

Operative part of the judicial act · A40-142261-2012 · 29.01.2014

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Federal Commercial Court of the Moscow District

Operative part of the judicial act

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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 = 34.625000 RUB; effective date 29.01.2014.

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Arbitration Court of the City of Moscow 115191, Moscow, St. Big Tula, d. 17 <http://www.msk.arbitr.ru> by name of the Russian Federation Moscow "29" January 2014 Case No. A40-142261/12 The operative part of the decision was announced on 22.01.2014 The full text of the decision was made on 29.01.2014. The Moscow Arbitration Court consists of: Judge Blinnikova I.A. (120-1410) The Protocol is conducted by Secretary Gavrillov O.I. Having considered in open court the case on the application of Pharmstandard OJSC to the FAS of Russia on the recognition of the decree of 25.09.2012 as illegal. in case No. 1 14.32/306-12 from the plaintiff Arkhangelskaya M.A. Dov. No 2346 from 31.12.2013 (Applicant) from the defendant N.N. Zaitsev. Dov. No IA/23365/13 of 17.06.2013, Aleshin K.N. Dov. No IA/27282/13 of 15.07.2013

EL:

Pharmstandard OJSC appealed to the Arbitration Court of the city. Moscow with a statement on the recognition of the illegal resolution of the Federal Antimonopoly service of Russia of 25.09.2012 in case No. 1 14.32/306-12 on bringing to administrative responsibility in part. 1 st. 14.32 RF Administrative Code. 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. The decision of the Federal Arbitration Court of the Moscow District of 05.11.2013 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 were canceled and the case was sent for a new hearing to the Arbitration Court of Moscow. When considering the case, the court must 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 should also assess the evidence presented by the notice of the society for consideration of the case and the issuance of a ruling. In support of the stated requirements in the new consideration of the case, the applicant refers to the absence of an event and the composition of an administrative offence, a violation by the administrative body of the procedure for bringing to administrative responsibility, as well as the appointment of an administrative penalty in the amount of,

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significantly higher than the administrative fines required by applicable law. At the court hearing, the applicant supported the claims in full on the arguments of the application and written explanations. The

defendant in the new hearing of the case revocation in the order of Art. 131 APC of the Russian Federation in the materials of the case did not submit. In the court session, he pointed out that the antimonopoly body complied with the procedure for bringing the company to administrative responsibility, compliance with the rules for imposing an administrative penalty, proof of the objective side of the offense imputed to the society by a judicial act that has entered into legal force. Having examined the case materials, having listened to the arguments of the persons involved in the case, having assessed the evidence presented, the court declared the application not subject to satisfaction on the following grounds. In accordance with the 6 of article 210 of the CPC of the Russian Federation when considering the case of challenging the decision of the administrative body on bringing to administrative responsibility, the arbitration court in the court session checks the legality and validity of the contested decision, establishes the availability of appropriate powers of the administrative body that made the contested decision, establishes the 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. In accordance with Part 7 of Article 210 of the CPC of the Russian Federation, when considering a case challenging the decision of an administrative body, the arbitration court is not bound by the arguments contained in the application, and checks the contested decision in full. In accordance with the 1 st. 30.3 RF Administrative Code, para. 2 tbsp. 208 A request to challenge the decision in the case of an administrative offence may be submitted to the arbitration court within ten days from the date of receipt of a copy of the contested decision. The court has verified and established that the time limit for appeal is provided for. 2 tbsp. 208 APC RF, p. 1 st. 30.3 The applicant has complied with the administrative code. As follows from the case materials, the Order of the FAS of Russia from 02.03.2011. No. 145, case No. 1 11/45-11 was initiated on the grounds of violation of CJSC CV PROTEK and CJSC ROSTA paragraph 2 part 1 of Article 11 of the Law on Protection of Competition. The basis for initiating the case No. 1 11/45-11 was the order of the Prosecutor General's Office of the Russian Federation (v. No. 046762 DSP dated 29.09.2010), sent to the FAS of Russia following the results of an inspection of the Ministry of Health and Social Development of Russia, the subject of which was the compliance of this Ministry with the legislation of the Russian Federation when it conducted auctions for the purchase of medicines for state needs in 2008-2009. At the same time, the Investigative Committee under the Ministry of Internal Affairs of the Russian Federation 04.02.2011. criminal case No. 678509 on the grounds of a crime under paragraph 2 of Article 178 of the Criminal Code of the Russian Federation, on the fact of restricting competition during the Ministry of Health and Social Development of Russia auctions No. 081010/001550/45 of 10.10.2008, No. 090316/0011550/93 of 16.03.2009, No. 090428/001550/106 of 28.04.2009, No. 091009/001550/284 05.11.2009, No.091127/0015/309 from 25.12.2009 for the supply of medicines for state needs, which caused particularly large damage to the state. Subsequently, the definition of 19.07.2011. No. ATS/28039 to participate in the consideration of case No. 1 11/45-11 were involved as defendants of OJSC Pharmstandard and OOO Optimal Health. The reason for the initiation of the case on an administrative offense was the adoption of the FAS of Russia decision of 25.05.2012. case No. 1 11/202-11 on the consideration of the case of violation of the antimonopoly legislation on recognition

