SFC revokes licences of Richmond Asset Management Limited and its responsible officer Graham Frank Bibby and bans him for 10 years

31 Oct 2016

The Securities and Futures Commission (SFC) has revoked the licences of Richmond Asset Management Limited (Richmond Asset Management) and its responsible officer and sole owner, Mr Graham Frank Bibby, and banned him from re-entering the industry for a period of 10 years effective from 31 October 2016 to 30 October 2026 (Notes 1 & 2).

The disciplinary actions follow a review of the SFC's decision to sanction Richmond Asset Management and Bibby by the Securities and Futures Appeals Tribunal (SFAT) (Note 3).

The SFC's investigation found that Richmond Asset Management and Bibby are not fit and proper persons in that they procured investment funds from customers which were invested in assets which Bibby and his wife held substantial undisclosed interests. Specifically, Richmond Asset Management and Bibby obtained approximately US$5 million from 36 clients to invest in a company and a plot of land in Phuket of Thailand (Phuket Land) in which Bibby and his wife held substantial undisclosed interests.

The clients' funds procured by Richmond Asset Management and Bibby were routed into three unauthorized funds (Optimizer Funds). Richmond Asset Management and Bibby were not only the investment advisers for the Optimizer Funds but also held management powers over the funds (Note 4).

Richmond Asset Management and Bibby directed monies invested in the Optimizer Funds into two other funds (Asia Property Funds) in which Richmond Asset Management and Bibby were also advisers and investment managers (Note 5).

In November 2007 the Asia Property Funds advanced a loan to The Fairway Holding Company Limited (Fairway), a Thailand-based company in which Bibby and his wife held a combined stake of 75%. The loan – essentially monies invested in the Asia Property Funds from the Optimizer Funds – were then used by Fairway to fund the purchase of the Phuket Land. Bibby also paid part of the purchase price of the Phuket Land.

The Optimizer Funds have been suspended since April 2010 and redemption requests from clients have been unsatisfied. The Optimizer Funds have been in limbo since suspension with the Asia Property Funds having become its major assets whilst the Phuket Land remains unsold and Fairway has defaulted on the loan owed to the Asia Property Funds.

Richmond Asset Management and Bibby failed to properly avoid and disclose potential conflicts of interest to its clients, abusing clients' trust. In so doing they demonstrate they are unfit to be licensed to conduct regulated activities.

In particular, Bibby played a central role in managing how the clients' monies in their portfolios were invested and he initiated the structure of funds to channel the clients' investments to a company and a property in which he and his wife have substantial interests.

End

Notes:

1. Richmond Asset Management is licensed under the Securities and Futures Ordinance (SFO) to carry on business in Type 4 (advising on securities) and Type 9 (asset management) regulated activities. Richmond Asset Management's licence has been suspended since 16 April 2014 as requested by the firm.
2. Bibby is a representative and responsible officer of Richmond Asset Management and is licensed under the SFO to carry on Type 4 (advising on securities) and Type 9 (asset management) regulated activities.
3. Please refer to the SFAT's Reasons for Determination, which is available on its website at www.sfat.gov.hk.
4. The Optimizer Funds are: (i) The Global Mutual Fund PCC Limited – The Optimizer Global Property Fund;

(ii) RGTO Hedge Optimizer Fund; and (iii) The Global Mutual Fund PCC Limited – RGTO Optimizer Fund.

5. The Asia Property Funds are: (i) Optimizer Asia Property Fund; and (ii) Optimizer Asia Property Fund II.

Page last updated : 31 Oct 2016

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Application No. 4 & 5 of 2015

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER of Decisions made by the Securities and Futures Commission pursuant to s 194 of the Securities and Futures Ordinance, Cap 571

and

IN THE MATTER of s 217 of the Securities and Futures Ordinance, Cap 571

Between :

RICHMOND ASSET MANAGEMENT LIMITED Applicants

GRAHAM FRANK BIBBY

and

SECURITIES AND FUTURES COMMISSION Respondent

Tribunal : Mr. Garry Tallentire, Chairman

Dates of Hearing : 12 & 13 October 2016

Date of Determination : 31 October 2016

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REASONS FOR DETERMINATION

Introduction

1. This is an application for review made in terms of s 217(1) of the Securities and Futures Ordinance, Cap 571 ("the Ordinance"). The Applicants, Richmond Asset Management Limited ("Richmond") and Mr. Graham Frank Bibby ("Mr. Bibby"), seek to review the decisions of the Securities and Futures Commission ("the SFC") dated 27 July 2015 to

(a) In respect of Richmond, to revoke its licence to carry on Type 4 (advising on securities) and Type 9 (asset management) regulated activities under the Ordinance.

