Title:
Hamburger Freundschaftliche Arbitrage, Ad Hoc-Award of March 12, 1984, YCA 1991, at 11, 12 et seq.

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Table of Contents:
Award of 12 March 1984
   Facts
   Excerpt

Content:

Award of 12 March 1984

Partie Claimant: FR German buyer; Defendant: Thai seller
s:
in:
Subject matter:
- legal authorization to sign contract
- lack of proper supervision of employee

Facts

The parties concluded a contract through a broker. The negotiations were conducted on the part of the Thai seller by a Mr. P, employee of the seller. A contract supplied by Mr. P on 18 January by the FR German buyer was confirmed on the following day by the management of the Thai seller.

The arbitrators held that the Thai seller was validly bound by the contract.

Excerpt

[1] "Defendant, which has its seat in Bangkok, is a major company in the international trade in [specific fruit]; this fact is notorious. In a company of such importance, one may expect the presence of, and the compliance with an established division of responsibilities regulating the employees' authority and

... at least preventing their repeated abuse of this authority. Mr. P acted repeatedly, and not just once, in the course of the negotiations leading to the contract at issue. Using defendant's letterhead, he signed the offer dated 15 January 1982; the telex sent to defendant by its Thai agent A was addressed to Mr. P; Mr. P signed the contract of 18 January drawn up by A and returned it to A; finally, he signed claimant's sales confirmation dated 19 January and also returned said document to claimant.

[...]

[5] "The arbitral tribunal, therefore, concludes that defendant granted to Mr. P the legal authority to make the offer of 15 January. It needs not be decided whether defendant gave Mr. P a special authorization for the contract at issue or a general authorization. Once given, this authorization was effective as far as the relationship with claimant is concerned, even if Mr. P did not inform defendant's management of the use he made of this authorization.

[6] "This legal authorization covered, at the minimum, the conclusion of the contract dated 19 January. Defendant's only
defence in regard to the extent of the disputed authorization is that the payment arrangements in the contract of 19 January are different from those mentioned in the contract of 18 January. According to the principle of good faith, defendant cannot plead an excess of authority based on this discrepancy. It is defendant's own management that made this excess of authority possible by not exercising sufficient supervision over its employee, Mr. P. Claimant could not have known of this (possible) excess of authority even if it had acted with due care.

[...]

Referring Principles:

II.4 - Agency by estoppel / apparent authority