in the Court file

IT IS HEREBY ORDERED THAT:

1.The Defendant shall pay the Claimant the amount of AED 55,526

2. Each party shall bear their own costs

THE REASONS

Parties

3.The Claimant, Frances, is a Turkish national working at Flera Bank

4. The Defendant is Flera bank, DIFC

BACKGROUND

5.The Claimant started working for the Defendant in August 2013 as a Trader Assistant, he reported directly to his line manager Franciand to the regional head. Franci and the Claimant were primarily responsible for trading debt securities including cross currency swaps. Franci is the desk head and books his bond trades; the Claimant assisted Franci with cash management and trade bookings and checking limits.

6. On 16 June 2014, Franci was out of the office and instructed the Claimant to cover the book and mismark the bond prices. Mismarking is to mark the bond at a price which does not reflect the market. The market price is the midpoint of the average best bid and the average best offer. The Claimant states that on that day he discovered that Franci had been inappropriately marking the books.

7. On 27 June 2014 the Claimant went on leave, when the Claimant came back from leave on 21 July 2014 an investigation was initiated and Franci was suspended on 23 July 2014. On 27 July 2014 an interview with compliance investigation was initiated with the Claimant to consider whether any disciplinary actions should be taken against him.

8. The Claimant worked with the Defendant for approximately 1 year and 4 months. On 19 September 2014 the Defendant was placed on suspension and on 29 October 2014 the notice of termination for gross misconduct was effective.

9. On 16 February 2015 the Claimant filed a case against the Defendant claiming end of service gratuity, untaken annual leave, notice period and unpaid salaries in accordance with DIFC Employment Law No.4 of 2005 in the amount of USD $42,110.70 including court fees. He also requested that the Defendant issue a reference letter regarding his employment.

10. The Claimant states that the Defendant has substantial written and factual evidence that the Claimant raised many concerns since April 2014 regarding the prop trading style of Franci and the excessive risk he put the Defendant in. He also states that the reports and concerns were put forward before the Defendant since April 2014, and they have not been given appropriate consideration, and that the Defendant is fully aware of the risk that failure to monitor excessive risk takers will likely result in bigger problems.

11. As a result of improper trading activities and excessive risk on Franci's part, this led to significant loss in his portfolio that he managed to

conceal. The Claimant states that once he discovered the concealed loss, he intended to resign from the bank. After which the Claimant was convinced by the regional head of trading to stay in the bank to reduce the excessive risk and he followed that instruction.

12. The Claimant was called for a disciplinary hearing on 23 October 2014 to consider whether any disciplinary actions should be taken against him in respect to the allegations that he was aware that the bond positions of the trading desk portfolio which he supported where being marked at inaccurate levels prior to it becoming known to senior management. Further, the Claimant's failure on 16 June 2014 to escalate concerns regarding the inaccurate marking of the desk's portfolio and the deliberate mismarking of the books and failure to inform the necessary internal parties of any knowledge or concerns of inaccurate marking and last but not least the breach of the Bank's Financial Code of Conduct on honesty and integrity, as well as not acting with due skill, care and diligence and observing proper market conduct in carrying out his functions were noted.

13. Once risk was reduced, and the portfolio was cleaned, the Claimant's employment contract was terminated on 29 October 2014, almost 4 months after the formal investigation started. It took another 4 months up to 22 January 2015 for the Defendant to make the final decision after appeal.

14. On 23 February 2015 the Defendant filed its Acknowledgement of Service intending to defend part of the claim, and addressed the Claimant's issues in its response.

15. The Defendant states that in respect to the payment of the end of service benefits, the bank has no intention of paying the claimed gratuity, notice period, and unpaid salaries for the months of November and December 2014 and January 2015. The Defendant states that the reason behind the rejection of the above is the employee's gross misconduct, the bank followed an extensive investigation prior to initiating a formal fair accountability disciplinary process against the Claimant. Further, the Bank has provided the Claimant with the right to appeal the dismissal decision and assigned a more senior independent party to hear the appeal, the result was that the appeal outcome upheld the decision of dismissal issued on 4 November 2015.