(b) In respect of Mr. Bibby to (i) revoke his licence to act as a representative and the approval for him to act as a responsible officer of Richmond and (ii) to prohibit him from practising in the industry for 10 years.

2. Both Applicants largely accept the facts set out in the Decision Notices issued by the SFC on 27 July 2015 and do not challenge the findings of breaches of regulatory requirements amounting to market misconduct. However, both Applicants do challenge the penalties imposed in both cases as being disproportionate to the breaches which occurred.

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The Role of the Tribunal

3. Since the judgement of the Court of Appeal in *Tsien Pak Cheong David v Securities and Futures Commission [2011] 3 HKLRD 533* it is clear that this Tribunal is to conduct a full merits review of both the liability of each party and the sanctions imposed.

The Standard of Proof

4. The standard of proof is well established and well accepted as that of proof on a preponderance of probabilities. In view of the nature and level of seriousness of the allegations found proven by the SFC in this case, that is the standard of proof applied to this review by this Tribunal.

Background

5. It was clear from the Applicants' brief Opening Submissions that the facts found by the SFC as set out in the Decisions Notices were not challenged save on interpretation. This had been indicated to this Tribunal at a previous Directions Hearing when both Applicants had been formally represented. Now they were not formally represented to the extent that Mr. Stuart appeared informally and with the leave of this Tribunal to put forward the case on behalf of both Applicants. Indeed, Mr. Bibby himself was absent and made no application to remedy this handicap to the review. I shall return to this at a later stage. In view of the factual acceptance of the situation as explained in the Notices of

Proposed Disciplinary Action ("the NPDAs"), the background is admirably and succinctly presented in the Opening Submissions made on behalf of the SFC.

6. Richmond provided advisory and discretionary investment management services to its clients. Mr. Bibby was the sole owner and CEO with overall control of its day to day operations. His duties were set out in full in Richmond's letter of 6 February 2013 to the SFC[1]. In a nutshell, he had complete control of Richmond.

7. The majority of Richmond's clients held Investment Linked Assurance Scheme (ILAS) policies. They subscribed to ILAS policies with an insurance company and deposited sums of money into their policy accounts. Richmond handled this subscription procedure. Then Richmond and the clients entered into management agreements which gave Richmond the power to manage the funds in the policy accounts on a discretionary basis.

8. The management agreements between Richmond and each client were materially in the same terms. Each contains the following provisions :

(i) Richmond charged its clients a management fee based on the value of the portfolio of each client and a performance fee based on the percentage growth of the portfolio.

(ii) The agreement incorporated an express provision that –

[1] On page 178, Item 1 at Bundle 1.

> "[Richmond] undertakes not to transact for the client any business in which [Richmond] or any registered individual has a personal interest unless that interest has been previously disclosed in writing."[2]

9. Richmond's dealing orders for its clients showed that on various dates between 2005 and 2009 investments were made into three funds known as :

(i) The Global Mutual Fund PCC Limited – the Optimizer Global Property Fund;

(ii) RGTO Hedge Optimizer Fund; and

(iii) The Global Mutual PCC Limited – RGTO Optimizer Fund

Collectively these three were referred to as the Optimizer Funds.

10. In turn the Optimizer Funds invested in two other funds called :

(i) Optimizer Asia Property Fund; and

(ii) The Optimizer Asia Property Fund II

Collectively they were referred to as the Asia Property Funds which were created by a company called Abroad Spectrum PCC Limited ("Abroad").

