Application No. 4 of 2019

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER OF a Decision made by the Hong Kong Monetary Authority under section 58A(1)(d) of the Banking Ordinance, Cap. 155

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

BETWEEN

PANG HON PAN	Applicant
and	
HONG KONG MONETARY AUTHORITY	Respondent

Tribunal: Mr. Michael Lunn, Chairman
Ms. Cindi Hui Ming-ming, Member
Mr. Jamee Wong Kwok-ching, Member

Date of Hearing: 11 May 2020

Date of Determination: 14 May 2020

DETERMINATION

The application for review

1. By a letter, dated 4 December 2019, to the Securities and Futures Appeals Tribunal (the "Tribunal") Mr. Pang Hon Pan (the "applicant") gave notice in writing, pursuant to section 217(1) of the Securities and Futures Ordinance, Cap. 571 (the "SFO") of his application for a review of the decision of the Hong Kong Monetary Authority (the "MA",) dated 14 November 2019, in a Notice of Disciplinary Action, pursuant to section 58A(4) of the Banking Ordinance, Cap. 155 (the "Ordinance") that the applicant was not a fit and proper person to be a relevant individual ("ReI") and, in the exercise of its power pursuant to section 58A(1)(d) of the Ordinance, the making of an order to suspend all of the applicant's relevant particulars from the MA Register for a period of 15 months. In the result, the applicant asked that the Tribunal "re-consider his case and grant him an opportunity by imposing a most lenient penalty upon him."

The course of the proceedings

2. The applicant did not attend a preliminary conference held on 13 December 2019, notice of which was given on 6 December 2019 to the email address set out on the application for review and to which he had invited communication from the Tribunal. At the adjourned preliminary conference held on 18 December 2019, the applicant, who appeared in person, explained that he was unaware of the hearing on 13 December 2019, until shortly before it was held, because whilst travelling outside Hong Kong he had blocked his mobile telephone and had forgotten to unblock it on his return to Hong Kong on 8 December 2019.

3. By written submissions, together with Draft Directions dated 12 December 2019, filed with the Tribunal and served on the applicant, the respondent asked that "the review be heard before the Chairman as the sole member of the Tribunal". The applicant having indicated at the hearing on 18 December 2019 that he intended engaging a solicitor to represent him, and at his request to reserve his response to the respondent's application until he had discussed the matter with that solicitor, the applicant was directed to provide his response on or before noon on 20 December 2019. In the event, the applicant informed the Secretary to the Tribunal on 20 December 2019 that he wished the Tribunal to be constituted with two members, in addition to the Chairman. In those circumstances, the provisions of section 31, Part 1, Schedule 8 of the SFO not having been met, the two members were appointed on 10 January 2020, pursuant to section 12, Part 1, Schedule 8 of

the SFO.

4. At the hearing on 18 December 2019, the Chairman ordered that the hearing of the application for review be held on 17 February 2020 and gave Directions setting out a timetable for the filing of evidence and submissions by the parties. As directed by the Tribunal, the respondent filed with the Tribunal on 18 December 2019 and served on the applicant a paginated version of the documents which the MA had considered in making its preliminary findings and to which reference was made in the Notice of Intention to take Disciplinary Action, dated 6 June 2019.[1] That material comprised 2,315 pages, contained in 12 lever-arch box files.

5. By an email, dated 8 January 2020, Messrs Hoosenally and Neo informed the Tribunal that they acted on behalf of the applicant and sought leave to adduce into evidence at the hearing the several documents attached to the email. In addition, they sought an extension of 35 days from that date, stipulated in the Directions as being the date at which the applicant was to file his evidence, to file further documents and an affirmation by the applicant. The MA opposed the application for an extension of time. By a Determination and Further Directions, dated 10 January 2020, the Chairman granted an extension to the applicant to 15 January 2020. However, the applicant did not file any further evidence with the Tribunal.

6. By an email, dated 3 February 2020, Messrs Hoosenally and Neo informed the Tribunal that no written submissions would be filed on behalf of the applicant that day, as required in the Directions, explaining that they were "awaiting instructions" of the applicant. On 10 February 2020, the respondent filed with the Tribunal its written Opening Submissions and list of Authorities. Then, by an email, dated 12 February 2020, Messrs Hoosenally and Neo informed the Tribunal that they no longer had instructions to act for the applicant and would not be appearing at the hearing fixed for 17 February 2020. In an email of the same date, the applicant confirmed that Messrs Hoosenally and Neo no longer acted for him but went on to assert:

> "I still wish to make oral submissions to the Tribunal for my case".

