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Ex-Hypo Real Estate CEO Funke Wins Ruling, \$211,000 in Suit Over Dismissal

By Karin Matussek - Oct 15, 2010

Former [Hypo Real Estate Holding AG](#) Chief Executive Officer [Georg Funke](#) won a preliminary ruling and was awarded 150,000 euros (\$211,000) in a suit over claims he was wrongfully dismissed after the 2008 bailout of the lender.

The Munich Regional Court today awarded Funke, 55, two months of pay in a verdict issued under a special procedure that only allows documents as evidence. The court also granted former Chief Financial Officer [Markus Fell](#) one month of pay of about 40,000 euros.

“This ruling will only be the last word if Hypo Real Estate won’t ask me to move to a second phase where I can hear more evidence,” Presiding Judge Helmut Krenek said after delivering the verdict. “It’s very likely that we will see that second stage.”

The German government took over Hypo Real Estate in 2009 after the lender’s Dublin-based Depfa Bank Plc unit couldn’t raise financing when the bankruptcy of Lehman Brothers Holdings Inc. froze credit markets. Hypo got another 40 billion euros of state guarantees in September, shortly before it sparked public outcry for granting a 25 million-euro bonus to employees. The Munich-based has obtained 142 billion euros in guarantees.

Hypo Real Estate considers Funke’s and Fell’s claims unfounded and it will start proceedings allowing it to present more evidence, the lender’s spokesman, [Oliver Gruss](#), said in a statement distributed after the ruling.

Depfa Acquisition

The Munich-based lender had argued that Funke violated his duties by not properly preparing the 5.3 billion-euro 2007 acquisition of Dublin-based [Depfa Bank Plc](#) and by failing to change the bank’s refinancing strategy, Krenek said. Other claims are that Funke’s risk management was flawed and that he had to correct the lender’s capital needs between rescue meetings in September and October 2008, the judge said.

“These could all be viable reasons for a dismissal if they can be proved at the later stage,” said Krenek. “But just firing him because the German government had asked for it, wouldn’t be enough. Ministers and heads of governments are bound by the rule of law like anybody else.”

Funke and Fell were dismissed in December 2008. Today’s ruling concerned their January 2009 payments and Funke’s salary for February of that year.

Pension Plan

In a separate suit that is also pending before the same court, Funke has asked the court to rule he was wrongfully dismissed. His contract was to run until 2013 with an annual payment of 800,000 euros.

Funke is also seeking to regain a pension plan under which he would get an annual payment of about 560,000 euros.

Funke and Fell could have filed a single lawsuit seeking the full amount of their claims, said [Peter Groll](#), an employment lawyer in Frankfurt who said he isn't involved in the case. Filing for just two-months' pay may have been a tactic to test the waters without risking potentially large court fees, which in Germany are a function of the amount sought, he said.

"Using the special procedure may not give them a final ruling, but it grants them a nice show effect," said Groll. "They win at least for now in court and in the headlines."

Experts' Testimony

Krenek has said in a May hearing that he needs to hear experts' testimony and witnesses to decide whether there was cause to fire Funke, Fell and ex-management board member [Frank Lamby](#), who has also sued.

It may be difficult for Hypo Real Estate to prove that Funke failed in the Depfa acquisition process, said [Manuel Rhotert](#), an employment lawyer based in Frankfurt, who said he isn't involved in the case.

"If you buy a bank you hire legions of lawyers and auditors in the due diligence process and every stone gets turned around," said Rhotert. "Later it's usually difficult to show that an executive, who relied on their work, should have done something differently in that process."

The contracts of all three executives were terminated in December 2008. Funke had stepped down in October of that year after Munich-based Hypo Real Estate almost collapsed during the credit crunch that followed Lehman's bankruptcy.

Today's cases are LG Muenchen, 5 HK O 2122/09 and 5 HK O 1762/09.

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