

**IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL**

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IN THE MATTER OF a Decision made by the Securities and Futures Commission under section 194 of the Securities and Futures Ordinance, Cap. 571

AND IN THE MATTER OF a proposed application pursuant to section 217 of the Securities and Futures Ordinance, Cap. 571

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BETWEEN

YI SHUN DA CAPITAL LIMITED	Applicant
and	
SECURITIES AND FUTURES COMMISSION	Respondent

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Tribunal: Mr. Michael Lunn, Chairman

Date of Hearing: 3 July 2020

Date of Decision: 6 July 2020

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DECISION

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1. By a letter, dated 27 June 2020, received by the Securities and Futures Appeals Tribunal on Monday 29 June 2020, Li & Partners, acting on behalf of Yi Shun Da Capital Limited (“YSD Capital”), sought an extension of time of six weeks for YSD Capital to file a Notice of Review pursuant to section 217 of the Securities and Futures Ordinance, Cap. 571 (the “Ordinance”) of a Decision by the Securities and Futures Commission (the “SFC”), dated 9 June 2020, that YSD Capital was culpable of misconduct in its conduct of the listing application of Imperial Sierra Group Holdings Limited and that it was not a fit and proper person to remain licensed, in consequence of which YSD Capital was reprimanded and fined \$4.5 million.

2. In support of the application, it was asserted that “YSD Capital intends to engage Senior Counsel to prepare the Notice of Review and appear on its behalf at the review hearing.” In addition, it was contended that an “additional reason for time extension is that the documents involved in the present case are voluminous.” In consequence, it was submitted that “Senior Counsel (who was not previously involved in the matter) will require some time to peruse the relevant documents before preparing the Notice of Review.”

*The written submissions of the SFC*

3. Having been invited by the Tribunal by an email, dated 29 June 2020, to indicate whether it wished to avail itself of the right to be heard on the application, pursuant to section 217(5) of the Ordinance, in a letter dated 29 June 2020, the SFC stated that it opposed the application. First, the Tribunal was invited to note that the application was made only three days before the deadline for the filing of a Notice of review, namely on 30 June 2020. Secondly, having noted that the mooted engagement of Senior Counsel was expressed as an intention only, it was submitted that it was unclear if such counsel had been engaged and, if so, if the proposed extension of time had been discussed with Senior Counsel. Thirdly, it was contended that in any event those representing YSD Capital had ample time to consider YSD Capital’s position given that:

- (i) the Notice of Proposed Disciplinary Action (“NPDA”) was issued by the SFC to YSD Capital on 16 January 2020;
- (ii) having informed the SFC by letter, dated 10 February 2020, that they now represented YSD Capital in place of Messrs Justin Chow & Company, at their request Li & Partners was provided by the SFC

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with “all documents on the list of documents enclosed with the NPDA” on 12 February 2020; and

(iii) on 26 March 2020, YSD Capital had filed with the SFC written submissions, settled by Mr. Victor TS Lui of counsel, opposing the making of the proposed findings of the SFC and the imposition of the proposed sanctions.

4. In response to the Tribunal’s email enquiry of the applicant’s solicitors in the morning of 30 June 2020, as to whether or not Senior Counsel had been engaged on behalf of the applicant and, if so, when, Messrs Li & Partners responded to the Tribunal by letter at 15:59 hours that day, informing the Tribunal;

“...we have approached a Senior Counsel of Temple Chambers during the end of last week and are now waiting for Senior Counsel’s quotation. We have subsequently sent to Senior Counsel the NPDA, our client’s written submissions and SFC’s Decision Notice for his preliminary perusal and discussed with him the length of the extension of time sought. We expect to receive Senior Counsel’s quotation today or later this week and to obtain clients confirmation of its acceptance by end of this week. We would like to reiterate that Senior Counsel was not previously involved in the matter will require some time to peruse the relevant documents before preparing the Notice of Review.”

5. At about 5 p.m. on 30 June 2020, the Tribunal gave notice to the parties of a hearing of the application fixed for 4:30 p.m. on Friday, 3 July 2020.

6. In the morning of 3 July 2020, the SFC provided the Tribunal, copied to Li & Partners, with copies of two decisions, said to be relevant to the issue of grant an extension of time, namely:

- (i) *Mona Wong Wai King v SFC*<sup>1</sup>; and
- (ii) *Fortune Asset Development v De Monsa Investments*<sup>2</sup>.

<sup>1</sup> SFAT 4/2003; 16 December 2003, Stone J, at paragraphs 11-12.