[1] Tribunal Bundle, page 11, at paragraph 36, and pages 15-29.

7. In the event, the hearing fixed for 17 February 2020 was adjourned as a result of concerns of public health, the applicant having travelled to and returned from the Mainland on 7 February 2020, as he was lawfully permitted to do, but nevertheless within 14 days of the prospective hearing.

8. By a notice to the parties, dated 16 March 2020, the Chairman ordered that the hearing of the application for review be re-fixed to be held on 11 May 2020.

9. By an email sent at 22:18 hours on 7 May 2020, the applicant informed the MA, copied to the Tribunal:

> "I'll drop the appeal and decide not to proceed the hearing."

That communication followed earlier emails between the parties, copied to the Tribunal, beginning on 27 March 2020, in which the MA enquired of the applicant, "As you are no longer registered as a relevant individual with the Monetary Authority (the "MA") as of 17 March 2020, please let us know as soon as possible whether it remains your intention to proceed with the application to review the MA's decision dated 14 November 2019 in the Proceedings." Following an email reminder, dated 28 April 2020, of the fact of the enquiry and the lack of a reply, the applicant replied by email, dated 29 April 2020, "I'm prepared not to proceed with the appeal if HKMA agrees to withdraw the statement made in paragraph 32(vi) in HKMA's letter to me dated 6 June 2019 regarding of not reporting two accounts to BOS." That was a reference to the MA's Notice of intention to take disciplinary action. In an email to the applicant, dated 5 May 2020, having said that there was no valid reason for withdrawing the statement, the MA informed him:

> "We are unable to accede to your request for withdrawal of the Statement."

10. By an email sent to the applicant at 5:08 p.m. on 8 May 2020, the MA responded to the applicant's email of late the previous evening, in which he had stated "I'll drop the appeal and decide not to proceed the hearing", by saying:

> "We take this to mean that you will be discontinuing your review application dated 4 December 2019. In this regard, we have no objection to leave being given to you by the Tribunal to discontinue your review application.

> However, we will at the hearing on 11 May 2020 seek costs in the sum of HK$460,000 against you for your discontinuance of the review application. The grounds for our application have been canvassed in further written submissions sent to the Tribunal and copied to you at 4:58 pm this afternoon (attachments to follow) and will not be repeated again in this email.
> Please be reminded to attend the hearing at 9:30 a.m. on 11 May 2020 to make any submissions as you see fit."

11. For its part, in an email sent to the parties at 5:29 p.m. on 8 May 2020, having adverted to the newly asserted position of the applicant, the Tribunal confirmed that it would sit as scheduled on 11 May 2020.

The Respondent's Further Submissions

12. The 'Respondent's Further Submissions', dated 8 May 2020, stated that they were made in response to an invitation by the Tribunal to make such submissions in an email sent in the late morning of 8 May 2020, in particular having regard to the earlier submissions of the MA, dated 10 February 2020, that the application "be dismissed with costs to the MA." It was submitted on behalf of the MA that:

> "Pang should be given leave to discontinue that application for review dated 4.12.2019…as regards the issue of costs, the MA submits that Pang should be ordered to pay the costs of the MA for these proceedings. The MA would invite the Tribunal to make a gross sum assessment of the course incurred by the MA for the amount of HK $460,000."

13. The Attachments to the Respondent's Further Submissions sent by email to the Tribunal and to the applicant in the early evening of 8 May 2020 included a Draft Order, which included a provision in respect of the claim for $460,000 costs, and what was described as "A breakdown of the Respondent's costs in the amount of HK $460,000".

The hearing: 11 May 2020

14. At the hearing on 11 May 2020, the respondent was represented by Mr. Norman Nip, whereas the applicant did not attend the hearing or make any other communication with the Tribunal.

15. In his oral submissions, relying on the Respondent's Further Submissions, Mr. Nip first invited the Tribunal to treat the applicant's communication in his email dated 7 May 2020, namely "I'll drop the appeal and decide not to proceed the hearing", as being an application by the applicant for leave to withdraw his application for a review. In those

circumstances, he invited the Tribunal to accede to the application and allow the application for review to be withdrawn, but to make the order sought by the MA in its favour for costs of $460,000. However, apparently on reflection, Mr. Nip then submitted that the proper order was for the application for review to be dismissed with costs.

