Application No. 6 of 2004

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER OF a Decision made by the Securities and Futures Commission under section 56(2) of the Securities Ordinance, Cap. 333 and under section 194(1) of the Securities and Futures Ordinance, Cap. 571

AND IN THE MATTER of section 217 of the Securities and Futures Ordinance, Cap. 571

BETWEEN

LAU HING HUNG, JOIE Applicant

and

SECURITIES AND FUTURES COMMISSION Respondent

Tribunal: Hon Mr Justice Stone, Chairman
Dr AU King Lun, Member
Dr TSUI Fuk Sun, Michael, Member

Dates of Hearing: 3 – 6 January 2005

Date of Determination: 27 January 2005

DETERMINATION

The application

1. This is an application for review by Mr Joie Lau Hing Hung, who by Notice of Application dated 7 June 2004 sought a review by this Tribunal of a Decision of the Securities and Futures Commission issued, by Notice of Decision and Statement of Reasons, on 17 May 2004.

2. By this Decision, the SFC determined that the registration of Mr Lau as a dealer's representative should be revoked under section 56(2) of the Securities Ordinance Cap 333. It was further determined that he should be prohibited for a period of ten years, under section 194(1)(iv)(A),(B),(C) and (D), from applying to be licensed or registered, from applying to be approved, under section 126(1), as a responsible officer of a licensed corporation, from applying to be given consent to act or to continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance, and from seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority, under section 20 of

the Banking Ordinance, as that of a person engaged by the registered institution in respect of a regulated activity.

The background

3. The genesis of this case arises from the somewhat tangled affairs of the CA Pacific Group, of which CA Pacific Securities (CAP Securities) and CA Pacific Finance Ltd (CAP Finance) were members. The former entity carried on business as a broker/dealer in securities, whilst the latter carried on business as a finance company, which provided margin facilities to clients of the securities arm. We have been told that as at January 1998 the securities arm had some 11,000 clients, of which some 8,000 were also clients of the finance branch.

4. On 19 January 1998 a company within the CA Pacific Group presented a petition to wind up CAP Finance on the basis of an inability to pay an inter-company loan, and on the following day, 20 January 1998, the SFC presented a petition to wind up the brokerage side, CAP Securities, on the ground that it was insolvent and that it was just and equitable and in the public interest for it to be wound up.

5. Consequent upon these events Provisional Liquidators were appointed for both entities, and thereafter litigation ensued

against margin clients of CAP Securities for the repayment of sums owed to CAP Finance which had been borrowed to finance their purchase, on margin, of securities the purchase of which was reflected in their CAP Securities accounts.

6. One such account holder, whom upon the face of the documents appeared to have been a margin client of CAP Securities and CAP Finance, and who was pursued for repayment by the liquidators, was one Lau Hei Tak. On the face of it, his account, Account No 102374, showed a debit balance of some HK$658,000. Letters of demand were sent, and in due course legal proceedings were commenced against him, by the liquidators, on 17 May 2001 in High Court Action 2187 of 2001.

7. The Statement of Claim in this action rehearses that Mr Lau had opened a cash securities trading account with CAP Securities and CAP Finance, that he had completed relevant account opening documentation which specified the obligations upon him in consideration of CAP Finance opening an account in his name, that as at 30 November 1997 the total amount loaned was HK$658,000.38, on which interest at the rate of 3.5% over prime was being charged, and that since 30 November 1997 no repayment had been made on that account. Hence the claim in

debt to CAP Finance, which, after taking into account accumulated interest, amounted to HK$999,351.72.

8. The problem with all this was that Mr Lau Hei Tak knew nothing whatever about it. In fact, he was first made aware of this action on 21 October 2002, when, presumably at the instigation of the liquidators, a notice of indebtedness in excess of HK$1 million was sent to his flat.

9. Mr Lau Hei Tak was greatly alarmed. He did not know what was going on. He went to Messrs Herbert Smith, the liquidator's solicitors, to obtain information. He also made a report to the police at Waterfront Police Station.

10. In addition he contacted his old schoolmate, Joie Lau, with whom he recalled that in 1997 he had discussed opening an account at CAP Securities, where Joie Lau then worked, and pursuant to which discussion he had given Joie Lau a copy of his ID card. He had however decided against investing on the stock market, he had told Joie Lau that he would not proceed, and he had asked him to destroy the ID card copy.

