

Award confirmed despite tribunal's failure to address set-off defence in dispute between two attorneys-at-law (Swiss Supreme Court)

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In decision 4A_539/2018, the Swiss Supreme Court rejected an application to set aside a domestic award because the appellant did not demonstrate that the tribunal had violated its right to be heard.

In a recently published French-language decision, the Swiss Supreme Court dismissed an application to set aside a domestic final award rendered by a sole arbitrator in Geneva.

The dispute arose out of a partnership agreement between two attorneys-at-law of a law firm that contained an arbitration clause. In a final award, the sole arbitrator ordered the appellant to pay his former partner a sum of money for the liquidation of their defunct partnership.

The appellant sought to set aside the award before the Supreme Court, arguing that the sole arbitrator had breached his right to be heard by failing to address the appellant's set-off defence.

The appellant explained that he had adduced evidence in the arbitration proceedings, in the form of a defamatory email his former partner had sent to numerous Geneva-based judges, bankers and lawyers. According to the appellant, this email caused serious reputational harm, the amount of which was higher than the sum claimed by his partner in the arbitration.

The court found that the appellant had failed to sufficiently substantiate his set-off defence in that he did not quantify the loss incurred or adduce any moral damage. The court also held that in the specific context of a dispute amongst two attorneys-at-law, characterised by a strong spirit of animosity and polemic, the sole arbitrator was right to consider the set-off defence as a mere additional recrimination, rather than a valid legal defence that could affect the outcome of the case. Therefore, the arbitrator was not obliged to consider the set-off defence.

Although this decision relates to a domestic award, the matter would have been decided similarly if it had been an international case. This case also serves as a reminder that the arbitral tribunal is at liberty to interpret statements made in the arbitration and that the parties must make their prayers for relief very clear.

Case: *Decision 4A_539/2018 (27 March 2019)* (Swiss Supreme Court).

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