1987 June 17

[KOURRIS J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

YORK INTERNATIONAL SECURITIES (CYPRUS) LTD AND ANOTHER

Applicants,

v.

THE CENTRAL BANK OF CYPRUS,

Respondent

(Case No. 203/87)

Companies — Objects — Clause in Memorandum of Association giving to the Board power to do whatever they may deem to be beneficial to the company — Scope and effect of such clause — In this case the said clause did not save the business of brokers from being ultra vires the company's Memorandum

Companies — Off-shore companies — Breach of conditions in the relevant permits — Revocation of permits — Whether Central Bank ought to have first examined possibility of modifying the conditions — Question answered in the negative as otherwise the Bank would be involved in an exercise of redrafting the Company's Memorandum of Association — Once, however such possibility was examined, the Court has to examine the legality of the decision not to modify the conditions

Reasoning of an administrative act — Several grounds given in support of a decision, one of which was erroneous — Principles applicable

Administrative Law — Discretion of administration — Judicial control — Principles applicable

On 21.5.86 an application was submitted to the Central Bank (respondents) for the establishment of an «off-shore» company «York International Securities (Cyprus) Ltd». On 23.9.86 the respondents granted the permit on certain conditions, namely that the company (applicants 1) should not carry out any activities which would be considered as banking activities in general, activities which are usually carried out by banks or to deal with the management of moneys of any persons except those who were shareholders of the company or would specifically be approved by the Central Bank of Cyprus

On 3rd December, 1986, following an application, the Central Bank issued a permit by which it allowed the transfer of the rights of the shareholders of applicants 1 «York International Securities B V» to the company «Downholme Investments N V» which it was stated to be a company registered in Holland

By letter dated 14 2 87 the respondents revoked the aforesaid permits on the following grounds, namely

(a) The permission of 3rd December 1986 was obtained by misrepresentations that Downholme International Investments N V was a Dutch company whilst it was a company of Netherland Antilles

(b) Applicants 1 are carrying out the business of Brokers which was not envisaged in and it is ultra vires their Memorandum of Association,

(c) The activities of applicants 1 in procuring, accepting and investing money belonging to persons other than their shareholders are contrary to the conditions set out in aforesaid letter of 16th September, 1986

Before reaching the aforesaid decision the respondents examined the issue whether to modify the conditions of the aforesaid permits, but decided not to do so on the following grounds, namely

(a) The applicants have not demonstrated the seriousness and professionalism which is demanded in the carrying out of the brokerage business, a field which is extremely sensitive because it deals with the investment of money of a large section of the public

(b) The applicants were not giving adequate financial data and were not issuing a proper prospectus, but, on the contrary they were applying methods which are contrary to all brokerage propriety and which are described as «boiler room methods

(c) Both Mr Leslie Steward Weber, who is the Managing Director of applicants 1 and who is represented as shareholder of applicants 2 as well as the officer of applicants 1 Mr Tony Murphy, were connected with First Commerce, and in any event, neither these two nor the other two alleged shareholders of applicant 2, afforded the safeguards for such a serious activity

On 20 2 87 the respondents decided to block the accounts, which applicants 1 kept with the Bank of Cyprus, and the Hellenic Bank

Hence this recourse impugning the validity of the said revocation and the decision to block the accounts of applicants 1

In a nutshell the case for the applicants is as follows (a) There was no misrepresentation, but a mere misdescription as regards the place of registration of applicants 2, which the respondents could discover with

rudimentary diligence in any event this was not a material factor because it did not contravene the policy of the respondents as explained in a pamphlet Exh 17 In this respect counsel for the respondent contended that if the respondents had been aware of the place of registration they would never have given the permits because according to their policy very strict conditions are imposed when giving permits to companies registered in places of convenience Counsel for the respondents further contended that respondents' policy is not to be found in Exh 17, but in Exh 14, which is a letter to the Vice-President of the Cyprus Bar Council

(b) The business of brokers was not ultra vires the Memorandum of Association In support of his case he invoked inter alia sub-clause 3(6) of the Memorandum, which is drafted in the usual terms and gives to the Board power to do whatever they may deem to be beneficial to the company

(c) As regards ground (c) in the letter of revocation, counsel for applicants submitted that «investment» presupposes exercise of discretion by the person «managing funds» as to where to invest

(d) The applicants were not bound to issue a prospectus and therefore the respondents in deciding not to modify the conditions of the permits were labouring under a misconception of fact namely that the applicants were bound to issue a prospectus

It must be noted that before the sub judice revocation of the permits the Central Bank received information through «Interpol» that «*York International Securities N V*» of Holland which was the initial shareholder of applicants 1 and the activities of which applicants 1 were continuing was involved in the sale of shares of *Biomedica N V and of Practical Investor Publications N V* with the method known as «boiler room» (Exhibit 18) The message also mentioned that this company had applied to the Dutch authorities for a permit under a law recently enacted in Holland to deal with the sale of shares and of other valued documents but its application was rejected In addition it was mentioned that against the company there were accusations, which until then had not been investigated and that Mr Leslie Steward Weber Managing Director of this company, as well as of applicants 1, had worked as a «*salesman of shares through telephone*» with the company First Commerce which is mentioned in Exhibit 7

