Economically sounded risks of management companies in the housing and utilities sector when managing apartment buildings

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Abstract. The article discusses business activities in apartment buildings by management companies without a license and the risks that arise. A comparative analysis of the methods of managing apartment buildings in Russia and abroad is carried out. Licensing of business activities for the management of apartment buildings is carried out by the state housing supervision bodies of the constituent entity of the Russian Federation, in particular the state housing inspection. The article presents judicial practice when a management company, on the basis of the minutes of the general meeting of owners, without waiting for the decision of the state housing inspection to be included in the list of licensed organizations for a particular apartment building, begins to provide housing and communal services. Thus, if the management company actually provided services and has contracts with resource supply organizations, then carrying out business activities without a license is legal. Under such circumstances, management companies can provide housing and communal services and make a profit without a license.

Keywords: risks in the operation of buildings, management companies, licensing of activities, management of apartment buildings

1 Introduction

Economically justified risks of management companies in the housing and communal services sector when managing apartment buildings are associated with various factors that can negatively affect their income and stability:

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- instability of utility tariffs: tariffs for water, electricity, heating and other housing and communal services may be subject to frequent changes, which affects the income of management companies;
- low collection of payments from residents: not all residents pay utility bills on time and in full, which leads to losses for management companies;
- costs of maintenance and repair of apartment buildings: maintenance and maintenance of apartment buildings requires significant costs, including payment of employees, purchase of materials and equipment, as well as payment for contractors’ services;
- competition in the market: there are many management companies in the housing and communal services market, which creates conditions for fierce competition and reduced profitability;
- corruption and fraud: management companies may become the target of fraud on the part of unscrupulous residents or company employees, which can lead to significant financial losses;
- changes in legislation: changes in legislation in the housing and communal services sector may lead to additional costs or restrictions on the activities of management companies, etc. [1-6]

Management companies (hereinafter referred to as management companies) consciously take risks by carrying out business activities in the housing and communal services sector without a license when the State Housing Inspectorate (state housing inspection) recognizes the decision of the general meeting as invalid in a managed apartment building (hereinafter referred to as MKD). Management companies hold a general meeting of owners and, without waiting for the license to be entered into the GZHI register, begin to provide services to the owners, enter into agreements with resource supply organizations and various contractors. As a result, the actions of the Criminal Code are beginning to be appealed by the authorities and the owners of the apartment buildings. From this moment on, risks arise, however, as judicial practice shows, the risks are economically justified.

2 Methods

The magistrate of the judicial district of the Khimki judicial district of the Moscow region considered in the case the claim of Management Company Svorog LLC against the owner of a residential premises for the collection of debt for payment of residential premises and housing and communal services (hereinafter referred to as housing and communal services).

The plaintiff makes claims for housing and communal services debt for the period from 05/01/2021 until 04/30/2022 in the amount of 22,409 (twenty two thousand four hundred nine) rubles 81 kopecks on the basis of a management agreement.

The statement of claim was accepted by the court on January 09, 2023. At the time of filing the statement of claim, the Plaintiff had information that the minutes of the extraordinary general meeting No. 1 of September 23, 2020, on the basis of which the claims were made, ceased to be valid, because The State Housing Inspectorate of the Moscow Region refused to allow Svarog Management Company LLC to make changes to the register of licenses of the Moscow Region with information on the management of an apartment building.

The main activity of the company is management of the operation of the housing stock, in connection with which the company received a License for the right to carry out entrepreneurial activities for the management of apartment buildings dated June 11, 2015 No. 863.

According to the Minutes of the extraordinary general meeting of owners of premises in an apartment building dated September 23, 2020. No. 1, a decision was made to select Svarog Management Company LLC as the managing organization of the apartment building.
06.10.2020 LLC “UK “Svarog” GZHI MO sent an Application for amendments to the Register of Licenses of the Moscow Region in connection with the conclusion of a management agreement for an apartment building. By decision dated January 29, 2021. Management Company Svarog LLC was refused to make changes.

After choosing Svarog Management Company LLC as the management company for a new multi-apartment residential building, the company applied to the management with an Application to include information about the multi-apartment building in the Register of Licenses of a constituent entity of the Russian Federation.

In accordance with paragraphs 2, 3 of Article 198 of the Housing Code of the Russian Federation, in the event of a change in the list of apartment buildings, the management activities of which are carried out by the licensee, in connection with the conclusion, termination, termination of the agreement for the management of an apartment building, the licensee within three working days from the date of conclusion, termination, termination of the specified agreement is obliged to post this information on the official website for disclosure of information, and also send it to the state housing supervision authority.

