

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER OF:

- (1) A notice of final Determination dated 25 April 2016 to Tin Choi Ying (田彩英)
- (2) A notice of final Determination dated 25 April 2016 to Lee Wai Ching Jim (李偉程)
- (3) A notice of application for review dated 12 June 2017 by Lee Man Hoi (李文開)

AND

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

BETWEEN

LEE MAN HOI (李文開)

Applicant

and

INVESTOR COMPENSATION COMPANY LIMITED

Respondent

Before: Mr Kenneth Kwok SC (Chairman)
Professor Leung Siu-fai (Member)
Mr Roy Tsang Chi-wai (Member)

Date of Hearing: 13 September 2017

Date of Determination: 9 October 2017

DETERMINATION

Relevant facts

1. The applicant, Lee Man Hoi (李文開), is the husband of Tin Choi Ying (田彩英) and the father of:

- (1) Lee Wai Chi (李偉慈);
- (2) Lee Wai Ching Jim (李偉程);
- (3) Lee Ho Yeung (李浩揚); and
- (4) Lee Siu Wah (李兆華).

2. On 2 January 2015, the Securities and Futures Commission (“SFC”) issued a Restriction Notice on Goodcape Securities Limited (“Goodcape”).

3. On 20 January 2015, the Investor Compensation Company Limited (“ICC”) published a Notice under section 3 of the Securities and Futures (Investor Compensation – Claims) Rules, Cap. 571T, (“Claims Rules”) inviting claims in respect of Goodcape. The Notice expressly stated that:

“Claims must be submitted in the specified forms and must reach the SFC on or before 20 April 2015 ... Claims lodged after 20 April 2015 may be disallowed”.

4. (1) Tin Choi Ying (田彩英) lodged her claim in writing in the specified form and dated it 26 January 2015.

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B (2) Lee Wai Ching Jim (李偉程) lodged his claim in writing in
C the specified form and dated it 26 January 2015.

D (3) Lee Man Hoi (李文開) has not lodged any claim with SFC,
E whether in the specified form or at all, whether in writing or at all,
F whether by the deadline of 20 April 2015 or at all.

G (4) Lee Wai Chi (李偉慈) has not lodged any claim with SFC,
H whether in the specified form or at all, whether in writing or at all,
I whether by the deadline of 20 April 2015 or at all.

J (5) Lee Ho Yeung (李浩揚) has not lodged any claim with SFC,
K whether in the specified form or at all, whether in writing or at all,
L whether by the deadline of 20 April 2015 or at all.

M (6) Lee Siu Wah (李兆華) has not lodged any claim with SFC,
N whether in the specified form or at all, whether in writing or at all,
O whether by the deadline of 20 April 2015 or at all.

P 5. (1) Tin Choi Ying (田彩英) had signed a written client
Q agreement with Goodcape and had opened and maintained an account
R with Goodcape until the date of the Restriction Notice.

S (2) Lee Wai Ching Jim (李偉程) had signed a written client
T agreement with Goodcape and had opened and maintained an account
U with Goodcape until the date of the Restriction Notice.
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B (3) Lee Man Hoi (李文開) claimed he had a client account with
C Goodcape which had been dormant since his bankruptcy. No document
D had been produced to support his bare assertion that he had an account.
E Assuming, but without accepting, the truth of his bare assertion, this does
F not assist him as no loss is alleged to have been suffered under this
G allegedly dormant account.

H (4) Lee Wai Chi (李偉慈) had not signed any written client
I agreement with Goodcape and had not opened or maintained any account
J with Goodcape.

K (5) Lee Ho Yeung (李浩揚) had not signed any written client
L agreement with Goodcape and had not opened or maintained any account
M with Goodcape.

N (6) Lee Siu Wah (李兆華) had not signed any written client
O agreement with Goodcape and had not opened or maintained any account
P with Goodcape.

Q 6. (1) By a document dated 13 January 2015, Tin Choi Ying (田彩
R 英) authorised Lee Man Hoi (李文開) to handle matters involving her
S stock and related matters.

T (2) By a document dated 13 January 2015, Lee Wai Ching Jim
U (李偉程) authorised Lee Man Hoi (李文開) to handle matters involving
V his stock and related matters.

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(3) There is no allegation and no evidence that Lee Man Hoi (李文開) has ever been authorised by Lee Wai Chi (李偉慈) to act for him in respect of any claim for compensation.