Costs

16. In his written submissions, Mr. Nip contended that the general rule is that the party who withdraws or discontinues an action has to pay the costs of the other party.[2] Mr. Nip submitted that the application was plainly unmeritorious and ought never to have been brought, so that all the costs incurred by the MA in engaging counsel to represent it were unnecessary. It was "plain that the claim would have failed". Further, Mr. Nip said that, having taken out the application to review on 4 December 2019, the applicant's conduct in notifying the MA and the Tribunal on the late evening of 7 May 2020, only one business day before the date fixed for the hearing, that he was dropping the appeal and not proceeding with the hearing was wholly unreasonable. The conduct was consistent with the applicant's prior conduct: the applicant chose not to attend the directions hearing held on 13 December 2019; the explanation that he had failed to turn off the locking mechanism on his mobile telephone was "no excuse at all" and resulted in the otherwise wholly unnecessary hearing on 18 December 2019; although the applicant had been granted a short extension in which to file with the Tribunal his own affirmation, none had been filed; and, having confirmed to the Tribunal on 12 February 2020 that Messrs Hoosenally and Neo were no longer engaged to represent him, although he had asserted that he wished to make oral submissions to the Tribunal at the re-fixed hearing, the applicant had not even attended that hearing.

17. At the hearing, Mr. Nip confirmed that his instructions were to ask for an order for costs in favour of the MA in respect of the costs of counsel only.

18. Mr. Nip said that, if the Tribunal was minded to make the order in respect of costs which he sought in favour of the MA, he invited the Tribunal to make a gross sum assessment of costs on the basis of the breakdown of those costs attached to the

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[2] *Brookes v HSBC plc* [2011] EWCA Civ 354; *Re Smart Land Investment Limited* (HCCW 96/2016; unreported, 30 April 2018), applied by this Tribunal in its 'Decision on Costs', dated 20 December 2019, *Adamas Asset Management (HK) Ltd v Securities and Futures Commission,* paragraphs 10-11.

Respondent's Further Submissions, so that the proceedings were not unnecessarily lengthened and to avoid the costs of taxation. [Attachment 1 of the Determination.]

Discussion

The applicant's employment

19. On and between 12 April 2010 and 17 April 2017, the applicant was a Relationship Manager, Private Banking at Standard Chartered Bank (Hong Kong) Limited.[3] In that period, the applicant was registered as a "relevant individual", namely an individual who performs for or on behalf of or by an arrangement with a registered institution "any regulated function in a regulated activity."[4] On 18 April 2017, he became employed as a Relationship Manager with the Bank of Singapore, where he was a relevant individual in respect of Type 1 regulated activities under the SFO. As such, his name was entered in the register maintained by the MA under section 20(1)(ea) of the Ordinance.

The investigation

20. By a notice, dated 21 August 2017, pursuant to section 72A(2) of the Ordinance, the MA required the applicant to attend an interview at the offices of the MA on 29 August 2017.[5] In the event, interviews of the applicant were conducted in the morning and afternoon of 8 September 2017. By a notice, dated 27 September 2017, the MA required the applicant to provide information stipulated in the notice, including:

> "A list of all accounts which you held in your name or in joint names, or in which you had a beneficial interest at KGI Asia Limited (KGIAL) and/or other financial institutions during the period from April 2010 to April 2017"

and to provide specified particulars in respect of such account and copies of all statements of such accounts "with investment transactions or holdings" during that period.[6]

21. Thereafter, as required by multiple similar notices over the following nine months the applicant provided the MA with various documents, including statements of his account with DBS Vickers and HSBC, and was interviewed by the MA on two further occasions, namely on 7 March and 7 June 2018. In addition, the MA obtained voluminous material from the Standard Chartered Bank, including in respect of their Personal Account

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[3] Hearing Bundle, pages 19-23.
[4] Section 20(10) of the Ordinance.
[5] Hearing Bundle, page 1819.
[6] Hearing Bundle, pages 1835-7.

Dealing policies and procedures with regard to employees and the related training programmes.