Held *dismissing the recourse* (1) There is a difference between Exhibit 17 and Exhibit 14 in that Exhibit 14 contains a provision to the effect that the ultimate beneficial owners of an off-shore company shall not change without the prior approval of the Central Bank The Court considered the contentions of both counsel as regards ground (a) of the letter of revocation and is satisfied that the Central Bank of Cyprus acted on information given to it by the then advocates of applicants 1 and that the bank would not have given the permits if it knew that the Downholme company was registered in the Dutch Antilles which is a place of convenience

(2) The legality, scope and effectiveness of a clause, such as the clause in sub-paragraph 6(3) of the Memorandum of Association of Applicants 1, was considered in *Bell Houses Ltd v City Wall Properties Ltd* [1966] 2 Q B 656 What is in issue is the construction of the Memorandum of the company, in order to ascertain whether the business of brokers is intra vires or ultra vires the Memorandum This Court has come to the conclusion that the business of brokers is ultra vires the Memorandum of the company because it is not expressly stated in the Memorandum as part of the objects clause and also because it cannot be held that the business of brokers is incidental and conducive to the attainment of the objects of the company

(3) As regards ground (c) in the letter of revocation the short answer to the submission of the applicants is that the applicants admitted that they sold shares to over 3,000 persons which were not shareholders of their companies and, therefore they acted contrary to the conditions set out in the said letter of the 16th September, 1986

(4) In the light of the facts in this case the Court reached the conclusion that the respondents ought not to have examined the possibility of modifying the conditions, because that would mean that the respondents should embark on an exercise of redrafting the objects in the Memorandum of Association of applicants 1 (*Karayiannis and Another v Central Bank* (1980) 3 C L R 108 followed, *Vassos Eliades Ltd v The Republic* (1979) 3 C L R 259 distinguished)

(5) Since, however, the respondents did in fact examine the possibility of imposing conditions the Court has to examine the implication of the fact that respondents laboured under the erroneous impression that the applicants were bound to issue a prospectus

When several grounds are given in justification of a decision, it is sufficient if one of them can support the decision, but exceptionally when one of the several grounds is erroneous, the decision should be annulled, if it does not appear therefrom the degree of influence of the erroneous ground in the taking of the decision (A passage from the Conclusions from the decisions of the Greek Council of State 1929-1959 cited with appoval)

In the opinion of the Court the fact that one of the grounds set out in paragraph 8 of the Opposition was defective, does not make all the grounds defective because, in the circumstances of this case, this misconception did not influence to a great extent the respondent bank in its decision

(6) The Bank ought not to have taken into consideration the contents of the message of Interpol (Exh 18), because the applicants were not given the opportunity to be heard with regard to the contents of the message and this is contrary to the rules of natural justice In the light of the material before it, the Court has come to the conclusion that the respondents in deciding the sub judice revocation did not rely on such report

(7) The crux of this case is whether the respondent bank properly exercised its discretion and the decision it reached was reasonably open to it on the basis of the material before it In the light of the material before this Court the answer is in the affirmative both as regards the decision to revoke the permits of the applicants and as regards the decision to block the accounts of applicants 1

Recourse dismissed with costs to be assessed by the Registrar

Cases referred to

Bell Houses Ltd v City Wall Properties Ltd (1966) 2 Q B 656

Karayiannis and Another v The Central Bank of Cyprus and Another (1980) 3 C L R 108.

Vassos Eliades Ltd v The Republic (1979) 3 C L R 259

Recourse.

Recourse against the decision of the respondent to revoke the permits granted, under the provisions of section 10 of the Exchange Control Law, Cap 199, to applicants 2 to become shareholders of applicants 1 and also to block their bank accounts by virtue of the provisions of the above Law

T. Papadopoulos, for the applicants.

A. Evangelou, Senior Counsel of the Republic, for the respondent.

Cur adv. vult

KOURRIS J read the following judgment By the present recourse applicants pray for:-

1) A declaration of the Court that the act and/or decision of the respondent Central Bank of Cyprus, which was communicated to the applicants by letter dated 14th February, 1987 whereby it revoked the permits which were granted by virtue of the provisions of s. 10 of the Exchange Control Law, Cap. 199, to applicants 2 to become a shareholder of the applicant company No. 1, is void and of no legal effect.

2) A declaration of the Court that the act and/or decision of the respondent Central Bank of Cyprus, which was communicated to the applicants by letter dated 9th March, 1987 whereby it

prohibited the applicants from carrying out their business and whereby it blocked the bank accounts of the applicants by virtue of the provisions of The Exchange Control Law, Cap. 199 and/or as a result of the unlawful act of the respondents referred to in paragraph 1 above, it is also void and of no legal effect.

The respondent Central Bank by their opposition allege that the actions and/or decisions complained of, have been taken lawfully and correctly in accordance with the provisions of sections 40(1)(b), 44(2) and 34 of The Exchange Control Law, Cap. 199 (as amended) on the basis of all facts and circumstances of the case.

The salient facts of this recourse shortly are as follows:-

On 21st May, 1986 the law office of Messrs. K. Chrysostomides and Co. submitted to the Central Bank an application to establish in Cyprus what is commonly known as an «off-shore» company,«York International Securities (Cyprus) Ltd.,» (Exhibit 1), the proposed objects of which were the carrying out of the business of investments and management of investements and for this purpose the acquisition and possession of shares, bonds etc., the then proposed shareholder was the company Downholme International Investment N.V. which was stated to be registered in Holland.