11. As the result of his inquiries, Mr Lau Hei Tak went one stage further: he made a complaint to the SFC about Joie Lau, the applicant in this review.

12. The SFC conducted its own investigation, with which conclusion Mr Joie Lau takes issue. Hence these proceedings.

The SFC investigation

13. The SFC investigation is well documented. In fact, the investigation seems to have commenced with the focus upon one Barry Tsui, another account executive in CAP Securities, whose dealing code, '178', appeared upon the face of the document commencing the account opening process in the Lau Hei Tak account, a document entitled 'Account Opening Information'.

14. In the event, the SFC have not proceeded against Mr Tsui, not least because, we have been told, after their first interview with him, in 28 November 2002, he has disappeared, and also because his existing licenced status has now expired due to effluxion of time and due to Mr Tsui's failure to pass the requisite exams.

15. However, Mr Joie Lau remained in the SFC's sights. A total of four interviews were conducted with him, on 3 December

2002, on 23 April 2003, on 13 May 2003, and on 26 June 2003. The transcripts of these interviews have been made available for our perusal.

16. Consequent upon its investigations, which also had included the commissioning of a handwriting expert, Mr Shum Lau, the SFC issued a Letter of Mindedness dated 25 November 2003, which informed the applicant of its mindedness to revoke his licence and to make a 10 year prohibition order for (1) impersonating Lau Hei Tak to open the account in that name and to trade therein; (2) for not admitting the liability incurred in the Lau Hei Tak account; and (3) for giving false and misleading information to the SFC in its investigation.

17. Solicitors appointed for the applicant made representations on his behalf on 23 December 2003. Such representations focused on the veracity of Lau Hei Tak, and asked for further investigation. The point also was made that the 'relevant account executive', that is, Barry Tsui, should be questioned.

18. Further representations followed on 19 March 2004, the gist of these being that the applicant had not given false information in his SFC interviews, that the evidence in the

possession of the SFC showed that Barry Tsui, rather than the applicant, was responsible for the Lau Hei Tak account, that the procedural circumstances surrounding the disputed account were such that Barry Tsui could not have been ignorant of the true state of affairs, and that the SFC should await the outcome of the High Court action between the Liquidators and Lau Hei Tak – an action to which the applicant had been joined as 2nd defendant in June 2003 – before proceeding further.

19. The SFC resisted this latter suggestion, and pressed forward, resulting in its Notice of Decision and Statement of Reasons dated 17 May 2004.

20. Upon the basis of the evidence before it, the SFC concluded that it was the applicant who had opened the Lau Hei Tak account, and who had traded within it, and that, as a consequence, Mr Joie Lau was guilty of serious misconduct and that by reason of such manifest dishonesty he was not a fit and proper person to remain licenced; the penalties consequently imposed, in terms of licence revocation and prohibition order, were those specified at the outset of this Determination.

The procedure adopted

21. Whilst generally regarded as an 'appellate' tribunal, with argument normally confined to submissions by counsel on the basis of existing papers, including the record of the SFC internal procedures/inquiries, this case represented an instance wherein fairness dictated that the tribunal accede to the request made on behalf of the applicant that evidence should be called in the conduct of this application.

22. In this regard Mr Bernard Mak, counsel for the applicant, noted that this tribunal was in a "better position" to determine the issues before it because it now had the advantage of considering the expert handwriting evidence commissioned by the applicant.

23. Mr Mak further submitted that this tribunal is vested with the power to confirm, vary or set aside the SFC decision, and thus all that this tribunal was required to do was to determine to the requisite standard whether, upon the material before it, it could be satisfied that his client had been responsible for, or had played a part in, the opening and trading within the disputed Lau Hei Tak account. If the answer to this was in the negative, Mr Mak stressed that the tribunal should set aside the SFC decision, and that it was not required further to determine whom in fact was responsible for that which had occurred.

24. In the event, therefore, this application turned into what amounted to a rehearing of the issue, with *viva voce* evidence, both factual and expert, being received from each side, together with opening and closing submissions from counsel retained by the parties.

The respective cases

25. The case ably run by Mr Mak on behalf of the applicant was essentially a case mounted on the basis of the standard of proof. His position was thus: his client denied knowledge of, or participation in, the opening of and subsequent trading within the Lau Hei Tak account, and that upon the basis of such evidence as was able to be mustered, it could *not* properly be said that the SFC case met the requisite standard of proof essential in a serious case such as this, wherein a man's very livelihood was at stake.