[2] Clause 3(b) of Private Clients Management Agreement entered into by Richmond and its clients on page 2015, Item 38A at Bundle 4.

11. Mr. Bibby through Richmond and another company owned and controlled by him, Optimizer Capital Limited, was also in charge of managing the investments of the Optimizer Funds and Abroad including the Asia Property Funds. In other words, Mr. Bibby and Richmond were involved in managing the whole investment structure of the inter-related companies.

12. By a Loan Agreement dated 2 November 2007, Abroad on behalf of the Asia Property Funds granted a loan of US$5,162,000 to the Fairway Holding Company Limited ("Fairway"). Fairway is a Thai company in which Mr. Bibby and his wife, Ms. Chomchanok Suthamma, hold a majority shareholding.

13. In interview by the SFC, Mr. Bibby said he initiated the idea of setting up the investment structure involving the Asia Property Funds and Fairway so that clients' funds under the ILAS policies could be channelled to invest in the purchase of a piece of land in Phuket. There is an agreement for the sale and purchase of the Land dated 9 November 2007.

14. Richmond's clients, the holders of the ILAS policies were never informed of Mr. Bibby's and his wife's interests and association with Fairway. There was also no clear indication of how potential profits from the sale/purchase of land would be shared as between Mr. Bibby, Ms. Suthamma and Abroad (which was also a shareholder in Fairway).

15. The date for the repayment of the Loan was extended from 1 November 2008 to 1 November 2013 by five Addenda to the Loan Agreement. Mr. Bibby confirmed that there was no agreement to extend

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the due date for the loan beyond 1 November 2013 in an email to the SFC of 12 September 2014.

16. The Optimizer Funds have been suspended since mid-2010 due to illiquidity and the clients are unable to seek redemption of their investments whilst the suspensions are in force. Richmond issued suspension notices to the clients but the notices made no mention of Mr. Bibby's or Ms. Suthamma's interest in Fairway.

17. There are lists of the 36 clients whose funds were invested in the Asia Property Funds in Appendices 2 to 4 of the NPDAs.

18. After investigation by the SFC on 19 December 2014, they issued NPDAs to Richmond and Mr. Bibby.

19. On 19 January 2015, Mr. Bibby submitted representations on behalf of himself and Richmond by email in response to the NPDAs.

20. By agreement with the SFC on 23 February 2015, further written representations on their behalf were submitted by Messrs Howse William Bowers, Solicitors.

21. The SFC considered the representations on behalf of both Applicants and all circumstances relevant to the matter. They decided to maintain the sanctions set out in the NPDAs. On 27 July 2015, Decision Notices were sent out to Richmond and Mr. Bibby setting out in detail their reasons for so doing.

22. On 17 August 2015, the Applicants lodged a notice of application for review with this Tribunal.

The Significant Aspects of the SFC's Findings of Misconduct

23. The SFC found that Richmond had transacted business on their clients' behalf in a company in which Mr. Bibby had a personal interest without making proper disclosure of such to the clients. This is not disputed by the Applicants and is therefore an accepted fact in this application.

(i) Mr. Bibby and his wife hold shares in Fairway and would be entitled to share in any profits generated from acquisition of the Land; and

(ii) Neither Richmond nor Mr. Bibby disclosed his or his wife's interest in Fairway to the clients whose funds were used to grant the loan to Fairway to purchase the Land.

24. There is ample evidence of the failure to disclose from :

(i) Mr. Bibby wrote a letter to the SFC on 21 March 2013 in which he stated *inter alia* that *"underlying investors in the Funds were not made aware of the involvements or arrangements with Fairway Holding Limited since [Richmond] held a Discretionary Mandate as Investment Advisor to the Funds"*;

(ii) Mr. Bibby sent an email to the SFC on 14 August 2014 in which he stated *"no clients were informed of his and his wife's shareholdings at the time by ourselves or the owners of the fund structure and in hindsight this was an oversight and should have been realised at the time"*;

(iii) Mr. Bibby admitted in his interview with the SFC that he did not inform Richmond's clients about his interest in Fairway; and

(iv) Mr. Dialdas who was at that time Richmond's Investment Manager and Responsible Officer in his email of 14 January 2014 confirmed he had checked Richmond's records as to whether any written notice was given to clients with regards to Graham (Bibby) also having ownership in the Land and had been advised that there had not been.

