

Łódź Court of Appeal judgment
dated 14 November 2014
Case No. I ACa 1084/14

Summary by arbitraz.laszczuk.pl:

In 2005, an individual who operated a sole proprietorship, D.A., entered into a framework agreement for financial market transactions with a Polish financial institution. Two currency hedging transactions allegedly entered into by telephone in June and September 2007 resulted in the customer owing a total of over PLN 240,000 following settlement of the transactions in December 2007 and March 2008. D.A. died in the meantime, in November 2007. His estate (including debts) was inherited by R.A.

The financial institution brought a claim against D.A.'s legal successor R.A. in arbitration (apparently before the Court of Arbitration at the Polish Bank Association) for the outstanding balance under the currency hedging transactions. A transcript of the telephone conversations during which the transactions were allegedly entered into was introduced into evidence in the arbitration. The arbitral tribunal found that the transactions had not been validly entered into because the parties had failed to follow the telephone identification procedure provided for in the framework agreement, i.e. the dealer and the customer had not introduced themselves by name when concluding the transactions. In an award issued in 2013, the arbitral tribunal denied the claim by the financial institution accordingly.

The financial institution filed a petition with the Łódź Regional Court to set aside the award, alleging *inter alia* that the award violated public policy in the form of the adversary principle because the issue of the invalid conclusion of the transactions was not raised by the respondent but was first raised by the arbitral tribunal in the justification for the award denying the claim, and that the award required compliance with a specific procedure for conclusion of the hedging transactions that was not provided for by statute or contract and thus violated the principle of freedom of contract. Similarly, the claimant alleged that it was deprived of the right to present its case because the issue of the invalidity of the transactions was first raised in the justification for the award.

The regional court found that the respondent had effectively raised the issue of the validity of the transactions and that the award did not violate public policy in the form of fundamental principles of contract law, because the telephone identification procedure was provided for in the framework agreement but was not followed by the parties when the currency hedging transactions were allegedly concluded. The regional court denied the petition to set aside the award accordingly.

On appeal, the Łódź Court of Appeal adopted the factual findings of the regional court and held that the award did not violate public policy, and denied the appeal accordingly.

Excerpts from the text of the court's ruling:

1. It cannot be concluded from the principle of the autonomous will of the parties that the parties may freely depart from their earlier arrangements concerning the conditions for effective conclusion of transactions. This conclusion would actually result in violation of the autonomy of the parties and failure to respect their will. ... A finding that currency hedging transactions were effectively concluded despite violation of the telephone identification procedure established by the parties' contract could in fact violate another fundamental principle of civil law, namely the principle of the enforceability of contracts.

2. A petition to set aside an arbitration award is not an appellate instrument, but a type of extraordinary judicial review by the state court of the activity of the arbitration court. It follows that in the proceeding to set aside an arbitration award the state court cannot consider the dispute between the parties to the arbitration proceeding on the merits.

3. Violation of provisions of substantive law are subject to review in the proceeding initiated by a petition to set aside an arbitration award only the provisions violated establish principles of the public policy of the Republic of Poland, and the public policy clause should be interpreted narrowly.