26. For her part Miss Cheng, appearing for the SFC, would have no truck with this. When looked at in the round, she said, the conclusion that she invited this tribunal to draw in light of the evidence before it was compelling, and it followed, she asserted, that this application should be dismissed.

27. At the outset, neither counsel alluded to the possibility of a middle ground, namely that if and in so far as the substantive offence regarding the Lau Hei Tak account was not demonstrated to the necessary standard, that nevertheless it was open to the tribunal to conclude that the applicant's conduct during the SFC investigation had been patently dishonest, and that this was conduct in itself meriting a significant penalty. As the case progressed, however, this possibility emerged, and in final submission both counsel alluded to this alternative element.

The standard of proof

28. Given that the issue of the standard of proof became a central issue in this application, we should, we think, make crystal clear the basis upon which we have assessed the evidence before us in this case.

29. The starting point is statutory: pursuant to section 218(7) of the Securities and Futures Ordinance, in cases other than instances of contempt "the standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in a court of law."

30. This standard, of course, is that of the balance of probability. But there is a gloss to this position, as Mr Mak was

keen to stress. This is that the more serious the allegation which is made, the more compelling must be evidence upon which to determine that the balance of probability standard has been met.

31. There are a number of judicial pronouncements along these lines, perhaps the most well-known being the much-quoted epithet that "the graver the allegation, so must the standard of proof be weighty".

32. The most recent and authoritative statement of principle in this area is that in *In re H (Minors), [1996] AC 563* wherein Lord Nicholls (with whom Lords Goff and Mustill concurred) stated, at 586E:

> "When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in a particular case, that the more serious the allegation, the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury… Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.
>
> Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established…"

We note that these remarks accord with the law as it has been stated and applied in Hong Kong: see *Attorney-General v Tsui Kwok Leung [1991] 1 HKLR 40.*

33. For her part Miss Cheng embraced this standard, and asked that the tribunal proceed on this basis. So too, we believe, did Mr Mak, although such was the ambit of argument that on occasion we wondered (no doubt, unfairly) that he was attempting to guide the tribunal toward the higher (and from his viewpoint the infinitely safer) ground of proof to the criminal standard, namely, proof beyond a reasonable doubt.

34. In any event, we take this occasion to state, as firmly as we may, that we recognize the gravity of that which is asserted against this applicant, and of the effect upon him should the revocation/prohibition order imposed by the SFC be upheld, and that these factors have been at the forefront of our minds in our evaluation of the evidence in this case.

35. It is to the burden of this evidence that we now turn.

The evidence

36. In terms of *viva voce* evidence of fact, the applicant himself, Mr Joie Lau, went into the witness box, whilst on behalf of the SFC the sole witness of fact to be called was that of the alleged 'victim', namely that of Mr Lau Hei Tak.

37. So far as expert evidence as to handwriting was concerned, the tribunal was assisted by Mr Paul Westwood, a handwriting and questioned document examiner, who had flown in from Australia for this hearing, and whose evidence was proffered on behalf of the applicant, whilst for the SFC expert evidence in this area was called in the person of Mr Shum Lau, a Hong Kong expert in this field.

38. Turning first to the evidence of fact, we wish to note at the outset that we were most impressed with the evidence of Mr Lau Hei Tak, whom in our view brought a simple dignity and an unmistakable ring of truth to these proceedings. We accept his evidence in its totality.

39. Mr Lau Hei Tak recounted the history of events, at least in so far as he knew of them after having become aware of the problem.

40. After contacting the liquidator's solicitors, Messrs Herbert Smith, he got in touch with Joie Lau, his old schoolfriend, by this stage having recalled the earlier discussion with Mr Lau about investing on the stock market and pursuant to which possibility he had given Joie Lau, at Joie Lau's request, a photocopy of his ID card. Joie Lau had told him that if and when Lau Hei Tak decided to open an account, that he would have taken care of the formalities in advance, and thus all that Lau Hei Tak would need to do would be to go to the office to sign the relevant account opening documents. However, Lau Hei Tak had decided not to proceed, prudently opting to retain his savings which he had been accumulating for his wedding. Accordingly, he had phoned Joie Lau informing him of his decision, and had asked him to throw away the photocopy of his ID card.