Because the aforesaid applicants failed to present to the Central Bank, bank references for the proposed shareholder as they were initially requested, they proposed on 11th September, 1986 as a new shareholder of the company two Cypriot companies which would be holding the shares as nominees of the company «York International Securities B.V.» of Holland (Exhibit 2). Bank references were presented in respect of the company «York International Securities B.V.». In addition on 16th September, 1986 the applicants by letter of their advocates informed the Central Bank of the names of three persons as the registered shareholders of «York International Securities B.V.,». Again, there was no bank or other reference for these persons and no such references were taken into account for the purpose of the application except the assurance that no Cypriot interests were involved (Exhibit 3).

On 16th September, 1985, the Central Bank issued its permit to the applicant company under certain conditions (Exhibit 4). It was a basic condition of the licence that the company, applicants 1 in this recourse, should not carry out any activities which would be

considered as banking activities in general, activities which are usually carried out by banks or to deal with the management of moneys of any persons except those who were shareholders of the company or would specifically be approved by the Central Bank of Cyprus.

On 3rd December, 1986, following an application, the Central Bank issued a permit by which it allowed the transfer of the rights of the company «York International Securities B.V.» to the company «Downholme Investment N.V.» which again it was stated to be a company registered in Holland (Exhibits 5(a), (b) and (c)).

Following information received by the Central Bank concerning the activities of applicants 1, applicants 1 were asked to submit full details of the work which they had carried out since the establishment of the company. They were asked to include in these details the list of names of the parties with which the company had dealt with i.e., concluded deals. Instead of complying, applicants 1 asked for a meeting with the Central Bank, which meeting took place on 7th February, 1987 At that meeting, a certain John Addey, on behalf of applicants 1, spoke from a manuscript and delivered a copy of his speech together with several documents (Exhibits 6(a), (b), (i) (ii), (iii), (iv), (c), (d), (e), (f) and (g)).

During that meeting it was ascertained that Downholme International Investments N V. was established in the Dutch Antilles and not in Holland and it was pointed out to the applicants that as their advocates very well knew the Central Bank would not have issued the permit (Exhibit 5 (c)) if, as they were obliged to do, they had disclosed that applicants 2 was a Dutch Antiles company; and this because, on the basis of the policy being followed in such matters, it was not allowed to off-shore companies, being registered in Cyprus, to open offices in Cyprus, in the cases where the shareholders or the beneficial owners of such shares are companies established in places of convenience. It was furthermore, stressed to applicants 1 that their business as stock-brokers were contrary to the terms of their licence dated 16th September, 1986 (Exhibit 4), and that activities of such kind are ultra vires of their Memorandum of Association.

On 9th February, 1987 two officers of the Central Bank visited the office of applicants 1 for a fuller briefing on the operations of applicant 1. For this purpose applicants 1 were again asked to

produce the list of the names of their clients, in the same way as the Central Bank had asked through its letter dated 29th January, 1987 but Mr. Weber refused to comply on the ground that he considered the list as confidential and that he might delivere it after consultation with the other shareholders of the company. The officers of the Central Bank secured, however, several details as to the mode of operation of applicants 1 and they were given copies of the material used by applicants 1 for the promotion of the sale of the shares of Biomedica N.V. and of Practical Investor Publications N.V.

Thereupon, the Central Bank communicated through «Interpol» with the Dutch authorities and they received information that «York International Securities N.V.» of Holland, which was the initial shareholder of applicants 1 and the activities of which applicants 1 were continuing, was involved in the sale of shares of Biomedica N.V. and of Practical Investor Publications N.V. with the method known as «boiler room» (Exhibit 18). The message also mentioned that this company had applied to the Dutch authorities for a permit under a law recently enacted in Holland to deal in the sale of shares and of other valued documents but its application was rejected. In addition it was mentioned that against the company there were accusations, which until then had not been investigated and that Mr. Leslie Steward Weber, Managing Director of this company, as well as of applicants 1, had worked as a «salesman of shares through telephone» with the company First Commerce, which is mentioned in Exhibit 7.

The Central Bank evaluated the material and documents in its possession and decided that the permits issued could not remain valid for the reasons which were finally set out in the revocation letter dated 14th February, 1987 (Exhibit 8). The possibility of modifying the terms of the then existing permit or the issue of a new permit with varied conditions so that the company could continue its operations was finally turned down because it was decided that this would not be conducive to the financial interests of Cyprus and, especially in the interests of the protection, maintenance and development of substantive foreign exhange interests of Cyprus. They maintained that whilst the Republic is aiming at the development of the country as a Commercial and Financial centre on a healthy basis the applicants:-

(a) Have not demonstrated the seriousness and professionalism which is demanded in the carrying out of the brokerage business, a field which is extremely sensitive because it deals with the investment of money on a large section of the population.

(b) Were not giving adequate financial data and were not issuing a proper prospectus but, on the contrary, they were applying methods which are contrary to all brokerage propriety and which are described as «boiler room» methods.

(c) Both Mr. Leslie Steward Weber, who is the Managing Director of applicants 1 and who is represented as shareholder of applicants 2, as well as the officer of applicants 1, Mr. Tony Murphy, were connected with «First Commerce» and in any event, neither these two nor the other two alleged shareholders of applicants 2, afforded the safeguards of such serious activity.

The respondent Bank alleged that affording to the applicants a «roof» facilitating the carrying out of their operations in the way in which they were aiming at carrying them out, would irreparably expose the Republic to the danger not only that new reputable «off-shore» companies will not come to Cyprus but also that existing important companies will leave Cyprus with corresponding repercussions to the financial and particularly to the foreign exchange interests of the Republic.

