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FEDERAL COURT

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

and

GEORGE KOURIDAKIS

Respondent

NOTICE OF APPLICATION FOR JUDICIAL REVIEW

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Montreal.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: February 10, 2023

Issued by: _____

Address of local office: _____

**TO: Federal Court
Chief Administrator
30 McGill Street
Montréal, Québec
H2Y 3Z7**

**AND TO: George Kouridakis
3-8379 Querbes Avenue
Montreal (Quebec) H3N 2C6**

**ET : Me Raphael Levy
Lawyer for the respondent
1440, rue Ste-Catherine
Bureau 210
Montréal (Québec) H3G 1R8**

**AND TO: Me Mark Abramowitz
Arbitrator and federal tribunal subject to the application
49 Aldercrest
Dollard-des-Ormeaux (Québec) H9A 1V1**

**AND TO: Attorney General of Canada
Quebec Regional Office
Department of Justice Canada
Guy-Favreau Complex
East Tower, 9th Floor
200 René-Lévesque Boulevard West
Montréal, Quebec H2Z 1X4**

Telephone: 514-283-4934

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Email: AGC_PGC_MONTREAL@JUSTICE.GC.CA

RELIEF REQUESTED

1. This is an application for judicial review in respect of:
 - a. Arbitrator Me Mark Abramowitz, appointed under the *Canada Labour Code*, and in particular his decision dated January 11, 2023, on redetermination of the quantum in *Kouridakis v Canadian Imperial Bank of Commerce*, Grievance HRSDC file: YM2707-10803,
2. The applicant makes application for:
 - a. An order quashing the redetermination decision of the arbitrator.
 - b. An order making the decision that the arbitrator should have made, namely evaluating damages at \$10,205.
 - c. In the alternative, an order directing the arbitrator to make a further redetermination.
 - d. Costs of this application at the upper end of column IV.

THE GROUNDS OF THE APPLICATION ARE:

1. The respondent Mr. Kouridakis was employed as a clerk with the applicant CIBC.
2. Mr. Kouridakis had a history of conflict and disrespect towards his managers, as well as unprofessional and inappropriate behavior which affected the harmony of the workplace and which had been the subject of several verbal and written warnings.
3. On June 14, 2016, CIBC terminated Mr. Kouridakis' employment following a final incident of violent and inappropriate behavior toward his manager.
4. Mr. Kouridakis challenged his dismissal before arbitrator Mark Abramowitz.
5. On September 28, 2018, the arbitrator decided that the dismissal of Mr. Kouridakis to be without just cause, but nonetheless found that termination was necessary. The arbitrator denied Mr. Kouridakis' request for reinstatement and determination for an appropriate severance award was reserved for a later hearing.
6. Mr. Kouridakis sought judicial review of the arbitrator's decision on the merits. His application for judicial review was rejected by Justice Pamel on September 24, 2019 (*Kouridakis v. Canadian Imperial Bank of Commerce*, 2019 FC 1226).
7. The arbitrator issued a decision on the quantum of severance on January 28, 2020. He awarded Mr. Kouridakis \$10,250 in damages.
8. In this decision, the arbitrator found that given Mr. Kouridakis' misconduct, which is at the base of his dismissal, and his minimal effort at mitigating the damages, a

“50% reduction of this average or 3 months of salary ($\$41,000 \div 12 \times 3$) or \$10,250 is appropriate as a severance indemnity.”

9. The Tribunal denied the claim sought by Mr. Kouridakis for moral damages and reimbursement of his legal fees considering that there was no evidence of abuse, malice, bad faith, recklessness whim or tactics of undue delay on the part of the Applicant in its decision to dismiss the Mr. Kouridakis.
10. Mr. Kouridakis once again sought judicial review.
11. On October 6, 2021, Justice St-Louis ordered a redetermination of the quantum of severance (*Kouridakis v. Canadian Imperial Bank of Commerce*, 2021 FC 1035).
12. Her order was not based on any finding of unreasonableness for the award of \$10,250. Instead, she found that the arbitrator had issued insufficient reasons to explain his decision to award that amount.
13. Hearings for the redetermination were held on March 17 and October 25, 2022.
14. The arbitrator issued his decision on the redetermination on January 11, 2023, awarding \$43,200 to Mr. Kouridakis. This represented \$36,000 in damages and \$7,200 in legal fees.
15. The redetermination decision is unreasonable for at least the following reasons:
 - a. The arbitrator’s redetermination decision does not explain why it was appropriate to increase the damages award from \$10,250 to \$36,000. There was a failure to provide sufficient reasons for such a drastic change in outcome, even though the law and the facts were the same.
 - b. Given that the facts and law were the same, and the Federal Court had not identified any error of law or fact in the first decision, it was unreasonable to reach a different result on the redetermination.
 - c. The arbitrator’s redetermination decision does not explain why it was appropriate to increase the length of the severance period from 6 months to 18 months for damage calculation purposes. This represents a tripling of the relevant period, and yet the decision does not provide any reasons for the departure from the previous conclusion.
 - d. The arbitrator’s redetermination decision unreasonably departs from other conclusions made in the first decision. For example, in the first decision, Mr. Kouridakis’ damage award was reduced by 50% to account for failure to mitigate damages and contributory fault, whereas in the redetermination, these two factors reduced the award by 40%, without providing any explanation for this discrepancy.