41. Mr Lau Hei Tak affirmed that he had never opened any share trading account with CAP Securities, or with any finance company, and that the trading ostensibly done in 'his' CAP Securities account had not been done by him. Nor, he said, had he ever received any client statements from CAP Securities or CAP Finance, and indeed had only come to know of the situation when in late October 2001 he had received the monetary demand on behalf of the liquidators.

42. His attempt to find out what was happening stimulated his visit to the offices of Messrs Herbert Smith, where he had been shown the account opening documents in question and had recognized that the account holder's address as written on the document entitled 'Account Opening Information' was the home address of Joie Lau, as was the mobile phone number listed therein. Mr Lau Hei Tak noted that he recognized his friend Joie Lau's address because he had helped him to move there, and that this had been his mobile number "all along". Moreover, he confirmed that the account opening documentation did not have his handwriting anywhere thereon, and that the 'client signatures' so appearing were not his signatures.

43. Lau Hei Tak and Joie Lau had a mutual friend, one Lee Kin Yu, who was also from the same school, and Lau Hei Tak asked Lee to find Joie Lau. Accordingly, a lunch meeting was set up in the afternoon of October 22, 2002, attended by Lau Hei Tak, Lee Kin Yu and his wife, and Joie Lau and his girlfriend. Lau Hei Tak told the tribunal of how, at this meeting, he had given to Joie Lau a copy of the account opening documentation which he had obtained from the lawyers, and that he had asked him how this had happened. Joie Lau's response was to the effect that it was his erstwhile colleague, Barry Tsui, who had taken the copy of Lau Hei Tak's ID card from his drawer, and who must have been

responsible. Joie Lau also had said that it was hard to find Barry Tsui, and he had urged Lau Hei Tak to leave the matter in the hands of the police.

44. Lau Hei Tak said that initially he had believed Joie Lau's version of events because the two "had known each other for many years and I did not believe that Joie Lau would have done such thing to me." However, he said that after discussing the matter with Lee Kin Yu after the lunch that he had concluded that "it was not possible" that Joie Lau had had no involvement, as he had learned that his erstwhile friend had been receiving court documents at his home, documents addressed to Lau Hei Tak, for some two to three years, and that "if Joie Lau was not involved, there was no reason for him not to tell me."

45. Thereafter, said Lau Hei Tak, in the evening of the following day, 23 October 2002, when he was telephoned by Joie Lau he asked him why he had not told him about the mail sent to Joie Lau's house, and whether he was involved. To this inquiry he asserted that Joie Lau had not replied, and that "I scolded him". In this conversation Joie Lau also asked him to which police station Lau Hei Tak had filed his report, but he did not give him that information, and after that, said Lau Hei Tak, he had had no conversation or contact with Joie Lau.

46. Lau Hei Tak stated that, in light of his income and savings, it was "absolutely impossible" for him to have conducted securities trades in the hundreds of thousands of dollars, as appeared to have been done through the account which ostensibly had been set up in his name.

47. He further said that he had known Joie Lau from secondary school days, when they had played together and had socialized, and that after graduation from secondary school and prior to the Asian financial crisis in 1997 he and Joie Lau had kept in regular contact through social gatherings attended by other old schoolmates. He noted that when he had got married at the end of 1997 Joie Lau had come to his wedding banquet and had had photographs taken with him, one of which was in the papers before the tribunal.

48. As we have earlier stated, we accept Lau Hei Tak as a witness of truth.

49. Unfortunately, the same *cannot* be said of the applicant, Joie Lau. Having seen and heard him, we do not consider him to be a witness of truth. To the contrary, we consider that the version

of events told to this tribunal was false and self-serving, and we place little or no reliance on what he had to say.

50. We refer to the 'version told to this tribunal' because there are significant differences in terms of his evidence during the hearing before us when compared with the version as told to the SFC during their interviews with him. There are further differences between his witness statement prepared for the purpose of this application, and his *viva voce* evidence, so much so that at one stage his counsel was constrained to ask him why there were such inconsistencies, to which there was no adequate response.

51. During the course of his evidence before us Mr Lau conceded that he had told lies to the SFC, conduct for which he now "repented", but he insisted that that which he now was saying to this tribunal was true. As we have observed, we do not, and did not, believe him. We are constrained to say that this gentleman struck us as dishonest.