As a result, on 14th February, 1987, the Central Bank of Cyprus by its letter (Exhibit 8) has revoked the licences which were given to the applicants and for the reasons mentioned therein.

On 16th February, 1987, the respondent Central Bank received information from the authorities of Jersey (Exhibit 9), that Richmond Financial Services Ltd., which applicants 1 were presenting as being the underwriters for the shares the sale of which they were promoting was in fact using the address of a law office has repeatedly refused to act as the representative of the group of companies of Richmond Financial Services Ltd., because it was not satisfied with the good faith of the persons behind this group.

After the revocation of the permits which was done by the Central Bank in exercise of the rights vested in the Central Bank by virtue of s. 40(1) of The Exchange Control Law, Cap. 199 and on the basis of the information mentioned hereinabove and which had been received in the meantime, the Central Bank on 20th

February, 1987 by virtue of s. 34 of the said law decided the blocking of the accounts which applicants 1 were keeping with the Bank of Cyprus and the Hellenic Bank (Exhibits 10(a) and (b)). The object of this blocking of accounts was the supervision of the movement of the accounts of the company in such a way as to safeguard the interests of Cyprus and to avoid the flow of money abroad either with direct remittances or through «reciprocal dealings» in Cyprus in violation of the Law. The blocking of accounts by virtue of Section 34 does not have the meaning of confiscation or deprivation of the property of applicants 1 but, as stated, it aims at the exercise of a lawful control.

It is pertinent, at this stage, to set out so far as relevant, the contents of the revocation letter (Exhibit 8) «in view of the seriousness of each one of the following facts, namely, that:-

(a) Our permission of 3rd December, 1986 was obtained by misrepresentations that Downholme International Investments N.V. was a Dutch company whilst it was a company of Netherland Antilles;

(b) You are carrying out the business of Brokers which was not envisaged in and it is ultra vires your Memorandum of Association;

(c) Your activities in procuring, accepting and investing money belonging to persons other than your shareholders are contrary to the conditions set out in our aforesaid letter of 16th September, 1986;

We hereby revoke the permissions given to you under the Exchange Control Law, Cap. 199 in the aforesaid letters».

The case of the applicants, in a nutshell, is as follows:-

The applicants allege that rumours reached the Central Bank about what the Bank calls «boiler room» operations in Holland and the Bank was informed that one such firm operating in Holland was First Commerce Investment Ltd., and it was also informed that Mr. Leslie Weber, the Managing Director of applicants 1, was employed as a salesman of shares for some time; on the basis of the above, the bank unjustifiably and unjustly drew the unwarranted conclusion that applicants 1 were carrying out in Cyprus a «boiler room» operation; and on these rumours and suspicions and on unproved information the bank decided as from 7th February, 1987 or at the latest from 10th February, 1987 to

revoke the licences of applicants 1 without proper or further inquiry and on unjustified grounds both in law and in fact

The applicants also allege that the grounds set out in the letter of revocation dated 14th February 1987 (Exhibit 8), are not the true grounds on which the respondent bank based their decision for the revocation of the permits but these are pretexes and made up grounds used by or devised by the respondents in order to conceal the true grounds on which the revocation was decided upon, because the respondents correctly realized that they could not substantiate in law the grounds given in paragraph 8 of the opposition which are really the true grounds They submitted that they are not guilty of the acts ascribed to them

Applicants alleged that the respondents took the decision to withdraw the permits and/or licences of the respondent

a) in abuse of power, and/or

b) in wrongful and/or unlawful exercise of discretionary powers, and/or

c) on a misconception of law and/or facts, and/or

d) in violation of the principles of proper and sound administration, and/or

e) wrongly and/or unlawfully and/or without proper inquiry, and/or

f) unlawfully and/or wrongly for all the additional reasons stated in the application and/or the address

I propose to deal with the grounds given in the revocation letter of 14th February, 1987 (Exhibit 8), in the light of the arguments advanced by counsel

With regard to the first ground that the permission of the respondent bank was obtained by misrepresentations that Downholme International Investments N V was a Dutch company whilst it was a company of Netherland Antilles, counsel for the applicants contended that if there was any misdescription, that was contained only in Exhibit 5(a) which is the letter addressed by the then advocates of the applicants to the bank The then advocates, however, he said, had attached a photocopy of Exhibit 5 (b) written by Leslie Steward Weber, the Managing Director of applicants 1 which contains no misdescription of Downholme

International Investments N.V. and that with only rudimentary diligence by the respondents the inconsistency could have been readily noticed.

Counsel for the respondents contended that it is immaterial whether the misdescription was held out by the applicants or by their advocates. The respondent bank received, he said, to put it lightly, wrong information about the place of registration of the said company. The advocate was acting on behalf of the applicants 1 and the respondent bank expected to receive correct information regarding the registration of the said company in as much as by s. 2 of the Advocates Law, Cap. 2 (as amended) advocates only can register a company in Cyprus; and the bank in exercising its discretion whether or not to grant permit to the said company relied on this information and granted the permits. Counsel alleged that had the Central Bank been aware that the Downholme company was registered in Netherland Antilles it would never have given the permits because it is its policy when giving permits to companies registered in places of convenience to impose certain strict conditions so as to safeguard the financial interests of Cyprus and, especially, the interests, the promotion, maintenance and development of substantive foreign exchange interests in Cyprus. He also contended that the respondents remained silent when they knew that the respondent bank granted the permits on the information received by their advocate to the effect that the company was registered in Holland. He said, that Dutch Antilles is a place of convenience because the shares of a company are bearer shares and they can change hands without any control exercised by the place of registration.