<sup>2</sup> [2009] 4 HKLRD 439; Registrar Au-Yeung, at paragraph 14.

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*The Hearing*

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*The applicant*

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7. At the hearing of the application on 3 July 2020, the applicant was represented by Mr. Victor TS Lui. At the request of the Tribunal, he provided a chronology of steps that had been taken by the applicant from the handing down of the Decision Notice on 9 June 2020:

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- 9 to 20 June 2020, the applicant considered with its solicitors whether or not to file a Notice of Review;

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- 20 June 2020 - the applicant decided to file a Notice of Review;

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- 22 June 2020 - applicant decided to engage Senior Counsel and various names were discussed with his solicitors;

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- 27 June 2020 - in the morning, Mr. Lawrence Li SC was approached and asked to provide a quotation of his fees, *inter-alia* to settle a Notice of Review;

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- 30 June 2020 - at about 3:15 p.m. Mr. Lawrence Li was provided with copies of the NPDA, the written submissions, dated 26 March 2020, and the Decision Notice;

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- at about 5:30 p.m. Mr. Li advised the applicant's solicitors that he could not represent the applicant because of an undisclosed conflict of interest;

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- at about 6:00 p.m. - the applicant's solicitors approached Mr.

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Jonathan Chang SC, providing him with copies of the NPDA, written submissions, dated 26 March 2020, and the Decision Notice;

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- 3 July 2020 - 3:59 p.m. the applicant's solicitors confirmed acceptance of Mr. Jonathan Chang's quotation, *inter-alia* to settle a Notice of Review.

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8. Then, reiterating the applicant's submissions as to the volume of material provided to the applicant, as identified in the NPDA, and the assertion of the time required by leading Counsel to consider that material, Mr. Lui invited the Tribunal to grant the extension of six weeks for the time in which to file a Notice of review by the applicant. He acknowledged that the stipulated period of six weeks was a period of time that he and his

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instructing solicitors had arrived at, not leading Counsel. In the alternative, he sought an extension of time of two weeks.

9. Of the determination of this Tribunal in *Mona Wong Wai King v SFC*, Mr. Lui invited the Tribunal to note that the case concerned an application for an extension of time that had been made after the expiration of the requisite 21-day period. Those circumstances did not apply to the applicant, whose application had been made prior to the expiration of that requisite time period. He submitted, that after the making of the application, what had followed was what he described as “discussions” between the Tribunal and the SFC. It was in those circumstances that the period for filing a Notice of review had expired. In answer to an enquiry of the Chairman, Mr. Lui said that those representing the applicant had settled a draft Notice of review and, although he was not possessed of that draft at the hearing and was not in a position to file the Notice there and then, nevertheless those representing the applicant were in position to file it the following day. In the result, as a fallback position, Mr. Lui asked for an extension of time to do just that.

*The SFC*

10. Mr. Norman Nip reiterated the SFC’s opposition to the application. He submitted that no good cause had been advanced to enable the Tribunal to be satisfied of the requirements of section 217(5). In particular, he drew attention to the observations of Stone J in the determination of the Securities and Futures Appeals Tribunal in *Mona Wong Wai King v SFC* in which he had said of section 217(5) of the Ordinance:<sup>3</sup>

“...an application for extension of time is not simply subject of the exercise of a wide judicial discretion, often liberally exercised subject to the usual considerations prejudice, compensation costs and so forth. To the contrary. The framers of this legislation and in particular the provisions of section 217 (5) Cap. 571, have seen fit to lay down that an extension “shall not” be granted “unless” the Tribunal is satisfied that there is a “good cause for such grant.”

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<sup>3</sup> *Mona Wong Wai King v SFC*, paragraphs 11 and 12.



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*Discussion*

*Chronology*

11. It is to be noted that the NPDA, dated 16 January 2020, sent by the SFC to YSD Capital c/o Messrs Justin Chow & Company, informed YSD Capital of its right to object to the proposed disciplinary action set out in the NPDA and advised that the SFC would take the proposed disciplinary action, “if we do not hear from YSD Capital before the close of business on 17 February 2020”.

12. In its letter to the SFC, dated 10 February 2020, Messrs Li & Partners, informed the SFC that they had “just been engaged” by YSD Capital and that, there having been a change of solicitors, it would take “time for us to obtain the relevant papers from our predecessors Messrs Justin Chow & Co.” In those circumstances, and having regard to what was said to be the “recent outbreak of the Wuhan coronavirus in the mainland and Hong Kong” and what was asserted to be the impact on communications and/or meetings with their lay client, Messrs Li & Partners requested an extension of 28 days, from the receipt of the documents from the SFC that had been requested in that letter, to submit written submissions on behalf of YSD Capital.