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Pharmstandard and ROSTA violated clause 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 During the administrative investigation by the authorized official of the FAS of Russia 21.06.2012 The case of administrative offense was initiated, protocol No. 1 14.32/306-12 of 19.07.2012 was drawn up. on an administrative offense against Pharmstandard OJSC on the fact of violation 1 st. 14.32 RF Administrative Code. By the decision of the FAS of Russia of 25.09.2012 in the case of administrative offense No. 1 14.32/306-12, Pharmstandard OJSC was brought to administrative responsibility under ch. 1 st. 14.32 The administrative code of the Russian Federation and the company was fined in the amount of 201 381 295, RUB 10 (approximately USD 0.29) Not agreeing with the decision, the applicant appealed to the Arbitration Court of Moscow with a statement on the recognition of it as illegal. In refusing to satisfy the claimed claim, the court proceeds from the following. Decision of 25.05.2012. In case No. 1 11/202-11, the FAS Russia Commission for the

consideration of the case of violation of antimonopoly legislation recognized Pharmstandard and ROSTA as violating Part 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 the auction No. 091127/001550/312 lot 16. Based on the decision of 21.06.2012, the FAS of Russia in respect of Pharmstandard OJSC was initiated case No. 1 14.32/306-12 on the administrative offense provided for in part. 1 st. 14.32 of the Administrative Code of the Russian Federation and the contested decision was made. The court has verified and established that the protocol on administrative offense and the contested decision were drawn up by authorized officials of the antimonopoly authority in accordance with their powers provided for in cl. 62 a.m. 2, h. 4 st. 28.3 RF Administrative Code, para. 2 tbsp. 23.48 Administrative Code of the Russian Federation, Regulations on the Federal Antimonopoly Service, approved by the Decree of the Government of the Russian Federation of 30.06.2004 No. 331 and Regulations on the territorial body of the Federal Antimonopoly Service, approved by the Order of the FAS of Russia of 15.12.2006 No. 324. As established by the court, the decision of the FAS of Russia of 25.05.2012. in case No. 1 11/202-11 appealed Pharmstandard OJSC in court. Upheld without amendment 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. 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 cassation summed up the illegality of the conclusions of the courts of first and appellate instances in case No. A40-94475/12-149-866, came to the conclusion that the antimonopoly authority has proved the conclusion of an anti-competitive agreement between Pharmstandard OJSC and ROSTA CJSC in the period from 23.12.2009. until 25.12.2009, as well as to the conclusion about the legality and validity of the contested decision of the Federal Antimonopoly Service of 25.05.2012. case no. 1 11/202-11 as