25. The SFC put forward additional matters to show the seriousness of the Applicants' misconduct.

26. The management agreement entered into by Richmond and its clients contained the following provision that –

> "Richmond undertakes not to transact for the client any business in which [Richmond] or any registered individual has a personal interest unless that interest has been previously disclosed in writing"[3].

[3] Please see Footnote 2.

Many of the agreements were signed by Mr. Bibby himself on behalf of Richmond.

27. The conclusions, therefore, drawn by the SFC were that the Applicants could be in no doubt that they were obliged not to enter into any transactions for clients in any business in which they had a personal interest unless this was disclosed to the clients in writing. Thus failure to make proper disclosure of Mr. Bibby's and his wife's interests in Fairway was in blatant breach of their contractual obligations.

28. The inclusion of that Clause 3(b) in the management agreements clearly suggests that the Applicants recognised and accepted the importance that in the relationship with the clients that they should guard against potential conflicts of interest which might arise if they were to transact business for their clients in enterprises in which the company or its registered representatives had personal interests. It also demonstrates that the Applicants recognised that their clients were entitled to make informed decision as to whether or not to enter into such transactions if their investment advisor had a personal interest.

The Investment Scheme to Acquire the Land

29. Mr. Bibby in his interview with the SFC acknowledged that it was his idea to set up the investment structure of Asia Property Funds and Fairway to purchase the Land as an investment.

30. It is clear that it was intended from the outset that Mr. Bibby and his wife would hold shares in Fairway. Whilst Mr. Bibby has provided three different explanations as to how any potential profits were

to be shared between himself, his wife and Abroad, it was clearly his intention to make a profit for himself. This Tribunal remains uncertain as to the precise arrangements.

31. From Mr. Bibby's interview, he accepted he was to hold 14% of Fairway's shares and thus 14% of the potential profits from the Land even though he did not initially contribute money towards the purchase. Whilst protesting that he did not do this for personal gain, he admitted there was an "upside for his shares … the shares are in [his] name" even though "everything … initially came from the funds." It seems that he struggled to explain why he was entitled to a potential upside without making contributions. He claimed it was "for security" or "for structure".

32. It is clear to the Tribunal that he had the intention of sharing in any potential gain from the Land from the very inception of the Scheme. This is despite all the money to purchase the Land coming from the Asia Property Funds. It was only in a later stage when it was apparent that the Asia Property Funds were insufficient that he himself raised funds to make up the shortfall. The Tribunal has never had any information as to the source of this extra funding. There is merely a suggestion that some, at least, came from Mr. Bibby's own pocket.

33. The above position is confirmed by Mr. Bibby's letter of 21 March 2013 to the SFC where he said :

> "Subsequent to the land acquisition being agreed and initial payments made, under a schedule of payments, the redemptions in the [Richmond] managed funds meant there became insufficient money

> available to complete the purchase. This meant the Funds stood to lose the money. I was then able to secure other funding to assist Fairway Holding [to] complete the purchase and therefore protect the investment made for the Funds …"

34. Mr. Bibby's email of 14 August 2014 said "he had to find 70 million baht in order to complete the investment into Fairway."

35. The SFC's position was this showed clearly that Mr. Bibby intended to derive a personal benefit from the investment which was originally intended to be solely funded by money invested by Richmond's clients. The Tribunal finds this to be the only possible conclusion and therefore agrees with the interpretation of the facts advanced by the SFC. This perforce is therefore clearly a breach of the duties placed upon a fiduciary as Richmond and Mr. Bibby were investment advisors to the clients with a discretionary power of investments over the funds. They are and, this was not challenged by Mr. Stuart, in this review, clearly in a fiduciary position to their clients as they managed the funds under the terms of the agreement. A fiduciary must not place himself in a position where his interest would or may conflict with the duties owed to the beneficiaries and must not profit from that position[4].

