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Application No 5 of 2009

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER of a Decision
made by the Securities and Futures
Commission pursuant to s 194 of
the Securities and Futures
Ordinance, Cap 571, (the Ordinance)

And

IN THE MATTER of s 217 of the
Ordinance

BETWEEN

HUNG CHI WAH

Appellant

and

SECURITIES AND FUTURES COMMISSION

Respondent

Before: Hon Saunders J, Chairman

Dates of Hearing: 5 March 2010

Date of Decision: 5 March 2010

REASONS FOR DECISION

1. Mr Hung is the holder of a type 1 dealing in securities licence under the provisions of the Securities and Futures Ordinance. He was first registered as a dealer's representative under the Securities Ordinance in December 1997. He was first accredited to Sun Hung Kai Investment Services Limited from 3 November 2003 to 22 April 2005. Since 22 April 2005, he has been accredited to GT Capital Limited.

2. On 3 November 2009, Mr Hung appeared before the District Court and pleaded guilty to five counts of fraud and five counts of forgery. He admitted the relevant facts, which may be summarised in the following way.

3. First, he persuaded a Mr Cheng, through a company, to invest \$5 million in securities by fabricating two securities trading agreements using his employer's letterhead.

4. Next, in order to cover losses in Mr Cheng's account, in March 2008 Mr Hung defrauded a Mr Ching of \$5 million by using a fabricated IPO subscription agreement on his employer's letterhead, in respect of the issue of new shares by a fictitious food and drink company.

5. Then in May 2008, Mr Hung defrauded the same Mr Ching of a further \$3 million by again using a fabricated IPO subscription agreement on his employer's letterhead, in respect of the issue of new shares in a fictitious aircraft accessories company.

6. In September 2008, Mr Hung defrauded a Mr Ma in the sum of \$1,250,000, again by using a fabricated IPO subscription agreement on

his employer's letterhead, again in respect of the issue of new shares by a fictitious aircraft accessories company.

7. Consequent upon his plea of guilty, Mr Hung was sentenced to four years and eight months in prison.

8. On 31 March 2009, the SFC wrote to Mr Hung, setting out proposed disciplinary action consequent upon these offences and indicating that it proposed to revoke his licence for life. Mr Hung duly made submissions in relation to that proposed disciplinary action.

9. On 6 May 2009, the SFC gave notice in writing to Mr Hung informing him that its final decision, having considered his submissions, was that the licence would be revoked and he would be prohibited for life from carrying out the following regulated activities:

- (1) applying to be licensed as a representative;
- (2) applying to be approved as a responsible officer of a licensed corporation;
- (3) applying to be given consent to act or to continue to act as an executive officer of a registered institution under section 71C of the Banking Ordinance;
- (4) seeking through a registered institution to have his name entered in the register maintained by the Monetary Authority under the Banking Ordinance as that of a person engaged by the registered institution in respect of a regulated activity.

10. Mr Hung has made application to review that decision to this tribunal. With the consent of both Mr Hung and the SFC, pursuant to the provisions of section 31 schedule 8 of the ordinance, the hearing was conducted by the tribunal consisting of the chairman alone.

11. In his submissions to the SFC, Mr Hung asserted that a life ban would be too harsh considering the amount of money that he had misappropriated. He argued also that if he were imprisoned, as he has been, following his release from prison if he were permitted to re-enter the industry he would not offend again. He has repeated that before me today, saying that a person in his situation would value the insight that has been given into his conduct by the imprisonment.

12. The principal argument advanced before me today by Mr Hung is that his licence ought not to be revoked nor ought he be banned for life because he believes that he has not breached general principle 1 of the SFC Code of Conduct. General principle 1 of the Code of Conduct provides as follows:

“Honesty and fairness. In conducting its business activities, a licensed or registered person should act honestly, fairly, and in the best interests of its clients and the integrity of the market.”

13. Mr Hung says, presumably, that because the documents were forged, Mr Cheng and Mr Ma and Mr Ching were not clients of his or of GT Capital. Mr Hung presented himself and GT Capital to those three persons in such a way as to lead them to believe that they were clients of GT Capital and Mr Hung. By so doing, he imposes upon himself all of the obligations under the Code of Conduct, and he must deal with them as though they were clients of his and clients of GT Capital.

14. By his admitted conduct, Mr Hung has forged documents and has misappropriated \$9.25 million. There can be no clearer evidence of a licensed person failing to act honestly, fairly or in the best interests of the client than Mr Hung's admission of the offences of five charges of fraud and five charges of forgery.

15. In considering whether or not a person is fit and proper to hold a licence, the SFC has regard to the provisions of section 129 of the ordinance. By section 129(1)(c) they may have regard to the ability of that person to carry on a regulated activity "competently, honestly and fairly". By his conduct, Mr Hung has demonstrated beyond argument that he is not capable of carrying on the business of a financial adviser, a licensed financial adviser, either competently or honestly or fairly.

16. Section 129(1)(d) requires the SFC to have regard to their "reputation, character, reliability and financial integrity" in determining whether a person is fit and proper to hold a licence. Mr Hung's character and reputation is that of a person who has been convicted of five charges of forgery and five charges of fraud.

17. It would be quite wrong to allow such a person to engage in licensed activities under the ordinance. It could not, in any circumstances, be said that such a person was either reliable or had any financial integrity whatsoever.

18. This application for review is utterly devoid of any merit whatsoever. The investing public deserves to be fully protected from people like Mr Hung and the only way that that can be done is to ensure that he should never enter this industry again.


19. The life ban must stand and the application for review is dismissed.

20. Mr Hung must pay the SFC's costs of and incidental to the application for review.

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

The Appellant, in person

Mr Jimmy Chan Associate Director of Enforcement, Securities & Futures
Commission for the Respondent