

Operative part of the judicial act · A40-142261-2012 · 12.07.2013

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Ninth Commercial Court of Appeal

Operative part of the judicial act

UNOFFICIAL COMPLETE TRANSLATION. The Russian original is the legally controlling text. This translation was prepared for documentary access and should not be relied upon as a certified translation.

Monetary amounts are shown first in Russian roubles, followed by an approximate USD equivalent calculated at the official Bank of Russia historical rate for the date of the act.

Official Bank of Russia rate used: 1 USD = 32.586700 RUB; effective date 12.07.2013.

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58/2013-97652(1)

Ninth Arbitration Court 127994, Moscow, GSP-4, Straw Guard Passage, 12 e-mail address: info@mail.9aac.ru website address: <http://www.9aas.arbitr.ru> DECISION No. 09AP-13373/2013

d. Moscow Case No. A40-142261/2012 July 12, 2013

Resolution announced on July 9, 2013 The Resolution was made in full on July 12, 2013

The Ninth Arbitration Court of Appeal shall consist of: Presiding Judge L.A. Moskvina, Judges: Pronnikova E.V., Tsymbarenko I.B., while maintaining the protocol by assistant judge V.V. Strukova, assistant judge Marnova Yu.P., having considered in an open court session in hall No. 13 the appeal of the Federal Antimonopoly Service against the decision of the Arbitration Court of the city. Moscow dated March 19, 2013 in the case No. A40-142261/2012 Judge Blinnikova I.A., according to the application of OJSC "Pharmstandard" (OGRN 1060274031047, 141700, Moscow region, Dolgoprudny, Likhachevsky Prost, 5B) to the Federal Antimonopoly Service on the recognition of the illegal decision with the participation of: from the applicant: Arkhangelskaya M.A., according to dov. from 09.01.2013 No. 2, Fedlyuk V.P., according to dov. from 29.12.2012 No. 1289; from the defendant: Aleshin K.N. Dov. from 23.08.2012 NoCA/27371, Kozlov E.V. Dov. from 13.08.2012 NoIA/26023, Abakumova Yu.I. Dov. from 29.08.2012 NoIA/28064

S T A N W A I L: The decision of the Arbitration Court of Moscow of 19.03.2013, adopted in this case, recognized as illegal and canceled the resolution of the Federal Antimonopoly Service in Russia of 25.09.2013 in case No. 1 14.32/306-12 on bringing Pharmstandard to administrative responsibility, provided for in part 1 of article 14.32 of the Administrative Code of the Russian Federation. In support of the decision, the court of first instance pointed to a violation by the administrative body of the procedure for bringing the Company to administrative responsibility. Disagreeing with the decision, the FAS of Russia appealed, in which he asked to cancel and take a new judicial act on the case to refuse to satisfy the stated requirements. In substantiation, it indicates the inconsistency of the court's conclusions with the circumstances of the case, as well as a violation of the norms of substantive law.

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In the court session, the applicant's representative supported the decision of the court of first instance, did not agree with the arguments of the appeal, considering them to be unfounded, asked the court decision to remain unchanged, and to refuse to satisfy the appeal. Having studied the case materials, having studied the arguments of the appeal, having heard the positions of the representatives of the parties who supported their arguments and demands in the court session, the court of appeal came to

