

Fidelity Policy

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Background

1. The Branch Manager received a request from an unlisted client ("Branch Manager"), for a bankers draft for 236,000,000 Indian Rupees ("Draft") to be made out to an Official Receiver.
2. Despite the Claimant protocols and the Foreign Exchange and Cheque Expectance Procedure, requiring confirmation from the bank that proceeds of cheques are received and credited to the Claimant account prior to the bank drafts being delivered, the Branch Manager drew the drafts in excess of his personal limit and did not wait until the cheque cleared prior to forwarding the drafts to the receiver.
3. The Branch Manager drew 20 bank drafts for a total sum of AED 21,320,340 and increased his own personal authorization by instructing another employee to change his authorization level on the allegation that he was authorized to do so by head office, presumably to get over the individual authorization limit for a draft for an unapproved customer. The drafts were signed by another employee and counter-signed by the Branch Manager. The drafts were presented and the Claimant account has been debited accordingly.
4. The cheque bounced when presented due to insufficient funds.
5. The Branch Manager jumped off a tower building killing himself and on the same day the Claimant reported the bounced cheque to the police.

Court of first Instance

The Claimant filed a claim against the Defendant to claim the limit of the insurance policy, due to the fact that the Claimant is entitled to indemnity under the policy, up to the policy limit for employee infidelity. As the Branch Manager breached the trust by not following established procedures and transferred the money before confirming with the bank that there was money in the account.

The court has decided to refer the matter to an expert in order to:

1. Review and consider the memos and the supporting documents which were submitted by both parties.
2. The court allowed the expert to attend the Claimant premises to check the original documents related to this matter.
3. To determine whether the Branch Manager made a mistake or exceeded his authority and if he did make a mistake to clarify the type of mistake, determine the damage and the value of the compensation.
4. The court allowed the expert to attend at any governmental authority to check documents if need be.

The expert reached the following conclusions:

1. Beneficiary received an amount of 236,000,000 Indian rupees from the Claimant bank account.
2. The Claimant suffered losses from the transaction performed by the Branch Manager.
3. The Branch Manager did not follow the normal procedures in transferring the amount, since he issued 20 draws and transferred the amount to the beneficiary before receiving the funds.

The expert did not reply to the court query of whether he deliberately performed the transaction or not. The expert left this point to the court to consider because it is a legal point.

The Claimant confirmed to the court that the Branch Manager committed an intentional mistake to benefit from the funds, which is apparent from the following facts:

1. The Branch Manager had transferred the money in 20 drafts.
2. The Branch Manager had instructed one of the employees to increase his authority to transfer the amount to the beneficiary.
3. The Branch Manager should have followed the strict procedures before transferring the amount.
4. The Branch Manager had not informed the Claimant that the cheques have bounced.
5. The Branch Manager had very good experience regarding following the correct procedures before transferring the amount, being a Branch Manager.
6. The Branch Manager's suicide when he failed to obtain his passport and leave the country.
7. The Branch Manager had used fraudulent methods to conclude the transaction; despite the fact that the Claimant has a very good security system.

The Court of First Instance rendered its judgment in favor of Claimant by ordering the Defendant to pay the Claimant the amount of USD \$ 1,975,000 with 9% interest from the date of filing the claim until the full payment, in addition to all expenses and fees.

The Defendant has filed an appeal before the Court of Appeal to challenge the Court of First Instance judgment. The Court of Appeal has not rendered a judgment yet.

The abovementioned judgment is currently under the appeal, and we will publish a further article once we receive the outcome of the appeal court judgment.