13. In its reply to YSD Capital, dated 12 February 2020, enclosing the requested documents, the SFC acceded to the request for an extension of time for filing written submissions and stipulated 11 March 2020 as the deadline for receipt of those submissions.

14. In its letter, dated 26 March 2020, Messrs Li & Partners enclosed written submissions on behalf of the applicant in response to the NPDA. Although it was acknowledged that the deadline for receipt of the submissions had been extended by the SFC from 11 March 2020, Messrs Li & Partners complained that a request, first made on 23 March 2020, for a further “final short time extension” had been refused.

*Section 217*

15. Section 217 of the Ordinance provides that an application to review a specified decision of, *inter-alia*, the SFC is to be made in writing within 21 days of the decision to be reviewed. Section 217(4) provides that, subject to sub-section 5, the Tribunal may grant an extension of time in which to file a notice. Section 217(5) provides that:

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“The Tribunal shall not grant an extension under sub-section (4) unless-  
(a) the person who has applied for the grant of the extension pursuant to the sub- section and the relevant authority have been given a reasonable opportunity of being heard; and  
(b) it is satisfied that there is a good cause for granting the extension.”

*The applicant’s conduct*

16. It is apparent from the chronology of events described earlier that the applicant’s solicitors have been possessed of all the documents listed in the NPDA since 12 February 2020. Mr. Lui informed the Tribunal at the hearing that he had been briefed on 20 February 2020 to settle written submissions on behalf of the applicant, which submissions were filed on 26 March 2020. Then, there followed a period of about 10 weeks until the Decision Notice was handed down on 9 June 2020. Thereafter, the applicant continued to retain the services of Li & Partners and, it appears, from time to time, those of Mr. Lui. As noted earlier, they represented the applicant at the hearing.

17. Mr. Lui’s description of the steps taken, or rather steps not taken, by the applicant to file a Notice of Review evidences a complete indifference to or disdain for the statutory requirements of section 217(5). That approach appears to have been sustained by an expectation that an extension of time was readily obtainable. Eleven days of the 21-day time period was expanded on a consideration of whether or not to file a Notice of review at all. Then, after that determination was finally reached on 20 June 2020, and the subsequent decision made to seek to engage leading Counsel to settle the Notice of review, no concrete steps at all were taken for a further seven days, until leading Counsel was contacted for the first time on Saturday, 27 June 2020 and a quotation of his fees sought. Even then, he was not provided with any material on which an intelligible assessment could be made, it being only at about 3:15 p.m. on the afternoon of 30 June 2020 that leading Counsel was provided with the NPDA, the written submissions and the Decision Notice. That was the very day on which the time period for filing the Notice was to expire.

18. Whilst the applicant was entitled to engage the services of leading counsel to settle the Notice of review, he was not entitled to pray-in-aid its extraordinarily dilatory approach in seeking to do so as providing him with a good cause to seek an extension of time for filing of the Notice of review.

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*Conclusion*

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19. I am satisfied that the applicant has advanced no good cause to permit the extension of the time as sought in which to file the Notice of review. On the other hand, it might be that by 30 June 2020 the Tribunal had afforded the parties a reasonable opportunity to be heard on the application, so that the Tribunal could have dealt with the matter and refused the application during that day. If the Tribunal had done so, the applicant would have had a short remaining time that day in which to file a Notice of review. In those circumstances, and for that reason only, I am prepared to and do grant an extension of time to file a Notice of review by close of business on 7 July 2020.

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*Costs*

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20. At the Tribunal's invitation, at the hearing the parties addressed the Chairman on the issue of costs. In seeking an order of costs in favour of the SFC, Mr. Nip invited the Tribunal to make a gross sum assessment. Sensibly, Mr. Lui indicated that, if his primary application was dismissed, he did not oppose the making of an order of costs in favour of the SFC, including in the circumstances that have resulted. Also, he indicated that no issue was taken to the making of a gross sum assessment of costs and, on being informed of Mr. Nip's brief fee, he said that had no submissions to make. I assess costs at \$50,000, that being Mr Nip's brief fee. Accordingly, I make an order that the applicant pay the SFC's costs of \$50,000.

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Dated: 6 July 2020

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Mr. Victor Lui, instructed by Li & Partners  
for the Applicant

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Mr. Norman Nip, instructed by SFC  
for the Respondent

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Michael Lunn  
(Chairman)

