

Hekro Pet Ltd., LLC v. VA Intertrading Aktiengesellschaft, Dnepropetrovsk region court of appeal, 22c-4091/11, 28 March 2011

Yaroslav Petrov, Asters; Olena Stepanenko, Asters

Headnote

In Hekro Pet Ltd. v. VA Intertrading Aktiengesellschaft, the Court of Appeal rejected the enforcement of the arbitral award holding that the party was not given proper notice of the appointment of the arbitrator (28 March 2011)

Digest

In June 2010 VA Intertrading Aktiengesellschaft (hereinafter "VA")(Austria) filed a petition before Amur-Nignedniprovskiy District Court of Dnepropetrovsk to enforce an international arbitration award. The award was rendered on 25 March 2010 by a sole arbitrator (Mr. Ernie Sekolets) under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber (VIAC Rules). The arbitrator ordered Hekro Pet to pay VA a sum in the amount approximate to USD 2 million. The court of first instance granted the enforcement petition. Unsatisfied with the court's decision, Hekro Pet filed an appeal before the Dnepropetrovsk Oblast Court of Appeal. The appeal stated that the court of the first instance's decision breached material and procedural laws.

Hekro Pet based its argument on article 5(1)(b) of the 1958 New York Convention and the Ukrainian Civil Procedure Code. Hekro Pet provided a proof that it was not given proper notice of the appointment of the arbitrator. In support of its argument, it provided the court with letters submitted by the VIAC stating that the notification of the appointment of the arbitrator was sent by DHL courier services, with copies of electronic delivery report (Tracking & Tracing report).

The Court of Appeal upheld the appeal holding that Tracking & Tracing report printed from the DHL web-site cannot be considered a sufficient proof for delivery of notices because they do not include any signatures and stamps as required under Ukrainian legislation, thus, rejected enforcement. *Parties: HEKRO PET Ltd., LLC v. VA Intertrading Aktiengesellschaft, case no: 22c-4091/11, Dnepropetrovsk Region Court of Appeal, Ukraine.*

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The summary of the case file and full text of summarized court decision are available on:

<http://www.kluwerarbitration.com/CommonUI/document.aspx?id=KLI-KA-1124117>

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Jurisdiction

- **Ukraine
Court**

- Dnepropetrovsk region
court of appeal
Arbitrators/Judges

- Ernie Sekolets, arbitrator
Case date

- 28 March 2011

Case number

- 22c-4091/11

Parties

- Appellant, Hekro Pet Ltd.,
LLC (Ukraine)
- Other, VA Intertrading
Aktiengesellschaft
(Austria)

Key words

- enforcement
- notification
- award

Applicable legislation

- UNCITRAL Model Law
 - Ukraine

Source

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