

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER OF a Decision made
by the Securities and Futures
Commission Ordinance under
section 56(2) of the Securities Ordinance,
Cap. 333 and section 36(2) of the
Commodities Trading Ordinance,
Cap.250

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

BETWEEN

WONG KWOK FAN, RICO

Applicant

and

SECURITIES AND FUTURES COMMISSION

Respondent

Tribunal: Hon Mr Justice Stone, Chairman

Date of Hearing: 11 April 2005

Date of Determination: 28 April 2005

DETERMINATION

The application

1. This is an application by Mr Rico Wong Kwok Fan, who seeks a review by this tribunal of the decision of the Securities and Futures Commission wherein, by Notice of Decision dated 22 February 2004, Mr Wong was informed that the SFC had decided to suspend his registration as a dealer's representative under the Securities Ordinance and the Commodities Trading Ordinance for a period of two (2) months pursuant to the regulatory powers under section 56 of the Securities Ordinance, Cap. 333, which powers remain exercisable after 1 April 2003 pursuant to section 64, Part 1, Schedule 10 of the Securities and Futures Ordinance, Cap. 571.

2. The parties to this application have agreed that this review should be heard by the Chairman sitting alone, pursuant to the provisions of section 31, Schedule 8, Securities and Futures Ordinance, Cap 571.

The factual background

3. Since June 2003 applicant has held a full licence as a licensed representative under the Securities and Futures Ordinance

of Hantec International Finance Group Limited and Hantec Investment Consultant Limited. This matter, however, has its genesis during the period in which Mr Wong was registered and accredited to Dashin Securities Limited and Dashin Commodities Limited, which were his employers up to February 2003.

4. The inquiry which gave rise to the disciplinary action presently taken against Mr Wong arose from an SFC investigation into a complaint by one Madam Sun Dai Sai in connection with alleged unregistered dealing activities of one Lam Ka Yuk and one Chan Kin Hung, who, together with the applicant herein, in 2001 were working at Dashin Securities Limited and Dashin Commodities Limited; at that time Mr Wong was registered both as a securities dealer's representative under the Securities Ordinance and as a commodity dealer's representative under the Commodities Trading Ordinance.

5. On 21 October 2003 Lam was convicted of unregistered dealing and Chan, who was a registered dealer, was convicted of aiding and abetting Lam in conducting such unregistered dealing in the period between August 2001 to May 2002.

6. It was into this net that Mr Wong appears to have been peripherally drawn, the consequences of his connection with the activities of Lam and Chan only now being visited upon him.

7. What happened was this. In an SFC interview Madam Sun, a client who had been introduced to the firm by Lam, alleged that on 24 August 2001, when she had opened a securities and commodities account with Dashin, that Lam had given her blank account opening forms to sign that already had been pre-signed by Chan and by the applicant herein, Rico Wong. These signatures purported to confirm that Wong and Chan had explained the documents to Madam Sun, whereas in fact this was not the case; in fact, Sun had never met Chan or Wong.

8. Madam Sun also alleged that on 3 September 2001, when she had signed the risk disclosure statement, that although she did not know Mr Wong nevertheless his signature had appeared on that statement purporting to confirm that he had explained the statement to her.

9. When the SFC interviewed the applicant about these matters, his position was that he could not recall Madam Sun or the circumstances of her account opening, but he had confirmed that the signature upon the account opening forms was his. Thus it

followed that Sun should have been Mr Wong's client, although he had not worked for Sun, and he could not recall who had placed orders for her nor how they were executed or confirmed.

10. Mr Wong also had admitted that he had rebated to Lam, who was unauthorized, commission earned from dealings on Sun's index futures trading account, as it had been Lam who had introduced Sun to him for the purpose of handling Sun's account.

11. By its Letter of Mindedness dated 24 November 2004 addressed to Mr Wong, the SFC recited the admissions made by him in terms of Sun's account, and stated that the certification by Mr Wong of his alleged witnessing of Sun's risk disclosure statement when he did not know her and had not met her, and the fact of the rebating of commission to Lam, thus facilitating Lam's unregistered dealings, breached the Code of Conduct for Licensed Persons, and had led to the preliminary conclusion that he had been guilty of misconduct for the purpose of section 56 of the Securities Ordinance and section 36 of the Commodities Trading Ordinance.

12. This letter proposed a suspension of Mr Wong's registration for 3 months, and requested an explanation prior to finalizing this decision.

13. By a letter dated 13 December 2004 Mr Wong responded to this request. He accepted his contraventions of the law, but asked for leniency, making the point that he had been working in the financial field with a clean record for over 20 years, and that he had attempted fully to co-operate with and to assist the SFC in their investigation despite his limited recollection of the events in question. He said that he had lost his wife in 1999, that he was bringing up his son on his own, and that his financial prospects were bleak.