Counsel, however, for the applicants suggested that even if the respondent bank acted on wrong information supplied to it, then, this was not a material factor for the revocation of the permit. He said that it was insignificant because it did not contravene the policy of the Central Bank which policy appears at p. 33 in Exhibit 17, which is a pamphlet inviting foreigners to invest in Cyprus, in as much as, the beneficial owners of York International Securities B.V. and Downholme International Investments N.V. were the same persons and were disclosed to the Central Bank. This pamphlet is entitled «Cyprus - International Centre of Business and Professional Services.» He went on to say that the relevant passage in Exhibit 17 relied on reads as follows:-

«In order to protect the public interest and preserve the

good name of Cyprus it has been decided that, with the exception of offshore enterprises which belong to public corporations or to legal entities whose shares are traded on recognized stock exchanges, offshore enterprises whose ultimate beneficial owners have not been disclosed to and approved by the Central Bank shall not be allowed to open their own administrative office in Cyprus.

Such offshore enterprises may secure permission to open their own administrative office in Cyprus at any time by disclosing to the Central Bank their ultimate beneficial owners and by making arrangements with the Central Bank regarding transfers of ultimate ownership normally as follows:

a) Offshore enterprises which belong to foreign entities with bearer shares shall make arrangements with a recognized bank or trust company to hold the share certificates in the names of the ultimate beneficial owners and to inform the Central Bank of Cyprus regarding any changes in the ultimate beneficial owners.

b) Offshore enterprises which belong to foreign entities with registered shares shall make arrangements with appropriate professionals to submit annually to the Central Bank copies of the relevant certificates showing the names and other particulars of the persons on whom the shares are registered and of the persons, if any, for whom they are acting as nominees».

Counsel, went on to say, that the policy of the Central Bank appearing in Exhibit 17, does not differ from the policy of the bank set out in Exhibit 14 which is a letter addressed to the Vice-President of The Cyprus Bar Council by the Central Bank.

Counsel for the respondents, however, alleged that the declared policy of the bank appears in Exhibit 14, which is an official document signed by E. Ioannou, an officer of the Central Bank of Cyprus, who is Chairman of the Permanent Consultative Committee on Offshore Business, and that furthermore, at p.3 of Exhibit 17, which is the preface and is signed by Afxentiou, the Governor of the Central Bank of Cyprus, it is stated:- «While every effort has been made to delineate in clear terms the most important rights and obligations of offshore enterprises and their ex-patriate personnel the Central Bank can accept no responsibility in respect of any errors or omissions. Interested parties are advised to seek

professional advice of specific issues The Central Bank is ready to answer inquiries and to supply additional information or clarifications upon request»

I have examined both documents i e Exhibit 14 and p 33 of Exhibit 17 and I have reached the conclusion that the policy of the Central Bank with regard to offshore enterprises is not stated to be the same in both documents The main difference between the two is that the ultimate beneficial owners shall not change without the Central Bank's prior approval This is contained in Exhibit 14

I have considered the contentions of both counsel on this issue and I am satisfied that the Central Bank of Cyprus acted on information given to it by the then advocates of applicants 1 and I am, also, satisfied that the bank would not have given the permits if it knew that the Downholme company was registered in the Dutch Antilles which is a place of convenience

Ground 2 of the revocation letter reads as follows -

> «(b) You are carrying out the business of brokers which is not envisaged in and is ultra vires your Memorandum of Association»

It is not in dispute that the applicants were carrying on the business of brokers What is in dispute, however, is whether this was intra vires or ultra vires the Memorandum of Association

Counsel for the applicants contended that a mere perusal of the Memorandum of Association and by application to it of elementary and well - established principles of interpretation of clauses in the memorandum of a company, will readily establish that the respondents were labouring under a serious misconception as to the facts and the law He maintained that the objects of the company are set out in numerous sub-paragraphs of the «Objects Clause» which is paragraph 3 of the Memorandum He said that in particular sub-clauses (1) and (2) of the Memorandum deal with the activities of the company in investments and administration of investments and in dealing in shares of any company and for anybody. He went on to say that they provided for the offering of services by the company of an administrative, managing or other ancillary nature and also for providing consultancy services in respect of shares, bonds, debentures, etc , and he submitted that the business of brokers of shares is nothing else but a specific and supporting business of a

very vide range of activities in share which the company, in its Memorandum, is entitled to engage in For example, he said, that sub paragraph (6), which is drafted in the usual 1 terms, gives to the Board power, in effect, to do whatever they may deem to be beneficial to the company and that the legality, wide scope and effectiveness of this clause has been considered by the Court of Appeal in England in respect of a company incorporated in England with almost an identical wording of the corresponding clause The case in question is Bell Houses Ltd , v City Wall Properties Ltd [1966] 2 Q B 656 Counsel for the applicants cited another four cases in support of his contention

Counsel for the respondent, on the other hand, submitted that the business of brokers is ultra vires the Memorandum of Association because in the sub-paragraphs of the «objects clauses» of the Memorandum of Association is not mentioned the business of brokers and it cannot be said that it is ancillary to the objects of the Memorandum of the company

