

CASE NAME: DIAMONTS CASE (2019)

KEYWORDS:

investment; good faith and fairness; professional diligence; unfair and misleading commercial practices

FACTS:

Intermarket Diamond Business SpA ('IDB') and Diamond Private Investments SpA ('DPI') were leading Italian sellers of investment diamonds. Both firms made almost all of their 'investment diamonds' sales through the banking system (in particular through Banco BPM and its subsidiary Banca Aletti, Monte dei Paschi, UniCredit and Intesa Sanpaolo). The banks offered select group of their customers to buy diamonds as an alternative form of investment. Nevertheless, they proposed the investment to customers in an incomplete, deceptive and misleading way. In particular, the diamonds were made to appear as a "store of value" (were considered a safe investment and a **safe-haven asset**), guaranteeing a constant annual yield of 3-4% according to the market prices published in a financial newspaper, "il Sole 24 ore"; actually, they were not the market prices; IDB e DPI created and advertised their own price list on the economic newspaper. Moreover, the sale price of diamonds established by IDB and DPI did not correspond to the real market value.

Moreover, banks were making a considerable commission introducing clients to diamond brokers (reaching, in some cases, more than 25% of the investment made by the customer).

In 2016 an investigative report broadcasted by Italian public television ('Report') questioned the fairness of the commercial practices followed by IDB and DPI; in 2017 an official investigation started, after a complaint filed by the consumer's association Altroconsumo; the proceedings were later extended to the four banks.

On 30.10.2017 the AGCM authority (the Italian competition authority), considered unfair and misleading the activities of IDB, DPI and of the involved banks; IDB, DPI and the banks involved were all sanctioned with fines.

On January 2019, IDB went bankrupt.

The Clinic provide legal assistance to 11 consumers who had bought diamonds as financial investment through the banks' channel; some of them did not have possession of the diamonds (they left the stones on deposit with the bankrupt company).

The consumers would like to receive the invested money back.

LEGAL ANALYSIS:

The commercial practices put in place by IDB and DPI and the Banks (as intermediaries) in the sale of investment diamonds were unfair and misleading because of their being deceitful of consumers with regard to the price of diamonds, the market conditions and the profitability of their purchase.

In particular, the banks' conduct is against the duties of professional diligence set out in Article 1176, paragraph 2 of the Italian Civil Code and in Article 20, paragraph 2, Article 21, paragraph 1 (letters b), c), d), e) and f)), Article 23, paragraph 1 (letter t)) of the Italian Consumer Code.

Such practices were also contrary to the principles of good faith and fairness in the formation and execution of the contract, pursuant to Articles 1175, 1337, 1375 of the Civil Code.

Since these contracts for the purchase of diamonds can be qualified as an investment contract, it is believed that the provisions of Legislative Decree no. 58 of 24 February 1998 (Article 21 of the Consolidated Law on Finance), and Chapter I of Consob Regulation no. 16190/2007, have been also infringed.

LEGAL SOLUTION:

Consumers are entitled to compensation for damages

APPLIED SOLUTION:

1. For all customers who did not have possession of the diamonds (they left the stones on deposit with the bankrupt company), an action has been brought to claim the stones.
2. For all the consumers a notice for damages have been sent to the intermediary bank.
3. For all customers the clinic has conducted negotiations with the banks: in most settlement agreements consumers received the stones back + % of the price paid (also based on the consumer's risk appetite).

PARTICULAR NOTE: NONE