

Dutch Supreme Court partially sets aside award for applying incorrect interest rate

by *Practical Law Arbitration*, with *OSK Advocaten*

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In *HCCEEH v Alpha (ECLI:NL:HR:2023:438)*, the Dutch Supreme Court partially set aside an award, to the extent the tribunal awarded an increased interest rate in an amended award.

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The Dutch Supreme Court has partially set aside an amended award to the extent it increased the interest awarded to a higher rate than the tribunal had originally determined in the initial award. The court refused to set aside the interest component of the award in its entirety.

In a dispute under a \$52 million sale and purchase agreement, the seller, Alpha, filed a claim in a Dutch-seated arbitration seeking payment of the remainder of the purchase price, plus 5% interest. After further submissions and two hearings, in its closing submission Alpha then increased its claim for interest from 5% to 11%. In its award, the tribunal found for Alpha and, among other things, awarded interest at 5%. Alpha then applied for an amendment to the award, requesting that the tribunal award interest at 10.5%. The tribunal accepted this and amended the award, fixing interest at 10.5%.

The purchaser, HCCEEH, then applied to the Dutch courts to have the award set aside, either to the extent it awarded more than 5% interest or, alternatively, in its entirety.

At first instance, the District Court set aside the award to the extent it awarded more than 5% interest but, on appeal, the Appeal Court set aside the full interest component of the award.

On appeal by Alpha, the Supreme Court ruled that:

- An award could not be set aside in its entirety simply because the incorrect interest rate was applied.
- An award can be partially set aside, however, if the award includes numerous decisions that are separable, so that one decision can be set aside, leaving the others undisturbed.
- The Appeal Court was wrong to set aside the award of interest in its entirety, as the increased interest rate in the amended award was clearly separable from the other parts of the award.

The Supreme Court ruled that in setting aside the award only to the extent it awarded more than 5% interest, the state courts avoided interfering in questions on the substance of the dispute, which were reserved to the tribunal.

This case underlines the importance of maintaining a clear and consistent position in relation to claims for interest, so as to avoid challenges of this kind.

Case: [HCCEEH \(HCC\) v Alpha \(ECLI:NL:HR:2023:438\)](#) (Dutch Supreme Court) (24 March 2023).

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