COMMONWEALTH OF THE BAHAMAS B 2019/APP/sts/00022

IN THE SUPREME COURT

Appellate Division

IN THE MATTER OF SECTIONS 18F AND 26 OF THE BANKS AND TRUST COMPANIES REGULATION ACT

AND IN THE MATTER OF A DECSION NOTICE DATED 20TH OCTOBER, 2019 ISSUED TO CARLOS MOLINA PURSUANT TO SECTION 6C OF THE BANKS AND TRUST COMPANIES REGULATION ACT, (Amendment) 2015

AND IN THE MATTER OF PRIVATE INVESTMENT BANK (BAHAMAS) LIMITED

B E T W E E N

CARLOS J. MOLINA

Appellant

AND

THE CENTRAL BANK OF THE BAHAMAS

Respondent

R U L I N G

Appearances: Plaintiff 12th December, 2019

Carlos J. Molina – Pro See

(Mr. Thomas A.E. Evans

Miss Veronique Evans)

Respondent: Mr. Ferron Bethell

Miss Camille Cleare

A Ruling in respect of a stay of the Prohibition Order of 30th October, 2019 was given previously on 6th December, 2019. The stay was denied. During the currency of the present appeal the Respondent herein in Action No. 2019/COM/lab/00082 applied for and was granted an Injunction.

The details of the same are contained in the Ruling of 6th December, 2019 in the above mentioned action.

The Appeal

1. This is an appeal filed herein on 6th November, 2019 and later amended and filed herein on 5th December, 2019. The appeal is made under Section 26 (1)(e) of the Banks and Trust Companies Regulation Act, 2000 and its subsequent 2015 (12th May, 2015) amendments.

26. (1) An appeal shall lie to the Supreme Court from any decision of the Governor —

(a) revoking a licence under section 4(6), section 7(5) or section 18;

(b) withdrawing any approval under section 7(4);

(c) requiring a licensee to take certain steps which the Governor may specify under section 18.

(2) An appeal against the decision of the Governor shall be on motion and the appellant within twenty-one days after the day on which the Governor has given his decision shall serve on the Attorney-General a notice in writing signed by the appellant or his counsel and attorney of his intention to appeal and of the general ground for his appeal:

Provided that any person aggrieved by the decision of the Governor may upon notice to the Attorney-General apply to the Supreme Court for leave to extend the time within which the notice of appeal prescribed by this section may be served, and the Supreme Court upon the hearing of such application may extend the time prescribed in this section as it deems fit.

(3) The Attorney-General shall upon receiving the notice of appeal transmit to the Registrar of the Supreme Court without delay a copy of the Governor's decision and all papers relating to the appeal: Provided that the Attorney-General shall not be compelled to disclose any information if he considers that the public interest would suffer by such disclosure.

(4) The Registrar shall set the appeal down for hearing on such day, and shall cause notice of the same to be published in such manner, as the Supreme Court may direct.

(5) At the hearing of the appeal the appellant shall, before going into the case, state all the grounds of appeal on which he intends to rely and shall not, unless by leave of the Supreme Court, go into any matters not raised by such statement.

(6) The Supreme Court may adjourn the hearing of the appeal and may upon hearing thereof confirm, reverse, vary or modify the decision of the Governor or remit the matter with the opinion of the Supreme Court thereon to the Governor.

(7) An appeal against a decision of the Governor shall not have the effect of suspending the execution of such decision.

2. By the Originating Notice of Motion the Appellant seeks the following relief:

1. ***An order revoking the entire decision communicated by the Decision Notice of the Respondent dated 30th October, 2019***
2. ***An Order providing for the costs of this appeal***

The stated grounds of appeal were:

1. ***The Respondent erred in finding that the Appellant was responsible for the governance deficiencies highlighted in the audit report and utilizing that finding to support a determination that the Appellant is not a fit and proper person as defined in the Banks and Trust Companies Regulation Act (as amended) ("the Act"***
2. ***The Respondent erred in finding that the Appellant had willfully and deliberately made false statements when he responded in the negative to questions 12, 15 and 28 of the Amended Confidential Statement sworn on 30th January, 2018***
3. ***The Respondent failed to take into account the information provided by the Appellant when making its decision as set out in the Decision Notice dated 30th October, 2019***
4. ***The Finding that the Appellant is not a fit and proper person within the meaning given in the Act is unreasonable in all the circumstances***
5. ***The Respondent erred in making a decision adverse to the interests of the Appellant without affording him any opportunity to be heard***
6. ***Such other grounds as may become apparent during the perusal of the papers relating to the appeal***

2. The evidence filed in the matter included the following:
   (i) Appellant's Affidavit in support of Stay filed 6th November, 2019
   (ii) Affidavit of Charles Littrell filed 11th November, 2019
   (iii) Affidavit of Akiri Nicholls filed 15th November, 2019
   (iv) Appellant's Supplemental Affidavit filed 18th November, 2019
   (v) Second Affidavit of Charles Littrell filed 2nd December, 2019
   (vi) Appellant's Third Affidavit filed 11th December, 2019

   The parties both submitted Skeleton Arguments

Background (as per the affidavits filed herein)

3. The Appellant is the majority shareholder of IPG Securities Asset Management (Geneva) SA which is the 100% owner of IPG Securities Asset Management Limited (IPG Bahamas)

which in turn is the owner of 85% of the shareholdings in Private International (Bahamas) Limited (PIBL). The Appellant is also the chairman of PIBL IPG Switzerland and IPG Bahamas.

4. PIBL was a licensee of the Respondent since 1984 with permission to carry on operations as a bank PIBL was purchased on 24th April, 2018 by IPG Securities Asset Management Ltd. (IPG Bahamas). The shareholders of IPG Swiss are the Appellant and Jorge Carreras ("Carreras").
5. The Appellant admits in his affidavit of 6th November, 2019 that since 2018 and into 2019 he had been in a shareholder dispute with Carrerras who is also a shareholder in IPG Switzerland and has been an officer and director of IPG Switzerland and IPG Bahamas.
6. It is evident that the Respondent acted on a report made to it by Carrerras made on or about 1st April, 2019. He reported his concern that the Appellant had misappropriated approximately USD$3,250,936 in various transactions or incurred by him for his own self-interest from PIBL.
7. At first the Respondent gave two directions namely that the Board of PIBL "propose suitable arrangements for the Appellant and Carrerras to recuse themselves from their normal duties in respect of PIBL while the Respondent instructed KPMG to conducted a forensic audit regarding the allegations made. The Appellant was also directed to dispose of his shareholding.
8. On 2nd August 2019 KPMG produced its Report following extensive examination of documents and interviews with individuals including the Appellant. A copy of the Report was provided to the Appellant.
9. The Respondent reviewed the Report and a Warning Notice pursuant to Section 6C(1) of the Bank's and Trust Companies Regulation Act, 2000 (as amended) was issued to the Appellant on 11th September, 2019. (Found in the Littrell Affidavit of 11th November, 2019). The Notice was clear as to the Respondent's concerns and in its demands of the Appellant.
10. The Respondent had the following concerns:
    (i) The conduct of the Appellant as a major shareholder and controller of PIBL
    (ii) The demonstrable failure to meet minimum standards of documentation and governance in respect of $3 million in payments

(iii) Providing to the Respondent false and misleading information and documentation in his application for grant of a licence to act as a controller of PIBL

(iv) The Appellant's continuation as controller as not being in the best interest of the financial system of The Bahamas

11. The Appellant was given an opportunity to submit any objections to the Respondent by 25th September, 2019.

12. The Appellant provided a response on 25th September, 2019. His response was carefully considered by the Respondent being guided by Section 6(B)(4) of the Act.

13. As a result on 30th October, 2019 the Respondent issued the written notice pursuant to 6 C(1) of the Act informing the Appellant that he was not a fit and proper person to be the controller of PIBL. The Respondent gave the further consequential directions:

(i) By 8th November, 2019 resign from your Board position and any other role at Private Investment Bank Ltd.;

(ii) Dispose of your direct and any indirect shareholdings in Private Investment Bank Ltd. and any affiliate businesses in which PIBL has an interest; and

(iii) By 8th November 2019 provide to the Central Bank a plan of action that will result in your disposition of any interest in Private Investment Bank Ltd. per the previous directive, no later than 31st March, 2020.