- e. The arbitrator's redetermination decision was unreasonable when it deducted only 10% for "contributory fault." This reduction was manifestly insufficient given the arbitrator's findings that, *inter alia*:
- i. Mr. Kouridakis showed "disrespect and aggressiveness" towards management in general and his manager in particular.
 - ii. Mr. Kouridakis showed "repeated personal behavioral tendencies of complainant to negatively question and criticise his managers and their authority rendering the workplace atmosphere and relationships tenuous and less than harmonious."
 - iii. Mr. Kouridakis' conflictual and disrespectful attitude had persisted even though he was the "subject of uncontested reprimands and warnings which, unfortunately, had no corrective effect."
 - iv. Mr. Kouridakis' unacceptable behaviour remained "unremediated" despite "repeated warnings."
 - v. Maintaining workplace harmony "necessitated" the termination of Mr. Kouridakis' employment by CIBC.
 - vi. Mr. Kouridakis had an extensive disciplinary record.
 - vii. CIBC had shown "great patience" despite Mr. Kouridakis' "unacceptable behavioural tendencies."

The reduction for Mr. Kouridakis' contributory fault should have been at least 50%.

- f. In light of the above, the arbitrator's decision, and the reasons provided for it, are unreasonable.
16. The arbitrator erred in law and in fact by awarding legal fees. The arbitrator's finding in this regard confirm the absence of any abuse, malice, bad faith, recklessness whim or tactics of undue delay on the part of the Applicant. Thus, the facts of this case did not meet the test for awarding an employee legal fees. No sufficient reasons were provided for why legal fees were awarded on the redetermination, when no legal fees were awarded for the first determination.
17. Additionally, in awarding legal fees to Mr. Kouridakis, the arbitrator failed to account for Mr. Kouridakis' unreasonable behaviour during the redetermination, notably his attempt to claim "all lost salary and benefits from the date of dismissal of June 14, 2016 to the date of rehearing on October 25, 2022." This position was

equivalent to alleging that Mr. Kouridakis was hired for a guaranteed indeterminate lifetime contract. This position was obviously absurd and exaggerated. Parties who advance frivolous legal arguments should not be awarded legal fees.

18. The muddled and insufficient nature of the reasons given for the damages award and legal fees contrasts markedly with the clear and succinct analysis which the arbitrator used to dismiss Mr. Kouridakis' claim for moral damages. Not coincidentally, this portion of the redetermination decision is identical to the arbitrator's earlier decision.
19. A common thread connecting the arbitrator's errors with respect to the redetermination decision is that he seemed to believe that the Federal Court's order required him to arrive at a different conclusion from his original decision. The Federal Court did no such thing.
20. If the arbitrator had properly understood his mandate on the redetermination, he would have arrived at the conclusion that the proper damage award remained \$10,250, supported by a more thorough explanation.
21. This Court should accordingly make issue the award that ought to have been made and set damages at \$10,250. The case has already gone through two judicial reviews and three arbitral decisions. It is appropriate for this Court to exercise its discretion to decide the matter on judicial review and not refer it back to the arbitrator for a fourth decision.

Statutory Provisions

22. The Applicants rely on sections 18-18.5 of the *Federal Courts Act*, RSC 1985, c F-7; and rules 3, 300-334 of the *Federal Courts Rules*, SOR/98-106, and on sections 235, 240-243 of the *Canada Labour Code*, RSC 1985, c L-2.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

1. The record that was before the arbitrator;
2. The pleadings and proceedings herein, including the decisions of the Federal Court rendered in earlier judicial reviews in this case;
3. One or more affidavits.

Respectfully submitted: Montréal, February 10, 2023



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