52. The gravamen of the applicant's evidence was that he had had nothing whatever to do with what had transpired with the Lau Hei Tak account, the clear inference being that this course of events should be laid exclusively at Barry Tsui's door.

53. He said that in or around 1997 “when the Hong Kong stock market was quite bullish” many of his friends had wanted to open accounts at his company, and that since there were so many friends who thus had contacted him he could not clearly recall whether at the time Lau Hei Tak had mentioned opening a trading account with him. He could “not discount the possibility” that he may have received a faxed copy of Lau Hei Tak’s ID card, but he had no memory of the meeting – which we note was described by Lau Hei Tak as having taken place somewhere in Wanchai, probably at a restaurant – in which Lau Hei Tak had given him the photocopy of the ID card and had discussed the question of the opening of a new trading account. He accepted the possibility that he may have filled Lau Hei Tak’s name on the account opening form pending his supply of further documentation and in advance of his coming into the office to sign upon the form, but he had definitely never signed nor submitted any account opening document to the company under the name of Lau Hei Tak, nor had he operated any such account, nor had he deposited any funds into that account.

54. He did recall the lunch meeting on 22 October 2002, and that he had spoken on the telephone to Lau Hei Tak the following day, in which he had asked him what he was going to do, and had suggested he go to the police.

55. The applicant stated that he had been receiving mail in the name of Lau Hei Tak, but he then had not realized that the addressee was his old schoolmate whom he had always known by the nickname of “Tak Chai”, and that consequently he had either returned the mail to sender or had left the mail downstairs at his management office.

56. He said that when he had realized what was happening he had attended at the offices of the accountants Coopers & Lybrand with a computer printout of the list of his own clients which he had obtained from the liquidators, in an attempt to demonstrate that Lau Hei Tak was not his client and that Lau Hei Tak did not live at the applicant's home address, that is, the address to which such mail was being sent, and further noted that his account executive code was ‘152’ and not ‘178’, which he subsequently had had to be reminded was the code used by Barry Tsui when CAP Securities was still functioning.

57. He had protested his innocence to the SFC, but they had persisted in wrongly accusing him, he said. He further spent some time in his evidence being led on the internal office procedures of CAP Securities, and opined that even if he had opened an account in the name of Lau Hei Tak that there was no way that he could

have profited from it, given that account holders who wished to encash their trading profits were issued a crossed cheque in their own name.

58. Mr Joie Lau also drew attention to the fact that ‘commission’ earned on this account would have gone to ‘178’, that is, Barry Tsui, and he drew attention to the content of the interview given by the latter gentleman to the SFC. He noted that a deposit slip in the sum of HK$40,000 for the account of Lau Hei Tak appears to have been sent to Barry Tsui, and that the commission for the month of December 1997 paid on this account tallied with the commission apparently paid to Barry Tsui for the like month.

59. In short, therefore, he disavowed both knowledge and action in regard to Account No. 102374.

60. As to the expert evidence called before us, we earlier have noted that two experts on each side of the fence were called to assist the tribunal. Each of Mr Westwood and Mr Shum had filed reports and supplemental reports, which we have reflected upon.

61. The documentation apparently utilized to open the false account in the name of Lau Hei Tak was considered by both. We refer to specific documents later in this judgment.

62. For present purposes suffice to say that Mr Westwood was essentially conservative in his approach, confining himself to a classification wherein he felt able to opine either that there was moderate, or strong support, for the proposition that the document under examination had not been written by the applicant, alternatively that in his opinion he could not exclude the possibility that a document had been written by the applicant, such observations being made against the background theme that there was insufficient sample material of known writing available for purposes of comparison with the questioned documents.

63. Mr Shum, a retired government scientific evidence officer, adopted a posture towards the disputed documents which in many ways was the complete opposite in approach. He eschewed probability, and asserted a “confirmatory view” which brooked little doubt that, for example, the disputed signatures he had been asked to examine were written by the applicant, Joie Lau, and that differences perceived were but “natural variations” in terms of the samples he had considered. We think it fair to mention that Mr Shum affected his own particular methodology,

relying in substantial part upon extrapolation of perceived hand movements/pen gripping techniques in arriving at his conclusions; in addition, we viewed with some reservation the level of certainty purportedly espoused by Mr Shum, although he did ultimately accept that his opinion as proffered was as consistent with the concept of probability – a concept which he appeared to dislike – as with the level of scientific certainty which he was prepared to propound.