(4) There is no allegation and no evidence that Lee Man Hoi (李文開) has ever been authorised by Lee Ho Yeung (李浩揚) to act for him in respect of any claim for compensation.

(5) There is no allegation and no evidence that Lee Man Hoi (李文開) has ever been authorised by Lee Siu Wah (李兆華) to act for him in respect of any claim for compensation.

7. By letter dated 25 April 2016, ICC gave Tin Choi Ying (田彩英) notice of final determination determining that only Tin Choi Ying (田彩英) might get compensation and that the amount of her compensation was HK\$150,000. A cheque for HK\$150,000 was enclosed with the letter. The letter informed Tin Choi Ying (田彩英) of her right to apply for a review by the Securities and Futures Appeals Tribunal (“**Tribunal**”) and that notice of application for review had to be lodged with the Tribunal within 21 days from receipt of the notice of final determination.

8. By letter dated 25 April 2016, ICC gave Lee Wai Ching Jim (李偉程) notice of final determination determining that only Lee Wai Ching Jim (李偉程) might get compensation and that the amount of his compensation was HK\$150,000. A cheque for HK\$150,000 was enclosed with the letter. The letter informed Lee Wai Ching Jim (李偉程) of his right to apply for a review by the Tribunal and that notice of

A application for review had to be lodged with the Tribunal within 21 days
B from receipt of the notice of final determination.
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D 9. In his written submission dated 28 August 2017, Lee Man
E Hoi (李文開) acknowledged that the 2 cheques totalling HK\$300,000
F (referred to in §§7 and 8 above) had been cleared.

G 10. (1) By letter dated 28 October 2016, ie about 6 months after the
H date of the notices of final determination, Lee Man Hoi (李文開) wrote to
I ICC expressing dissatisfaction with ICC's determinations.

J (2) Having made their final determinations and having given
K notices of final determination, the ICC had *no* further official authority or
L function in the matter of the claims for compensation. In other words,
M ICC was *functus officio*. Neither ICC nor the Claims Committee had
N any authority to review or vary ICC's final determinations.

O (3) These notwithstanding, ICC and the Claims Committee, in
P their wisdom, saw fit to engage in correspondence with Lee Man Hoi (李
Q 文開) and to hold meetings with him when ICC was *functus officio*.

R (4) In his letter to Lee Man Hoi (李文開) dated 9 May 2017,
S Ang Cheung Yick, General Manager of ICC, invited Lee Man Hoi (李文
T 開) to enquire directly with the Tribunal (請閣下直接向審裁處作進一步
U 查詢).

V (5) Ang Cheung Yick had no authority of the Tribunal to write
as he did. He had no business to set up the Tribunal as the channel for

A “further enquiry”. What made matters worse was that the time limit for
B lodging an application for review had long since expired. It was
C misleading for him to invite Lee Man Hoi (李文開) to make further
D enquiries with the Tribunal when the time limit for applying for review
E had long since expired.

F 11. (1) A notice of application for review dated 12 June 2017 by
G Lee Man Hoi (李文開) was lodged with the Tribunal.

H (2) Tin Choi Ying (田彩英) has not lodged any application for
I review by the Tribunal.

J (3) Lee Wai Ching Jim (李偉程) has not lodged any application
K for review by the Tribunal.

L (4) Lee Wai Chi (李偉慈) has not lodged any application for
M review by the Tribunal.

N (5) Lee Ho Yeung (李浩揚) has not lodged any application for
O review by the Tribunal.

P (6) Lee Siu Wah (李兆華) has not lodged any application for
Q review by the Tribunal.

R 12. (1) On 18 July 2006, a bankruptcy order was made against
S Lee Man Hoi (李文開) by the Court of First Instance.

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(2) According to the Registrar's Certificate of Discharge dated 23 March 2015, Lee Man Hoi (李文開)'s bankruptcy order was **discharged on 18 July 2010**.

(3) Lee Man Hoi (李文開)'s bankruptcy is a red herring. On Lee Man Hoi (李文開)'s own documents, he had been discharged long before the Restriction Notice on Goodcape was issued.

Whether Lee Man Hoi (李文開) is entitled to compensation

13. Rule 3(1) and (2) of the Claims Rules provide that:

"(1) Where the Commission has reason to believe that a specified person or any associated person of the specified person has committed a default, it may publish a notice inviting a qualifying client of the specified person named in the notice who believes he has sustained loss as a result of such default to claim for compensation. Such a notice shall be published in one or more English language newspapers and one or more Chinese language newspapers which are published daily and circulating generally in Hong Kong.