16. The Bank has no objection to paying the Claimant against the accrued untaken annual leave and paid suspension up until the date of 4 November 2014

THE HEARING

17. On 15 March 2015, an SCT hearing was held before me, the Claimant attended by teleconference and the Defendant was represented by the Head of Employee Relations.

TERMINATION

18. Pursuant to Article 59A of the DIFC Employment Law No. 3 of 2012, Termination for cause reads as follows:

> "an employer or an employee may terminate an employee's employment for cause in circumstances where the conduct of one party warrants termination and where a reasonable employer or employee would have terminated the employment."

19. Clause 14.1 and 14.2 of the Claimant's contract states that:

> "14.1 The bank is entitled to terminate your employment with immediate effect and without notice or compensation for the reasons permitted in the DIFC Employment Law
>
> 14.2 Notwithstanding any other provision in this Agreement, the Bank is entitled to terminate your Employment where you have (without limitation):
>
> (a) Committed an act of gross misconduct or serious negligence or neglect in the performance of, or failed to perform, any of your duties under this Agreement; or
>
> (b) Committed any serious breach, or repeated or continued a material breach, of the terms of you Employment;."

20. The Defendant provided the Compliance investigation interview transcript dated 29 and 30 September 2014, signed by the Claimant during which the Claimant admitted that he had not been open and honest about the mismarking incident which constituted a breach of the Code of Conduct in failing to act responsibly and failing to act ethically, honestly and professionally.

21. Also the Claimant admitted that on 16 June 2014 he, in agreement with Franci, inaccurately mismarked the trading portfolio without any market basis for such marks and with the prior knowledge that the marks were inaccurate.

22. The Compliance investigation interview transcript shows that from 16 June 2014 onward, the Claimant failed to speak up or escalate the inaccurate marking to the Financial Market Management.

23. That conduct identified other breaches of the Defendant's Code of Conduct, which states that financial market staff must speak up if they know of or suspect any actual planned or potential behavior that breaks any laws, regulations or Group standards. The individual responsibility is to report actual or suspected misconduct, malpractice and illegal or unethical behavior by informing senior management of the concerns by the ways identified in the Code of Conduct, which is taking it up with a supervisor or by email or an independent organization, separate from the Group. This should be done via an email to the Group's external Speak Up channel who will forward the information on behalf of the FM Staff member to Group Compliance; the Claimant did not provide any evidence proving otherwise. Therefore, he is not entitled to one month's notice.

END OF SERVICE (GRATUITY) AND NOTICE PERIOD

24. Under Article 62(4) of the DIFC Employment Law, an employee is not entitled to a gratuity payment where the employee has been terminated for cause, as defined in Article 59(4).

25. The Defendant provided evidence, namely the Compliance investigation interview transcript dated 29 and 30 September 2014, signed by the Claimant that he had been terminated for cause due to his conduct stated in the reasons for termination referred to above.

26. Given Article 62(4) of the DIFC Employment Law and the evidence provided by the Defendant, the Claimant is not entitled to gratuity payment following his termination for cause.

SALARY AND VACATION LEAVE

27. In the hearing the Defendant admitted that the Claimant is entitled to unpaid salary for 5 days of November 2014 in the sum of AED 8,632 and the Claimant is entitled to 23 days unused vacation leave in the sum of AED 46,894.

CONCLUSION

28. For those reasons stated above, the Defendant shall pay the Claimant the sum of AED 55,526, for 5 days of November 2014 and untaken annual leave.

29. Each party shall bear their own costs.

30. Accordingly, I dismiss any other claims advanced by the Claimant.

Issued by:

Nassir Al Nasser

Judicial Officer

Date of Issue: 25 March 2015

At: 3pm