64. We think it also fair to observe that, whilst we naturally have reflected at some length upon the relatively disparate nature of the expert evidence presented to us, at the end of the day the issue of expert evidence in this field is but one piece of a far larger 'jigsaw' in terms of the available evidence, and that the determination we ultimately have reached in this case in itself does not turn upon acceptance or rejection of any particular aspect of such expert evidence.

65. Finally, in outlining the range and nature of the evidence before this tribunal, we wish to note that available for our consideration was the documentation assembled by the SFC over the period of its investigation conducted into this case, within which, to take but one example, there was evidence of payments into the false 'account' of Lau Hei Tak, payments which on their

face were made with the purpose of meeting margin requirements, and which payments were demonstrated to be proximate in time and amount to ATM cash withdrawals made by the applicant upon the same day.

Decision

66. This case has provoked concern and has necessitated considerable reflection. We are conscious of the importance of this application to this applicant, given the penalty imposed by the regulator, and we have reminded ourselves of the considerations earlier set out in terms of the standard of proof, and the necessity of the appropriate benchmark being satisfied in a case in which both 'victim', regulator and liquidators can have no direct knowledge of that which occurred, and in which the applicant, the only person on the ground at the time, denies responsibility and says, in effect, 'prove it'.

67. We also bear in mind the principle pressed upon us by Mr Mak, namely that lies which are told by an accused – and in this instance we are reminded that Mr Joie Lau admits to having lied and having attempted to deceive the SFC – in themselves are not necessarily probative of the offence under consideration, nor necessarily constitute evidence of guilt, and that such falsehoods may be explained by other, perhaps innocent, reasons. Suffice to

say, however, that on the basis of the evidence in this case – wherein no defence has been put forward save for a blanket denial of the allegations in question – we have been unable to discern any reason that otherwise may explain the lies that admittedly have been told.

68. In reaching our decision we have considered the broad evidential spectrum, and where we have been prepared to draw inferences we have done so only after satisfying ourselves that the underlying factual matrix thus permits. In short, we have evaluated that which is before us upon the basis of the high degree of probability warranted by the seriousness of this charge.

69. We have no doubt whatever, and so find, that the 'account' ostensibly opened in the name of Lau Hei Tak had nothing whatever to do with that gentleman, who was entirely ignorant of that which had transpired until he was subjected to what must have been the trauma of being notified by the liquidators – whom of course had only the documentation emanating from CAP Securities and Finance upon which to base their judgment – to the effect that 'his account' was substantially in debit. Whilst obviously the matter is one for the liquidators, we should be surprised if in the circumstances it was seen fit to

continue to prosecute the existing High Court action against Lau Hei Tak.

70. We further find that after becoming aware of the situation that events transpired as described by Lau Hei Tak, and in particular that there was a meeting with Joie Lau at which the possibility of opening a trading account was discussed, that at that meeting Lau Hei Tak had handed over a copy of his ID card at the request of Joie Lau, that he had subsequently called Joie Lau and informed him of his desire not to take the matter any further in terms of opening an account, and that the lunch meeting of 22 October 2002 and the telephone call of the following day took place, both as to event and content, as he recounted to this tribunal. In this regard we specifically note, only to reject, the applicant's calculated assertion to the effect that he "could not exclude the possibility" of having received a fax copy of Lau Hei Tak's ID card. In terms of the history of events Lau Hei Tak was, in our judgment, an unshaken witness of truth.

71. A key element within the evidence as it has been placed before us relates to the issue of the identity of Lau Hei Tak as understood by the applicant, Joie Lau. We are in no doubt, and specifically so find, that at all times the applicant was well acquainted with Lau Hei Tak, and well knew his full name; in light

of the history, we reject entirely the applicant's suggestion that, despite an association of some twenty years or so dating back to their schooldays, that he knew Lau Hei Tak only by his nickname, "Tak Chai". We consider it inconceivable that despite having grown up together, with the applicant having attended Lau Hei Tak's wedding, that the applicant was, or could have been, in ignorance of his friend's identity.

72. Against the backdrop of these primary factual findings, we have considered the factors which have been urged upon us as 'connecting' the applicant with the manifestly dishonest scheme that took place in terms of the opening of this false account, and of the trading within it. In this context we cannot but observe that had the 1997 financial crisis not eventuated, bringing with it the highly adverse market conditions that it did, such trading on this account may well have continued for private gain untrammelled by regulatory or internal corporate constraint.

