

**CASE NOTE:
RUSSIAN FEDERATION**

CASE CITATION:
A12-3342/05-C11

NAME AND LEVEL OF COURT:
**The Federal Arbitration of
the Povolzhsky District**

PLAINTIFF:
**Sovtransavto – Volzhsky
Limited Liability Company**

DEFENDANT:
**KOR Joint-Stock Commercial
Bank and Volgoprombank
Open Joint Stock Company**

Extract of the RESOLUTION issued by the Arbitration of Annulment Cassation on Examination of Justifiability of Enforced Arbitration Decisions (Determinations, Resolutions), November 17, 2005

The Federal Arbitration of the Povolzhsky District has considered the cassation filed by Sovtransavto – Volzhsky Limited Liability Company, Volzhsky, the Volgograd Region, of the Decision issued by the Volgograd Region Arbitration on 07.06.2005 and Resolution issued by the Arbitration of Appeals of the same location on 03.08.2005 on case no. A12-3342/05-C11, following the claim filed by Sovtransavto – Volzhsky Limited Liability Company, Volzhsky, the Volgograd Region, against KOR Joint-Stock Commercial Bank, Volgograd, Volgoprombank Open Joint Stock Company, Volzhsky, the Volgograd Region, third parties: Avtokolonna N 1513 Limited Liability Company, Gorodische, the Volgograd Region, Avtokolonna N 1513 Open Joint Stock Company, Volgograd, for collecting 87,800 rubles.

The Federal Arbitration of the Povolzhsky District has determined the following:

The Decision issued by the Volgograd Region Arbitration on 07.06.2005, which was supported by the Resolution issued by the Arbitration of Appeals on 03.08.2005, rejected the claim filed by Sovtransavto – Volzhsky Limited Liability Company, Volzhsky, the Volgograd Region, against KOR Joint-Stock Commercial Bank, for the collection of 87,800 rubles, of which 85,000 rubles comprised the money transferred, and 2,800 rubles the interest to be paid for ambages (not being able to use the funds).

OOO Sovtransavto – Volzhsky requested the cancellation of the Decision of the Arbitration of First Instance as of 11.05.2004 and the Resolution of the Arbitration of Appeals as of 03.08.2005, and for satisfying the claim; the basis of the request by the Claimant was the assertion that norms of material

law had been violated.

Having examined the reasons for the appeal, the Arbitration of Cassation has found no grounds for canceling the finding of facts.

As follows from the materials of the case on 06.08.98, an agreement was concluded between OAO AKB Volgoprombank and OOO Sovtransavto – Volzhsky related to bank account no. 40702810400000001145.

On 16.09.2004, 17.09.2004, and 20.09.2004 the Claimant made and submitted to the bank (OAO AKB Volgoprombank) payment orders no. 754, no. 758, no. 765, and no. 766, according to which 85,000 rubles should be transferred from bank account no. 40702810400000001145 owned by OOO Sovtransavto – Volzhsky to bank account no. 40702810400000001031 with OAO AKB KOR, owned by OOO Avtokolonna no. 1513 (INN Code (Tax Code) no. 3403018704).

Within the payment documents submitted, the Claimant mentioned by mistake the beneficiary bank OAO AKB KOR and the recipient's account no. 40702810400000001031, while at that time OOO Avtokolonna no. 1513 (INN Code (Tax Code) no. 3403018704), which was mentioned as recipient, did not have an account with the recipient bank. In compliance with the payment documents submitted, OAO AKB Volgoprombank made electronic payment documents to transfer the money from the Claimant's account to OAO AKB KOR correspondence account.

85,000 rubles were transferred to account no. 40702810400000001031 with OAO AKB KOR (recipient: OAO Avtokolonna no. 1513), placed on file, and on the same day the money was debited to clear off the file on the basis of agreement no. 749 as of

24.12.99, concluded between OAO AKB KOR and OAO Avtokolonna no. 1513.

Thus Claimant's money in the amount of 85,000 rubles was transferred to the wrong recipient, namely, OAO Avtokolonna no. 1513.

This circumstance of the transfer are the basis of the grounds for OOO Sovtransavto – Volzhsky to take legal action to recover the 87,800 rubles, of which 85,000 rubles are the transferred money, and 2,800 rubles interest for ambages (not being able to use the funds).

The Arbitration of First Instance rejected the claim since the Claimant's damage was not caused by the fault of OAO AKB KOR.

The Arbitration of Appeals approved the conclusion reached by the Arbitration of First Instance. Having analyzed the materials of the case, the Federal Arbitration of the Povolzhsky District supported the rejection of the claim filed by OOO Sovtransavto – Volzhsky.

