

Operative part of the judicial act · A40-142261-2012 · 05.11.2013

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Federal Commercial Court of the Moscow District

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 = 32.180800 RUB; effective date 02.11.2013.

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Federal Arbitration Court of the Moscow District. Seleznevskaya, d. 9, g. Moscow, GSP-4, 127994, official website: <http://www.fasmo.arbitr.ru> e-mail: info@fasmo.arbitr.ru

DECISION

d. Moscow 05 November 2013 Case No. A40-142261/12-120-1410

Resolution Resolution announced October 31, 2013 Full text of Resolution made November 5, 2013

The Federal Arbitration Court of the Moscow District consisting of: Chairman-Judge Dolgasheva V. A., judges Voronina E. Yu., Latypova R. R., with participation in the meeting: from the applicant CJSC "Pharmstandard" - Arkhangelskaya M.A. Dov. from 09.01.2013 No. 2 from the defendant FAS Russia - Zaitseva N.N. Dov. from 17.06.2013 IA/23365/13, E.V. Kozlov. Dov. 20.08.2013 IA/32350/13 having been considered on October 31, 2013 in the court session the cassation appeal of the Federal Antimonopoly Service of Russia (FAS Russia) against the decision of the Arbitration Court of Moscow of March 19, 2013, adopted by Judge I.A. Blinnikova, to the decision of the Ninth Arbitration Court of Appeal of July 12, 2013, adopted by the judges of L.A. Moskvina, E.V. Pronnikova, I.B. Tsymbarenko

2 at the request of the Closed Joint Stock Company "Pharmstandard" (OGRN: 1060274031047, Moscow) on challenging the decision of the Federal Antimonopoly Service of Russia of 25.09.2012 in case No. 1 14.32/306-12, concerning the bringing to administrative responsibility

ISSUED: Pharmstandard OJSC (hereinafter referred to as the Company) applied to the Moscow Arbitration Court with a statement on declaring illegal and cancelling the decision of the Federal Antimonopoly Service (hereinafter referred to as the FAS of Russia, the antimonopoly body) dated 25.09.2013. in case No. 1 14.32/306-12 on bringing to administrative responsibility, provided for by part 1 of article 14.32 of the administrative code of the Russian Federation. By the decision of the Arbitration Court of Moscow of 19.03.2013, left unchanged by the decision of the Ninth Arbitration Court of Appeal of 12.07.2013, the stated requirements were satisfied. The court declared illegal the decision of the FAS of Russia of 25.09.2013 in case No. 1 14.32/306-12 on bringing the company to administrative responsibility under part 1 of article 14.32 of the administrative code of the Russian Federation. Considering the adopted judicial acts illegal, the antimonopoly body appealed to the Federal Arbitration Court of the Moscow District with a cassation appeal, in which it asks them to cancel. The legality of the judicial acts rendered shall be checked by the court of cassation in the manner prescribed by Articles 284, 286 of the CPC of the Russian Federation. Representatives of the FAS of Russia in the court session supported the arguments of the cassation complaint filed. The court acts are considered illegal and taken in violation of

the norms of the current legislation. The representative of the society objected to the arguments of the complaint, noting the legality of the appealed judicial acts. Requests the decision and the decision to remain unchanged, and the complaint filed without satisfaction. V

3 the case materials submitted a review, which expresses disagreement with the position stated by the complainant. Having studied the case materials, the arguments of the cassation appeal and the withdrawal of it, having heard representatives of the persons involved in the case, the court of cassation comes to the conclusion about the cancellation of the court acts issued with the direction of the case for a new consideration in the Arbitration Court of Moscow. As follows from the case materials and established by the courts, the decision of the antimonopoly body of 25.05.2012. in case No. 1 11/202-11, ROSTA and the Company were found to have violated Clause 2 of Part 1 of Article 11 of the Federal Law of 26.07.2006. No. 135-FZ "On Protection of Competition" by concluding and implementing an agreement that led to maintaining the price at auction No. 091127/001550/312 on lot No. 16. Based on the decision of the antimonopoly body 21.06.2012 filed administrative offence case No. 1 14.32/306-12 against the Company, 19 July 2012. Protocol on administrative offense and 25.09.2012 a decision was made, which brought to administrative responsibility under part 1 of article 14.32 of the administrative code of the Russian Federation and he was sentenced to a fine of 201 381 295, RUB 10 (approximately USD 0.31) Considering the decision made by the FAS of Russia illegal, the company appealed to the arbitration court. In satisfying the stated requirements, the courts proceeded from the following. According to part 1 of article 14.32 of the administrative code of the Russian Federation, the conclusion of an inadmissible agreement by an economic entity in accordance with the antimonopoly legislation of the Russian Federation, as well as participation in it or 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. 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 in

