

Translation from the Hebrew

NEWS FIRST CLASS - (a leading Israeli news on-line site)

The German Pension Affair: 43 Clients' Claims against the Organization for Implementation of the Treaty Dismissed

The clients asserted that they were deceived and robbed by the Organization for the Implementation of the Treaty on Social Security (Israel-W. Germany) and that the agreement between them was made fraudulently: the Judge harshly criticized the clients and determined that they violated the agreement unilaterally; he also imposed heavy court expenses on them.

25/12/2003 – by Noam Sharvit

The Tel Aviv Magistrate's Court dismissed (14.12.03) 43 counter-claims filed by insured clients, who were taken to court by the companies B.G. Assistance and B.G. Financing and the Organization for the Implementation of the Treaty on Social Security (Israel-W. Germany) that constituted part of the financing arrangement of the German Pension. This brings to an end a legal conflict of 5 years.

The Court also harshly criticized the clients, dismissed all their allegations, and ruled that the counter-claims were filed frivolously and without any foundation. The judge imposed heavy legal costs on the clients, which will be determined after the Plaintiffs submit their bills for their costs.

“At the end of the day”, ruled the court, “there was no justification for legal discussion of these claims and it is apparent that the allegations of the Defendants (and counter-claimants) were groundless, that were created out of thin air, without any ability or even serious intention to prove them. The suspicion is raised that the Defendants acted from short-term tactical motives in order to wear down the Plaintiff, waste valuable time, and exploit a legal procedure for invalid purposes.

“Therefore, I have decided to charge them the full amount of expenses incurred by the Plaintiff in this proceeding, as also its representative's professional charges, further to the payments to which they are liable by virtue of the agreement made and which they are obliged to honor, even if, after the fact, it was not to their liking or was not economically worthwhile, as being wise after the event.”

The Original Claim: Violation of the Agreement

The Plaintiff, B.G. Assistance Ltd. which, together with B.G. Financing Ltd., handles the acquisition of social security rights in Germany, and the granting of credit to finance individuals' investments in a retroactive premium in the German Federal Institution for Clerical Workers Insurance, filed a lawsuit in which it demanded to oblige the Defendants to pay it its service fees and other payments, in accordance with their undertakings in the agreement with it, as detailed in the various Statements of Claim.

In their Statements of Defence, the Defendants admitted the existence of their contractual relationship with the Plaintiffs, but asserted that the agreement was made as a result of misrepresentation, deceit, fraud and extortion, and that the Plaintiff charged them considerable sums unlawfully and contrary to what was agreed upon. The Defendants even filed counter claims, in which they demanded that the Plaintiff return them sums which they alleged were charged them unlawfully and contrary to what was agreed upon.

In the Statement of Defence to the counter claims, the Defendants asserted that the counter claims were subject to the statute of limitations, and alternatively, denied the counter claims.

Amalgamation of files and reduction of disputes

Owing to the reasons behind the claim and the litigants' assertions being identical, the discussions in all the files – both the claims and the counter claims - were amalgamated. All the Defendants, apart from one, confirmed that they invested no funds of their own, and furnished no guarantees in order to receive the rights from Germany.

Justice Meir Shenhav also confined the disputes to a number of main points. In principle, the discussion dealt with the company's claim against those clients who stopped repayments of the loan they received, and with the clients' counter-claims.

Justice Shenhav categorically dismissed the clients' allegations, and ruled that the Plaintiffs successfully bore the initial burden of persuasion that the agreement between the parties was valid, and even proved the details of the agreement and that at a certain stage the clients stopped performing their obligations of years' standing. "The Defendants failed to carry the secondary burden of persuasion and failed to refute the proofs of the Plaintiffs, so that, at the end of the day, the Plaintiff successfully bore the burden of persuasion and proved its claims."

Harsh criticism of the clients

Justice Shenhav did not spare his criticism of the clients: "It should be mentioned that the unbearable facility with which the Defendants chose not to honor a valid agreement between them and the Plaintiff, without any justifiable lawful reason, and without lawful notice of its cancellation, violating the agreement forcibly and one-sidedly, is in very poor taste, and cannot be sanctioned by any court".

"As is known, an agreement is to be honored, even if, after the fact, one of the parties to the agreement realizes that he made an error in judgment, or that its economic benefit to him is doubtful, or that its result is hard or burdensome, as being wise after the event. Agreements form the basis of any economic system, and this cannot survive, or there will be complete anarchy, if these are not honored, and are violated unilaterally as soon as circumstances change, and because of non-profitability of one of the parties, or not being able to rely on their performance or enforcement."

As to the clients' assertions that they were cheated and robbed, Justice Shenhav ruled that "the Defendants failed utterly to prove their assertions as to fraud, extortion, robbery and misrepresentation, did not bear the increased burden upon them of proving them, and on the face of things it appears that these assertions were made insincerely, and were almost abandoned in their summations".

Increased court costs

With regard to court costs, Justice Shenhav ruled: "At the conclusion of the trial proceedings it is apparent that counter claims were filed by the Plaintiffs indiscriminately, only for tactical reasons, in order to bait the Plaintiff or to hamper the discussion and extend it with no basis, and this will find expression in the court costs".

"At the end of the day of battle it became apparent that the Defendants and counter-claimants' armory is empty of any substantial weaponry and in fact, they did not have any real defence against the claims. As it emerges, the Defendants grossly violated the agreements with the Plaintiff unilaterally and unlawfully, and compounded their crime by choosing to exploit the trial proceedings to the full without any basis or substance, delaying the end and date of repayment of their debt to the Plaintiff".

At the end of the day, Justice Shenhav ordered the clients to pay the Plaintiffs the payments due them pursuant to the contract, and also obliged each one of the Defendants to pay an equal proportionate part of all the court costs incurred

by the Plaintiff over the course of the legal hearings of the cases, after the latter submit an updated calculation of the expenses.

The criminal case is still in process

The dismissal of all the clients' allegations in this claim constitutes a severe blow to the whole array of the claim in the German Pension affair. It should be noted, that the criminal case in the affair is still in process in the District Court, under Justice Zechariah Caspi.

According to senior officials in the Organization for the Implementation of the Agreement, the ruling will make the filing and proof of further claims against the Organization very difficult, and will apparently have an effect also on the criminal case.

The Plaintiffs were represented by Adv. Eitan Segal; the 43 clients were all represented by Adv. S. Tzang.