The state housing supervision body, after receiving the information specified in part 2 of this article, makes changes to the register of licenses of a constituent entity of the Russian Federation in the manner and within the time frame approved by the federal executive body exercising the functions of developing and implementing state policy and legal regulation in the field housing and communal services.

06.10.2020 The management company applied to the Moscow Region State Housing Property Inspectorate with an application to make changes to the license register.

By decision dated January 29, 2021. No. 20241, the applicant was refused to make changes to the register due to a discrepancy between the application and the attached documents.

The application was accompanied by the Minutes of the extraordinary general meeting of owners of premises in an apartment building dated September 23, 2020. No. 1. However, this protocol did not confirm the choice of management method for the management organization LLC “Management Company “Svarog”, since, as rightly noted by the Moscow Region State Housing Institution, on the basis of the Minutes of the general meeting of owners of premises in an apartment building dated January 25, 2021. No. 2, the owners chose the municipal unitary enterprise “Zhilishchnik G.O.” as the managing organization. Khimki.

By virtue of Part 8.2 of Article 162 of the Housing Code of the Russian Federation, the owners of premises in an apartment building, on the basis of a decision of the general meeting of owners of premises in an apartment building, unilaterally have the right to refuse to execute a management agreement for an apartment building if the management organization does not comply with the terms of such an agreement, and decide to choose another management organization or about changing the method of managing this house (Part 8.2 of Article 162 of the Housing Code of the Russian Federation).

Consequently, the owners of premises in an apartment building can unilaterally terminate the management agreement for an apartment building, since the activities of any management organization depend on the will of the homeowners, who, depending on the quality of the services provided by the management company, have the right and opportunity to enter into an agreement for the management of their building with another management company organization or change the way the home is run.

As of the date of the general meeting of premises owners at the choice of the municipal unitary enterprise “Zhilishchkin g.o. Khimki” (01/25/2021), there was no information about changes to the Register of Licenses of the Moscow Region regarding the inclusion of Svarog Management Company LLC in it.
Minutes of the extraordinary general meeting of owners of premises in an apartment building dated January 25, 2021. No. 2, including on the grounds of violation of the procedure for its conduct, is not disputed.

The Plaintiff did not have the right to carry out business activities at the above address without a license, because there were no legal grounds for the provision of services in the apartment building provided for by current legislation.

Federal Law No. 217-FZ of June 28, 2022 amended the Housing Code of the Russian Federation. The document establishes the obligation of the person who initiated the general meeting of owners of premises in an apartment building to place in the state information system of housing and communal services or in the regional information system the decisions and minutes of the meeting no later than ten days after its holding (subject to ensuring the placement of these documents in system in an automated manner.

On the official website, provided for by current legislation for posting documents on the management of apartment buildings, including licenses, nothing has been posted about this house from the Plaintiff, which once again confirms the lack of evidence of the legality of business activities for the management of apartment buildings at the specified address.

From the above, the declared claims for housing and communal services debt for the period from 05/01/2021. until 04/30/2022 in the amount of 22,409 (twenty two thousand four hundred nine) rubles 81 kopecks. on the basis of management agreement No. 1 dated September 24, 2020, concluded on the basis of Minutes No. 1 of the extraordinary general meeting dated September 23, 2020. until 04/30/2022 inclusive in relation to the Defendant are illegal, in connection with which the representative of the Defendant asked the court to refuse to satisfy the stated requirements in full.

The plaintiff filed claims, and the court satisfied the stated demands based on the decision of the general meeting, which was declared void by the Arbitration Court of the Moscow Region. Since the house was not included in the company's register of licenses, it had no legal basis to manage the house and enter into relevant agreements with resource supply organizations.

The Plaintiff did not have the right to carry out business activities at the above address without a license, because there were no legal grounds for the provision of services in the apartment building provided for by current legislation.

Thus, management organizations have the right to manage the house if three conditions are met:

- a house management agreement has been concluded;
- the requirement to place information in the GIS Housing and Communal Services has been fulfilled;
- changes were made to the register of licenses of a constituent entity of the Russian Federation.

According to the register of licenses, the house that the Plaintiff managed was not included in her license, therefore, presenting utility bills to residents of the house violates the requirements of Art. 198 Housing Code of the Russian Federation. At the same time, the fact that the management organization actually managed the house, as the court indicated in its decision, has no legal significance. She performed these actions at her own peril and risk.

