

**Securities and Futures Appeals Tribunal
Application No 4/2003**

Mona Wong Wai-king

DETERMINATION

The Application

1. On 10 December 2003 Messrs Haldanes, solicitors for Madam Mona Wong, applied for an Order that this Tribunal grant an extension of time to Madam Wong, pursuant section 217(4), Cap.571, to enable her to file and serve a Notice of Review against a Notice of Decision, dated 13 November 2003, issued by the SFC, wherein Madam Wong's licence was ordered to be suspended for a period of three months.

2. Madam Wong is aggrieved at this decision. However, her Notice of Review was not received by this Tribunal, via fax, until 8 December 2003, outwith the stipulated 21 day period specified in section 217(3), Cap.571. Hence the application for extension of time.

The Statutory Position

3. Section 217(4) of the Securities and Futures Ordinance, Cap.571, provides the jurisdiction to the Tribunal to extend time. However, section 217(5), Cap.571, further provides that the Tribunal "shall not grant an extension...unless—

- (a) the person who has applied for the grant of an extension...and the relevant authority have been given a reasonable opportunity of being heard; and
- (b) it is satisfied that there is a good cause for granting the extension.”

The Representations

4. By letter dated 9 December 2003 from the Secretary to the Tribunal to the solicitors for Madam Wong, copied to the SFC, the parties were invited to make representations on the issue of an extension of time.

5. In response thereto, letters dated 10 December 2003 were received from Messrs Haldanes, on behalf of Madam Wong, and from the SFC.

6. The SFC made the point that at the time of sending the Notice of Decision to Madam Wong on 13 November 2003, the covering letter clearly advised her of the latest date for lodging her Notice of Review; in fact, this covering letter noted that the notice should be lodged before 6 December 2003. The SFC further noted that Madam Wong had been apprised by the case handling officer of her right to apply to this Tribunal for review of the SFC decision in her case on 31 October (before issuance of the Notice of Decision), and latterly on 17 November 2003, when Madam Wong was given the telephone number of the Secretary to the Tribunal, Mr Lee.

7. As to the application itself, the SFC did not consent. Having outlined the relevant circumstances, the SFC position was to defer to the decision of the Tribunal as to whether “good cause” had been established upon the time application.

8. In their letter applying for the grant of an extension of time, Messrs Haldanes noted that they had received instructions from Madam Wong to act in her application for review on 4 December 2003, and had instructed counsel on an urgent basis. The Notice of Review was served on the Tribunal on Monday 8 December 2003, although it is said that it was also served on the SFC on 5 December. This letter apologized for the lateness in filing, and stated that no prejudice had arisen thereby. The letter further requested an immediate response in light of concerns about activation of suspension of the applicant’s licence.

9. By further letter dated 11 December 2003 to Messrs Haldanes from the Secretary to the Tribunal, it was noted that the grounds for the application to extend time as set out in Messrs Haldanes’ letter of 10 December 2003 had dealt only with the period from 4 December to 8 December 2003, and that nothing whatever had been said about the period between 13 November 2003 and 4 December 2003. In the circumstances, an explanation was invited as to what, if anything, had occurred during this period in terms of the application for review that now had been made out of time.

10. In response to this request, by letter of the same day Messrs Haldanes made three points on behalf of Madam Wong : *first*, that she had acted in person in the previous stages of this matter, because she was concerned about legal costs, and because she did not wish to be seen to ‘contest’ the SFC by instructing lawyers; *second*, after being shocked by her three month suspension she had spend a considerable amount of time discussing the matter with friends in the securities industry; and *third*, given that she was concerned about costs, she spend a considerable period of time attempting to persuade her employer, Concord, to provide financial support for her review, and it was only when this was rejected that her friends advised her to go to a lawyer, at which time she decided to instruct Messrs Haldanes to represent her.

Determination

11. In the context of proceedings before this Tribunal, an application for extension of time is not simply subject to the exercise of a wide judicial discretion, often liberally exercised, subject to the usual considerations of prejudice, compensation in costs and so forth.

12. To the contrary. The framers of this legislation, and in particular the provisions of section 217(5), Cap.571, have seen fit to lay down that an extension “*shall not*” be granted *unless* the Tribunal is satisfied that there is “good cause” for such grant. In the circumstances it seems reasonable to posit that, whilst putting in place a safety net for what are considered to be excusable cases of delay, the legislative intent in laying down the 21 day time

limit for making an application for review was to impose an element of certainty in terms of commencement of service of such penalties as are meted out by the SFC *qua* industry regulator. Hence the requirement of “good cause”, however that may be interpreted in the circumstances of any given case.

13. Viewed against this backdrop, in the view of this Tribunal the case for an extension of time as now put up on Madam Wong’s behalf fails, and fails signally.

14. This application could (and perhaps should) simply have been dismissed immediately upon receipt of the initial letter of explanation, dated 10 December 2003, from Messrs Haldanes, wherein the period between the date of the Notice of Decision, 13 November 2003, and 4 December 2003 (on which date that firm was instructed), was totally ignored in terms of the reasons tendered.

15. Upon the grant of an additional opportunity for explanation, that which was further proffered in Haldanes’ letter of 11 December 2003 manifestly failed to provide “good cause” for the delay that undoubtedly occurred in service of the required Notice of Review — which if properly constituted has the effect of suspending the SFC penalty pending a decision upon such review.

16. It is not easy to see why discussing this matter with friends in the industry or concern about the incurring of legal costs (together with failure of

an attempt to persuade her employer to meet any such costs) can, or indeed should, be considered as constituting “good cause” for the undoubted delay, not least because the individual concerned has the right of audience before the Tribunal upon any review. I hold that these matters clearly fail to meet the statutory requirement. Nor does alleged concern about being seen to take issue with, or ‘contest’, the SFC by means of the instruction of lawyers strike me as coming close to satisfying the necessary rubric.

17. The short point is that in my judgment absolutely no good reason has been advanced on behalf of Madam Wong to enable the Tribunal properly to conclude that the statutory requirement of “good cause” has been met, and thus to permit the grant of an extension of time over and above the 21 day period permitted by the statute in which to file an application for review.

18. It follows, therefore, that this application for a time extension is dismissed. It follows also that the application for review of the SFC Notice of Decision dated 13 November 2003, as served out of time, is of no effect.

Mr Justice Stone
Chairman
Securities and Futures Appeals Tribunal

16 December 2003