the conclusion that there are no grounds for canceling the appealed judicial act, proceeding from the following. As seen from the case materials, the decision of the FAS of Russia from 25.05.2012 in case No. 1 11/202-11 of Pharmstandard and CJSC ROSTA were found to have violated paragraph 2 of part 1 of Article 11 of the Law on Protection of Competition by concluding and implementing an agreement that led to the maintenance of the price at auction No. 091127/001550/312 lot.16 Based on the decision 21.06.2012 FAS Russia against JSC "Pharmstandard" was initiated case No 1 14.32/306-12 on administrative offense and made protocol No1 14.32/306-12 from 19.07.2012 on administrative offense on the fact of violation of part 1 of article 14.32 of the administrative code of the Russian Federation. By the decision of the FAS of Russia of 25.09.2012 in the case of administrative offense No1 14.32/306-12, Pharmstandard OJSC was brought to administrative responsibility under Part 1 of Art. 14.32 of the Administrative Code of the Russian Federation and a fine of 201 381 295 was imposed on the company, RUB 10 (approximately USD 0.31) These circumstances were the basis for the appeal of Pharmstandard OJSC to the arbitration court with the above application. In satisfying the requirements of the Company, the court of first instance legitimately proceeded from the illegality of the contested decision. In accordance with Article 210 of the CPC of the Russian Federation, when considering a case challenging the decision of an administrative body to bring to administrative responsibility, the arbitration court at the court session checks the legality and validity of the contested decision, establishes the availability of relevant powers of the administrative body that adopted the contested decision, establishes the relevant powers of the administrative body that adopted the contested decision, establishes the court's decision. whether there were legal grounds for bringing to administrative responsibility, whether the established procedure for bringing to responsibility has been observed, whether the limitation periods for bringing to administrative responsibility have not expired, as well as other circumstances relevant to the case. When considering a case challenging a decision of an administrative body, the arbitral tribunal is not bound by the arguments contained in the application and shall verify the contested decision in full. In accordance with Article 22 of the Federal Law "On Protection of Competition" the antimonopoly body provides state control over compliance with the antimonopoly legislation by federal executive authorities, state authorities of the constituent entities of the Russian Federation, local self-government bodies, other bodies or organizations performing the functions of these bodies. as well as state extra-budgetary funds, economic entities, individuals, including in the field of land, subsoil, water resources and other natural resources; detects violations of antimonopoly legislation, takes measures to stop violations of antimonopoly legislation and brings to justice for such violations; prevents monopolistic activity, unfair competition, other violations of antimonopoly legislation by federal executive authorities;

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bodies of state power of the constituent entities of the Russian Federation, local self-government bodies, other bodies or organizations performing the functions of these bodies, as well as state extra-budgetary funds, economic entities, individuals. The procedure for considering cases of violation of antimonopoly legislation is established by Chapter 9 of the Federal Law. By virtue of Part 1 and Part 3 of Part 2 of Article 39 of the Law, the antimonopoly authority within its powers initiates and considers cases on violation of antimonopoly legislation. The basis for initiation and consideration by the antimonopoly authority of a case on violation of antimonopoly legislation is, among other things, a statement of a legal entity indicating signs of violation of antimonopoly legislation. According to part 6 of article 44 of the Law, during consideration of the application or materials, the antimonopoly body has the right to request from commercial organizations and non-profit organizations, their officials, federal executive authorities, their officials, state authorities of the constituent entities of the Russian Federation, their officials, local self-government bodies, their officials. other performing functions of these bodies or organizations, their officials, as well as state extrabudgetary funds, their officials, individuals, including individual entrepreneurs, in compliance with the requirements of the legislation of the Russian Federation on state secrets, bank secrets, trade secrets or other secrets protected by law documents, information explanations in writing or orally related to the circumstances set out in the application or materials. In accordance with paragraph 1 of Article 49 of the Law, the Commission, when making a decision on a case of violation of antimonopoly legislation, evaluates the evidence and arguments presented by persons participating in the case; determines the norms of antimonopoly and other legislation of the Russian Federation, violated as a result of the implementation of the actions (inaction) considered by the

