

Application No. 5 of 2022

**IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL**

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IN THE MATTER OF the 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

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BETWEEN

LAI KWOK KWONG

Applicant

and

SECURITIES AND FUTURES COMMISSION

Respondent

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Tribunal: Mr Michael Hartmann, Chairman

Date of Ruling: 7 August 2023

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**RULING ON ASSESSMENT OF COSTS**

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1. In a ruling dated 13 March 2023, this Tribunal ordered that the Applicant pay the costs in full of an application for review that had been launched by him and then withdrawn.

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2. In this regard, section 223(1)(b) of the Ordinance gives the power to the Tribunal, in the exercise of its discretion, to order payment of such sum as it considers appropriate for costs and expenses reasonably incurred by the successful party, in this instance that party being the Securities and Futures Commission ('the SFC').

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3. In the present case, it was submitted on behalf of the SFC that, as these proceedings had not been substantial in nature, it would be in the general interest to conduct a gross sum assessment of the costs. The Tribunal accepted this submission as indicating the best way forward, saving costs for both parties. Accordingly, it was directed that the SFC should, in the first instance, submit its bill with the Applicant to reply. Thereafter, again to save costs, the Tribunal would make its determination on the papers.

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4. As to its costs and disbursements, the SFC submitted a detailed assessment which set them at a total of \$287,167.

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5. In respect of this total sum, five SFC fee earners were listed: an interim chief counsel, a deputy chief counsel, two counsel and a legal clerk. In addition, it was thought necessary to brief senior counsel, Mr Norman Nip SC, who submitted three separate bills for a total of \$192,000.

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6. Among other criticisms of the SFC's assessment of costs, it was said on behalf of the Applicant that the numbers of counsel involved was unjustified, more especially as it appeared that senior counsel was briefed to make a submission on costs.

A 7. For ease of reference, the claim by the SFC in respect of its costs  
B and disbursements fell into specified categories of professional work. By way  
C of example, in respect of necessary letters and emails, telephone attendances  
D and conferences, the SFC claimed a sum of \$43,728.33.

E 8. On behalf of the Applicant, his solicitors, Messrs. Lam & Co.,  
F submitted a detailed response, examining the SFC's detailed assessment and  
G suggesting that in many instances such costs were excessive or simply not  
H required. In total, it was suggested on behalf of the Applicant that a sum of  
I \$185,075 be deducted from the SFC claim of \$287,167, leaving a balance due  
J and payable to the SFC of \$102,092: a deduction of more than 50%.

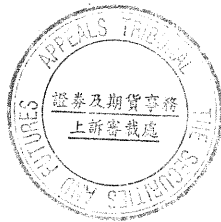
K 9. In preparing its bill, it was, of course, necessary for the SFC to  
L prepare detailed groupings of professional work carried out by various  
M members of the SFC "team" and, of course, to itemise all disbursements  
N incurred. Equally, it was necessary for the Applicant's solicitors to consider  
O the SFC bill in detail, item by item.

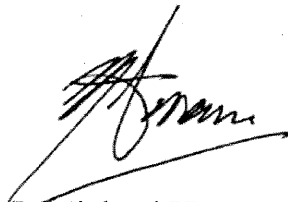
P 10. What is to be remembered, however, is that it is not for this  
Q Tribunal to conduct an audit, a detailed weighing of each and every item in  
R each and every bill. It is instead its duty to take a broader, more objective view,  
S one in which the Tribunal can be satisfied that, in looking especially to the  
T nature and extent of the proceedings, an appropriate figure can be calculated;  
U "appropriate" in the sense that, having regard to the nature and complexity of  
V the proceedings, it allows for such sum as should reasonably have been  
incurred by the SFC in prosecuting those proceedings and no more.

11. In conducting such an exercise, being aware always of the nature  
and extent of the proceedings, the Tribunal is satisfied that it would be

A appropriate to order that the Applicant do pay the SFC the sum of \$230,000  
B as and for costs and disbursements.

C 12. Accordingly, it is ordered that the Applicant do pay the SFC  
D pursuant to section 223(1)(b) the sum of \$230,000 being the costs and  
E expenses reasonably incurred by the SFC.



  
K Mr Michael Hartmann  
L (Chairman)  
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K Messrs. Lam & Co.

L for the Applicant

M Securities and Futures Commission - Respondent