73. Central within the analysis of such factors is the applicant's risible attempt, which constituted a discernible theme within the course of his evidence, to distance himself from his erstwhile school friend at every material juncture.

74. In this regard, we are in no doubt that he was blatantly lying to this tribunal. We are able to discern no basis or objectively acceptable reason for such prevarication save that this posture was directly related to the applicant's self-serving assertion to the effect that he had not realized – due to his lack of knowledge of Lau Hei Tak's full name – that the mail that the applicant had been receiving at his home was being sent to his old friend, and, moreover, that he had not realized to whom the SFC had been referring until he had been shown a photograph of Lau Hei Tak within a wedding group of which he himself had been a member.

75. Nor do we entertain any doubt that the mail that was being sent to Joie Lau's home address – because of course it had been this address which had been included within the 'Account Opening Information' entered with respect to the false account – constituted monthly statements regarding this account, together with other official correspondence subsequent to the winding up of the company.

76. In this regard we consider, and so find, that in his treatment of such mail, either by purporting to return it or by placing it unopened in the management office, the applicant falsely affected not to know the identity of the addressee, Lau Hei Tak. We have further concluded that the applicant's subsequent

attendance at the offices of Messrs Coopers & Lybrand, when he purported to demonstrate that his computer-generated client list did not contain the name of Lau Hei Tak – which of course would not have been the case, since the printout in question concerned only those clients dealt with under his own account executive code, '152' – was a further self-serving action designed to deflect attention from himself as having anything to do with this false account. We note also that this same computer generated printout was used for the like purpose by the applicant during his interviews with the SFC.

77. We have considered the evidence relied on by the SFC which is said to demonstrate that funds deposited within the false 'Lau Hei Tak' account were proximate in terms of time and amount to ATM withdrawals made by the applicant. In this context two sums were cited, which Miss Cheng noted were the only deposits into this account other than inter-company transfers: the sum of HK$3,374.00 on 24 October 1997 and the sum of HK$3,000.00 on 15 September 1997, which deposits correlated, it is asserted, with cash withdrawals by the applicant on those dates in similar amounts.

78. Looked at in isolation, this element of the evidence is not immediately probative of the assertion for which it is put

forward. The highest that this can be put is that it is coincidence indeed for the deposited sums broadly to match the sums withdrawn on those days by the applicant, and at best it strikes us that it can only be regarded as but a further piece of the 'jigsaw' making up the larger picture. Perhaps of more interest in this context is the legend "102374 LAU HEI TAK" which is handwritten upon each of the bank deposit slips which evidence payment of these sums into the account of CAP Finance upon the dates in question.

79. This brings us, therefore, to the issue of the handwriting evidence, and to our conclusions thereon.

80. We have spent some time considering the evidence of Mr Westwood and that of Mr Shum. Upon reflection we are satisfied that certain of the handwriting upon the documentation surrounding or connected with this account is, on the balance of probability, that of the applicant. We have carefully compared the views of the experts, and in this regard we have been assisted by Mr Westwood's 'charts', which contain enlarged versions of the materiel under scrutiny.

81. In particular, we are satisfied that the writing on the two deposit slips to which we have referred bear an extremely close

correlation with samples of Mr Joie Lau's handwriting obtained for the purpose of this investigation. In fact, we recalled Mr Westwood to the witness box to deal with this aspect – *vide* the writing in block letters on the deposit slips compared with the samples at Items 23 and 24 of his 'charts' – and he was unable to exclude the possibility that the writing on these deposit slips had been written by the applicant; for his part, Mr Shum had considered this aspect, and as we understand the position, issued a confirmatory view that this was the case.

82. In the handwriting context we also have paid close attention in particular to the forged signatures of Lau Hei Tak upon the falsely-completed 'Account Opening Information' document, and we have compared those two signatures with specimen signatures of Mr Joie Lau obtained from the Hong Kong Bank. Once again Mr Westwood's 'charts' have been of assistance, and once again Mr Westwood was unable to exclude the possibility that Joie Lau was the writer of the questioned signatures, although he was at pains to distinguish certain aspects of the letter formation, and he further commented that such similarities as there were between the questioned signatures and the specimen signatures "may well be due to chance coincidence in the writings of two different people". Once again, also, Mr Shum

was in little or no doubt that these questioned signatures could be attributed to the applicant.