The Sharing of Potential Profits between Partners

36. This matter was of great concern to the Tribunal. It is clear, and not challenged by Mr. Stuart for the Applicants that potential profits from the acquisition of the Land were to be split between Mr. Bibby, his wife and Abroad. It is obvious that this factor has immense bearing on

[4] *Kao, Lee and Yip v Koo Hoi Yan [2003] 3 HKLRD.*

the resolution of this review. The absence of Mr. Bibby and absence of any fresh documentary evidence placed the Applicants in an extremely difficult position as Mr. Stuart agreed.

37. The difficulty is that the Tribunal cannot, nor can the SFC or Mr. Stuart on behalf of the Applicants find any certainty as to the way the profits were to be apportioned. There are, in fact, four different versions :

(i) The first version which is to be gleaned from Mr. Bibby's interview with the SFC. In that interview he clearly stated that he was to receive 14%, his wife 61% and Abroad 25% of the profit.

(ii) The second version was in the written representations of the Applicants on 23 February 2015. In that Mr. Bibby claimed the profits were to be apportioned according to the percentage of the purchase price of the Land that each contributed. So the clients having contributed approximately 73% of the purchase price would receive that portion and presumably Mr. Bibby the remainder which is 27%. This agreement was totally unsupported by any evidence, written or otherwise.

(iii) The third version appears in Mr. Stuart's Opening Submissions. This is again totally unsupported by any written or oral evidence and accepted to be not so supported by Mr. Stuart. This claimed that only preference shares carried any entitlement to share in the profits except that ordinary shares did attract a very small entitlement of 0.01%.

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Thus, Ms. Suthamma's 61% ordinary shares did entitle her to 0.01% of the profits. The preference shares amounted to 39% of Fairway's capital of which Mr. Bibby (and Suthamma) owned 35.89% of those and Abroad approximately 64.11%. These were thus the proportions of the profits (if any) that the parties were entitled to. The only support for this third option comes from the Articles of Association of Fairway which do refer to preference share entitlement and ordinary share entitlement.

(iv) However, the waters are further muddied by looking at the Fairway's list of shareholders for April 2008 and April 2012 which respectively showed the following :

(a)	Mr. Bibby	1,400 preference shares
	Ms. Suthamma	5,050 ordinary shares and 1,000 preference shares
	Abroad	2,500 preference shares
and		
(b)	Mr. Bibby	500 preference shares
	Ms. Suthamma	5,100 ordinary shares and 1,900 preference shares
	Abroad	2,500 preference shares

38. The only conclusion that the Tribunal can and does draw is that Mr. Bibby and his wife stood to benefit by a substantial share of any profits made which was a position not relayed in any form to their clients. Both lists showed the position to be that 49% of the shares in Fairway

were preference shares and that Mr. Bibby and his wife held 48.98% of those with Abroad owning the remaining 51.02%. However, there is simply nothing which shows how the potential profits would be apportioned. The second version advanced suggests Abroad would get 73% and the third version 64%. However looking at the division of preference shares it seems 51% is most likely.

39. It should also be noted that Clause 6(c) of Fairway's Articles of Association provides that the company's dividends are only distributed in the year the company notifies to pay dividends. Given that Mr. Bibby and his wife are the only directors of the company, it is entirely up to them to decide if and when to announce distribution of dividends and unclear as to whether investors would have any recourse at all if they decided not to distribute dividends even if the Land has been sold for a profit.

40. Clearly the Applicants have not honoured their contractual obligation to the clients and have failed to keep them properly informed of the true position.

The Applicants' Case

41. The Applicants' case as presented in the written Opening Submissions and the oral submissions made to the Tribunal can now be crystallised as follows. Mr. Stuart accepted the factual basis for the findings by the SFC of market misconduct by both Richmond and Mr. Bibby. Logically he therefore accepted on behalf of each that some penalties are appropriate but that the penalties in this case, given the facts, are simply too harsh especially the disqualification of Mr. Bibby for 10

years from practising in the industry. To this end, Mr. Stuart made reference to the authorities produced by the SFC. This will be referred to again later. He submitted that Mr. Bibby had been in the business for 35 years and held a licence for 20 years. During that time he had a completely clear record. This is accepted by the Tribunal.

