

# International Litigation on Steroids: Citigroup Global Mkts., Inc. v. Fiorilla



Although the case below does not shed light on any new legal development, it is nevertheless an interesting story which offers a prime example of a plaintiff willing to use each and every possible trick in the context of international litigation and arbitration to (unsuccessfully) achieve his goal.

In the case at hand, John Fiorilla initiated arbitral proceedings against *Citigroup* before the *Financial Industry Regulatory Authority (FINRA)* – an American organisation dedicated to investor protection in the financial industry. However, before the hearing took place, the parties settled their dispute (which was confirmed through emails exchanged between the respective attorneys representing both parties). Against his lawyer's advice, Mr Fiorilla subsequently changed his mind and wrote to FINRA claiming that the dispute was not settled. He then continued the arbitral proceedings which ultimately resulted in an award in his favor for USD 10,750,000.

Following the issuance of the award, *Citigroup* petitioned the

New York courts claiming that the award should be annulled on the basis that the parties had already agreed to settle their dispute, thereby relinquishing the tribunal's authority over the case. The New York courts agreed with *Citigroup* and rendered a judgment vacating the award.

Undeterred, Mr Fiorilla commenced *ex parte* proceedings in France seeking the recognition and enforcement of the award\*. He successfully obtained the recognition and enforcement of the award in France and then cleverly brought the case once again before the New York courts asking to set aside the prior judgment vacating the arbitration award through an application of the doctrine of comity (*i.e.* the international law courtesy doctrine according to which courts in one country should recognise legislative, executive and judicial acts emanating from a foreign jurisdiction). *Citigroup* cross-moved and asked the courts to enjoin Mr Fiorilla from seeking attachment of its foreign assets and to direct Mr Fiorilla to lift or release any seizure of *Citigroup* assets.

On 29 June 2017, the New York Appellate Division called an end to the game, ultimately frustrating Mr Fiorilla's elaborate manoeuvring by ruling in favour of *Citigroup*. More particularly, the court found that Mr Fiorilla had acted in bad faith by not informing the French court that the award had previously been vacated by a New York court.

*\* Although it is apparent from the case that Mr Fiorilla never actually informed the French court that the award had been annulled by the New York courts, his choice to petition French courts was most probably not neutral since French courts have a tradition to enforce arbitral awards even though those awards have been annulled at their seat (see: Hilmarton and Putrabali).*

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