
Enforcement News

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SFC's Suspension of Wong Pui Hey Duncan Upheld by the Securities & Futures Appeals Tribunal

The Securities and Futures Appeals Tribunal (SFAT), in its first review since its formation under the Securities and Futures Ordinance, has upheld a decision by the SFC to suspend a responsible officer of a licensed corporation.

The licence of Mr Wong Pui Hey Duncan, a responsible officer of Victory Enterprises (Investment) Limited, has been suspended for six weeks from 25 September 2003 until 5 November 2003 (both dates inclusive) for facilitating trading malpractices. The suspension took effect immediately after the decision of the SFAT, which last week issued its reasons.

Background

The SFC conducted an inquiry into the conduct of Victory following its reporting of misappropriation of clients assets by two former dealer's representatives from June 1998 to June 2001 (Note 1).

In July 2001, an independent accounting firm was commissioned by Victory at the SFC's request to conduct a comprehensive review of Victory's internal control system. A number of major deficiencies were identified during the review (Note 2).

The SFC found that Wong, who was responsible for Victory's day-to-day operations, bore direct responsibility for the failings identified by the independent accounting firm. In particular:

- he failed in his duty to put in place adequate and effective internal control procedures to protect Victory and its clients from financial loss; and
- he acted improperly by arranging private loans to certain client accounts of the two former dealer's representatives, which directly or indirectly facilitated their misconduct.

The SFC considered that, had Wong contacted those clients requesting them to settle the long outstanding sums in their accounts rather than arranging private loans to them, he would have discovered the misappropriation by the two former dealer's representatives several months earlier and would have therefore minimised the losses to Victory and its clients.

In light of these findings, the SFC concluded that the fitness and properness of Wong as a licensed person had been called into question. In July this year, the SFC therefore decided to suspend the licence of Wong for six weeks. When making that decision, the SFC took into account that:

- Wong reported the matter to the SFC;
- Wong co-operated fully with the SFC during the investigation; and
- Victory compensated the clients' losses promptly.

Wong applied to the SFAT for a review of the SFC's decision.

Review by the Tribunal

The SFAT review hearing took place on 25 September 2003 (Note 3). The SFAT considered that it was difficult to discern any merit in Wong's application for review, and dismissed the application at the conclusion of the hearing. As a result, the SFAT affirmed the SFC's decision to suspend Wong for six weeks.

The SFAT's reasons for its decision were issued on 16 October 2003 (Note 4). In those reasons, the SFAT made important comments about how it would handle appeals/reviews:

"An appellate/reviewing tribunal is in principle reluctant to interfere with a decision handed down by a regulator statutorily charged with overseeing the operation of a particular market *unless* [emphasis added by the SFAT] it can be demonstrated that a clear error has been made...Each case obviously will depend upon its particular facts, but it should not be thought that a tribunal of this nature readily will accept invitations to interfere with the exercise of the discretion of the regulator in the field and to substitute its own judgment or assessment of the position unless it can be demonstrated that good and cogent reason exists for so doing."

Mr Alan Linning, SFC's Executive Director of Enforcement, said: "We welcome the SFAT's first decision. It reconfirms the importance of responsible officers of licensed corporations maintaining high standards of integrity, as they are the persons who are ultimately responsible for ensuring their brokerage firms comply with all the relevant laws, regulations and Codes of Conduct administered by the SFC. Owing to their elevated status, we expect more of responsible officers, and will punish responsible officers who fail to comply with the relevant regulatory requirements more severely than less senior licensees."

Ends

Notes:

1. The SFC revoked the registrations of the two former dealer's representatives in 2001. For details, please refer to the [SFC press release issued on 15 November 2001](#).
2. The SFC has publicly reprimanded Victory for its internal deficiencies. Please refer to the [SFC press release dated 13 August 2003](#).
3. This was the first application for review decided by the SFAT, the appellate body established under the new SFO regime. The SFAT is a full-time body and is chaired by The Honourable Mr Justice Stone, a permanent High Court judge.
4. Under the new regime, all review hearings are open to public unless the SFAT decides otherwise. A copy of the "[Reasons for Determination](#)" in this case is posted on the SFC website.