42. Mr. Stuart further submitted that whilst market misconduct was admitted by Richmond and Mr. Bibby that he strenuously denied any dishonest intent. He accepted there was a breach of the management agreement relating to the non-disclosure of personal interest and with hindsight things might and indeed, by implication, should have been handled differently.

43. Also Mr. Stuart submitted that none of the clients had suffered actual loss as the Land was still in the ownership of Fairway and would ultimately be sold. Although he did concede that at this time it could not be sold as there were legal challenges to the title. The investments have been frozen since 2010. This was through no fault of Mr. Bibby as the purchase was made with full due diligence being carried out by local law firms. The challenges to the title are being dealt with by the Thai courts which are notoriously slow. Mr. Stuart informed the Tribunal that it was his understanding that the Land had increased in value quite substantively. However he produced no evidence to support this assertion.

44. Mr. Stuart made reference to the authorities produced by the SFC. Very fairly Mr. Stuart conceded that it was difficult to draw conclusion on the limited facts available and also that the penalties in

some cases were discounted on the basis of admission of the facts and acceptance of a resolution.

45. Mr. Stuart also said that this review was brought to try to restore Mr. Bibby's reputation and remove his perception that the imposition of the 10 years ban was simply too long. Also in the review the revocation of Richmond's licence was also challenged on the basis of unfairness and that Richmond was in effect Mr. Bibby.

46. Mr. Stuart's final submissions were that given the level of misconduct actually proven that the sanctions meted out especially to Mr. Bibby but also Richmond were disproportionate.

The Response of the SFC

47. The SFC's case has largely been set out in these findings previously so reference will only be made to Ms. Ho's oral response to Mr. Stuart's submissions. The basis of that response is to be found in Ms. Ho's Opening Submissions at paragraph 63. There she raised seven matters; the final one merely confirmed the clear record of both Applicants. One of the fundamentals of the SFC's case is that from the outset Mr. Bibby/Richmond had no intention to share any potential profits in a proportional way. This is because initially he did not intend nor envisage he would have to contribute funds to the purchase of the Land. He had to raise extra money because the funds raised from the investors were insufficient to cover the purchase price. Yet all along he intended to take a profit. The contributions of the 70 million Baht was out of necessity. Mr. Bibby in his interview with the SFC admitted he would have 14% of Fairway's shares which was an "upside" for him.

48. Ms. Ho also referred to the percentage of profits to each of the parties. Whilst the actual figure remained uncertain it was clear that Mr. Bibby and his wife would get proportionally more than the amount contributed. Abroad contributed 73% of the funds and Mr. Bibby 27% yet according to the register of shares which showed the number of preference shares, they would take almost half of any profits. The maths clearly showed that these profits were not to be shared in proportion to the amount invested in the Land.

49. She further submitted that the non-disclosure to the clients of Mr. Bibby's and his wife's interests in Fairway was a serious breach of contract and duty.

50. Also the lack of protection for the interests of the clients, if the deal did not work out. This showed the Applicants had not been cautious about protecting their clients' rights. She also noted that at present the Land could not be sold due to legal challenges to its title.

51. The final point Ms. Ho made was the duration of the misconduct. This commenced in 2007 and even to the present, no steps had been taken to inform the clients of the true position.

52. Ms. Ho then went on to deal with the eight cases provided by way of reference. She accepted the difficulties of making meaningful comparisons but the SFC's position was that the misconduct in this case was certainly no less serious than in those cases referred to.

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Consideration of the Review Application

53. The two Applicants were represented by Mr. Angus Stuart, a solicitor admitted in England and Wales but not Hong Kong. The Tribunal granted him rights of audience with no objection from the SFC pursuant to s 22(b) of Schedule 8 of the Ordinance.

54. The Tribunal was satisfied from the facts agreed and concessions made by Mr. Stuart that both Richmond and Mr. Bibby were rightly held to have committed clear, obvious and serious acts of market misconduct. Further such acts were ones which merited sanctions of a condign nature.

