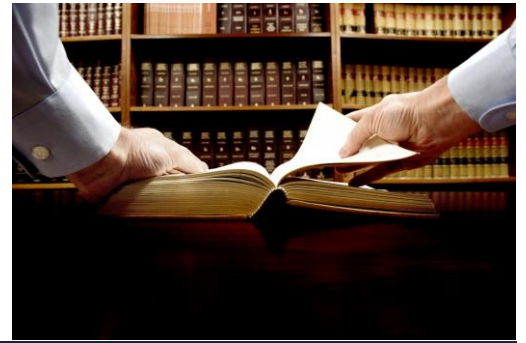


inBrief

**DFSA Decision Notices *not* Findings of Fact in the DIFC Courts**

By Stuart Walker and Sulakshana Senanayake | 17 October 2023

The DIFC Courts have recently confirmed that Decision Notices issued by the Dubai Financial Services Authority (DFSA) are not binding on the Court as findings of fact.

Decision Notices

Under Article 116(2) of the Regulatory Law 2004 (as amended), the DFSA may publish, in such form and manner as it regards appropriate, information and statements relating to decisions of the DFSA, the Financial Markets Tribunal and the DIFC Court, sanctions, and any other matters which the DFSA considers relevant to the conduct of affairs in the DIFC. These include Decision Notices issued under Article 5 of Schedule 3 of the Regulatory Law in respect of Authorised Individuals who are defined as individuals who have been authorised by the DFSA to perform one or more Licensed Functions for an Authorised Firm.

The DIFC Claim

In the Court of First Instance case of [2018] DIFC CFI 080, the Claimant initiated proceedings against the Defendant, alleging, among other claims, that the Defendant had misappropriated funds invested by the Claimant in connection with a DFSA Authorised Firm (the **Relevant Entity**).

The Claimant sought to rely on a Decision Notice issued against the Defendant by the DFSA (and unconnected to the DIFC Claim) which referred to a series of misdoings on the part of those engaged in the business of the Relevant Entity and failures to abide by the DFSA Rules and Regulations which applied to financial advisers and investment managers as well as the Defendant's personal responsibility for breaches.

The Defendant contested the admissibility and relevance of the Decision Notice in respect of the DIFC Claim.

The Judgment

Issuing the judgment consequent to trial, Justice Sir Jeremy Cooke held, among other things, that:

- the DFSA proceedings were “adversarial” and “disciplinary” in nature; and
- The “*conclusions reached by others cannot bind [the DIFC] Court, absent the application of res judicata or specific exceptions to the rule in Hollington v Hewthorn which is binding on English Courts*”.

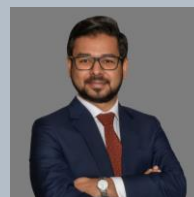
The Authors**Stuart Walker**

Partner

swalker@afриди-angell.com

Tel: +971 4 330 3900

Stuart's primary practice includes employment, financial services regulation, corporate finance and mergers and acquisitions. He leads the field in advising parties during Dubai Financial Services Authority (DFSA) investigations and was instructed by the first authorised firm to be fined by the DFSA. He assists a variety of international clients with their tax planning.

**Sulakshana Senanayake**

Senior Associate

ssenanayake@afриди-angell.com

Tel: +971 4 330 3900

Sulakshana practices in the firm's dispute resolution group and advises and represents clients in litigation disputes. His experience and specialties include advising on and assisting with disputes relating to international law, commercial law, banking, labour law, fundamental rights and intellectual property. Sulakshana is a registered practitioner of the DIFC Courts with full rights of audience.

The Court also referred to the English cases of *Conlon and another v Simms* [2006] EWCA Civ 1749 and *Three Rivers DC v Bank of England* (No.3) [2001] UKHL 16, [2003]2 AC 1 in support of its conclusions and confirmed that the principles set out in those cases “reflect the law of the DIFC” and apply in relation to Decision Notices issued by the DFSA.

Conclusion

The case is an important precedent from the DIFC Courts which considers the evidential burden to be met in establishing a claim. It also provides individuals against whom Decision Notices are issued by the DFSA an opportunity to defend themselves in claims brought against them based on the merits of each case.

However, it remains to be seen whether the DIFC Courts would take a different view if the findings in a DFSA Decision Notice directly related to a specific claim in the DIFC Courts, and were properly substantiated by direct witness evidence in relation to the Decision Notice. ■

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