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14 February 2014

Subject: Document 470/TA.797

Dear Dr Spiliotis,

Thank you for your query regarding URC 522. Please find below the opinion of the ICC Banking Commission Technical Advisers and Officers.

QUOTE

Documentary Collection dated 14th September 2012 for EUR 53.040,00 (ICC URC 522 applicable) (Tenor: documents against payment).

05th October 2012:

Remitting Bank authorized Collecting Bank to forward the collection documents against payment of a reduced amount for EUR 45.084,00 (i/o EUR 53.040,00) to drawee. The authorization was transmitted by authenticated MT 799.

09th October 2012:

Unfortunately and by error the Collecting Bank had remitted erroneously (without any instruction by drawee) the amount for EUR 53.040,00 i/o EUR 45.084,00 to Remitting Bank. Documents had been handed over to drawee. Funds had been credited by Remitting Bank to the drawer (which collecting bank has learned from their local representative who had contacted the manager of the remitting bank) without clarifying with the collecting bank. (The first reaction and payment confirmation Collecting Bank received from the Remitting Bank was on 25th Feb. 2013 via MT 499.)

Since 11th October 2012:

As a consequence of the wrongful payment, we (Collecting Bank) have been demanding from the Remitting Bank the refund of the overpaid amount for EUR 7.956,00 by several S.W.I.F.T messages but with no success. Problem: Drawer and drawee take the advantage of the new situation to negotiate and to offset new orders against the current one.

Opinion of Remitting Bank:

For refund of the excess amount due to wrongful payment Remitting Bank needs again a new customer authorization.

Our question:

Is the Remitting Bank obliged to keep on their first authorization wherein a reduction of the collecting amount have been already advised to the Collecting Bank?

Our (Collecting Bank) opinion:

Because of our early and on time information (2 days after remittance) to the Remitting Bank we think that the refund of the excess amount must follow conclusively.

UNQUOTE

ANALYSIS

Remitting bank sent a documentary collection, subject to URC 522, to the collecting bank with instructions to release documents against payment of EUR 53.040,00. On Friday October 5 the remitting bank sent a SWIFT MT799 (a Free Format message) reducing the amount to EUR 45.084,00. Note the remitting bank did not use an MT430 Amendment of Collection Instruction to transmit this information.

On Tuesday October 9 the collecting bank remitted the amount in the initial collection instruction, not the reduced amount in the MT799. The query states that this payment has been made erroneously and without any instruction by drawee, thus the amendment of the amount had been known to both the collecting bank and the drawee even though a MT799 had been used instead of a MT430. Even though it is not clear from the query whether the drawee did give instructions to pay the reduced amount or no instruction to pay at all, it may be assumed that the drawee welcomed the amendment and gave corresponding payment instructions.

The remitting bank failed to follow their own amended collection instruction and credited the payment to the drawer. Two days later, the collecting bank requested return of overpayment made in error. Remitting bank states they must have an authorization from the drawer to refund.

URC 522 do not regulate amendments of collection instructions. In the absence of rules in the URC the remitting bank may have assumed that their amendment reached the collecting bank too late for consideration. In this case this could easily have been the case (amendment sent on Friday – payment made on the following Tuesday). However, it would have been prudent to seek clarification prior to crediting the principal.

URC 522 sub-article 4 (a) (i) states:
"All documents sent for collection must be accompanied by a collection instruction indicating that the collection is subject to URC 522 and giving complete and precise instructions. Banks are only permitted to act upon the instructions given in such collection instruction, and in accordance with these Rules."

CONCLUSION

Both the remitting and collecting bank followed the original collection instructions, not the amended collection instructions. Both banks made errors. While the return of an overpayment is not addressed in the URC522, standard banking practice is for banks to work together to resolve such errors.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission's officers based on the facts under "QUOTE" above. They do not necessarily reflect the opinion of the ICC Banking Commission until the Banking Commission renders its approval or disapproval of these opinion(s) at the next scheduled meeting.

INTERNATIONAL CHAMBER OF COMMERCE

The reply given is not to be construed as being other than solely for the benefit of guidance and there should be no legal imputation associated with the reply offered.
If this query relates to a matter currently under consideration by the courts, the ICC Banking Commission will refrain from considering it for adoption as an opinion.

Neither the ICC nor any of its employees, nor any member of the Banking Commission, including the Chairman, Vice-Chairmen or Technical Advisers shall be liable to any person for any loss or damage arising out of any act or omission in connection with the rendered opinion(s).

Yours sincerely,

Thierry Senechal
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