The Case

14. It must be noted that the Appellant was at first represented by counsel in the application for the stay but by the time the appeal came on hearing the Appellant appeared pro se.

15. The matter having come on for the hearing of the appeal the Appellant raised a procedural objection as per Section 26 of the Banks and Trust Companies Regulations Act. However, although stated in skeleton arguments, no submissions were made in this regard.

16. The Respondent, too, raised objections to the Appeal. It alleged that the Appellant had failed to comply with the provisions of Order 80 Rules of the Supreme Court which required a supporting affidavit for the Originating Notice of Motion was filed within the time specified. However, the Court notes that the Appellant filed subsequent affidavits in support of the application for stay and for the hearing of the substantive appeal neither of which condescended to the particulars presented in the Appellant's opening statements. Of

note was the Appellant's Third Affidavit which, as was pointed out by Respondent counsel had an incomplete jurat. In this latter regard the Respondent averted the Court's attention to the case of **Wallace-Whitfield v The Parliamentary Registrar Np. 975 of 1987** a case in which it was held that an incomplete jurat rendered the affidavit invalid and inadmissible. The Appellant conceded this point saying that he did not need it. It was apparent that the Appellant did not realise that his case was not properly before the Court. He offered no explanation for the same.

17. Further the Appellant on 5th December, 2019 filed an Amended Originating Notice of Motion without the leave of the Court. The Respondent, did raise the same in limine and but did not pursue a strike out application instead it encouraged the Court to have the Appellant confined to his original Originating Notice of Motion.
18. It was the Respondent's contention that both the Amended Notice of Motion and the Appellant's subsequent affidavits post 18th November, 2019 could not be used by the Respondent in his presentation of the appeal. The court will comment on these irregularities later.
19. The Respondent maintained that it acted correctly and in the best interest of the financial system of The Bahamas. The Respondent was mandated by Section 18(F) of the said Act as amended to issue warning notices where it proposes to make a Prohibition Order. There was full compliance in this regard. The Respondent relied on the authority given it under Section 6(B) and 6(C)(1) which gave it powers to object to an existing controller of a licensee and to give relevant and consequential directions.

"6B. Objection to an existing controller of a licensee

1. The Central Bank may, where approval has been granted for the acquisition of shares or other securities in a licensee in the circumstances referred to in paragraphs (a) or (b) of Subsection (1) of Section 6 A, serve a written notice of objection on the controller where the Bank is satisfied that –

(a) the controller has ceased to be a fit and proper person

(b) having regard to the likely influence of the controller, the licensee is no longer likely

(i) to conduct, or is no longer conducting, its business prudently;

(ii) to comply with, or is no longer complying with, the provisions of the Act;

(c) a condition of approval imposed on the controller under subsection 3 of section 6 A has not been complied with;

(d) the controller has furnished a false or misleading document or information in connection with an application made under subsection (1) of Section 6;

(e) the Bank would not have granted the approval in relation to the controller had the Bank been aware, at the time, of circumstances relevant to the application for such approval; or

(f) it is no longer in the best interest of the financial system in The Bahamas for the person to continue to be a controller of a licensee.

2. The Central Bank shall, in any written notice of objection, specify a reasonable period in which the person named in the notice shall –

(a) take such steps as are necessary to ensure that he ceases to be a controller or and indirect controller, as the case may be; or

(b) comply with such direction or directions as the Central Bank may make under Section 6 C.

3. A person served with a notice of objection under this section shall comply with the notice.

4. Notwithstanding the provisions of Subsections (2) and (3) a controller who has been served with a notice of objection pursuant to Section 1 may, within a period of fourteen days commencing the day after which the notice is served make written representation to the Central Bank which the Bank shall take into account in determining whether to vary or revoke the notice.

