

## **Arbitration Award Incompatible With 'Fundamental Principles'**

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On October 23 2002 the Swedish Supreme Court declined to enforce an arbitral award on the basis that enforcement would be incompatible with fundamental principles of the Swedish legal system (Case O 2309-02).

### **Facts**

A Slovenian citizen, RG, requested that the Supreme Court declare an arbitral award enforceable. He claimed that the award was rendered in Ljubljana, Slovenia on August 16 2001 in a matter between him and JL, a Swedish citizen. In the award the bankrupt, JL, had been declared to have inferior title to certain property and had been ordered to pay a sum of money to RG.

However, the court noted that RG had presented another arbitral award dated March 16 2001, which was identical. RG explained that the first version was a draft, which had been subsequently corrected by the arbitrators, and that he sought enforcement of the August 16 2001 version.

### **Decision**

The court found it clear from the documents in question that RG and JL were brothers, and that some of the property covered by the award was subject to other legal proceedings. In those other legal proceedings it was argued that RG had better title to the property because of an assignment, while his right to the same property in the award was said to be based on a contract of commission.

The Supreme Court thus declined to enforce the arbitral award, under Section 55 of the Swedish Arbitration Act. The court found that it would be incompatible with fundamental principles of the Swedish legal system to enforce the award.

One of the judges added that RG's claim did not merit protection against the creditors in the bankruptcy of JL anyway. For this reason the award should not bind the bankruptcy

estate even if it was declared enforceable in Sweden.

## Comment


The Supreme Court neither gives guidance as to which circumstances are incompatible with fundamental principles of the Swedish legal system, nor expressly addresses the issue of what those fundamental principles are. The court seems to have found it evident that there was no valid arbitration agreement between RG and JL, and that the award was given only in order to protect the bankrupt's property from his creditors.

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