Notice of intention to take disciplinary action

22. By the Notice of intention to take disciplinary action, dated 6 June 2019, the MA informed the applicant of the preliminary view that it took of his conduct whilst employed by Standard Chartered Bank.[7]

> "***The MA's preliminary view of your conduct***
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> On the basis of information collected during the MA's investigation, the MA is of the preliminary view that you are not a fit and proper person to be a ReI pursuant to section 129(1)(c) and (d) of the SFO (Cap. 571) and the criteria in section 3(1) of the Fit and Proper Guidelines issued by the Securities and Futures Commission (SFC) because, while working as a relationship manager at SCBHK during the Relevant Period, you
>
> (i) failed to disclose to SCBHK your personal accounts with three financial institutions and, to seek pre-clearance and make post-trade reporting for 48 securities transactions;
> (ii) made false declarations to SCBHK on seven occasions that you had no existing securities account;
> (iii) knowingly breached and acted in deliberate disregard of SCBHK's policies and procedures which are designed to help SCBHK and its employees avoid conflicts of interest and comply with paragraph 12.2 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (SFC Code of Conduct);
> (iv) conducted yourself in a manner that fell short of the standard required of a registered person under General Principles 1 and 6 of the SFC Code of Conduct; and
> (v) conducted yourself in a manner that calls into question your ability to carry on regulated activities competently, honestly and fairly, as well as your reputation, character and reliability.

The proposed disciplinary action

23. Next, the MA set out its proposed disciplinary action, namely "to suspend all of your relevant particulars from the Register for a period of ***15 months*** on the basis that the evidence justifies a preliminary finding that you are not a fit and proper person to be a ReI, having taken into account the following in respect of the applicant:[8]

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[7] Tribunal Bundle, page 2, paragraph 3.
[8] Tribunal Bundle, pages 10-11, paragraph 32.

(i) your misconduct was dishonest and deprived SCBHK of the opportunity to monitor your trading activities and to identify and prevent potential conflicts of interest arising from such activities;

(ii) you deliberately disregarded SCBHK's personal account dealing policies and procedures;

(iii) your misconduct was persistent and your concealment of the Undisclosed Accounts and failure to seek pre-clearance and make post-trade reporting spanned over a prolonged period of time;

(iv) your failure to seek pre-clearance and make post-trade reporting of a total of 48 different transactions;

(v) you made seven false declarations to SCBHK and your failure to seek pre-clearance exposed SCBHK to potential conflict of interest as described in paragraphs 17 and 23 above;

(vi) you appeared to have repeated your misconduct at your new employer in that you concealed from BoS your personal accounts and disclosure was only made 10 months after commencing work at BoS, upon the enquiries during the investigation;

(vii) your lack of frankness and candour regarding your accounts during the investigation was not in line with the standards expected of a ReI;

(viii) you acknowledged that, with the benefit of hindsight, your conduct was inappropriate and you claimed this was due to negligence;

(ix) you had substantial experience in the banking industry and have been registered as a ReI since 2004; and

(x) you have no previous disciplinary record with the Hong Kong Monetary Authority and the Securities and Futures Commission.

The applicant's representations to the MA

24. By a letter to the MA, dated 28 August 2019, Simon Ho & Co. made representations to the MA.[9] First, it was asserted that:

> "There are two allegations against our client, namely failing to report investment accounts/activities to Standard Chartered Bank, his former employer and failing to report investment accounts to The Bank of Singapore, his existing employer."

Secondly, it was contended that:

> "...it is the common market practice among financial institutions not sending transaction statements to their clients if the clients have not had any transaction/activities within the statement period."

[9] Tribunal Bundle, pages 44-5.

25. Of the applicant, it was submitted that he:

> "…did not carry out any transactions at all since the opening of the relevant accounts and also was not aware of the existence of those investment account bundled together with his priority banking accounts with Standard Chartered Bank thus the allegation of not reporting investment accounts to Bank of Singapore on purpose has not been established."

Further, that:

> "…our client did not carry out any investment activities since 2014 with his investments accounts. He also thought that all his investment accounts who had no transaction for such a long time had been closed as he had received no statements at all. Hence, our client did not report of having any investment accounts to Standard Chartered Bank. Such mistakes were due to inadvertence and have nothing to do with dishonesty. Upon having been interviewed by HKMA, our client rectified the mistakes by taking immediate action to close and report of all of his accounts for remediation.
>
> Per previous attached email from the Compliance Department of the Bank of Singapore, they requested our client close the account immediately without taking any further action."

26. Of the proposed penalty, it was submitted that:

> "…all allegations HKMA considered established are not the relatively serious cases and it is unlikely to recur. In this regard, please re-consider our client's case and grant him an opportunity by imposing a most lenient penalty upon him."