6C Power to make directions

1. Subject to Section 6 D, the Central Bank –

(a) where the Bank is satisfied that a person has failed to comply with a condition imposed under Subsection 3 of Section 6A; or

(b) where the Bank has served a written notice of objection under section 6 B, may by notice in writing –

(i) direct the transfer or disposal of all or any of the shares or other securities in a licensee held by such person or an associate of such person within such time, or subject to such conditions, as the Central Bank considers appropriate;

(ii) restrict the transfer or disposal of shares or other securities specified pursuant to sub-paragraph (i); or

(iii) make such other direction as the Central Bank considers appropriate.

20. The Appellant objects strenuously to the Respondent's use of its power and abuse of the exercise of its discretion and grounds his appeal under Sections 18F and 26 of the Banks and Trust Companies Regulation Act (Amendment) 2015.

Presentation of Appeal

21. The Appellant's case rested on his desire to he heard. He complained that he was denied natural justice. He put forward five points to assert his position and in explanation for his position with the Respondent's imposition of the Prohibition Order. Firstly, that the answers submitted on the Confidential Statement were in fact true. They related to his dealings with Barclays Bank. He admitted to the existence of the Final Judgment and a verified Petition filed in the Supreme Court of New York as exhibited to the First Littrell Affidavit. However, his withholding of the information on his statement was done on the advice of counsel and he reduced his failure to do so to a "misinterpretation/misunderstanding" by his counsel and the Respondent as to the significance of the truthful answer. Secondly, the Appellant admitted that he failed to admit the settlement amount of $4M being owed to Barclays because the sum was subject of a Confidential Settlement Agreement and, again, he was legally advised that such information should not be disclosed. Thirdly, the Appellant went to great lengths to explain that there was no misappropriation of any monies, in particular the noted $1.7M. Fourthly, the Appellant, while admitting the deficiencies noted in the KPMG report at page 38 et seq, he put the blame for the financial governance deficiencies on his business partner, Mr. Carrerras. He insisted that had he not forced a shareholders meeting by pursuing legal action in Switzerland Carrerras would not have come to the table. Lastly, as to his past employment, the Appellant stated firmly that that should not have been an issue as he had provided the Respondent with his resume.
22. The Appellant went on to explain his "apparent defiance" of the Court's order given in the sister action. It was never his intention to disobey as he, had through his attorney, tried to get permission/clarification for him to re-enter the bank and to attend the Board meeting

due to the recent death of the bank's CEO. He claims that he got no response but he acted any way.

23. The Appellant maintains that he was denied a meeting without counsel with the Respondents supervisory team. All he ever wanted was an opportunity to put his side of the story.
24. The Respondent counsel, in putting the Respondent's case,, reminded the Appellant that he had as yet at the date of the hearing complied with the Respondent's request to provide a plan for the divestiture of his shareholdings.
25. The Respondent relied on the report of KPMG. The full scope of the investigation can be found at page 16 of the report (Exhibited at Tab 1 of the First Littrell Affidavit).
26. The Respondent referred to the verified Petition confirming the arbitration award in the Confidential Settlement and the Final judgment already exhibited. The explanation proffered was that there was a viable court action which was of public record in respect of an award adjudicated by FINRA. THIs award was binding in nature whether it was stipulated or consented to. The Final Judgment related to the Appellant's default in payment of the sums due under the FINRA award. This, too, was a public document.
27. At pages 36 et seq of the transcript Respondent counsel extracted from the KPMG report the several instances of the misappropriation of monies allocated to "re-imbursed expenses".
28. The valid query raised by the Respondent was in respect of the disposal of the escrow funds of $1.7M. On reading the KPMG report it was unclear whether the same was used to settle the Appellant's various debts or for the purported new technology platform for the Bank or for the proposed injection into the company's capital.
29. In reply the Appellant urged the Court to not accept the Respondent's position. He stressed that all the information in the KPMG report had to be read in context and that he should be given an opportunity to tell his side of the story. He firmly asserted that the Respondent's Prohibition Order was unreasonable in its determination.

