

Polish Supreme Court judgment
dated 16 June 2004
(Case No. III CK 97/04)

Summary by arbitraz.laszczuk.pl:

D. Bank 24 SA operated a bank account for the brokerage Dom Maklerski P.N. SA under several bank account agreements dated September 1999 and February and March 2000. In February 2000 the bank and the brokerage entered into an offering agreement under which the brokerage would conduct a public offering of the bank's shares. Subscribers would pay the funds for their subscriptions into the brokerage's account at the bank.

The offering agreement included an arbitration clause calling for all disputes arising out of the offering agreement to be resolved by an arbitration court (the Court of the Polish Chamber of Brokerage Houses).

A dispute arose between the bank and the brokerage over which of them was entitled to the interest on funds deposited in the brokerage's account at the bank. First the bank sued the brokerage in regional court seeking a judgment for the amount of the interest in the account, under the bank account agreements. The court granted the claim in part, but dismissed the claim for setoff of amounts of interest allegedly owed the bank under the offering agreement because that claim was subject to arbitration. In an appeal from that judgment, which the appellate court denied, the court stated that the brokerage was not entitled to the interest on the funds deposited by subscribers for the shares, even though the funds were deposited in the brokerage's bank account.

The brokerage then commenced arbitration against the bank at the Court of the Polish Chamber of Brokerage Houses, in which it sought and obtained an award declaring that it did not owe the interest to the bank. The bank then filed an action with the regional court to set aside the arbitration award. The regional court denied the motion to set aside the award. The appellate court denied the appeal, holding that the earlier finding by the appellate court that the brokerage was not entitled to the interest was not controlling because the two disputes were not identical (one arose under the bank account agreements and the other under the offering agreement) and thus *res judicata* did not apply.

In its cassation appeal, the bank argued *inter alia* that the arbitration award violated Polish Civil Code Art. 740, which requires a party performing a service agreement (in this case, the brokerage conducting the offering for the bank) to turn over to the principal anything it obtained for the principal, even in the agent's own name. The Supreme Court held that the arbitration award did not violate public policy, and denied the cassation appeal.

Excerpt from the text of the court's ruling:

The relative nature of Civil Code Art. 740, relied on by the appellant, ... means that even if this provision served as the substantive legal grounds for considering the claim that is the subject of the dispute, it cannot be treated as a fundamental provision, essential to the legal order.