What is in issue is the construction of the Memorandum of the company, in order to ascertain whether the business of brokers is intra vires or ultra vires the Memorandum

In the case of Bell Houses Ltd , (supra) the Court had to construct sub-clause (c) which reads as follows.- «To carry on any other trade or business whatsoever which can in the opinion of the board of directors, be advantageously carried on by the company in connection or as ancillary to the general business of the Company »

Salmon L J had this to say at p 690 -

«As a matter of pure construction, the meaning of those words seems to me to be obvious An object of the plaintiff company is to carry on any business which the Directors genuinely believe can be carried on advantageously in connection with or as ancillary to the general business of the company It may be that the directors take the wrong view and in fact the business in question cannot be carried on as the directors believe But it matters not how mistaken the directors may be Providing they form their view honestly, the business is within the plaintiff company's objects and powers This is so plainly the natural and ordinary meaning of the language of sub-clause (c) that I would refuse to construe it

differently unless compelled to do so by the clearest authority. And there is no such authority. Indeed, the authorities establish that the obvious meaning to which I have referred is in law the true meaning of the words.»

I have examined carefully this issue and I have come to the conclusion that the business of brokers is ultra vires the Memorandum of the company because it is not expressly stated in the Memorandum as part of the objects clause and also it cannot he held that the business of brokers is incidental and conducive to the attainment of the objects of the company.

I, now, turn to ground (c) of the letter of revocation which reads as follows:-

«Your activities for procuring, accepting and investing money belonging to persons other than your shareholders are contrary to the conditions set out in our aforesaid letter of 16th September, 1986».

This is a short issue and counsel for the applicants contended that applicants did not carry out activities which are customarily performed by banks and he went on to say that «investment» presupposes exercise of discretion by the person «managing funds» as to where to invest. Buying and selling shares, at specific instructions of clients as to when to buy or sell, how many and at what prices, is the business of a share «broker» and cannot be held to be an investment.

The short answer to this is that the applicants admitted that they sold shares to over 3,000 persons which were not shareholders of their companies and, therefore they acted contrary to the conditions set out in the said letter of the 16th September, 1986.

I, now, propose to examine the grounds set out in paragraph 8 of the Opposition for not modifying the conditions of the permits given to the applicants, and this on the principle that the administration in achieving its lawful aims should choose always the less onerous for a private citizen.

The grounds are the following:-

(a) The applicants have not demonstrated the seriousness and professionalism which is demanded in the carrying out of the brokerage business, a field which is extremely sensitive because it deals with the investment of money of a large section of the public.

(b) The applicants were not giving adequate financial data and were not issuing a proper prospectus, but, on the contrary they were applying methods which are contrary to all brokerage propriety and which are described as «boiler rooms» methods.

(c) Both Mr. Leslie Steward Weber, who is the Managing Director of applicants 1 and who is represented as shareholder of applicants 2 as well as the officer of applicants 1 Mr. Tony Murphy, were connected with First Commerce, and in any event, neither these two nor the other two alleged shareholders of applicant 2, afforded the safeguards for such a serious activity.

Counsel for the applicants contended that the respondent bank formed a hasty opinion as to the activities of the company, its shareholders and officers and acted under a misconception of facts due mainly to lack of due inquiry.

Counsel for the respondent contended that there was sufficient material before the respondent bank to reach the conclusions set out in paragraph 8(a) of the Opposition and this material is contained in the publications and other material contained in Exhibit 6 and the respondent bank decided that if it issued a permit with modified conditions, this would not be conducive to the financial interests of Cyprus and, especially, would not be in the interests of the protection, maintenance and development of substantive foreign exchange interests of Cyprus.

Regarding paragraph 8(b) counsel for the applicants maintained that it was not the duty of the applicants to issue a prospectus as alleged in that paragraph and this is a misconception of fact which would vitiate the decision of the bank not to issue a permit to the applicants on modified conditions. He went on to say that there was no material before the bank that the applicants employed the so-called «boiler rooms» methods. Furthermore, he said, the respondents did not allege that this is unlawful in Cyprus.

Regarding paragraph (c) counsel for the applicants suggested that Leslie Steward Weber was not in any way connected with First Commerce but that he was merely employed by First Commerce for a short period of seven months and this cannot be described that he was connected with the First Commerce.

Counsel for the respondents, on the other hand, suggested that there was sufficient material that the applicants were not giving

adequate financial data and that they were employing the «boiler rooms» methods and that, in any event, neither Leslie Steward Weber nor Tony Murphy, who is an officer of applicants 1, afforded the safeguards for such a serious activity. He explained that by the word «connected» he meant that they worked with First Commerce.

Counsel for the respondents' argument that the applicants were not bound to issue a prospectus is correct because applicants were not bound to issue a proper prospectus in selling shares of other companies; and the question arises what is the effect in law of the fact that the respondent bank was under the impression that the applicants were bound to issue proper prospectus. Before doing so, I propose to deal with the issue whether the respondent bank had a duty to examine the possibility of modifying the conditions of the permits before their absolute revocation.

In the case of *Karayiannis and Another v. The Central Bank of Cyprus and Another* (1980) 3 C.L.R., p. 108 the majority decided that the respondent bank was not bound to do so because doing so should embark on an exercise of redrafting the objects in the Memorandum of Association of a company to be formed.