28. In answer to the stated grounds of appeal:

1. The Respondent erred in finding that the Appellant was responsible for the governance deficiencies highlighted in the audit report and utilizing that finding to support a

determination that the Appellant is not a fit and proper person as defined in the Banks and Trust Companies Regulation Act (as amended) ("the Act"

It must be established from the outset that the Prohibition Order was as against the Appellant in his capacity of controller of the licensee. He was in fact the person so approved by the Respondent and authorized to deal with the licensee bank. The Appellant falls squarely into the definition of "controller" as defined under the Act, namely,

"a person

(a) in accordance with whose directions, instructions or wishes the directors or officers of a licensee, or of another company or which the licensee is a subsidiary, are accustomed or are under an obligation, whether formal or informal to act ;

(b) who is able to exercise a significant influence over the management of a licensee, or of another company of which it is a subsidiary, by virtue of –

(i) a holding of shares or other securities in the licensee or such other company;

An entitlement to exercise, or control the exercise of, the voting power at any general meeting of the licensee or such other company;

c) who is in a position to determine the policy of the licensee but who is not –

(i) A director or officer of the licensee whose appointment has been approved by the Central Bank; or

(ii) A person in accordance with whose directions, instructions or wishes the directors of the licensee are accustomed to act by reason only that they act on advice given by such person in a professional capacity.

29. The Appellant is aptly described in the Act. As the controller of the bank it was incumbent upon the Appellant to ensure that the bank complied with all laws and regulations related to the running of the bank. He was not only controller, but an owner and major shareholder of the bank. No matter how incestuous the bank's ownership/shareholding was devised, the ultimate responsibility was that of the Appellant, despite the fact that he insisted on blaming his business partner. If it was that the Central Bank ought to have also dealt with the business partner/co-owner as well, then the question was answered. Earlier in the year Carrerras had been ousted out of the bank for various other reasons. At this point Carrerras' involvement was not under scrutiny.

30. The Appellant cannot deny that he did not act as the controller of the said bank. He held himself out as such; made application to the Central Bank of The Bahamas on the basis that he was; and the Central Bank acknowledged that he was and approved his licence as a controller. Inherent in this designation was the fact that he was ultimately responsible for the governance deficiencies highlighted in the KPMG report.

31. The Respondent placed great reliance on the Auditor's report produced by KPMG. The Respondent expressly says of that report that : *"Based on the concerns expressed by Mr. Carrerras, the Respondent, at the behest of the Appellant, engaged KPMG Forensic Inc. ("KPMG") to conduct a forensic audit with respect to the allegations and report on the facts related to the transactions (complained of)."*

32. The KPMG Report was tendered on 2nd August 2019. It was produced after having completed extensive examination, review and testing of the documents presented for its inspection together with personal interviews with those concerned. A copy of the same was provided to the Appellant and he was given an opportunity to provide a response.

33. The Appellant vehemently opposed the Respondent's designation of him as "not being a fit and proper person". Section 3E of the Amending Act sets out in detail as to the criteria in determining if a person is "a fit and proper" person.

> ***"Criteria to determine if person is fit and proper***
>
> ***The Central Bank shall, in determining for the purposes of this Act whether a person is a fit and proper person, have regard to all of the circumstances, including such person's***
>
> ***(a) Honesty, integrity and reputation***
>
> ***(b) Competence and capability;***
>
> ***(c) Financial soundness; and***
>
> ***(d) Previous disciplinary record and general compliance history, including whether the Central Bank or any other domestic regulatory authority, or Supervisory Authority, has previously imposed a disciplinary sanction on such person.***

34. The Respondent relied heavily on the information contained in the KPMG report in determining that the Appellant was not a fit and proper person. The report was damning

of the Appellant. It brought into question his involvement and participation in the licensee bank; the many governance deficiencies; the ongoing misappropriation of funds for his personal use; lack of documentation from the intermediate holding companies (IPG Bahamas and IPG SA); his personal financial history; and the fact of his admission to the KPMG auditor that he was "personally financially stressed.

35. The Appellant tried as he might to explain away in his presentation (both in chief and in reply) the various "inadequacies" or "unclear allegations" made in the KPMG report. This he did not do successfully. He continued to stress the urgency for him to resolve the present application as he had urgent (within the week) payment obligations.