14. By its Notice of Decision and Statement of Reasons, dated 22 February 2005, the SFC found that Mr Wong had certified that he had witnessed Madam Sun's risk disclosure statement when he had not, and had not even met her, and that he had rebated commission to Lam, thereby facilitating Lam's unregistered dealings.

15. The SFC concluded that Mr Wong had been guilty of misconduct for the purpose of the statutory provisions, that such matters called into question whether he was a fit and proper person to remain registered, and that, after having considered his representations, in particular his clean record, his frankness, the fact that this was an isolated incident, nevertheless that it was in the public interest that there be a suspension. The final decision

made by the SFC was suspension of his registration for a period of two months, thus reducing the penalty initially proposed by one month.

16. It is against this decision that Mr Wong now makes his application to this Tribunal.

The submissions

17. Mr Wong was unrepresented. His submissions were in short form, and substantially echoed the representations he earlier had made to the SFC.

18. He noted that he had an unblemished record over the period of his employment within the finance industry, and that no client ever had had cause to complain about his work. He affirmed that which he felt was his good moral integrity, and that, although he had done what he had done, this contravention of the regulatory framework was more inadvertent than intentional, that he had had no intention of personally profiting, and that in truth although misguided, his motivation essentially had been that of giving a colleague “a helping hand”.

19. Mr Wong noted that he was in a difficult economic position. He had had to bring up his family single-handed since his wife had been executed in China in 1999, and he had exhausted his financial reserves in attempting, sadly unsuccessfully, to secure her release. He pleaded for leniency for this isolated regulatory infraction, and made clear his intention to continue to be careful in observing the necessary rules applicable to the holder of a securities dealer's licence.

20. He asked that the suspension presently imposed upon him be reduced to a reprimand. Were he to be suspended, he maintained, he would lose his client base and, as a consequence, his livelihood.

21. For the SFC Miss Chung reviewed the history of the case. She noted that the applicant did not dispute the facts asserted against him, indeed he had admitted his misconduct. She argued that false certification of the account opening documents was relevant to the honesty and integrity of the applicant, and that whilst personal sympathies certainly could be extended to Mr Wong arising from the loss of his wife, this in no sense addressed the regulator's concerns relating to the account opening failings and the rebate of commission.

22. Miss Chung made the point that as an experienced person the applicant should have known and been familiar with the Code of Conduct, and that the regulatory body was in the best position to determine the appropriate penalty for professional misconduct, so that unless it could be said that the existing penalty of two months plainly was wrong, this penalty, and the Respondent's decision in this regard, should stand.

23. Miss Chung referred to a number of precedents dealing with similar infractions which had attracted suspensory punishment, although it must be said that the facts of these cases varied very significantly. At the end of the day, each case must depend upon its own particular facts.

Decision

24. This case has given me pause for reflection. Of its type it appears to be substantially less serious than several of the other cases that have been cited by the respondent regulator, and this is not an instance in which, in my judgment, there is any real flavour of venality or calculation on the part of the applicant.

25. That said, I do not consider that a reprimand is sufficient punishment for the infraction that admittedly has taken place, notwithstanding Mr Wong's plea for leniency.

26. In my view the regulator is correct in maintaining that an infraction of this nature warrants a suspensory penalty, and in the submission that failings in the account opening process such as signing risk disclosure statements when documents have not been explained and in 'witnessing' documents when the person is not present tend to call into question personal integrity and to undermine the fundamental 'client identity' requirement – important considerations which, if honoured in the breach, tend to encourage trading malpractice.

27. However, this case represents very much an isolated historical incident which strikes me as at the low end of this particular scale. I recognize that this Tribunal has said, and no doubt will continue to say, that as a matter of primary inclination it will be disinclined to interfere with the view of the regulator in terms of penalty. In this case, however, I have concluded that no damage will be done to the basic principle warranting suspension if, in these particular circumstances, I afford the applicant a slightly greater degree of leniency than that already exhibited by the SFC,

who in considering the two month suspension imposed had taken into account the matters variously raised by Mr Wong.

28. The loss of his wife in these extraordinary circumstances clearly has had a profound effect upon Mr Wong's life and career and, as I have said, I detect no degree of venality in the mistake that he made in terms of the opening of Madam Sun's account, whilst the very small sum involved in the collateral charge as to commission rebate tends to reinforce Mr Wong's submission that this was more misplaced generosity than calculated gain arising from the unauthorised trading by Lam, which in the event appears to have been quickly stopped, apparently at Mr Wong's behest, when such unauthorized activity became known.

29. At the end of the day, therefore, I have decided to allow this application in part.

30. I order that the existing period of suspension of 2 months be reduced to a period of five (5) weeks, such period to commence from the date of notification to the parties of this order.

31. In the circumstances of this case I make no order as to the costs of this application.

Hon Mr Justice Stone
(Chairman)

Mr Rico Wong Kwok Fan, the applicant, in person

Ms Jenny Chung of the Securities & Futures Commission, for the respondent