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ADMINISTRATIVE RESPONSIBILITY OF COURT-APPOINTED TRUSTEES

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Administrative responsibility of court-appointed trustees through the prism of specific of their professional activities involving the knowledge of the requirements of normative acts regulating the activities of court-appointed trustees is examined in the article. Attention is given to formal elements of an administrative offense under part 3 of article 14.13 of the Code on Administrative Offences of the RF, bringing to administrative responsibility for which is based on the determination of an offender's violation of specific duties prescribed by the legislation on bankruptcy.

Proposes amendments to the Code on Administrative Offences of the RF providing for different sets of elements of court-appointed trustees' offences to differentiate the amount of a fine according to the adverse effects that have occurred.

Keywords: administrative responsibility, responsibility of court-appointed trustees, administrative offences of court-appointed trustees, elements of an administrative offence of a court-appointed trustee.

The number of cases of insolvency (bankruptcy) considered by arbitration courts increases annually, with this, the central figure in any bankruptcy procedure is a court-appointed trustee.

The current version of the Federal Law No. 127-FL of October 26, 2002 “On Insolvency (Bankruptcy)” [2] stipulates that a court-appointed trustee is a subject of professional activity and in private practice performs professional activity regulated by this law.

Court-appointed trustee has the right to engage in other types of professional and business activities, upon condition that such activity does not affect the proper performance of the duties specified in the legislation on bankruptcy.

The law attributes mandatory requirements for the candidature of a court-appointed trustee to the possibility of the last to be a member of the self-regulated organization of court-appointed trustees, membership of which is required for it, and the court-appointed trustee may be a member of only one self-regulated organization.

The rights and duties of court-appointed trustees are contained in article 20.3 of the Law “On Bankruptcy”. Arbitration insolvency practitioner is obliged, in particular, to take steps to protect the property of a debtor, to analyze the financial condition of the debtor and the results of its financial, economic and investment activities, to keep a register of creditors’ claims, to make reasonable and justified expenditures related to the execution of his responsibilities in a bankruptcy case, to perform other functions.

According to paragraph 4 of article 20.3 of the Law “On Bankruptcy” in procedures used in a case on bankruptcy a court-appointed trustee is required to act in good faith and reasonably in the interest of the debtor, creditors and society.

Thus, court-appointed trustee’s range of duties as defined by the Law “On Bankruptcy” is quite broad.

Moreover, in every bankruptcy procedure the role of a court-appointed trustee is different; there are its different rights and duties as of a temporary, external, administrative or bankruptcy trustee.

The law establishes that any failure to perform or improper performing the duties assigned to a trustee in accordance with the Law “On Bankruptcy” and federal standards, is a ground for bringing the trustee to responsibility.

So, in considering a particular case on insolvency, a court-appointed trustee for the improper performance of duties may be dismissed by the court of arbitration from the execution of these duties at the request of persons involved in

the bankruptcy case, he may be brought to property responsibility for causing losses to the debtor, creditors and other persons.

In addition, article 14.13 of the Code on Administrative Offences of the RF [1] provides for administrative responsibility for wrongful actions, when going bankrupt.

Meanwhile, a court-appointed trustee is a subject to responsibility only under part 3 of the article – for failure to perform duties prescribed by the legislation on insolvency (bankruptcy) [5].

According to paragraph 10 of part 2 of article 28.3 of the Code on Administrative Offences of the RF the reports on administrative offenses provided for by part 3 of article 14.13 of the Code must be drawn up by authorized officials of the federal executive body exercising control over the activities of self-regulated organizations of court-appointed trustees. These functions are entrusted to the Federal service of State registration, cadaster and cartography (Rosreester) [3].

Cases on administrative offenses, provided for by part 3 of article 14.13 of the CAO RF in accordance with paragraph 3 of article 23.1 of the CAO RF, are considered by the judges of arbitration courts.

The provisions of part 3 of article 14.13 of the CAO RF establishing responsibility for offenses in the field of entrepreneurial activity are focused on providing the established procedure of bankruptcy, which is an essential condition for economic recovery, as well as for the protection of rights and legitimate interests of owners of organizations, debtors and creditors.

From the subjective aspect, the offence provided for by paragraph 3 of article 14.13 of the CAO RF is characterized by an act in the form of action or inaction, and is manifested in intentional or reckless failure to comply with the rules applicable in a particular procedure of bankruptcy. Thus it is necessary to proceed from the fact that a court-appointed trustee because of the nature of its profession should know the requirements of normative acts governing the activities of court-appointed trustees, and has to take all possible measures to comply with them.

Since the structure of an administrative offense under part 3 of article 14.13 of the CAO RF is formal, the fact of not performance by a court-appointed trustee its duties, established by the norms of bankruptcy legislation, in any case constitutes an administrative offense [6; 7; 8; 9].