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accepted by the defendant in compliance with the applicable law. In accordance with the 2 tbsp. 69 CCRF circumstances established by the judicial act of the arbitration court in the previously considered case, which has entered into force, are not proved again when the arbitration court considers another case in which the same persons participate. Thus, the fact of violation of paragraph 2 of part 1 of article 11 of the Federal law "On protection of competition" established by the court in case No. A40-94475/12-149-866, re-proof is not required. According to the article. 26.1 RF Administrative Code circumstances to be clarified in the case of an administrative offence are: the presence of an event of an administrative offence, a person who has committed illegal actions for which this Code or the law of a subject of the Russian Federation provides for administrative liability, the guilt of a person in an administrative offence, circumstances that mitigate and aggravate administrative liability, the nature and amount of damage caused by an administrative offence, the circumstances excluding proceedings in the case of an administrative offence. Based on the judicial act entered into force in case No. 40-94475/12-149-866, namely, the decision of the Federal Arbitration Court of the Moscow District dated 22.04.2013, the court established the presence in the actions of Pharmstandard OJSC of an event and imputed composition of the offense provided for in part. 1 st. 14.32 RF Administrative Code. By virtue of part 1 of article 1.6 of the Code of the Russian Federation on administrative offences, a person brought to administrative responsibility may not be subjected to administrative punishment except on the grounds and in the manner prescribed by law. In accordance with article 1. 24.1 The administrative code of the Russian Federation among the tasks of the proceedings in cases of administrative offences is a comprehensive, complete, objective and timely clarification of the circumstances of each case. According to paragraph 1 of article. 25.1 The administrative code of the Russian Federation, the person in respect of whom the proceedings on the case of an administrative offence are conducted, 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 administrative code of the Russian Federation. The existence of the applicant's explanations is one of the sources of evidence in the case under Art. 26.2 RF Administrative Code. Having checked, taking into account the conclusions of the court of cassation, the procedure for bringing the applicant to administrative responsibility, the court considers that the provisions of Art. 4.5, 28.2, 25.1, 29.7 of the Administrative Code of the Russian Federation are complied with by the administrative body. Violations of the procedure for bringing the applicant to administrative responsibility, which may be the basis for the cancellation of the contested decision in accordance with paragraph. 10 Resolutions of the Plenum of the RF Supreme Court of 02.06.2004. No. 10, the court has not established and the applicant is not contested. The FAS of Russia of 21.06.2012 on initiation of the case on administrative offense No. 1 14.32/306-12 and conducting an administrative investigation was assigned the date of drawing up the protocol - 19.07.2012 at 11.00, at the address: d. Moscow, st. Garden Kudrinskaya, d. 11 (Administration of the Anti-Cartels Office, cab. No. 10), and the legal representative of the society was to appear for its signature. This definition (ex. No. 22/19623 of 21.06.2012) sent to the address of the company by mail and received by him on 02.07.2012, which is confirmed by postal notification. On the appointed date, the legal representative of the applicant, duly notified of the place and time of drawing up the protocol, did not appear for the preparation of the protocol. The protocol was drawn up with the participation of a representative of the company by proxy from