(2) A notice published under subsection (1) shall specify a date, not being earlier than 3 months after publication of the notice, on or before which a claim for compensation may be made under section 4."

14. Rule 4(3) and (4) of the Claims Rules bar claims which are lodged out of time:

"(3) A claim under subsection (1) shall be lodged with the Commission—

(a) if a notice under section 3(1) has been published, on or before the date specified in the notice; or

(b) ...

(4) A claim which is not lodged within the time limit provided in subsection (3) is barred, unless the Commission determines otherwise.”

15. Lee Man Hoi (李文開) has not lodged any claim with SFC, whether in the specified form or at all, whether in writing or at all, whether by the deadline of 20 April 2015 or at all. His claim is barred by Rule 4(4) of the Claims Rules. SFC has not determined otherwise under Rule 4(4). Any and all claims which Lee Man Hoi (李文開) may have is/are barred. His application for review does not get off the ground and fails.

16. This is not the only fatal objection against the application for review by Lee Man Hoi (李文開).

17. Section 217(3)(a) provides that an “application for review of a specified decision of the relevant authority shall be made within 21 days after ... where there is any requirement in this or any other Ordinance for notice in writing in respect of the decision to be served, the notice has been served in accordance with such requirement”.

18. ICC has made 2 final determinations relevant to this case. They are both dated 25 April 2016. The application for review by Lee Man Hoi (李文開) is dated 12 June 2017 which was more than a year out of time. Lee Man Hoi (李文開) has not made any application for extension of time.

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19. Whether or not Lee Wai Chi (李偉慈), Lee Ho Yeung (李浩揚) or Lee Siu Wah (李兆華) has any claim for compensation is wholly irrelevant to our review. There is no allegation and no evidence that any of them has ever authorised Lee Man Hoi (李文開) to act for him in respect of any claim for compensation or to lodge any claim on his behalf.

Claims for compensation by Tin Choi Ying (田彩英) and Lee Wai Ching Jim (李偉程)

20. Section 12 of the Claims Rules provides that:

“Upon payment of the full amount determined to be payable to a claimant under these Rules, the rights of the claimant against the compensation fund in relation to the claim and the default are absolutely discharged.”

21. Both Tin Choi Ying (田彩英) and Lee Wai Ching Jim (李偉程) have accepted payment to each of HK\$150,000. By virtue of section 12 of the Claims Rules, the rights of Tin Choi Ying (田彩英) and Lee Wai Ching Jim (李偉程) against the compensation fund in relation to the claims and the default are absolutely discharged.

22. The maximum amount of compensation was prescribed by the Legislature. It is a matter of looking up the relevant statutory provision. The maximum amount is not determined by bare assertions of Lee Man Hoi (李文開) or members of his family.

23. Section 3 of the Securities and Futures (Investor Compensation – Compensation Limits) Rules, Cap. 571AC, provides that the limit is HK\$150,000.

Lee Wai Chi (李偉慈), Lee Ho Yeung (李浩揚), and Lee Siu Wah (李兆華)

24. Lee Man Hoi (李文開) has sought to involve Lee Wai Chi (李偉慈), Lee Ho Yeung (李浩揚), and Lee Siu Wah (李兆華) in this review.

25. To start with, none of them has lodged any claim with SFC, whether in the specified form or at all, whether in writing or at all, whether by the deadline of 20 April 2015 or at all. They are barred by Rule 4(4) of the Claims Rules from raising any claim.

26. In any event, none of them has authorised Lee Man Hoi (李文開) to act for him in respect of any claim for compensation or to lodge any claim on his behalf.

Qualifying clients = account holders?

27. Ms Evelyn Tsang contended in §§51 – 53 of her written submissions that:

“51. The Claims Rules makes it clear that only qualifying clients are entitled to compensation from the Fund. As set out above, under the Claims Rules, a claimant means a qualifying client who makes a claim for compensation from the Fund. Qualifying clients are defined as persons for whom the specified person (ie, Goodcape) provides a service ...

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52. Under the SFO, a client, in relation to a licensed corporation means a person for whom the licensed corporation (i.e. Goodcape) provides a service. Under the Code of Conduct [for Persons Licensed or Registered with the Securities and Futures Commission (“**Code of Conduct**”)], it is a requirement for a licensed corporation to enter into a Client Agreement with the client.

