

**Warsaw Court of Appeal judgment**  
**dated 11 April 2013**  
**Case No. I ACa 1223/12**

**Summary by arbitraz.laszczuk.pl:**

In December 2005, a sole trader, P.P., entered into a lease with the owner of a shopping mall for a space at the mall where he would operate a food service location. The lease was for 5 years with the possibility of an extension if the tenant applied for an extension at least 6 months before the end of the lease term and the parties reached agreement on the amount of the rent for the lease extension period at least three months before the end of the lease term and signed a relevant annex to the lease agreement.

In April 2010 the tenant requested an extension of the lease and received an email from I.K., an employee of the landlord, with a preliminary proposal of rent at EUR 55 per square metre for the extension period. The email stated that it was not an offer for purposes of the Civil Code and was not binding on the parties, and any decision on lease of the premises required approval by the landlord's management board. I.K. was designated by the landlord to conduct negotiations with potential tenants of the mall but was not authorized by the management board to set the amount of rent and to make declarations for the landlord.

The tenant rejected the proposal and requested a reduction to EUR 28/m<sup>2</sup>. The landlord then informed the tenant that because he failed to accept the proposed rent, the landlord was negotiating with another potential tenant who had offered EUR 69/m<sup>2</sup>. In May 2010 the tenant notified I.K. that he nonetheless accepted the proposed rent of EUR 55/m<sup>2</sup>. But the landlord did not agree to extend the lease, and instead rented the unit to another tenant at EUR 69/m<sup>2</sup>.

The tenant obtained an arbitration award holding that the lease had been extended at a rent of EUR 55/m<sup>2</sup>. According to the tribunal, during the negotiations with the current tenant the landlord was not authorized to conduct negotiations with other potential tenants, and as the tenant ultimately accepted the landlord's proposal the parties had reached agreement on the issue.

The landlord applied to the Warsaw Regional Court to set aside the award as contrary to public policy. The court held that the award violated the constitutional principles of freedom of contract and property rights, and set aside the award accordingly.

On appeal, the Warsaw Court of Appeal found that the regional court had improperly applied a standard of review closer to appellate review than review of an arbitration award. The circumstances of the case justified the finding by the arbitral tribunal that the tenant could rely on the rent proposal from the landlord's representative and that the landlord acted unfairly in negotiating with other prospective tenants during the period between the tenant's notice of its wish to extend the lease and the deadline for signing an annex. The tenant's claim could not be excluded because of failure to sign an annex because it was the landlord that had refused to sign an annex. Consequently the award did not violate public policy. The court of appeal amended the judgment of the regional court accordingly to deny the application to set aside the award.

**Excerpt from the text of the court's ruling:**

**There is a great deal of autonomy in arbitration procedure, entirely consistent with the intentions of the Parliament, distinctly limiting the possibilities for review by the state court. The basic goal of this law is the speed of the procedure for resolving civil disputes, and not creation of an additional phase of pre-litigation proceedings. Parties deciding to submit a dispute to an arbitration court must count on these conditions, including minimal external review of its awards. The jurisdiction of the court considering a petition to set aside an arbitration award generally does not include review of the consistency of the award with substantive law or the correctness of the factual findings, apart from a ruling based on an obviously selective, unfair evaluation of the evidence.**