4 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 the administrative offense was 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 amount of the offender's proceeds from the sale of goods (work, services), on the market of which an administrative offense has been committed, but not less than one hundred thousand rubles. In accordance with part 1 of article 25.1 of the administrative code of the Russian Federation, the person against whom proceedings are conducted in the case of an administrative offense, has the right to get acquainted with all the materials of the case, give explanations, present evidence, file petitions and challenges, use legal assistance of a defense counsel, as well as other procedural rights in accordance with the Code. Part 3 of article 25.4 of the administrative code of the Russian Federation established that the case of an administrative offense committed by a legal entity, is considered with the participation of his legal representative or defense 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 the Code, or if there is evidence of proper notification of the persons about the place and time of the case and if they have not received a request to postpone the case or if such a request is left without satisfaction. Thus, the current legislation establishes procedural guarantees aimed at preventing illegal bringing of a person 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.

5 The Supreme Arbitration Court of the Russian Federation in the decisions of the Plenum of 27.01.2003 No. 2 "On some issues related to the introduction of the administrative code of the Russian Federation" and from 02.06.2004 No. 10 "On some issues that arose in judicial practice during the consideration of cases of administrative offences" indicated that the violation of the provisions of the Administrative Code of the Russian Federation, providing guarantees for the protection of rights to persons brought to

administrative responsibility is significant 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. The courts, when investigating the circumstances of the case, established that the protocol on administrative offense of 19.07.2012. compiled in the presence of a representative of the society by proxy of Arkhangelskaya M.A. At the same time, the resolution of 25.09.2012 issued by the FAS of Russia in the absence of a representative of the company, in the absence of evidence of the notice to the company about the time and place of consideration of the materials of the case of an administrative offense. However, in making these conclusions, the courts did not take into account the following. From the case materials it follows that the definitions of 02.08.2012 and from 27.08.2012 The case of an administrative offence of the FAS Russia was extended and was scheduled for 25.09.2012. Definition of 27.08.2012 sent to the address of the company through the post office with the postal identifier 12399553105825. According to the copy of the envelope in the case file, documents were inserted with the details of the correspondence sent - PS/28572 and PS/28571, indicating the person sending these documents. The document with the details of PS/28572 corresponds to the definition of the antimonopoly body of 27.08.2012. on the extension and postponement of the consideration of the case on administrative offense No. 1 14.32./306-12. The courts did not give a proper legal assessment of this fact.

6 The courts also did not take into account the fact that the representative of the Arkhangelskaya M.A. society. was present at the issuance of the appealed decision of the antimonopoly body. In addition, the court of first instance in the decision indicated that the decision of the FAS of Russia 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 part 1 of Article 11 of the Federal Law "On Protection of Competition" by concluding and implementing an agreement The auction price, which led to the maintenance of prices at auction No. 091127/001550/312 on lot No. 16 by court acts of the court of first instance and appeal in case No. A40- 94475/12-149-866, was declared illegal. The court considered these judicial acts to be of prejudicial importance for the consideration of this dispute, in connection with which it concluded that the antimonopoly body had no grounds for initiating an administrative offence case against the company. At the same time, the court of appeal did not take into account that the decision of the Federal Arbitration Court of the Moscow District of 22.04.2013. Court of first instance and appeals in case No. A40-94475/12-149-866 was canceled, and the decision of the FAS of Russia of 25.05.2012. 11/202-11 is considered lawful. The Court of Appeal, having taken into account the decision of the court of cassation of 22.04.2013, came to the conclusion that there is no prejudicial value for the consideration of this dispute, which cannot be considered legal and based on the norms of the current procedural legislation. According to paragraph 3 of part 1 of article 287 of the CPC of the Russian Federation, following the results of consideration of the cassation appeal, the arbitration court of cassation has the right to cancel or change the decision of the court of first instance and (or) the decision of the court of appeal in whole or in part and send the case for a new consideration to the relevant arbitration court, the decision, the decision of which is canceled or changed, if the conclusions,

7 contained in the appealed decision, decision, do not correspond to the factual circumstances established in the case or the evidence available in the case. Given that the courts have not fully clarified the circumstances of the case that are essential for the consideration of this dispute, the court of cassation concludes that they are canceled. In the new consideration of the case, the courts must take into account the above and adopt a lawful and justified judicial act based on the requirements of the current legislation, taking into account the evidence available in the case file. Guided by Articles 284, 286-289 of the Arbitration Procedure Code of the Russian Federation, the Court DECIDED: The decision of the Arbitration Court of Moscow of March 19, 2013, the decision of the Ninth Arbitration Court of Appeal of July 12, 2013 in case No. A40-142261/12-120-1410 to cancel. The case should be sent for a new consideration to the Arbitration Court of Moscow.

Presiding judge V.A.Dolgasheva Judges: E.Yu.Voronina R.R. Latypova