Article 864 of the Russian Federation Civil Code provides that the content of a payment document and of settlement documents submitted therewith, and the form of the documents should meet the requirements set by law and by any lawfully adopted bank regulations. Where a payment order fails to meet such requirements, the bank may specify the content of the payment order.

The requirements set out for the settlement documents (including payment orders) made on paper, are listed in Chapter 2 of the Regulations for Non-Cash Settlements no. 2-P approved by the Russian Federation Central Bank on 03.10.2002. In compliance with the requirements set by the Regulations for Non-Cash Settlements, OAO AKB Volgoprombank, when receiving payment documents from the Claimant, determined that the documents met all the requirements. All the necessary bank details were present, the documents were filled up correctly, and payer bank account had enough money. In compliance with the Regulations, OAO AKB Volgoprombank was not charged with the responsibility to check the name of the payer, his INN code (Tax Code), name of payer bank and payer

account number.

In this connection, the manipulations of OAO AKB Volgoprombank with the Claimant's payment documents should not be classified as illegal. Article 866 of the Russian Federation Civil Code provides that in the case of the inappropriate fulfillment of a client's order, the bank is liable under Chapter 25 of the Russian Federation Civil Code. Where inappropriate fulfillment of an order occurs where the bank fails to observe the rules of settlement, the bank may be held liable upon a court decision.

In this case, OAO AKB KOR remitted the funds to the recipient account on the basis of electronic payment documents formed by OAO AKB Volgoprombank using bank details provided by the Claimant in paper form.

The Regulations on Exchange of Electronic Documents among the Bank of Russia, credit organizations and other clients of the Bank of Russia in the course of settlement through the Bank of Russia settlement network, approved by the Russian Federation Central Bank on 12.03.98, no. 20-P, provide that the holder of an electronic digital signature is responsible for the content of the electronic document (Item 2.2). In the case of electronic settlement, no paper settlement documents should be delivered (Item 2.11).

Item 2.13 of the Regulations as of 12.03.98 no. 20-P provide that writing off under correspondence accounts within the Bank of Russia is performed on the basis of numerical details mentioned in the electronic payment document, irrespective of the written details mentioned in the payment document, unless the law requires otherwise or it is an exchange document. The person who prepared the document will be responsible for any incorrect remittance due to the inconsistency between the numerical and written details in the electronic payment document.

Part 4 of the Regulations no. 20-P as of 12.03.98 and the provisions of the Agreement no. 30 on Free Use of APM Software for Electronic Documents Exchange as of 06.10.2000, and Agreement no. 440 on Electronic Documents Exchange in Settlements through Settlement Network of the Bank of Russia as of

06.10.2000, to which OAO AKB KOR was a party, determine the procedure of verification of electronic documents; the procedure includes authentication, verification of integrity of the electronic package, logic control, and the account has sufficient funds to make the payment.

Thus no legal act nor provisions of agreements make the payee's bank responsible for checking the legal status of the recipient, therefore the payment documents were accepted for payment in full accordance with Item 6.5 of the Regulations no. 20-P as of 12.03.98.

The arbitrations determined that the bank performed the necessary actions to verify the electronic documents, namely, the bank checked whether the form of the electronic document was correct, it checked whether the details meet the legal requirements, including the presence of client's INN Code within the electronic document, the payer's bank name and the payee's bank name were mentioned in the List of Local Banks, etc.

Item 4 of the Letter no. VG-412/25n as of 16.06.95, issued by the Russian Federation Tax Inspection, Letter no. 47 as of 05.06.95 issued by the Ministry of Finance, Letter 174 as of 16.06.95 "On Obligatory Tax Identification Numbers in Settlement Documents" issued by the Central Bank of Russia, require the following: when a bank accepts settlement documents, it should visually verify the presence of the INN Code. The person authorized in the organization which created the documents, is responsible for entering the correct details in settlement documents.

Thus the appealed arbitration decisions are legally valid.

The Arbitration of Cassation has found no grounds for canceling the Decision issued by the Arbitration of First Instance on 07.06.2005, and the Resolution issued by the Arbitration of Appeals on 03.08.2005. The Claimant's arguments have been rejected.

In view of the foregoing and based on Articles 286, 287, 289 of the Russian Federation Code of Arbitration Proceedings the Arbitration of Cassation holds as follows:

The Decision issued by the Volgograd Region Arbitration on 07.06.2005 and the Resolution issued by the Arbitration of Appeals of the same location on 03.08.2005 on case no. A12-3342/05-C11 will remain in force.

The cassation filed by Sovtransavto – Volzhsky Limited Liability Company is rejected.

This Resolution, issued by the Arbitration of Cassation, comes into effect on the date of its issue.

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