36. Ground (1) must also be considered in light of ground (2) of the Appeal:

2. The Respondent erred in finding that the Appellant had willfully and deliberately made false statements when he responded in the negative to questions 12, 15 and 28 of the Amended Confidential Statement sworn on 30th January, 2018

The Respondent maintained that the information provided and attested to on the Amended Confidential Statement sworn on 30th January, 2018 were materially false. In his presentation the Appellant insisted that he was truthful when presenting the form for consideration. The Appellant confidently admitted that any non-disclosure on his part in relation to questions asked was done on the advice of counsel. When challenged he was unable to reconcile the dates of his indebtedness with the dates provided in the form. Regrettably, without more, the Respondent can only determine that the statements made on the said Amended Confidential Statement were false and were willfully and deliberately made. At all turns, the Appellant tried to reduce his predicament to a squabble as between two business partners.

37. The Appellant's character was further put to the test by the submission of a Supplemental report provided by KPMG on 24th October, 2019 (signed on 14th November, 2019) which included information lately provided by Mr. Carrerras. Again the Appellant claims that he was not given an opportunity to answer the allegations in the report.

38. Having reviewed the KPMG report the Respondent issued its Warning Notice on 11th September, 2019. Up until this time it seemed that the Appellant had not deemed it necessary to put to the Respondent any reply or to refute the allegations made in the report delivered to him in August. In the said Notice the Appellant was given an opportunity once again to put his

case or to properly answer the allegations put in the KPMG Report. The Appellant answered at the deadline of 25th September, 2019. The Respondent deemed the responses unsatisfactory and invoked its powers under 6 C of the Banks and Trust Companies Regulations Act Amendment) 2015.

39. The Appellant's actions in responding to the regulatory authority; the findings of the reports in respect to the governance deficiencies in the bank; and his inability to refute or deny the allegations in the reports were sufficient to ground the Respondent's designation of the Appellant as not being a fit and proper person.

40. **Grounds (3) and (4)**

3. The Respondent failed to take into account the information provided by the Appellant when making its decision as set out in the Decision Notice dated 30th October, 2019

4. The Finding that the Appellant is not a fit and proper person within the meaning given in the Act is reasonable in all the circumstances

These seem to be a repeat of grounds (1) and (2). It can be said definitively that the Respondent received, reviewed and considered the Appellant's response of 25th September, 2019 and determined that the response was not satisfactory. Further, the Respondent had the Supplemental Report in hand. The Decision letter of 30th October, 2019 set out the Respondent's supervisory findings. From the said letter it could be concluded that the Appellant had

(i) Failed to make full and frank disclosure to the Central Bank on the his confidential statement so that the Respondent could make a sound assessment/decision as to his honesty, integrity, reputation or financial soundness etc.;

(ii) Failed to make full and frank disclosure in his answers to the personal financial questions; and

(iii) Failed to properly disclose the details of his previous employment and pending regulatory actions/sanctions

In all the reanable circumstances the Appellant does not fit the statutory requirements of being a fit and proper person.

41. **Ground (5)**

5. The Respondent erred in making a decision adverse to the interests of the Appellant without affording him any opportunity to be heard

The Respondent has objected to the amendment of the Originating Notice of Motion to include the above ground. While the Court agrees with counsel the ground deserves some comment. The Appellant can hardly posit this as a ground when he firstly, was in receipt of the report as early as August, 2019. Secondly, it was only after the Warning Notice given on 11th September, 2019 that he responded on the date given as the deadline. His answer, though given, was deemed unacceptable by the Respondent. Having received the Prohibition Order, his option was to either accept the Respondent's decision or appeal the Order, which he did. The Appellant proffered no evidence that he even tried to meet with the Respondent post his letter of 25th September, 2019 save that he attended a meeting with counsel when he pleaded for and meeting sans counsel and was denied. Of course, none of this is in any of his affidavits.