This norm is of blanket nature, what involves the use in each particular case of the appropriate norms of legislation on insolvency (bankruptcy). That is, for the bringing a person to administrative responsibility it is necessary to identify a violation of specific duties prescribed by legislation on bankruptcy.

However, as has already been indicated above, the range of duties of a court-appointed trustee is quite broad, and depends, in particular, on a specific procedure of bankruptcy, so, at the start of bankruptcy proceedings. In accordance with paragraph 1 of article 129 of the Law “On Bankruptcy”, from the date of approval of a bankruptcy manager prior to the date of termination of bankruptcy proceedings, or conclusion of voluntary arrangement, or removal of the bankruptcy manager he shall exercise the powers of the head of the debtor and other management bodies of the debtor and the owner of debtor’s property – unitary enterprise property. Article 94 of the Law “On Bankruptcy” also provides for, that from the date of introduction of external control the powers of the debtor’s head terminates, disposal of business affairs of the debtor is assigned to an external manager.

In view of the above, attention should be drawn to the sanction of the examined norm. As a punishment, it provides for an administrative penalty in minimum and maximum limits, which should allow imposing punishment according to the nature of an administrative offense, property and financial situation of the offender and other circumstances stipulated by law. So, for violation of bankruptcy legislation there is provided a fine in the amount of from 2,500 rubles to 5000 rubles.

Meanwhile, if we consider the maximum penalty, it is 6 times less than the monthly fixed salary of temporary or bankruptcy manager.

In accordance with paragraph 3 of article 20.6 of the Law “On Bankruptcy” the remuneration, paid to a court-appointed trustee in a case on bankruptcy, consists of a fixed amount and the amount of interest. The fixed amount of such remuneration is for: temporary manager – thirty thousand rubles a month; administrative manager – fifteen thousand rubles a month; external manager – forty-five thousand rubles a month; bankruptcy manager – thirty thousand rubles a month.

Arbitration court considering a bankruptcy case, based on the decision of the creditors meeting or the reasoned request of the persons participating in the case on bankruptcy, has the right to increase the size of a fixed amount of remuneration paid to a court-appointed trustee, depending on the scope and complexity of its work.

Amount of interest on court-appointed trustee remuneration depends on the balance sheet assets of the debtor and often amounts to hundreds of thousands of rubles.

Thus, the amount of the fine, even at its maximum size is not critical to a court-appointed trustee.

Analysis of judicial practice allows concluding that for one and the same violation there are applied different types of punishment, and sometimes in a manner

prescribed by article 2.9 of the CAO RF a court-appointed trustee shall be exempt from administrative responsibility in connection with the insignificance of an administrative offense.

The reason for this is seen, above all, in blanket nature of the norm. Of course, by itself the blanket nature of the norm does not indicate its unconstitutionality, because, as pointed out by the Constitutional Court of the Russian Federation in the Ruling No.122-R from 21.04.2005, regulatory standards that establish certain rules of conduct not necessarily should be in the same normative-legal act, in which are contained the norms establishing legal responsibility for their infringement [4]. However, specifying a particular offense and determination of an appropriate punishment would promote to uniformity of judicial practice.

In addition to a fine the sanction of part 3 of Article 14.13 of the CAO RF provides for punishment for court-appointed trustee in the form of a disqualification for a period from six months to three years.

In accordance with part 1 of article 11.3 of the CAO RF disqualification shall consist of depriving a natural person of the right to be engaged in business on management of a legal entity, as well as to be engaged in management of a legal entity in other cases provided by the laws of the Russian Federation.

It is obvious that disqualification is an enough severe punishment. Taking into account the exclusiveness of the called measure, as well as the inadmissibility of the actual employment ban, what has been repeatedly pointed out by higher court instances, this type of punishment is rarely used.

Thus, the analysis of article 14.13 of the CAO RF and the practice of its application leads to the conclusion, that in this version the article does not always allow to resolve the tasks assigned to administrative and tort legislation.

In accordance with article 1.2 of the CAO RF the tasks of administrative-tort legislation are, in particular, not only the safety and protection of the economic interests of society and the state from administrative offenses, but also prevention of administrative offenses, which is consistent with the general objectives of proceedings in courts of arbitration that are defined in article 2 of the Arbitration Procedural Code of the Russian Federation.

Therefore, it seems appropriate to amend the Code on Administrative offences of the RF, through introducing different offences in order to increase and differentiate the amount of fine depending on the consequences, in particular, depending on the infliction of property damage to a debtor and creditors. In addition, it would be appropriate to provide for that the court-appointed trustee's

repeated violation of legislation on bankruptcy within one year is a ground for disqualification of the trustee.

Such amendments would make bankruptcy procedures more efficient, and would contribute the protection of rights of creditors and a debtor.

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