27. In support of that submission, reference was made to the earlier decisions of the MA in respect of *Yip Wai Pang*[10] and *Mo Wei*,[11] it being submitted that the impugned conduct of the former, whose registration was suspended for 18 months, was "highly serious than what our client did, if any". Further, that the applicant's conduct was "similar or less serious" than the impugned conduct of *Mo Wei*, whose registration was suspended for 10 weeks only.

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[10] Tribunal Bundle, pages 66-7 (Hong Kong Monetary Authority Press Release, 12 September 2017.)
[11] Tribunal Bundle, pages 64-5 (Hong Kong Monetary Authority Press Release, 29 July 2015.)

Notice of disciplinary decision

28. By a Notice of disciplinary decision, dated 14 November 2019, the MA informed the applicant of its decision that he was not a fit and proper person to be a ReI and that it had decided to exercise its power under section 58A(1)(d) of the BO to suspend all of his relevant particulars from the MA Register for a period of ***15 months***.[12]

29. Then, the MA addressed *seriatim* each of the contentions advanced on behalf of the applicant in the representations contained in the letter, dated 28 August 2019. The MA said that contention that only "two allegations" were made against the applicant, namely failing to report investment account/activities to Standard Chartered Bank and investment accounts to the Bank of Singapore, was inaccurate. In addition to failing to report those matters to Standard Chartered Bank, the Notice of intended disciplinary action made it abundantly clear that the applicant's impugned conduct also involved making "false declarations" to that bank "on seven occasions that you had no existing securities account" and that the applicant had "knowingly breached and acted in deliberate disregard" of the bank's policies and procedures. The failure to report to the Bank of Singapore the existence of the applicant's accounts was relevant to the issue of his conduct during the investigation, evidencing a lack of candour.[13]

30. Of the submission that the applicant "did not carry out any investment activities since 2014 with his investment accounts", the MA said that it was "not factually correct", pointing out that the applicant had admitted in interviews with the MA that he had conducted a total of "48 securities transactions through the Undisclosed Accounts during the relevant period."[14] The last such transaction was in June 2015. Having regard to that evidence, the contention that the applicant did not "report of (sic) having any investment accounts to Standard Chartered Bank" because "he received no statements at all" was not "credible".[15]

31. There was no evidence that it was "common market practice" for financial institutions not to provide transaction statements to their client's where there were no

[12] Tribunal Bundle, page 51.
[13] Tribunal Bundle, pages 51-53, paragraph 10(a).
[14] Tribunal Bundle. pages 53-54, paragraph 10(b)(i).
[15] Tribunal Bundle, page 55, paragraph 10(d)(i).

transaction/activities within a given period. In any event, given that the applicant had conducted transactions in the period, that was irrelevant.[16]

32. Similarly, the assertion that, the applicant was unaware of "the existence of those investment account…with Standard Chartered Bank", so that "the allegation of not reporting investment accounts to Bank of Singapore on purpose has not been established", was irrelevant because the relevant accounts were those with KGI, DBS Vickers and HSBC not Standard Chartered Bank.[17]

33. The submission that the applicant's failure to report having investment accounts to Standard Chartered Bank was "due to inadvertence and have nothing to do with dishonesty" was a "bare assertion", which was "inconsistent with the evidence". The MA pointed to the evidence, referred to in the Notice of intended disciplinary action[18], that the applicant had bought shares in *L'Occitane International S. A.* ("*L'Occitane*") in his personal account with KGI "two days after you received the first email notification on 4 May 2010 requesting you to declare whether you had any personal dealing account or any shareholdings." Further, the applicant had sold those shares three days before he acknowledged to Standard Chartered Bank that he had familiarised himself with the Personal Account Dealing Policies and Procedures and "declared that he had no personal dealing account on 10 May 2010."

34. Also, the MA pointed to the evidence that the applicant had sold shares in *Legend Holdings Corporation* ("*Legend*") in his HSBC account "on the same day as declaring you had no personal dealing accounts", namely 29 June 2015. Moreover, the MA observed that:[19]

> "given the proximity in time between these trades and your declarations that you had no personal dealing accounts the MA considers there is sufficient evidence to draw an inference that you were well aware of the PAD requirements and had deliberately disregarded SCBHK's PAD Policies and Procedures and knowingly made a false declaration on seven occasions that you had no dealing accounts."