42. As stated earlier this appeal challenges the Central Bank of The Bahamas exercising its discretionary powers. Section 18 E of the Banks and Trust Companies Regulations Act 2015 as amended – Prohibition Orders provides for the unfettered exercise of the Respondent's discretion. In exercising its discretion the Respondent, as the decision maker has the power to make choices whether to act or not act, to approve or not approve, or to approve with conditions having taken into account all the relevant information.

43. The Court agrees with the Respondent's submission that the burden is on the Appellant to show that in exercising its discretion the Respondent abused or exceeded or misused its discretion in the issuance of in the cited letter of 30th October, 2019. Further, the court is persuaded that as found in the Respondent's case of **AEI Radiffussion Music Ltd. v Phonographic Performance Ltd. [1999 1 WLR 1507 at p 1523** and as expressed by Lord Woolf MR

> ***"The conventional approach of this court is conveniently summarized by Stuart-Smith in Roache v News Group Newspapers [1998] E.M.L.R. 161 at p 172 in these terms 'Before the court can interfere it must be shown that the judge has either erred in principle in his approach, or has left out of account, or taken into account some feature that he should, or should not, have considered, or that his decision was wholly wrong because the court is forced to the conclusion that he has not balanced the factors fairly in the scale***.

44. This is a statutory appeal and the Court will only interfere with the decision so made if there was disregard of some legal principle. The governing statute gives the Respondent the absolute discretion to deal appropriately with its licensees. The Act also provides at

Section 18 F a mandatory process by which the Respondent should deal with such individuals.

45. The Canadian case of **Boulis v. MMI, [1974] S.C.R. 875, 26 D.L.R. (3d) 216** citing **D. R. Fraser and Co. Ltd. v. Minister of National Revenue at page 36** set out clearly what is expected when reviewing a discretion:

> ***"The criteria by which the exercise of a statutory discretion must be judged have been defined in many authoritative cases, and it is well settled that if the discretion has been exercised bona fide, uninfluenced by irrelevant considerations and not arbitrarily or illegally, no court is entitled to interfere even if the court, had the discretion been theirs, might have exercised it otherwise."***

46. The Appellant has not questioned the discretion, only the exercise of it in that it was unfavorable to him. The Prohibition Letter of 30th October, 2019 detailed the basis of the Respondent's need to act in the manner in which it did. The Appellant did not assert that the decision so made was ultra vires or wrong in law. He maintains that he, personally, was misjudged and erroneously punished by the prohibition order.
47. The Act has placed no restrictions on the Respondent's exercise of its discretion. The Court can only interfere if it found that the Respondent had exercised its discretion unlawfully and without the bounds of administrative law. The Court finds that in the exercise of its discretion the Respondent showed procedural fairness and acted rationally.
48. Of greater import was the fact that the Respondent, as regulator, took due consideration of the impact of the Appellant's continued involvement at the Bank and the resultant effect that it would have on the financial system in the Bahamas. In all events the Respondent exercised its discretion consistent with the objects and scope of the Banks and Trust Companies Regulations Act.
49. The procedural errors noted by Respondent counsel cannot be ignored. The Rules of the Supreme Court are in place for a reason. They are in place for the facility of the Court's adjudication and disposal of matters coming before it. It is true that there was no affidavit filed in support of the Originating Notice of Motion only one filed in support of a stay. Moreover, the affidavits filed did not aver the evidence presented by the Appellant in his presentation of the appeal. It is of note, however, that the Respondent sought to reply to certain elements of the Appellant's affidavits whether for the stay or the substantive action.

50. The only restriction the Court will place on the Appellant is that he cannot proceed on the Amended Originating Notice of Motion, the same having been filed without leave whether the same was subject to Order 80 or Order 20 of the Rules of the Supreme Court. The Appellant cannot pray in aid the Affidavit of 11th December, 2019.
51. The appeal herein is dismissed with costs to the Respondent to be taxed if not agreed.

Dated this 13th day of April, 2020

_____

Ruth M.L. Bowe-Darville, J.

NB: **This Judgment was delivered during the lockdown period of the Covid 19 pandemic. Both parties had no objection to the delivery of the same by ZOOM. Attached are copies of the emails exchanged in this regard.**
RBD