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Application No 6 of 2009

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER of a Decision made by the Securities and Futures Commission pursuant to s 195(1)(a)(i) of the Securities and Futures Ordinance, Cap 571, (the Ordinance)

And

IN THE MATTER of s 217 of the Ordinance

BETWEEN

WOO CHI KAU

Appellant

and

SECURITIES AND FUTURES COMMISSION

Respondent

Before: Hon Saunders J, Chairman

Dates of Hearing: 13 November 2009

Date of Decision: 13 November 2009

Date of Reasons for Decision: 26 November 2009

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REASONS FOR DECISION

Background:

1. On 18 May 2009, the SFC made a decision, pursuant to s 195(1)(a)(i) of the Ordinance to suspend Mr Woo’s licence as a representative for such period as a bankruptcy order made against him on 8 April 2008, remains in effect.

2. Mr Woo has appealed against that decision to this Tribunal. With the consent of both Mr Woo and the SFC, pursuant to the provisions of s 31, Schedule 8 of the Ordinance, the hearing was conducted by the Tribunal consisting of the Chairman alone.

3. The appeal was heard on 13 November 2009, and was dismissed, with reasons to follow. These are my reasons.

The power to suspend:

4. Under 195(1)(a)(i) of the Ordinance the SFC has a discretionary power to suspend a licensed person’s licence if a bankruptcy order is made against that person. This power is in addition to the power of the SFC to suspend a person’s licence under s 194 of the Ordinance for misconduct or failure to satisfy the SFC that that person is a fit and proper person to hold a licence.

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5. The SFC has issued formal guidelines, called the “Fit and Proper Guidelines”, (the Guidelines), containing matters which are likely to give rise to concerns about a person’s fitness and propriety to hold a licence. The Guidelines contain the following particular provisions:

Para 1.3: “In simple terms, a fit and proper person means one who is financially sound, competent, honest, reputable and reliable.”

Para 4.1.1(a) “The SFC is not likely to be satisfied that a person is a fit and proper person if that person... is an undischarged bankrupt...”

Para 8.1 “A person licensed or registered under the SFO... must continue to be fit and proper.”

6. Having learned of Mr Woo’s bankruptcy, and following representations made by him, and properly following the appropriate procedure, the SFC made its decision to suspend his licence during the period of the bankruptcy.

The grounds of appeal:

7. Before me, Mr Woo has accepted that previously he spent money recklessly, paying no attention as to how he would pay his debts. In January 2006, Mr Woo’s mother ceased to assist him in making credit card payments, and by March 2008, he had reached the stage where he had to petition for his own bankruptcy.

8. Mr Woo acknowledges that he knew that under the Ordinance if he went bankrupt, his licence would be revoked.

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9. Mr Woo is the breadwinner of the family of four, and points out that his work is limited merely to answering phone calls and placing orders from clients, and that he has no financial contact with clients. He says that sitting next to him is a dealing room manager who monitors his work. His employer is willing to continue to employ him, notwithstanding the bankruptcy.

10. Mr Woo seeks that the Tribunal should show empathy for what he describes as a unique situation.

Discussion:

11. Inevitably, one has a deep sense of sympathy for the position in which Mr Woo finds himself. It is undoubtedly most unfortunate that, as a result of his bankruptcy, and the suspension of his licence during the period of the bankruptcy, Mr Woo is likely to lose his job.

12. But notwithstanding that sympathy, I am obliged, as was the SFC, to have regard to the fact of the bankruptcy. It is simply not possible to separate that bankruptcy, a personal matter, from Mr Woo's professional position. That is because bankruptcy is a personal financial matter, and the personal financial integrity of persons in the financial industry is inevitably a matter with which the SFC and the general public are entitled to be concerned. That is a concept that applies widely; it applies equally to professionals such as lawyers or accountants, each of whom deal with financial matters on behalf of members of the public.

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13. In Mr Woo’s employer’s letter of support the employer asserts that there was no direct co-relationship between a bankruptcy and poor integrity. I reject that proposition for the reasons stated in paragraph 12 above.

14. The SFC is of the view, correctly in my view, that bankruptcy casts doubt on the financial integrity, reputation and reliability of a person, consequently placing in question that person’s fitness and propriety to remain licensed.

15. Unfortunately, Mr Woo’s situation is not unique. A significant number of the appeals coming before the Tribunal are appeals from persons in precisely the same situation as Mr Woo. The Tribunal has consistently supported the SFC in its view as set out in paragraph 14 above. There is nothing special about Mr Woo’s situation that provides a basis upon which the Tribunal can say he ought not to have his licence suspended during the period of the bankruptcy.

16. While it is right that Mr Woo has been in the industry for a number of years, and that during that time there has been no complaint against his conduct, I accept the submission of the SFC that the fact of the bankruptcy puts him at a higher risk of deviating from the high standards required of a licensed person, during the period of bankruptcy.

17. Although Mr Woo may not have been dealing directly with clients, he is licensed to do so, and the SFC is of the view that the interests of his employer’s clients and the investing public may be placed at risk if Mr Woo is permitted to continue as a licensed person during the period of

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his bankruptcy. I cannot say that that view is wrong. Consequently, although his employer is willing to retain his services I must place the interests of the investing public first. That requires that, during the bankruptcy, Mr Woo should not be exposed to any temptation that might arise through his employment.

18. Ms Wong has drawn to my attention certain aspects Mr Woo's credit card spending. In the period prior to his bankruptcy, between July 2007 and June 2008, Mr Woo regularly used no less than 12 credit cards each month, spreading his spending between those cards. The effect of that practice was that although the spending on each card may have appeared modest, in fact substantial credit, actually beyond Mr Woo's means was incurred each month.

19. The fact that Mr Woo had 12 credit cards is itself a matter of concern. A person who has proper control over their spending has no need to have more than perhaps 2 or 3 credit cards. The spreading of spending over numerous credit cards, with only the minimum payment being made each month, thereby usually consistently incurring high interest charges, is itself a clear sign of fiscal irresponsibility.

20. Mr Woo knew that he was obliged to disclose his bankruptcy to the SFC, but did not do so. That itself is a punishable criminal offence, and reveals lack of candour on the part of Mr Woo, which undermines the ability of the SFC to perform its functions under the regulatory regime.

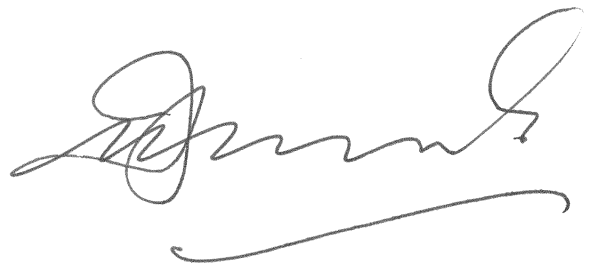
21. I am satisfied that the SFC has taken into account all matters raised by Mr Woo in opposition to the decision. In so doing they have

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properly exercised the discretion given under s 195(1)(a)(i) reasonably and no grounds exist upon which the Tribunal may interfere with that decision.

22. The decision of the SFC must be confirmed. The appeal is dismissed. Having regard to Mr Woo's financial position, and in accordance with what appears to be the usual practice of the Tribunal, there will be no order for costs.



(John Saunders)
Judge of the Court of First Instance
High Court
Chairman

The Appellant, in person

Ms Melanie Wong, Counsel, Securities in Futures Commission for the Respondent