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10.01.2012 No. 23 Arkhangelskaya M.A., who was handed a copy of the protocol. A copy of the protocol in the case of administrative offense No. 1 14.32/306-12 of 19.07.2012 was received by the applicant on 11.09.2012 cm. No. 01/179, as confirmed by the stamp of incoming correspondence. Thus, the FAS Russia complied with the requirements of article 28.2 of the administrative code of the Russian Federation in the preparation of the protocol. By the decision of the FAS of Russia from 02.08.2012, the term of consideration of the case on administrative offense No. 1 14.32/306-12 was extended, the consideration of the case is scheduled for 27.08.2012 at 17-56 at the address: d. Moscow, st. Garden Kudrinskaya, d. 11, floor 4, cab. 315. This definition was sent to the company by mail and received by him on 15.08.2012, which is confirmed by a postal notification. By the decision of the FAS of Russia from 27.08.2012, the term of consideration of the case on administrative offense No. 1 14.32/306-12 was extended, the consideration of the case is scheduled for 25.09.2012 at 14-45 at the address: d. Moscow, st. Garden Kudrinskaya, d. 11, floor 4, cab. 415. This definition was sent to the company by mail and received by him on 17.09.2012, which is confirmed by the printout of tracking the promotion of postal items from the official website on the Internet of the FSUE "Mail of Russia", available in the materials of the administrative case (volume 3, l.d.). (4). Definition of FAS Russia of 27.08.2012 (ex. No PS/28572 of 31.08.2012), which considered the case No 1 14.32/306-12 on administrative offense is appointed on 25.09.2012 at 14-45, sent to the society at: 141701, Moscow region, Moscow region, Long-poord, Likhachevsky passage, d. 5 "B." In the materials of administrative case No. 1 14.32/306-12 there is a copy of the mail envelope with the postal identifier 12399553105825 (volume 1, LD). 45). This envelope contains the address of the addressee: Pharmstandard OJSC (Moscow Region), Likhachevsky Passage, etc. 5 "B," d. Long-poord, Moscow region. This envelope, as evidence of receipt by the legal representative of the company of the determination of the FAS of Russia from 27.08.2012 in case No. 1 14.32/306-12 (ex. PS/28572 of 31.08.2012), represented by the defender of the society by power of attorney from 10.01.2012 No. 23 Arkhangelskaya M.A., who appeared for consideration of the case. This envelope contains the details of the document sent to Pharmstandard in this envelope: PS/28572, PS/28571, surname, name, patronymic of the FAS employee of Russia who sent the documents and the date of departure. The court took into account that the outgoing number of the FAS determination of Russia from 27.08.2012 in case No. 1 14.32/306-12 on an administrative offense, which is assigned to the consideration of this case on 25.09.2012 at 14-45, namely - PS/28572. Thus, the evidence presented in the case file, namely: copy of the decision of 27.08.2012 in case No. 1 14.32/306-12, a copy of the mail envelope and a printout of tracking the progress of the postal item from the official website of the Federal State Unitary Enterprise "Mail of Russia" on the Internet, allow us to make an unequivocal conclusion that the determination of the FAS of Russia from 27.08.2012 in case No. 1 14.32/306-12 on administrative offense (ex. No PS/28572 of 31.08.2012) about appointment of consideration of the case

on 25.09.2012 at 14-45 at the address: d. Moscow, st. Garden-Kudrinskaya, d. 11, floor 4, cab. 415, sent to Pharmstandard OJSC (g. Long-poord, Likhachevsky passage, d. 5 "B", Moscow region) by post with identification number: 12399553105825, and received by the company on 17.09.2012. Thus, the presence in the case file of the simultaneously specified definition, a copy of the mail envelope and a printout tracking the progress of the postal item from the official website of the Federal State Unitary Enterprise "Mail of Russia" on the Internet, in their totality contain sufficient information (outgoing document number (PS/28572), postal identifier (12399553105825), name and address of the recipient of correspondence (141701, Moscow region). ,g. Long-breeding,

