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# Panama won investment arbitration lawsuit filed by Jochem Bernard Buse



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The Republic of Panama, through the firm Hogan Lovells US LLP and the Investment Arbitration Office of the Ministry of Economy and Finance (MEF), won the international investment arbitration lawsuit, presented by Dutch investor Jochem Bernard Buse, founder, executive director, president and majority shareholder of the Panama Wall Street brokerage house (PWS), before the International Center for Settlement of Investment Disputes (ICSID).

In 2017, Buse sued the Republic of Panama under the Bilateral Investment Treaty between the Netherlands and Panama, arguing that the inspection, intervention and liquidation of PWS by the Superintendency of the Securities Market (SMV) violated the Treaty and deprived him of his investment.

Buse claimed that Panama allegedly breached its obligation to provide fair and equitable treatment, as well as due process, by arbitrarily ordering repeated inspections of the brokerage house, and by deciding to intervene and liquidate PWS allegedly without prior notice.

The founder of PWS also claimed an alleged lack of transparency, arguing that the intervention and liquidation took him by surprise. On that basis, he claimed compensation of at least \$60 million, plus interest and moral damages.

After a multi-year arbitration procedure, which included the presentation of multiple rounds of briefs, precautionary measures, documentary production phases, a hearing held in November 2021 and a second closing hearing in March 2022, Panama achieved a resounding victory for the State, causing the Court to completely dismiss all of Buse's claims, and to deny him the requested compensation.

In particular, as Panama argued, the Court took into account the long history of violations by PWS and Buse, to consider that Buse could not have expectations that it would be allowed to continue the operation of PWS in the event of additional violations of the Securities Market Law. Furthermore, the Court found that " *the actions of the SMV were consistent with the legal regime and based on factual findings.* "

Regarding due process, the Court took into account that the SMV complied with the provisions of the Securities Market Law, provided sufficient notice of the findings found, and therefore " *the SMV had sufficient justification to conclude that the liquidation was the "appropriate course of action for the facts of this case."*

The award dated June 3, 2024 ratifies the right and duty of Panama to take measures aimed at protecting the public interest, especially in highly regulated markets, without foreign investors being able to question legitimate exercises of public authority under the international system of investor – State arbitrations, when they have incurred serious violations of local law.

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