53. The definition of client in the SFO is consistent with that of a qualifying client under the Claims Rules. It follows from these definitions and the requirement under paragraph 6.1 of the Code of Conduct [**SFC/7/217**], a qualifying client is a person for whom the licensed corporation provides a service and with whom the licensed corporation has entered into a Client Agreement (i.e. an account holder). Accordingly, the ICC’s position was and is that only account holders are qualifying clients within the meaning of the Claims Rules.”

28. “Qualifying client” is defined in section 2 of the Claims Rules as follows:

“ ‘qualifying client’ (合資格客戶), in relation to a specified person, means a person for whom the specified person provides a service but does not include ...”

Thus, there is only one requirement for a client of the specified person to qualify as a “qualifying client”. A “qualifying client” means a person for whom the specified person provides a service. There is no further requirement of being an “account holder” of the specified person. The “ICC position” changes the law by imposing the further requirement of being an “account holder”. It is questionable whether this is permissible.

29. Further, the “ICC position” requires the specified person to be Code compliant. This approach is questionable given that the Claims Rules deal with a scenario of a default by the specified person.

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30. Thus, the “ICC position” may produce an absurdity. If the specified person should fail to enter into a client agreement with a client for whom the specified person provides a service, then according to the “ICC position”, the client is not a qualifying client. We question whether the breach of the Code of Conduct by the specified person should strip a client of the status of a qualifying client.

31. The concern we have with the “ICC position” is that ICC is trying to construe the statute by reference to the Code of Conduct. No authority has been cited to support the proposition that a statute can be construed by reference to a document such as the Code of Conduct. No authority has been cited to support the proposition that the Code of Conduct is admissible in the construction of the Claims Rules.

32. Further and in any event, the Claims Rules came into effect on 1 April 2003. The first edition of the Code of Conduct was published in 1994, the sixth edition in 2003 and the eighteenth edition in June 2017. Which edition should we look at?

33. If it is thought that the meaning of a “qualifying client” should be defined with reference to a client agreement, then Claims Rules could have been drafted in direct and plain English.

34. As we do not have the benefit of full arguments and as it is not necessary to rule on the “ICC position”¹, we leave the question open.

¹ As Lee Man Hoi (李文開) and his family members have no case for reasons given in this Determination.

Credibility of Lee Man Hoi (李文開) and his family members

35. Lee Man Hoi (李文開) alleged² in his letter dated 6 August 2017 that:

(1) In handling his personal bankruptcy, he had to deal with assets not solely owned by him;

(2) Therefore, on 2 May 2006, he sold all his shares in another broker's account with a market value of HK\$595,294.69;

(3) He withdrew on 4 & 8 May 2006 a total of HK\$590,000 in cash;

(4) It was decided after a family meeting to input it to Goodcape; and

(5) The sum represented savings by 6 members of his family.

36. We make two preliminary observations on Lee Man Hoi (李文開)'s allegations:

(1) Lee Man Hoi (李文開) seemed to be alleging that he was transferring assets in his sole name to accounts in the name of others to "handle" his bankruptcy.

(2) There is no documentary evidence that HK\$590,000 represented savings by 6 members of his family and there are no particulars on how the sum is alleged to be made up.

² 「又因為辦理個人破產，須在破產令生效前處理好非本人單獨擁有的財產，於是約在 2006 年 5 月 2 日，將本人存倉在[name redacted]股票有限公司市值\$595,294.69 的股票買(原文照錄)出，隨之在同年 5 月 4 日及 5 月 8 日分兩次提取現金 59 萬元，經家庭會議後將其投入佳堅增值，這筆錢是一家六口經幾拾年打拚才儲存到的，請參閱附件②。」

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37. The crucial point for the purpose of our review is whether there is any evidence any money paid to Tin Choi Ying (田彩英)'s account with Goodcape or to Lee Wai Ching Jim (李偉程)'s account with Goodcape was sourced from 6 members of Lee Man Hoi (李文開)'s family. Apart from bare assertions, there is no evidence that any money paid to Tin Choi Ying (田彩英)'s account with Goodcape or to Lee Wai Ching Jim (李偉程)'s account with Goodcape was sourced from Lee Man Hoi (李文開). The only documentary evidence which Lee Man Hoi (李文開) produced on this point was extracts from a passbook of his account with Bank of China (Hong Kong) Limited showing:

- (1) a deposit on 3 May 2006 of HK\$595,294.69;
- (2) a cash withdrawal of HK\$270,000 on 4 May 2006; and
- (3) a cash withdrawal of HK\$320,000 on 8 May 2006.