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[16] Tribunal Bundle, page 55, paragraph 10(b)(ii).
[17] Tribunal Bundle, page 55, paragraph 10(c).
[18] Tribunal Bundle, page 8, paragraph 26.
[19] Tribunal Bundle, page 56-7, paragraph 10(e)(i).

35. The MA stated that it refuted the submission that, having been interviewed by the MA, the applicant "rectified the mistakes by taking immediate action to close and report of (sic) all of his accounts for remediation." As had been pointed out in the Notice of intended disciplinary action[20], the applicant had admitted in his second interview[21] with the MA that he was required to disclose his personal accounts to the Bank of Singapore. That interview was conducted on 7 March 2018. However, whilst his employment with the Bank of Singapore had commenced on 18 April 2017, he did not disclose to the Bank of Singapore his accounts with KGI and DBS Vickers until 20 February 2019.[22]

36. Similarly, the MA refuted the submission that the matters which the MA "considered established are not the relatively serious cases and it is unlikely to recur", observing in particular that the applicant's "…failure to seek pre-clearance for one transaction, where that particular security was restricted by SCBHK at the material time, exposed SCBHK to potential conflict of interest."[23] Also, the MA pointed to the statement in the Notice of intended Disciplinary Action that in respect of the sale of 1,200 *AIA Group Limited* ("*AIA*") shares on 29 October 2010 in the applicant's KGI account, "since the particular security was restricted by SCBHK at the material time, SCBHK confirmed that approval would not have been granted."[24] Further, the applicant had failed to seek pre-clearance prior to the trade execution from SCBHK and had not made post-trade reports in 48 securities transactions, approval for which would not being granted in 13 sell transactions.[25]

37. In addition, in respect of the seriousness of the applicant's conduct, the MA said:[26]

> "…you had made false declarations to SCBHK over a prolonged period and deliberately disregarded SCBHK's disclosure policies."

Of the importance of disclosure policies, it was said that:

> "(they) enable the bank to monitor its employees' trading activities and to identify and to prevent potential conflicts of interest. Candid disclosure is

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[20] Tribunal Bundle, pages 8-9, paragraph 27.
[21] Translation Bundle, page 1454-1, 7 March 2018.
[22] Hearing Bundle, pages 2301-9.
[23] Tribunal Bundle, page 57-8, paragraph 10(g)(i).
[24] Tribunal Bundle, page 5, paragraph 17.
[25] Tribunal Bundle, page 57-8, paragraph 10(g)(i).
[26] Tribunal Bundle, page 58, paragraph 10(g)(ii).

> fundamental and your prolonged and deliberate failure to do so is considered serious"

38. Of the risk of re-occurrence of the conduct, having noted that the applicant's conduct "continued at your new employer BoS" the MA said that, "…cast serious doubts on whether the same conduct will recur in future unless sufficient deterrent action is taken."[27]

39. Of the applicant's reliance on the MA's disciplinary decisions in respect of *Yip Wai Pang* and *Mo Wei*, the MA observed that they concerned "other types of misconduct" and the action taken reflected the particular circumstances of each case.[28]

The application for review

40. The application for review, dated 4 December 2019, was signed by the applicant in person. However, the overwhelming majority of the text has been taken *verbatim* from the submissions, dated 28 August 2019, submitted by Simon Ho & Co. to the MA. In respect of the assertion that the applicant was unaware of the existence of an investment account "bundled together with his priority banking account with Standard Chartered Bank", additional text has been inserted, namely "Nowadays, most of the integrated account bundles with investment function. This account has never carried out any trading activities." The assertion in the Simon Ho & Co. letter that the applicant "did not carry out any investment activities since 2014 with his investment accounts" was changed in the application for review to "2015". In the result, the applicant merely repeated the earlier submission advanced to the MA on his behalf and asked that the Tribunal "re-consider his case and grant him an opportunity by imposing a most lenient penalty upon him."

The respondent's submissions

41. No doubt, having regard to the potential ambit of the application for review, in particular that it is a full merits review in which the Tribunal may conduct itself as if it were the original decision-maker, in his helpful full written submissions Mr. Nip drew the Tribunal's attention to relevant primary facts. Having submitted that the previous decisions of the MA in the cases of *Mo Wei* and *Yip Wai Pang* were readily distinguishable and of

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[27] Tribunal Bundle, page 59, paragraph 10(g)(iii).
[28] Tribunal Bundle, page 59, paragraph 10(g)(iv).

no assistance to the Tribunal, Mr. Nip drew the attention of the Tribunal to the determinations made by the SFC in the cases of of *Benjamin Zhu Zhiwei*[29] and *Lee Wai Keung*[30], which he submitted were more relevant to the case of the applicant. In the former case *Mr. Zhu* was found to have concealed his securities account, exposing the employer to the risk of conflict of interest. An 18-month prohibition was imposed. In the latter case, *Mr. Lee* had failed to disclose his beneficial interest and his trading activities through a sister-in-law's account. A 12-month prohibition was imposed.