The facts of that case were that applicants No.1 was a non-resident, applied to the respondent No. 1 for permission, under s. 10 of The Exchange Control Law, Cap. 199, to subscribe the memorandum of a company to be formed under the name «Appollon 8 Tours Ltd.,». From the objects of the proposed company it appeared that it was no just an ordinary travel agent dealing only with the issue of tickets but it could deal, inter alia, with the organization of cruises and excursions and generally the attraction and development of internal and international tourism. The applicants in that case alleged that the respondents resorted to absolute prohibition when considering whether by granting conditionally or to terms the permission sought same would have served the public interest and policy. A. Loizou, J. had this to say at p. 119-120:-

> «Regarding the ground that the respondent Bank should have examined the possibility of imposing conditions before rejecting the appellant's application, I wish to point out that the case of *Aphrodite Michael v. The Improvement Board of Dhali* (1969) 3 C.L.R. p. 112 should be distinguished. That was a case of interference with the right of ownership

safeguarded by Article 23 of the Constitution and it was decided on its facts and in relation to the question whether there existed the power to disallow completely any building operations on the property of that applicant which have been included in the Second Schedule to the Antiquities Law, Cap. 31, or whether the appropriate Authority could have imposed terms instead. On the other hand if I were to accept in the present case the sub-judice decision should have been annulled because the respondent Bank did not examine the possibility of imposing conditions before rejecting the appellants' application, that would mean that the respondent Bank should embark on an exercise of redrafting the objects in the memorandum of association of a company to be formed, for the purpose of intimating to a prospective applicant how far and in what circumstances its discretion would be exercised under section 10(2) of the Exchange Control Law, Cap. 199 which in my view was not required of the respondent Bank in the circumstances.».

Triantafyllides, P., had this to say on this issue in his dissenting judgment:-

«The same principle is reflected in a series of cases (as, for example, No. 300/1936) in which the Council of State in Greece has held that in achieving its lawful aims the administration should choose always the less onerous course for a private citizen, though such principle, as pointed out by Daktoglou (supra at p. 108) has been deviated from occasionally by the Council of State in Greece when it did not seem to be adopted by the legislation applicable to a particular case.»

Counsel for the applicants relied on this issue on the case of *Vassos Eliades Ltd. v. The Republic* (1979) 3 C.L.R. 259 where the Court annulled the decision of the Minister of Commerce who refused to grant a licence to import rubber gloves because they held that the Minister could grant a licence and impose conditions on the principle that the administration has to choose the more equitable one instead of the more onerous choice.

It should be noted that in the *Eliades* (supra) there was a statutory provision making it incumbent upon the Minister to make such licence subject to such conditions as he may deem fit (See s.4(1) of the Imports (Regulation) Law, 1962 (Law 49/62). In

the case in hand there was not such a statutory provision. I think the facts of the present case bear similarities to the facts of the case of Karayiannis (supra) and I think that the respondent bank ought not to have examined the possibility of imposing conditions before rejecting the applicants' application, because that would mean that the respondent bank should embark on an exercise of redrafting the objects in the Memorandum of Association of the company; but since the bank proceeded to examine the possibility of imposing conditions before rejecting the appellants' application, I shall proceed and examine what is the effect, in law, the fact that the respondent bank was under the impression that the applicants were bound to issue proper prospectus.

Counsel for the applicants contended that it is a principle of administrative law that where several grounds are given for an act and/or decision, and where even only one of such several grounds or decisions are held to be defective, then the act or decision becomes voidable. He went on to say that the justice of this principle and the justification for its application is that, otherwise, it would be uncertain to what degree the erroneous ground has influenced the decision. In support of this proposition he relied on a passage in the Conclusions from the Jurisprudence of the Greek Council of State 1929 - 1959 which reads as follows:

«Κατ' εξαίρεσιν γίνεται δεκτόν, ότι, πεπλανημένης ούσης μιας των πλειόνων αιτιολογιών, η πράξις καθίσταται εν τω συνόλω της ακυρωτέα, εφ' όσον δεν συνάγεται εξ αυτης ο βαθμός, καθ' όν η πεπλανημένη αιτιολογία επέδρασεν επί της εκδόσεως της πράξεως (βλ. π.χ. 966(48)».

(«Exceptionally it is accepted that if one of more grounds, given in justification of a decision, is erroneous, the decision should be annulled in toto, if it does not appear therefrom the degree in which the erroneous ground influenced the taking of a decision»).

With due respect to Counsel for the applicants the passage cited is not the general rule but the exception to the rule. The whole passage under the heading «Several grounds to justification one of which is defective» reads as follows:-

«ΥΙΙ. Πλείονες αιτιολογίαι ων η μια πλημμελής.

Εν περιπτώσει επαλλήλων αιτιολογιών γίνεται δεκτόν ότι η πράξις είναι νόμιμος, εάν η μια τούτων δύναται επαρκώς να την στηρίξη.

Κατ' εξαίρεσιν γίνεται δεκτόν, ότι, πεπλανημένης ουσης μιας των πλειόνων αιτιολογιών, η πράξις καθίσταται εν τω συνόλω της ακυρωτέα, εφ' όσον δεν συνάγεται εξ αυτής ο βαθμός, καθ' ον η πεπλανημένη αιτιολογία επέδρασεν επί της εκδόσεως της πράξεως (βλ. π.χ. 966(48)».

(«YII. Several grounds, one of which is defective.

In case of several grounds in justification of a decision it is accepted that the decision is legal, if one of the grounds is sufficient to support it.

