

## High Court rules SFC disciplinary process fair

23 Aug 2010

The High Court has dismissed a leave application for judicial review brought by a defendant in an on-going Securities and Futures Commission (SFC) disciplinary proceeding, confirming that the SFC has acted fairly in the disciplinary process.

In August 2009, the SFC commenced a disciplinary action pursuant to section 194 of the Securities and Futures Ordinance against the defendant "A" - whose name has been suppressed by the order of the court - alleging that "A" had contravened the Code of Conduct for Persons Licensed by or Registered with the SFC in relation to certain alleged trading activities carried out by him.

The SFC disclosed to "A" all the relevant evidence of the case. The SFC later disclosed further evidence to "A" which was gathered after "A" initially responded to the case.

"A" sought leave to review the SFC's decision to rely on the new evidence, characterizing the SFC's obligations, in disciplinary cases, as akin to the obligations of a criminal prosecutor.

The Honourable Mr Justice Reyes dismissed "A"'s application (Note 1) and made a number of important comments about the disciplinary process including that:

- the disciplinary procedure followed by the SFC in this case was "impeccably fair";
- even though the SFC's role in disciplinary proceedings bears some similarities to that of a prosecutor in criminal proceedings, ultimately the SFC is not a formal court or tribunal and its disciplinary process cannot realistically be expected to mirror criminal procedure; and
- "A"'s judicial review application was premature because he has not exhausted the available administrative remedies. "A" can appeal to the Securities and Futures Appeals Tribunal and higher appeal courts if he is aggrieved by the disciplinary decision of the SFC, which has not yet been made (Note 2).

"This decision confirms that the SFC's disciplinary process is a civil process, not a criminal process," said Mr Mark Steward, the SFC's Executive Director of Enforcement.

"In carrying out our disciplinary functions, we have an obligation to act fairly at all times. We will continue to give this obligation the highest priority," Mr Steward added.

The SFC's disciplinary case against "A" is continuing.

End

Notes:

1. The court's judgment (HCAL 64 of 2010) is available at <http://www.judiciary.gov.hk/>
2. See also the judgment of the Honourable Mr Justice Hartmann in a previous High Court judgment (HCAL 132 of 2004), also available at <http://www.judiciary.gov.hk/>

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