Conclusion

42. In all circumstances, we are satisfied that it is appropriate to treat the applicant's assertion to the MA and the Tribunal, "I'll drop the appeal and decide not to proceed the hearing", as an application to withdraw or discontinue his application for leave for review. The respondent having repeatedly indicated to the applicant both in its email of reply and in its Further Submissions that it did not object to leave being granted by this Tribunal to discontinue the application for review and, in particular in the absence of the applicant at the hearing, it is not now open to the respondent to seek at the hearing to have the application dismissed, albeit that the order may be more appropriate. Accordingly, we grant leave to the applicant to discontinue the application for review.

Costs

43. Section 223(1) of the SFO provides that the Tribunal may, in relation to a review, by order award to:

> "(b) any party to the review,
> such sum as it considers appropriate in respect of the costs reasonably incurred by the person or the party (as the case may be) in relation to the review and the application for review in question."

44. The Tribunal accepts that it is the "...general rule or starting point that an applicant who has given up an application by withdrawing it has to pay the costs of the respondent unless there is a good reason for a different order to be made.[31] Further, as noted by the Court of Appeal of England and Wales in *Brookes v HSBC plc*[32] an additional factor in favour of applying that presumption is "if it is plain that the claim would have failed."

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[29] SFC Press Release, 7 May 2015: Statement of Disciplinary Action.
[30] SFC Press Release, 11 December 2014: Statement of Disciplinary Action.
[31] *Re Smart Land Investment Limited*, paragraph 7.
[32] *Brookes v HSBC plc,* paragraph 6(3).

We are satisfied that is the case in respect of this application for review. It is wholly without any merit. As it is readily apparent from the primary material, there was a wealth of documentation that evidenced the fact that the applicant was made aware of his duties and responsibilities in dealing in his personal accounts whilst employed by Standard Chartered Bank and that he was given a specific training in that regard. He acknowledged as much in his records of interview. Similarly, he acknowledged that he was aware of the same duties and responsibilities whilst employed by the Bank of Singapore. There was an abundance of evidence that he was in obvious and flagrant breach of those requirements over many years. In result, we are satisfied that the respondent is entitled to an order of costs in its favour.

Gross assessment of costs

45. As noted earlier, the MA seeks an order only in respect of the costs of counsel. The breakdown of the costs is at Attachment 1 of this Determination. We are satisfied that sum of $460,000 sought on the basis articulated in the breakdown is fully justified. Accordingly, we make an order that the applicant do forthwith pay the respondent the costs of the application for review, summarily assessed at $460,000.

(Mr. Michael Lunn)
(Chairman)

(Ms. Cindi Hui Ming-ming)
(Member)

(Mr. Jamee Wong Kwok-ching)
(Member)

Mr. Pang Hon Pan in person

Mr. Norman Nip, instructed by HKMA
for the Respondent

A breakdown of the Respondent's costs in the amount of HK$460,000 is as follows:

Item	Description	Amount
1	Counsel's brief fee for attendance at the directions hearing held on 13.12.2019, which the Applicant did not attend. Counsel's brief was issued on 11.12.2019.	HK$70,000
2	Counsel's brief fee for attendance at the second directions hearing held on 18.12.2019. Counsel's brief was issued on 17.12.2019.	HK$35,000
3	Counsel's brief fee for attendance at the substantive hearing fixed for 17.02.2020, which was adjourned upon the Applicant informing the Tribunal on 12.02.2020 that he had travelled to the Mainland China on 07.02.2020. Counsel's brief was issued on 04.02.2020.	HK$250,000
4	Counsel's brief fee for attendance at the adjourned substantive hearing fixed for 11.05.2020. Counsel's brief was issued at 3:06 p.m. on 07.05.2020, while the Applicant gave notice to withdraw or discontinue the application at 10:18 p.m. on the same day.	HK$105,000
	Total:	**HK$460,000**