

Article 14 (3) of the Republic of Armenia Law on Financial System Mediator establishes that in making a decision Mediator shall be based not only on the requirements of the Armenian legislation but also on the rules of business conduct and ethics, and customary business rules. In the office of the Financial System Mediator during the case review process there was a need to find out the customary business practice concerning the application of the article # 236 of the RoA Civil Law. Particularly, according to the second part of the article, consecutive mortgage is allowed if it is not forbidden by the previous mortgage contract. Mediator found it reasonable to inquire banks for customary business practices relevant to this subject matter.

According to the lodged claim, the Customer had signed a mortgage loan and pledge contract with the Bank. The Customer applied to the Bank to obtain assent for the Consecutive pledge contract. Before giving assent to the Customer the Bank informed the Customer about the below mentioned payment in a written form. The Bank cited the contractual provision from the pledge contract signed between the Customer and the Bank, according to which the subject of pledge could not be put in pledge in the transactions with the third party if there had been no written agreement by the Pledgee. The Bank also used as a basis the clause defined by the Board of the Bank, which was about the definition of payment for the maximum of 1,000,000 AMD and 1% of the actual credit reminder in return for the consecutive mortgage asset. After getting the written letter from the Bank the Customer paid 1% of the actual credit reminder and obtained the Permission by the Bank. Though the Customer finds that the paid money is not stipulated in the contract and demanded the Bank to pay back the mentioned money he paid for getting the Permission by the Bank.

To make the case review the Financial System Mediator needed to reveal the second part of the article # 236 of the RoA Civil Law defining the Bank practice on the consecutive mortgage. The Financial System Mediator referred to the following elucidations:

1. Did the Bank forbid or limit the ability of the pledger to make the pledged property the subject of the consecutive mortgage?
2. If the Bank defined a clause about making the pledged property the subject of the consecutive mortgage in the contract in the written form, did they charge money from the pledger for their permission or no? Or, in which cases the permissions were given?

3. If the pledger was charged money for the permission of the consecutive mortgage by what act was the mentioned money defined? Was the mentioned money stipulated in the contract signed with the Customer or in the conditions and tariffs adjacent to the contract or no?

4. If the charging money for the consecutive mortgage permission was defined by the legal act regardless of the agreement signed between parties, to which the Customer had not united before, on which legal basis did the Bank act?

Regarding the case, the office of the Mediator received the explanations and interpretations from fourteen Banks acting in the Republic of Armenia the examination of which resulted in:

1. All the Banks limited the ability of the pledger to make the pledged property the subject of the consecutive mortgage in the contract stipulating the term about the permission of the Bank in a written form.

2. Eight Banks from the above mentioned fourteen Banks did not charge money from the pledgor for giving the permission and gave permission based on different objective and subjective criteria (i.e. credit-pledge interaction, the financial situation of the debtor). They gave the permission in case of financial responsibility to the Bank.

3. Three Banks quoted the tariffs, which defined the payable money of the Pledgor for getting the permission.

4. Three Banks defined the payable money of the Pledgor as by the legal act regardless of the agreement signed between parties. The legal act included inner legal acts, tariffs of the Bank, to which the Pledgor had not united before. These Banks brought the legal confirmation that Bank had the right to define a commission payment for the services and permissions made by them and each Customer had opportunity to be informed about the tariffs and the payment beforehand, before making that payment.

So, the practice of the Banks about the permission of the Consecutive mortgage is: The mortgage contract limits the ability of the pledgor to make the pledged property the subject of the consecutive mortgage stipulating the term about the permission of the Bank in a written form, which gives permission based on different objective and subjective criteria, i.e. credit-pledge interaction and the financial situation of the debtor or is given in condition to repay the financial obligations to the Bank or to be paid by the pledgor stipulated in the contract or in the inner legal act regardless of the contract.