

- Arbitration proceedings commenced by plaintiff against defendants pursuant to terms in the various contracts.
- Arbitrator appointed and commenced hearing the case.
- Arbitrator, in the course of conducting his private business, conducted seminars on building dispute management and arbitration for employees of the first defendant during an adjournment of the arbitration hearing.
- Arbitrator disclosed that he conducted seminars open to the public: plaintiff had attended such seminars which were also attended by employees of the first defendant. Arbitrator did not disclose that he was conducting private seminars for the first defendant.
- After two interim awards made by the arbitrator, plaintiffs applied under section 42 of the *Commercial Arbitration Act* for an order that the awards be set aside and the arbitrator removed.
- At first instance, application rejected. Appeal to Full Court.

ISSUES

- Were there grounds for a reasonable apprehension of bias on the part of the arbitrator such that the arbitrator should be removed?

HELD

1. The nature of the litigation process demands complete objectivity and neutrality on the part of the tribunal. In this regard there is no difference between a judge and an arbitrator.
2. There is a substantial difference between the public seminars conducted by the arbitrator which the arbitrator disclosed to the parties and the private seminars conducted for the first defendant.
3. The seclusion of the seminars and the time when they were held were inimical to the rule that justice should be open and even handed. The conduct of the seminars also offended against the principle that while the hearing is under way, nothing should be said to the arbitrator in the absence of any of the parties.
4. The fact that the arbitrator was paid by the first defendant to conduct the seminars exacerbates the problem.
5. The arbitrator was exposed to a suspicion of having had relevant communications with the first defendant and this detracts from what should have been his apparent impartiality.
6. The arbitrator's conduct gave rise to a reasonable apprehension of bias. Appeal allowed, interim awards set aside, arbitrator removed.

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Editorial Note:

A Case Note concerning the findings of the judge in the first instance was published in *The Arbitrator* Vol. 14, No.1, May 1995 at page 22.

DUBAI

ARBITRATORS NEED NOT FOLLOW COURT PROCEDURE IN DELIVERING THEIR AWARDS

SUMMARY OF THE CASE

An action was filed before the Dubai Court in which the plaintiff asked the court to ratify an arbitration award delivered in its favour. The defendant challenged the judgment delivered by the Courts of First Instance and the court of Appeal which upheld and ratified the arbitration award. The defendant argued that the arbitration award should be held null and void, because the arbitrator did not follow the terms of reference agreed between the parties and did not follow the procedure set out by the U.A.E. Law of Civil Procedure. The Court of Cassation held that an arbitrator need not follow the legal procedures set out by the Law of Civil Procedure for the delivery of judgments. An arbitrator need only follow the rules and regulations relating to arbitration, procedure and the provisions of the arbitration agreement and terms of reference. It was evident that the arbitrator in this case had followed those procedures and so the appeal filed by the defendant was dismissed.

CASE IN DETAIL

An action was filed in the Dubai Court in which the plaintiff asked the Court to ratify an arbitration award which was delivered by a local arbitrator in favour of the plaintiff against, the defendant. The plaintiff argued that pursuant to a contracting agreement between the parties the defendant had hired the plaintiff to decorate its villa for Dhs. 6,500,000/-. By a supplemental agreement the plaintiff had also been hired to decorate the majlis attached to the villa for Dhs. 550,000/-. A dispute had arisen and it was agreed to refer the matter to a single arbitrator. The arbitrator's decision was to be final and not subject to any appeal. Both parties agreed to choose a local individual from Dubai to be the arbitrator who subsequently delivered an award in favour of the plaintiff on 3 July 1992 and provided each party with a copy of his award.

The Court of First Instance upheld and ratified the award. The defendant appealed against the decision to the Dubai Court of Appeal. The Appeal Court upheld the judgment delivered by the Court of First Instance. The defendant appealed further to the Dubai Court of Cassation and requested the court to hold the arbitration award was null and void and to set aside the impugned judgment. The defendant argued the following:

1. An arbitration award is a judgment and therefore, it must be delivered in the form of a judgment. The arbitrator must follow the procedure and style of judgments as specified by the U.A.E. Law of Civil Procedure. The arbitration award must be delivered in the name of the