

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER OF a Decision made by the Securities and Futures Commission under section 208 of the Securities and Futures Ordinance, Cap. 571

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

BETWEEN

PAN TIANYU

Applicant

and

SECURITIES AND FUTURES COMMISSION

Respondent

Tribunal: Mr Michael Hartmann, Chairman

Date of Ruling: 23 August 2022

RULING

A 1. In December 2020, the Securities and Futures Commission (“**the SFC**”),
B the Respondent, issued a notice pursuant to sections 204 and 205 of the Securities
C and Futures Ordinance, Cap 571 (“**the Ordinance**”) prohibiting CNI Securities
D Group Limited, a company licensed under the Ordinance, from in any way dealing
E in the assets of the Applicant up to a value of some HK\$50.964 million.

E 2. At the time when the notice was issued, the SFC had reason to believe
F that a group of traders, including the Applicant, had acted in concert in a pre-
G arranged scheme to inflate the share price of a company called Mansion
H International Holdings Ltd to an artificially high level, following that with an abrupt
I disposal of the shares, the great majority being sold in the span of just one day. The
J SFC had reason to suspect that the group of traders may have committed offences
K under the Ordinance by way of false trading, price rigging and/or market
L manipulation.

K 3. Subsequent to the imposition of the notice, the Applicant requested
L the SFC to withdraw or vary the notice so that he could receive part or all of his
M ‘frozen’ capital. The application was refused.

M 4. In the result, on 19 August 2021 the Applicant filed his notice of
N application for review of that refusal, seeking a review of the SFC decision and a
O declaration to the effect that the SFC had insufficient evidence to show that the
P Applicant’s share dealings had been contrary to any provisions of the Ordinance.

P 5. The notice of application for review was filed on behalf of the
Q Applicant by his then solicitors, Angela Ho & Associates, the application being set
R down for hearing on 6 June 2022.

S 6. Prior to that date, however, by letter dated 26 May 2022, the
T Applicant’s solicitors informed the Tribunal that it was no longer able to represent
U the Applicant as it had been unable to contact the Applicant in order to obtain
V

A instructions from him. In the result, the Applicant’s solicitors informed the Tribunal
B that it would not appear in any representative capacity at the hearing.

C 7. Upon receipt of this information, the Tribunal issued an order
D addressed directly to the Applicant requiring him within 14 days to confirm in
E writing whether or not he intended to proceed with his application for review and,
F if so, to provide contact information and to lodge with the Tribunal, and serve also
G on the SFC, his written submissions. The order provided that, if there was no
H response from the Applicant within 14 days of the order being served upon him, his
I application would be treated as withdrawn.

J 8. In due course, the SFC supplied proof that the order (together with its
K Chinese translation) had been served at the Applicant’s address in the Mainland on
L 2 July 2022. There was no response received from him within the required period
M of 14 days; indeed, it does not appear that the Applicant has at any time up to the
N date of this ruling sought to further his case before the Tribunal.

O 9. The SFC has now made an application for an order that the
P Applicant’s application for review be treated as withdrawn. The Tribunal is satisfied
Q that the Applicant has taken no steps to pursue his application. In the judgment of
R the Tribunal, the application for review is accordingly to be treated as withdrawn.

S 10. In light of that order, the SFC has sought an order for costs, such costs
T to be assessed on an indemnity basis.

U 11. Section 223 (1)(b) of the Ordinance provides that the Tribunal may,
V in relation to an application for review, award costs to any party to the review.
Section 223(3) provides that the award of costs by the Tribunal is to be governed by
order 62 of the rules of the High Court. Order 62 itself¹ provides that, in determining
costs, a court may, in any case in which it thinks it fit to do so, direct that costs shall

¹ Specifically, Order 62, Rule 28(3).

A be taxed on an indemnity basis. That this Tribunal has the power to award costs on
B an indemnity basis is clear and is now well established in its practice.

C 12. As to the exercise of this Tribunal's discretion, definitive guidance is
D to be obtained from *Choy Yee Chun (The Representative of the estate of Chan Pui*
E *Yiu) v Bond Star Development Ltd* [1997] HKLRD 1327. On the basis of that
F authority, it is settled that indemnity costs can properly be ordered when
G proceedings have been initiated maliciously, in an oppressive manner or for an
H ulterior motive.

I 13. The discretion vested in this Tribunal is therefore a broad one, the key
J question being: is such an order in the circumstances an appropriate order? Or, put
K another way, having regard to all relevant circumstances, is such an order justified?

L 14. The SFC has founded its application for enhanced costs on a number
M of grounds which may be summarised as follows: first, that the application itself
N was not made in good faith, that it was vexatious or made with an ulterior motive in
O mind; second, that the Applicant had made an abrupt decision to abandon his own
P application, removing himself from any contact with his own legal representatives,
Q with the SFC and with this Tribunal, third, that his actions generally had constituted
R an affront to the integrity of the Tribunal.

S 15. As to the first ground, namely, that the application had patently not
T been made in good faith, the Tribunal has difficulty accepting that this has been
U demonstrated. The application, on the evidence available, was not, for example, a
V delaying exercise. In this regard, it is to be remembered that the Applicant was
seeking the release of his own funds. He had attempted by way of negotiation to
obtain that release or to have the imposition modified but had been unsuccessful.
The only avenue open to him to seek full, or partial, release of a very substantial
sum of money was therefore by way of his application. Whether the Applicant's
case in law was at all times demonstrably weak, so much so that it must have been
made in bad faith is not a matter that this Tribunal can now determine. In such

A circumstances - absent other compelling evidence - it is difficult to find that the
B Applicant, when he made his application, did so in bad faith.

C 16. As to the second ground, namely that the Applicant had made an
D abrupt decision to abandon his own application, it is to be remembered that, in doing
E so, the applicant was also abandoning his claim for the return to him of funds to
F which he believed himself to be entitled. In the view of the Tribunal, abandonment
G by a party, either in part or in whole, of a claim cannot, of itself, constitute conduct
H which smacks of bad faith. It is often a realisation simply that, on balance, the
I likelihood of success is limited.

J 17. As to the third ground, there is no substantive evidence before the
K Tribunal that the Applicant has intentionally acted so as to insult the Tribunal and/or
L to undermine its process. He may have ‘washed his hands’ of the whole process,
M refusing to cooperate with the SFC investigators. But in the present circumstances,
N the Tribunal does not see that his abandonment of his own claim, even when read
O with the other matters outlined by the SFC, is sufficient to warrant an enhanced
P order.

Q 18. In the circumstances of this particular case, the Tribunal is not
R persuaded that persuasive grounds exist for awarding costs on an indemnity basis.
S Costs will therefore be awarded on a party and party basis.

T 19. That said, the Tribunal accepts that, having regard to the complexity
U of the matters that were at issue, a certificate for two counsel is deserved and will
V be granted.

20. The Tribunal therefore makes the following orders –


- (1) That the application for review is treated as withdrawn.

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V

- (2) That the Applicant be ordered to pay costs on a party and party basis.
- (3) That, in respect of the SFC representation, there be a certificate for two counsel.

Dated the 23rd day of August 2022.




Michael Hartmann
(Chairman)

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V