The magistrate satisfied the Claimant's claims, despite the appealed minutes of the general meeting, which is essentially invalid; the Claimant is not included in the register of licenses for the specified house. The service organization according to the register of licenses of the Moscow Region State Housing Institution is listed as the municipal unitary enterprise “Zhilishcheknik g.o. Khimki, which never provided the service to residents, did not send receipts for payment. The court satisfied the claims of the management company, despite numerous violations of the current legislation, on the grounds that services were actually provided to the owners, such as the provision of water supply, sewerage, heat supply, garbage removal, cleaning
of waste landfills, etc., because there are valid agreements with resource supplying organizations and it does not matter to the court that agreements with resource supplying organizations were also concluded on the basis of the minutes of the extraordinary general meeting of owners of premises in an apartment building dated January 25, 2021. No. 2.

Judicial practice shows that management companies can carry out business activities at risk to themselves, without a license to maintain apartment buildings, without a general meeting, the main thing is to conclude agreements with resource supply organizations and provide receipts to residents for payment.

Entrepreneurial activity in the management of apartment buildings, in itself, is quite risky. Management Company "Svorog", which carried out business activities in the apartment building, knowingly took risks by providing housing and communal services services without a license for this house. The risk paid off, because activities without a license were carried out during the period on the basis of Minutes No. 1 of the extraordinary general meeting of September 23, 2020. the claim was filed on April 30, 2022. inclusive, i.e. 20 months of claims. From the Defendant's receipt it can be seen that the maintenance fee is 37 rubles. 40 kopecks, the area of the apartment building is 24,527.5 m².

The calculation of income for the risk period is: 24,527.5 m²·37 rubles.40 kopecks·20 months = 18,346,570 (eighteen million three hundred forty-six thousand five hundred seventy) rubles 00 kopecks.

3 Results

In the Russian Federation there is no precedent law. It is necessary to clearly assess the consequences that may arise under certain circumstances, because if the court adopted a different legal position, the management company could end up in bankruptcy. And at the moment, any owner can, in court, declare all transactions with both resource supply organizations and other contracting organizations during the disputed period, concluded on the basis of the canceled general meeting of September 23, 2020, void.

One of the main problems of managing the housing stock in Russia - improving the quality of housing and utility services - must be solved step by step, relying on foreign experience in the effective management of apartment buildings and introducing it into Russian practice to the extent possible [7-9]. The problem of managing apartment buildings is relevant for all Russian cities. To solve this problem, it is necessary to analyze the experience of countries that have achieved significant results in the provision of housing and communal services. Foreign experience in the field of forming a system for providing housing and communal services and managing the development of the market for these services deserves special attention, since they pay great attention to this industry [10-13].

To receive high-quality housing and utility services, homeowners abroad unite in a non-profit consumer organization that unites owners of real estate objects or shareholders, created for the purpose of managing a complex of real estate, ensuring the operation of this complex, ownership, use and disposal of property. The association of homeowners (OSH) has become a generalizing concept for various legal forms of housing cooperation, for example, such as:
– territorial communities of residents (Planning Unit Developments – PUD),
– condominiums (Condominium Association);
– Housing Cooperatives in the USA and Canada;
– syndicates in France;
– apartment joint stock companies in Finland;
– homeowners’ associations (HOA) and housing-construction cooperatives (HBC) in Russia.
Thus, from the point of view of the approach to the provision of housing and communal services, Russia is not building its own unique model, but is adopting international experience, proven over decades. Property management services abroad are provided by both real estate agencies and developers, as well as management companies and concierge services specializing in this. All of them take on clearly defined and documented obligations to maintain order in the entrusted territory. Upon request, they will prepare an apartment or house for the owner’s arrival, and also select the necessary personnel: from a chef or landscape designer to a governess for children. The management company's responsibilities also include payment of payments, taxes and insurance premiums, conflict resolution, accounting, security and repairs. In addition, if the owner wishes to rent out the property, his authorized representative abroad assumes responsibility for maximizing the profit that the property brings in the absence of the owner.

Today, there are two main formats for remote property management abroad:

– facilities management (FM), when the company is responsible only for the maintenance and direct maintenance of the facility and works for a set fee;
– property management (RM), when a company deals only with rent and takes an agreed percentage of the profit.

In some countries, the market for the provision of property management services is regulated by the state and thus guarantees quality, responsibility of the management company and transparency of pricing. This situation has developed in Finland, where there is an organization that monitors and evaluates the activities of residential and commercial real estate management companies in the country. In Germany, property can be transferred to the management of a property management company. This is a mandatory condition for apartments located in an apartment building [14-17]. As a homeowner in Germany, there are four types of operating costs: maintenance, property management, interest payments (if you have a mortgage) and consulting fees (legal, accounting, tax). Everything else is paid by the tenants as part of the service fee.

Maintenance fees include building insurance, land tax, cleaning fees for common areas, landscaping, grounds maintenance, regular heating and plumbing inspections, cable TV services, snow removal and trash removal.

