

X v. Y, Award, CAM Case No. 7808, 10 February 2009

Stefano Azzali, Chamber of Arbitration of Milan;

Benedetta Coppo, Chamber of Arbitration of Milan

Headnote

In X v. Y, the arbitral tribunal constituted under the Rules of the Chamber of Arbitration of Milan ruled on terminating the agency agreement between the parties (19 January 2009)

Digest

X, an Austrian company, and Y, a Romanian company, signed an agency agreement (the "Agreement") in 2004 according to which X was required to buy certain products in East European Countries on behalf of the latter. The Agreement was signed *intuitu personae*, that is to say taking into consideration X's CEO, Mr K, as the supervisor of X's activities.

The Agreement expressly provided that each party was entitled to terminate the Agreement in case of:

- a) Cessation of production activities by Y;
- b) bankruptcy or any other similar procedures to which any of the parties is subject to, even extra-judiciary, or the compulsory or voluntary liquidation and/or civil incapacities, criminal or penal convictions of the agent and;
- c) cessation or substantial reduction of Mr. K's activities.

The Agreement also contained an arbitration clause providing for arbitration and that three arbitrators shall form the arbitral tribunal. The parties agreed in the Agreement to apply Romanian substantive law under the Rules of the Chamber of Arbitration of Milan.

In 2008 X merged with another company, W, and Y terminated the Agreement on the basis that W disrespected the Agreement. X filed its request for arbitration claiming for damages.

The arbitral tribunal ruled that Y's termination of the Agreement does not fall under any of the agreed causes of termination. The tribunal found that the termination entitle an exceptional cause according to Romanian law No. 509/2002. Yet, as provided by the said law, Y had to pay for the damages occurred to X because of its unilateral termination of the contract, both as actual damages and loss of profits. Parties: unknown, case no: 7808, Arbitral Tribunal under the Rules of the Chamber of Arbitration of Milan, Italy.