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Likhachevsky passage, d. 5 "B", Pharmstandard OJSC, allowing to identify both the recipient of the postal item and the contents of the item. Moreover, the antimonopoly authority submitted to the materials of the present case a copy of the list No. 950 of mail delivered to the Main Post Office (date of dispatch - 06.09.2012) (volume 3, l.d.). 20-21). Under the order number 8 in this list is indicated postal item with the following details: Ex. No PS/28572, No PS/28571, postal address and addressee name: 141701, Likhachevsky passage, d. 5 "B," d. Dolgoprudny, Moscow region, Pharmstandard OJSC (Moscow region), postal identifier: 12399553105825. In view of the above, there is sufficient evidence in the materials of the administrative case, indicating that the legal representative of Pharmstandard OJSC was duly notified of the date, time and place of consideration of the case on administrative offense No. 1 14.32/306-12, appointed on 25.09.2012 at 14.45. On the appointed date, the legal representative of the company, duly notified of the time and place of consideration of the case of an administrative offense, did not appear for consideration of the case, sending a representative (defender) by power of attorney from 10.01.2012 No. 23 Arkhangelskaya M.A. Case No. 1 14.32/306-12 was considered by the State Secretary - Deputy Head of the FAS of Russia A.Yu. Tsarikovskiy, authorized to consider cases of administrative offences on behalf of the FAS of Russia in accordance with part 2 of article 23.48 of the administrative code of the Russian Federation. Taking into account the above, the procedure for bringing the company to administrative responsibility by the antimonopoly body has been observed, the rights and legitimate interests of the society have not been violated during the administrative investigation. The Court finds that the applicant's argument that the administrative penalty was unreasonably high is subject to dismissal on the basis of the following. According to the article. 3.1. Administrative punishment is a state-established measure of responsibility for committing an administrative offense and is used to prevent the commission of new offenses by both the offender and other persons. In accordance with article 1. 4.1 The Administrative Code of the Russian Federation, when imposing an administrative penalty on a legal entity, takes into account the nature of the administrative offense committed by it, the property and financial situation of the legal entity, the circumstances mitigating administrative liability, and the circumstances aggravating administrative liability. In accordance with article 1. 4.3 The Administrative Code of the Russian Federation as circumstances aggravating administrative liability shall be recognized, including, the repeated commission of a homogeneous administrative offense, if for the first administrative offense a person has already been subjected to administrative punishment, for which the period provided for in Article 4.6 of the Administrative Code of the Russian Federation has not expired. Due to the fact that the amount of administrative fine calculated in accordance with the notes to articles 14.31 and 14.32 of the administrative code (ed.). Federal law of 06.12.2011 No. 404-FZ improves the position of the person brought to administrative responsibility, then an administrative fine calculated according to the specified notes of the articles of the Administrative Code is subject to application. Federal Law of 06.12.2011 No. 404-FZ. Therefore, the calculation of the fine is carried out on the basis of the provisions of the Administrative Code operating during the proceedings in this case, that is, the Administrative Code. Federal Law of 06.12.2011 No. 404-FZ. The initial (maximum) price of the bidding contract for lot No. 16 of Auction No. 312 is RUB 671 270 983 (approximately USD 19,386,887.60) 68 kopecks. Circumstances Mitigating Administrative Liability in Respect of

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Pharmstandard has not been identified. In the case of an administrative offence against Pharmstandard, it was established that Pharmstandard OJSC had extracted income of more than five million rubles as a result of an administrative offence, which, in accordance with subparagraph 2 of paragraph 3 of the

Notes to Article 14.32 of the Administrative Offence Code, is determined by a circumstance aggravating administrative liability. However, the CAO in the editor. Federal law of 06.12.2011 No. 404-FZ, did not establish this circumstance as an aggravating. Thus, in accordance with part 2 of article 1.7 of the administrative code, this can not be taken in detail as a circumstance aggravating administrative liability and taken into account when imposing an administrative penalty. Based on the above, taking into account the nature and circumstances of the offense committed, the antimonopoly authority has also legitimately calculated an administrative fine on the basis of part 1 of Article 14.32 of the Administrative Code. In accordance with part 3 of article. 211 RF CPC if, when considering an application to challenge the decision of an administrative body to bring to administrative responsibility, the arbitration court determines that the decision of the administrative body to bring to administrative responsibility is lawful and justified, the court decides to refuse to satisfy the applicant's claim. In the above circumstances, there are no grounds for satisfying the applicant's claims. In accordance with the 4 st. 208 APC of the Russian Federation application to challenge the decision of the administrative body on bringing to administrative responsibility state duty is not subject. Based on the Federal Law "On Protection of Competition" of 26.07.2006 No. 135-F3, Art. 2.1, 14.32, 25.1, 25.4, 28.2, 29.7, 30.1, 14.32 of the Administrative Code of the Russian Federation, and guided by Art. 64-68, 156, 167-170, 176, 180, 210, 211 APC of the Russian Federation, court

DECIDED:

Statement of Open Joint Stock Company "Pharmstandard", located at: (Moscow region, g. Long-distance, Dramatic Passage, d. 5 B, TIN 0274110679) on the recognition of the illegal resolution of the Federal Antimonopoly service of Russia of 25.09.2012 in case No. 1 14.32/306-12 on bringing to administrative responsibility in part. 1 st. 14.32 The RF administrative code should be left without satisfaction. The decision may be appealed within ten days from the date of its adoption in the Arbitration Court of Appeal.

Judge I.A. Blinnikova