In Greece, a standard set of services provided by a management company may include the organization and control of landscaping works and the services of suppliers of electricity, water supply, security and fire alarms, communications, etc. After-sales services for residential or commercial real estate in Greece: assistance in resolving daily issues/problems, as well as assistance in establishing the necessary contacts; registering your home; registration for electricity and water supply; phone connection; installation of a security system, if necessary; repair and restoration work; paying bills for water, electricity, telephone, paying taxes in your absence; cleaning and maintenance of the house and grounds, including landscaping. It should be noted that the costs of maintaining and improving real estate in Greece are among the lowest in Western Europe. The main expense items are fees for water, sewerage, electricity, utilities and outdoor lighting of public places. To this should be added the costs of telephone and natural gas. If we are talking about living in an apartment building, then, among other things, a fee will be charged in the amount of part of the costs for maintenance and improvement. Foreign experience introduces us to the most advanced knowledge in the field of management of apartment buildings.

The difference in approaches to managing apartment buildings on the part of authorities abroad and in Russia encourages our municipalities to implement the proven long-term experience of other countries. First of all, we note that in most foreign countries, for example in France, the Netherlands, the USA, Canada, Poland, Slovakia, the Czech Republic, Mexico, Singapore, Malaysia and others, management in the housing and communal services sector is
considered as a separate type of business activity for which the management organization receives remuneration from the owners of the premises, and the association (association, partnership) of home owners is responsible to them for the maintenance of the building. All major management decisions (primarily regarding the management of finances and the conclusion of contracts for the purchase of goods and services) are made by the governing bodies of the homeowners’ association (associations), while the manager prepares and substantiates recommendations for the board of the association. The market for housing and communal services creates requirements for management companies, failure to comply with which makes them uncompetitive.

First of all, this applies to the management company(s) insuring their civil and material liability in the event of damage to homeowners as a result of the manager’s improper actions. Management liability insurance is developed in most countries in Europe and America. In addition, the competitiveness of a management organization increases if it has certificates confirming its professionalism, experience and financial stability, as well as strict adherence to standards in the housing and communal services sector.

The legislation of Western countries sets high requirements for property managers. In Germany, a manager must have a higher education and qualifications as an economist, engineer, lawyer or social worker, and also have personal qualities such as communication skills, negotiation skills, and conflict resolution. In Hungary, according to the Law on Homeowners' Associations, condominium managers can only be persons who have undergone appropriate professional training. Since 1999, training courses in the specialties “condominium manager” and “real estate manager” have received state license in the country. Both courses meet the criteria for vocational training and exams are taken in accordance with the regulations of the Hungarian Ministry of the Interior.

Western countries and the United States demonstrate a developed market for housing services with highly specialized activities of organizations in the field of housing maintenance and repair. The separation of apartment building management abroad as an independent type of activity contributes to an increase in offers from professional managers and the formation of a competitive market for management services, the development of small and individual businesses in the field of housing management [18].

4 Discussion

In Russia, the emergence of homeowners' associations and management companies in the housing sector largely depends on the policies of local governments. First of all, it depends on them whether equal conditions will be created for access to the housing services market for enterprises of various organizational and legal forms of ownership. Associations created by homeowners, as a rule, have the status of non-profit organizations - housing construction (housing) cooperatives or homeowners' associations. The main task of these associations, according to their charters, is to organize the management of an apartment building - operation management, including maintenance management, repair work management, and management of the provision of utility services. In turn, maintenance management is divided into areas: management of maintenance of structures, utilities, elevators, etc.

The main advantage of creating a homeowners' association is to control the costs of maintaining common property, and the goal of attracting a management organization to manage an apartment building is to reduce costs. That is why this method of management can be considered the most profitable and effective [19].

5 Conclusions
Thus, the experience of Russia and foreign countries testifies to the variety of forms of management of municipal infrastructure, which make it possible to rationally distribute responsibility and risks between municipal and private businesses. The large-scale and complexity of solving economic, social and other problems of managing the development of housing and communal services in Russia require a comprehensive and effective use of accumulated experience. First of all, it is necessary to introduce government regulation and control into the market for the provision of real estate management services. This will ensure quality assurance, as well as the responsibility of the management company and transparency of pricing.

References

1. Decree of the Government of the Russian Federation dated August 13, 2006 N 491 (as amended on March 27, 2023) “On approval of the Rules for the maintenance of common property in an apartment building and the rules for changing the amount of payment for the maintenance of residential premises in the case of the provision of services and performance of work on management, maintenance and repair of common property in an apartment building of inadequate quality and (or) with interruptions exceeding the established duration”


