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Application No 3 of 2010

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IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

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

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IN THE MATTER of s 217 of the
Ordinance

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BETWEEN

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CHAN SHUK HANG

Appellant

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and

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SECURITIES AND FUTURES COMMISSION

Respondent

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Before: Hon Saunders J, Chairman

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Date of Hearing: 1 June 2010

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Date of Decision: 1 June 2010

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DECISION

Background:

1. On 26 February 2004, Ms Chan was issued with a licence under the Securities and Futures Ordinance, Cap 571, (the Ordinance) as a Type 1 dealer in securities. On 29 January 2010, the SFC made a decision, pursuant to s 195(1)(a)(i) of the Ordinance to suspend Ms Chan's licence for such period as a bankruptcy order made against her on 30 June 2009, remains in effect.

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

The power to suspend:

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

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

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

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

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

5. Having learned of Ms Chan’s bankruptcy, and following representations made by her, and properly following the appropriate procedure, the SFC made its decision to suspend her licence during the period of the bankruptcy.

The grounds of appeal:

6. Ms Chan explained the reason for her bankruptcy as having arisen from financial assistance she had given to her parents. Her parents and family are apparently in modest circumstances, with her parents operating a street news-stand. Ms Chan was pressed by her parents to give them financial assistance when the news-stand suffered financial difficulties. In order to assist them, Ms Chan says that she used her credit card to obtain cash advances. Those advances were then applied to the assistance of her parents. Her parents promised that they would make the

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repayments required, but the circumstances of news-stand were such that they were not able to do so, leaving Ms Chan responsible for the payments.

7. Ms Chan herself did not have a substantial income, and that income went not only to support her but to support her parents as well. In order to meet the outstanding payments on loans that she had obtained, she engaged in the unfortunate practice of settling the outstanding balance of one credit card by utilising another credit card. Her resources were not such that she could repay principal as well as interest. Consequently the payments made were limited, because of her limited funds, to the interest and bank charges outstanding each time. As a result the outstanding principal amount snowballed over time and led to a situation where the extent of her debts were such that she reluctantly filed in bankruptcy.

8. There is no evidence before me to indicate that the situation was anything other than as explained by Ms Chan.

9. Ms Chan continues to assist her parents from her income, and emphasises that her work is limited merely to answering phone calls and placing orders from clients, and that she has no financial contact with clients. Her employer is willing to continue to employ her, notwithstanding the bankruptcy.

Discussion:

10. Inevitably, one has a deep sense of sympathy for the position in which Ms Chan finds herself. That is particularly so in the present case where Ms Chan's financial position has arisen, not from profligate

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spending, but from what she saw as an obligation to assist her parents. It is undoubtedly most unfortunate that, as a result of her bankruptcy, and the revocation of her licence during the period of the bankruptcy, Ms Chan is likely to lose her job.

11. The Tribunal has previously set out the reasons why, in most cases, the SFC is right to suspend a person’s licence during the period of bankruptcy. In *Woo Chi Kau v SFC* Appeal 6/2009, the Tribunal said:

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

.....

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

15 Unfortunately, Mr. Woo’s situation is not unique. A significant number of the appeals coming before the Tribunal are appeals from persons in precisely the same situation as Mr. Woo. The Tribunal has consistently supported the SFC in its view as set out in paragraph 12 above. There is nothing special about Mr. Woo’s situation that provides a basis upon which the Tribunal can say he ought not to have his licence revoked during the period of the bankruptcy.

16 While it is right that Mr. Woo has been in the industry for a number of years, and that during that time there

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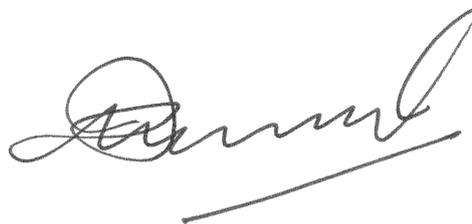
has been no complaint against his conduct, I accept the submission of the SFC that the fact of the bankruptcy puts him at a higher risk of deviating from the high standards required of a licensed person, during the period of bankruptcy.

17 Although Mr. Woo may not have been dealing directly with clients, he is licensed to do so, and the SFC is of the view that the interests of his employer’s clients and the investing public may be placed at risk if Mr. Woo is permitted to continue as a licensed person during the period of his bankruptcy. I cannot say that that view is wrong. Consequently, although his employer is willing to retain his services I must place the interests of the investing public first. That requires that, during the bankruptcy, Mr. Woo should not be exposed to any temptation that might arise through his employment.”

12. Those statements apply equally to Ms Chan. Although there is no evidence to suggest that Ms Chan indulged herself with her credit card spending, or used the card unnecessarily for personal expenditure, she did engage in the practice of using one card to pay off another card. That is a practice which is inevitably destined to fail and is itself a sign of fiscal irresponsibility.

13. I am satisfied that the SFC has taken into account all matters raised by Ms Chan in opposition to the decision. In so doing they have properly exercised the discretion given under s 195(1)(a)(i) reasonably and no grounds exist upon which the Tribunal may interfere with that decision.

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



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

The Appellant, in person

Ms Annabel T M Lee, Counsel, Securities and Futures Commission for the
Respondent

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