83. We consider that there is a strong probability that the forged signatures in question emanate from the hand of the applicant. In fact, in light of the accumulation of other evidence before us in this case, it strikes us as beyond the bounds of coincidence that the 'looped' formation of the 'L' together with the formation of the 'a' and the 'u' within the forged signature should accord so closely with, for example, Item 14.2 in the 'charts' which represents a bank signature of the applicant dated 18 March 1996. We consider that there is much in the observation of Mr Shum – with which, we believe, Mr Westwood did not disagree – that a person designing a signature cannot conceal his personal stylistic form within such designed signature. In this context we further agree with an observation of Miss Cheng to the effect that a person forging a signature would wish to do so in a manner which, if necessary, would be capable of repetition by that person.

84. We do not in this determination see the necessity to expand our view in terms of the handwriting element of the case, although it is appropriate at this stage also to note that Mr Shum also identified certain Chinese characters appearing on other

questioned documents could be attributed to Mr Joie Lau, whilst Mr Westwood expressed no view thereon.

85. Accordingly, when having regard to the evidence as a whole, namely our view as to the veracity of Mr Joie Lau, to the history of events given by the 'victim' of this subterfuge, Lau Hei Tak, and to the other evidential circumstances outlined herein, we are satisfied, to a high degree of probability, that this applicant was inextricably involved with the establishment and operation of the false account attributed to his old friend Lau Hei Tak. We so find.

86. At this juncture we should perhaps make reference to two further factors.

87. First, we unequivocally reject the assertion of Mr Joie Lau that, even had he set up and/or operated this account that, by reason of internal corporate constraints that there was no way in which he would have been able to benefit in terms of monies yielded from the operation of Account No 102374. The very fact that this account was able to be so apparently easily set up and operated absent internal detection in our view gives the lie to this assertion.

88. Second, and in a sense following from the same point, in light of the circumstances of this case we do not reject the possibility, perhaps even probability, that mixed up in the affair of the establishment and operation of this manifestly false account was Mr Barry Tsui. In fact, Mr Tsui appears to have been purportedly acting as 'witness' to the execution of some of the documentation, and that which apparently is his signature can also be seen.

89. However, in our view the fact that the SFC have not proceeded against him – we repeat the information that Mr Tsui cannot currently be located, and that in any event his personal licensing has now expired – strikes us as nothing to the point *provided* that we are satisfied to the relevant standard, as indubitably is the case, regarding Mr Joie Lau's participation in this dishonest venture.

90. Accordingly this is not a case of 'one or the other', as Mr Mak submitted, and that absent identification of which one it was that it was not open to this tribunal to make a decision. As we have observed, it may well have been that both of these gentlemen were involved in this deception – in fact, account executive code '178' was the code earmarked for Mr Tsui (an aspect, we are reminded, that the applicant affected *not* to recall when first

interviewed by the SFC about this case) – but the fact that it is not now possible to identify who did what matters not as long as we are satisfied to the necessary standard, as is the case, that the applicant himself was involved.

91. It follows from the foregoing that the Determination of this tribunal is that the application before us do stand dismissed, and that the decision of the SFC in this case is affirmed. We so order.

92. In light of this conclusion, there is no necessity further to consider the alternative argument to the effect that, in the event that the SFC decision were not to be affirmed, that the lies admittedly told by the applicant to the SFC during the inquiry themselves should be subject to specific sanction. Had this eventuality occurred, we are inclined to think that the appropriate procedure would have been to have remitted this case to the SFC for further consideration in light of our findings and in light of the applicant's admission during his evidence. However, given the views we have expressed in the application before us, this possibility does not now arise.

Costs

93. It remains only to consider the issue of costs.

94. In light of the content of this Determination we consider that there is no realistic alternative but that costs are to follow the event, and that the costs of and occasioned by this application are to be paid by the applicant to the SFC, such costs to be taxed if not agreed.

95. Accordingly we make an order *nisi* to this effect.

Hon Mr Justice Stone (Chairman)	Dr Au King Lun (Member)	Dr Tsui Fuk Sun, Michael (Member)

Mr Bernard Mak inst'd by M/s Pang, Kung & Co, for the applicant

Miss Flora Cheng inst'd by the Securities and Futures Commission