commission. Thus, when making a decision to bring Pharmstandard to administrative responsibility, the defendant acted within the competence provided by the Law. In accordance with part 1 of article 14.32 of the administrative code of the Russian Federation, the conclusion by an economic entity of an agreement unacceptable in accordance with the antimonopoly legislation of the Russian Federation, as well as participation in it or the implementation by an economic entity of coordinated actions unacceptable in accordance with the antimonopoly legislation of the Russian Federation entails the imposition of an administrative fine on legal entities in the amount of one hundredth of a hundredth of a year. up to fifteen hundredths of the amount of the offender's proceeds from the sale of goods (work, services), on the market of which an administrative offense has been committed, or from one tenth to one second of the initial cost of the subject of trade, but not less than one hundred thousand rubles, and if the amount of the offender's proceeds from the sale of goods (work, services), on the market of which an administrative offense has been committed exceeds 75 percent of the total amount of the offender's proceeds from the sale of all goods (works, services) or an administrative offense committed on the market of goods (works, services), the sale of which is carried out at prices (tariffs) regulated in accordance with the legislation of the Russian Federation - in the amount of three thousandths to three hundredths of the offender's proceeds from the sale of goods (work) services, on the market of which an administrative offence has been committed, but not less than one hundred thousand rubles. By virtue of part 1 of article. 25.1 of the Administrative Code of the Russian Federation, the person in respect of whom proceedings are being conducted in the case of an administrative offense, has the right to get acquainted with all materials

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cases, give explanations, present evidence, file petitions and challenges, use legal assistance of a defense counsel, as well as other procedural rights in accordance with this Code. All right. 3 st. 25.4 The case of an administrative offence committed by a legal entity is considered with the participation of its legal representative or defence counsel. In the absence of these persons, the case may be considered only in the cases provided for in part 3 of article 28.6 of this Code, or if there is data on the proper notification of persons about the place and time of consideration of the case and if they have not received a request to postpone the consideration of the case or if such a request is left without satisfaction. The above legal provisions are designed to provide procedural guarantees of the person brought to administrative responsibility. Without the possibility of exercising the procedural rights of the person, the case of an administrative offence cannot be considered comprehensively, fully and objectively. As established by the court and is seen from the case materials, the protocol on administrative offense dated 19.07.2012 No1 14.32/3-6-12 was drawn up in the presence of a representative of the society by proxy of Arkhangelskaya M.A. However, the contested decision of 25.09.2012 in case No. 1 14.32/306-12, the FAS of Russia issued in the absence of a representative of the company, while the case materials do not contain any evidence of the notice of the company about the time and place of its preparation. The Appeals Board agrees with the conclusion of the court of first instance that the printed copy of the tracking of a postal item with the postal identifier 12399553105825 from the official website of the Federal State Unitary Enterprise "Mail of Russia" cannot be evidence of proper notification of the person about the time and place of the decision on the case of an administrative offense. because it is not possible to identify the recipient and the contents of the shipment. At the same time, any registers, letters of correspondence delivery to the post office, lists that allow you to establish that the specified postal item with the postal identifier 12399553105825 sent a notice of the time and place of consideration of this case to Pharmstandard LLC, the antimonopoly authority has not submitted. Thus, the court found that the applicant had no opportunity to exercise his rights under Article. 24.4, 24.5, 25.1, 25.4, 25.5 of the Administrative Code of the Russian Federation in the case of an administrative offense. The applicant was not properly informed of the date, place and time of the decision in the case of an administrative offence, and therefore the administrative authority's conclusions on the applicant's administrative offence were based on evidence obtained in violation of the law, which was inadmissible by virtue of h. 3 st. 26.2 RF Administrative Code. According to the provisions of Articles 29.7, 29.10 of the Administrative Code of the Russian Federation, it is the decision on bringing to administrative responsibility that is an act in which the circumstances established during the consideration of the case are recorded, and by the issuance of which the administrative responsibility is

brought. In view of the above, it is legitimate to conclude that the court of first instance that the decision on the case of an administrative offence was made by the antimonopoly authority in violation of the legal rights of the applicant due to the non-admission to participate of the authorized representative who appeared to represent the interests of the applicant on the appointed date, as a result of which the person being brought to administrative responsibility is deprived of the opportunity to exercise its rights under the Administrative Code of the Russian Federation.