Exceptionally it is accepted that if one of more grounds, given in support of a decision, is erroneous, the decision should be annulled in toto, if it does not appear therefrom the degree in which the erroneous ground influenced the taking of a decision»).

In my opinion the fact that one of the grounds set out in paragraph 8 of the Opposition was defective, does not make all the grounds defective because I do not think that in the circumstances of this case, this misconception influenced to a great extent the respondent bank in its decision.

Having considered the matter placed before the respondent bank and the arguments of both counsel respecting paragraph 8 of the Opposition. I have come to the conclusion that the respondent bank had sufficient material to justify the grounds set out in paragraph 8 of the Opposition for not granting a modified permit. I think, at this stage, it is appropriate to deal with the message sent by Interpol to the respondent bank which is Exhibit 18 before the Court. I am of the view that the bank ought not to have taken into consideration the contents of this message because the applicants were not given the opportunity to be heard with regard to the contents of the message and this is contrary to the rules of natural justice; and the question arises whether the respondent bank had taken into consideration Exhibit 18 before reaching its decision. It appears from Exhibit 13, which are the minutes of the meeting of the respondent bank of the 14th February, 1987, in which it decided to revoke the permits of the applicants and to reject the modification of the permits that the message of Interpol was not taken into consideration by the respondent bank. Although it

appears in Exhibit 13 that they examined the message of Interpol they did not rely on it in taking their decision and this is apparent from the paragraph in Exhibit 13 that the information received from Interpol confirmed their findings

The crux of this case is whether the respondent bank properly exercised its discretion and the decision it reached was reasonably open to it on the basis of the material before it Our Case Law has established that although the administrative authorities have discretionary powers under the Law, a discretion has to be exercised properly and it is well settled that in matters of discretionary powers this Court will not interfere so long as on a proper exercise thereof a decision has been taken which was reasonably open to the appropriate organ on the basis of the material before it And that this Court will interfere if the said powers have been exercised in a defective manner or when the decision reached cannot be validly supported by the reasons given when material considerations have not been duly taken into account (See Karayiannis case, supra)

With due respect, I adopt what A Loizou, J had said in his judgment in the case of Karayiannis at p 120, with regard to the discretion of the respondent bank, which reads as follows -

> «The paramount consideration therefore, under the aforesaid provision is to control the shareholding in companies by non-residents, as upon the registration of a company a subscriber automatically becomes a member and a holder of the shares for which he has signed, in this case 3,334 ordinary shares of one pound each as compared with 6,666 shares to be subscribed by residents This is a section that gives an unfettered discretion and as it covers a matter of fiscal policy it should be considered as a wide one Being so, an administrative Court is always cautious and slow to interfere with its exercise by the appropriate organ I therefore have no difficulty in upholding the approach of the learned trial Judge in the circumstances on this issue as same was neither wrong in Law nor exercised in abuse or excess of power, nor reached under any misconception of fact After all the extent of judicial control of the administrative discretion is confined to the examination of the lawful thinking and the observance of the lawful limits within which such discretion should be exercised »

I have carefully examined the material which was before the respondent bank and I gave due consideration to the arguments of both counsel and I have come to the conclusion that the respondent bank exercised its discretion properly. The decision it reached was reasonably open to it on the basis of the material before it and is validly supported by the reasons given therefor. I, therefore, have no difficulty in reaching the conclusion that the sub judice decision was neither wrong in law nor exercised in abuse or excess of power, nor reached under any misconception of fact or lack of due inquiry.

I shall now proceed and examine the second decision of the respondent bank of 20th February, 1987 to block the accounts of the applicants in exercise of the rights vested in the Central Bank under section 40(1) of the Exchange Control Law, Cap. 199, by virtue of s. 34 of the same law.

Counsel for the applicants argued that this decision is unlawful and contrary to the true meaning and effect of the Exchange Control Law, Cap. 199 and the declared policy as to «offshore» companies. He went on to criticize the respondent bank for the various actions it had taken subsequent to the blocking of the accounts to the Immigration and Customs authorities.

Counsel for the respondents said that after the bank revoked the permits of the applicants, received information on 16th February, 1987 from the authorities of Jersey (Exhibit 9), that Richmond Financial Services Ltd., which applicants 1 were presenting as being the underwriters for the shares the sale of which they were promoting, was in fact using the address of a law office in Jersey without the consent of the said law office. The said law office has repeatedly refused to act as the representative of the group of companies of Richmond Financial Services Ltd., because it was not satisfied with the good faith of the persons behind this group. So, the respondent bank blocked the accounts of the applicants. The purpose, he went on to say, of this blocking of accounts was the supervision of the movement of the accounts of the applicants in such a way as to safeguard the interest of Cyprus and to avoid the flow of money abroad either with direct remittances or through «reciprocal dealings» in Cyprus in violation of the law. The applicants, could, however, make payments to residents as well as to nonresidents of Cyprus subject to the approval of the respondent bank.

As I have said hereinabove, in cases such as the present, the administrative organ has a very wide discretion as it covers a matter of fiscal policy and an administrative Court is always cautious and slow to interfere with its exercise of discretion. In these circumstances I am of the view that the exercise of the discretion of the respondent bank was neither wrong in law nor exercised in abuse or excess of power, nor reached under any misconception of fact and their decision was, also, reasonably open to it.

For all the above reasons the recourse is dismissed with costs against the applicants.

Costs to be assessed by the Registrar.

Recourse dismissed with costs against applicant.