38. Plainly, these extracts do not begin to show that any payment to Tin Choi Ying (田彩英)'s account with Goodcape or to Lee Wai Ching Jim (李偉程)'s account with Goodcape was sourced from Lee Man Hoi (李文開). There is no evidential basis for any assertion that Lee Man Hoi (李文開) was a client of Goodcape.

39. Apart from bare assertions, there is no evidence that any payment to Tin Choi Ying (田彩英)'s account with Goodcape or to Lee Wai Ching Jim (李偉程)'s account with Goodcape was sourced from Lee Wai Chi (李偉慈), Lee Ho Yeung (李浩揚) or Lee Siu Wah (李兆華). There is no evidential basis for any assertion that Lee Wai Chi (李偉慈),

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B Lee Ho Yeung (李浩揚) or Lee Siu Wah (李兆華) was a client of
C Goodcape.

D 40. Conflicting allegations have been made as to the beneficial
E ownership of Tin Choi Ying (田彩英)'s account with Goodcape:

F (1) Tin Choi Ying (田彩英) stated in her claim in writing in the
G specified form that she was the only beneficiary of her
H account;

I (2) Tin Choi Ying (田彩英) did not mention in her letter to ICC
J dated 11 February 2015 that Lee Man Hoi (李文開) was also
K a beneficiary of her account; and

L (3) Tin Choi Ying (田彩英) stated in her letter to ICC dated 18
M May 2015 that Lee Man Hoi (李文開) contributed half of the
N funds for purchasing the securities.

O 41. Whether Lee Man Hoi (李文開) was a beneficiary of her
P account was a question of fact. There was no explanation for her
Q conflicting versions which we reject.

R 42. Conflicting allegations have been made as to the beneficial
S ownership of Lee Wai Ching Jim (李偉程)'s account with Goodcape:

T (1) Lee Wai Ching Jim (李偉程) mentioned in his letter to ICC
U dated 11 February 2015 that he, Lee Wai Chi (李偉慈) and
V Lee Siu Wah (李兆華) contributed the funds for purchasing
the securities; and

(2) Lee Wai Ching Jim (李偉程) asserted on 2 March 2015 that Lee Man Hoi (李文開), and all 3 brothers of his contributed the funds for purchasing the securities.

43. Whether Lee Man Hoi (李文開), Lee Wai Chi (李偉慈), Lee Ho Yeung (李浩揚), or Lee Siu Wah (李兆華) was a beneficiary of the account Lee Wai Ching Jim (李偉程) was a question of fact. There was no explanation for the conflicting versions which we reject.

44. We do not accept that allegations made by Lee Man Hoi (李文開) and his family members were credible.

Tribunal's Determination

45. For reasons given above, the application for review is wholly unmeritorious and fails. The application fails on law and on fact.

Costs

46. The application for review is frivolous and vexatious and wholly devoid of merits. Lee Man Hoi (李文開)'s conduct of the claims before ICC and its Claims Committee was abusive, rude and threatening.

47. Ms Evelyn Tsang asked for costs to be summarily assessed by us. She produced a summary of costs totalling HK\$123,950. Lee Man Hoi (李文開) did not challenge ICC's claim for costs and did not question any of the items.

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48. The Tribunal is authorised by section 223(1)(b) of the Securities and Futures Ordinance, Cap. 571, to award costs against Lee Man Hoi (李文開) to ICC.

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49. We dismiss the application for review; confirm the 2 final determinations referred to in §§7 and 8 above, with costs which we assess summarily at HK\$123,950 to be paid by Lee Man Hoi (李文開) to ICC by 4:00 pm on 23 October 2017.

50. We thank Ms Evelyn Tsang and Mr Nelson Siu for their assistance.

Kenneth Kwok

(Mr Kenneth Kwok SC)
Chairman, Securities and Futures Appeals Tribunal

Leung Siu-fai

(Professor Leung Siu-fai)
Member, Securities and Futures Appeals Tribunal

Roy Tsang Chi-Wai

(Mr Roy Tsang Chi-Wai)
Member, Securities and Futures Appeals Tribunal

The applicant, Lee Man Hoi (李文開), present and unrepresented

Ms Evelyn Tsang and Mr Nelson Siu, of the Securities and Futures
Commission, for the Respondent