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These violations are significant and did not allow a comprehensive, full and objective consideration of the case of an administrative offense, which in accordance with paragraph 10 of the above-mentioned Resolution of the Plenum of the Supreme Court of the Russian Federation is the basis for recognizing illegal and canceling the contested decision of the administrative body. By virtue of Part 1 of Article 1.6 of the Code of Administrative Offences of the Russian Federation, a person brought to administrative responsibility may not be subjected to administrative punishment and measures to ensure the proceedings in the case of an administrative offense except on the grounds and in the manner prescribed by law. Compliance by the administrative body in the proceedings on the case of administrative offense of procedural requirements established by the Administrative Code of the Russian Federation is mandatory, since it allows to ensure compliance with the guarantees of protection of the rights of the person brought to responsibility. In accordance with part 2 of article 211 of the administrative code of the Russian Federation, paragraph 17 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation of 27.01.2003 No. 2 "On some issues related to the enactment of the administrative code of the Russian Federation", paragraph 10 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation of 02.06.2004 No. 10 "On some issues that arose in judicial practice in the consideration of cases of administrative offences", violation of the provisions of the administrative code of the Russian Federation The law, providing guarantees of protection of rights to persons brought to administrative responsibility, is essential and can act as an independent basis for recognition of illegal and cancellation of the decision of the administrative body on bringing to administrative responsibility. Other arguments set out in the appeal do not refute the conclusions of the court of first instance and do not indicate the existence of grounds for revoking the judicial act adopted in the case. In such circumstances, the Court of Appeal considers that the court of first instance made a lawful and well-founded decision, fully and correctly established the circumstances of the case, applied the substantive law applicable and did not violate the procedural law, and therefore there are no grounds for revoking or amending the judicial act complained of. The Board of Appeal also considers it necessary to note the following. In its decision, the court of first instance also concluded that there were no events and imputed composition of the offense provided for in part in the actions of Pharmstandard OJSC. 1 st. 14.32 RF Administrative Code. The court pointed out that the fact that the Company's actions lacked the event and the composition of the imputed administrative offense was established by a judicial act that entered into legal force, which has prejudicial significance for the consideration of this dispute. As established by the court, left unchanged by the decision of the Ninth Arbitration Court of Appeal of 31.01.2013. No 09AP-40346/2012 by the decision of the Arbitration Court of Moscow of 19.11.2012 in case No. A 40-94475/12-149-866 the decision of the Federal Antimonopoly Service of 25.05.2012. in case No. 1 11/202-11 on violation of antimonopoly legislation regarding the recognition of Pharmstandard OJSC and ROSTA CJSC as violating paragraph 2 of paragraph 1 of Article 11 of the Federal Law "On Protection of Competition" by concluding and implementing an agreement that led to the maintenance of prices at auction No. 091127/001550/312 on lot No. 16 was declared illegal. At the same time, by the decision of the Federal Arbitration Court of the Moscow District of 22.04.2013 in case No. A40-94475/12-149-866, the decision of the Arbitration Court of Moscow of 19.11.2012 and the decision of the Ninth Arbitration Court of Appeal of 21.04.2013

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cancelled. In satisfaction of the requirements of Pharmstrandart and Rostra CJSC on recognition of the decision of the FAS of Russia of 25.05.2012 in case No. 1 11/202-11 as illegal. In view of the above, there are no grounds for applying the norms of Art.69 of the APC of the Russian Federation to the dispute under consideration, pointing to the establishment of the absence of an event of an offence and the guilt

of Pharmstandard OJSC in its commission. In this case, violations of the procedure for bringing Pharmstandard to administrative responsibility committed by the antimonopoly authority are an independent basis for recognizing the decision to bring the Company to administrative responsibility and its cancellation as illegal. Guided by Articles 266, 268, 269, 271 of the Arbitration Procedure Code of the Russian Federation,

DECIDED: decision of the Arbitration Court d. Moscow of March 19, 2013 in case No. A40-142261/2012 to leave unchanged, the appeal – without satisfaction. The decision of the Ninth Arbitration Court of Appeal shall enter into force from the date of its adoption and may be appealed within two months from the date of the decision in full in the Federal Arbitration Court of the Moscow District.

The presiding judge shall: L.A. Moskvina

Judges: I.B. Tsymbarenko

E.V.Pronnikova Phone of the court's help service – 8 (495) 987-28-00.