55. The Applicants were of the opinion and this is the basis of the application for review that the punishment imposed by the SFC was excessive given the nature of their misconduct.

56. This is a full merit review but as indicated and accepted by Mr. Stuart on behalf of the two Applicants it was restricted to the penalties imposed it being conceded on behalf of each that there was as had already been admitted by Mr. Bibby demonstrable and proven market misconduct.

57. The Tribunal has considered all aspects of the case and finds it proved on a preponderance of probabilities that the following acts of misconduct occurred :

(i) Mr. Bibby and Richmond instigated a scheme for the purchase of the Land using funds provided by their clients.

(ii) In flagrant breach of their contractual duties they failed to inform in writing and indeed in any way whatsoever their clients of their interests in Fairway.

(iii) That it was intended and so constructed that the Scheme in its initial conception meant that Mr. Bibby [Richmond] would financially benefit without putting in funds and taking substantial profits should they accrue.

(iv) That Mr. Bibby did contribute to the funds to purchase the Land but only out of extreme necessity when the funds provided by the Asia Property Funds were insufficient to complete the purchase of the Land and clearly would have necessitated aborting the Scheme.

(v) That any profits from the Land would have been disproportionately shared between Mr. Bibby, Ms. Suthamma (his wife) and Abroad to the disadvantage of Abroad. The exact profit sharing proportion was and remained unfathomable to the Tribunal as Mr. Bibby did not attend the hearing to provide proper evidence of such matters.

(vi) That Richmond and Mr. Bibby are clearly and consciously in breach of their fiduciary duty to their clients.

(vii) That it cannot be said that as a result of the Scheme the clients have lost their investment but nonetheless it is far from certain they will recoup their investment or make any

profit as their investments remain frozen as the Land is subject to a legal challenge over title. The outcome remains uncertain.

(viii) That the conduct of Richmond and Mr. Bibby amounts to serious market misconduct for which condign sanctions are appropriate.

(ix) That the Tribunal notes the clear record of each and also notes the cases provided by the SFC and commented on by Mr. Stuart on behalf of the Applicants.

Conclusion

58. The Tribunal is of the opinion that investors are entitled to be able to invest with confidence and be fully protected from acts of breaches of contract and duty on behalf of those who hold themselves out as Investment Advisors. They are entitled to transparency and the right to make decisions with full information as provided for in the agreements they entered into. In this case, the Applicants embarked upon a scheme which initially was designed to provide substantial reward with no investment and no information provided to the investors. As such, the Tribunal views this as serious market misconduct which falls short of fraud but strays perilously close thereto. Therefore in all the circumstances of this case, the Tribunal upholds the facts found and sanctions imposed by the SFC and dismisses the application for review. The Tribunal so finds having approached this review *de novo*.

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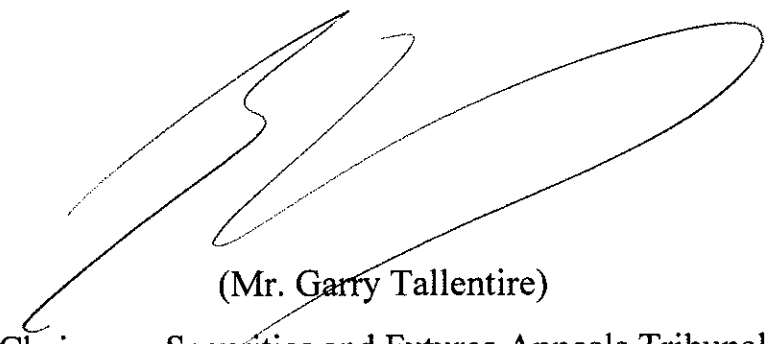
Costs

59. The Tribunal can see no reasons why costs should not follow the event. Accordingly there will be an *order nisi* that the costs of the SFC are to be paid by the Applicants, such order to be rendered final if no application for a different order is made within 14 days of the handing down of these Reasons for Determination.



(Mr. Garry Tallentire)
Chairman, Securities and Futures Appeals Tribunal

Mr. Angus Stuart for the Applicants

Ms. Janet Ho, instructed by SFC for the Respondent