

Ex-IO chairman gets 18 months for pocketing \$390,000

8 December 2014

A former chairman of the incorporated owners (IO) of a residential estate, charged by the ICAC, was today (Monday) sentenced to 18 months' imprisonment at the Fanling Magistracy for pocketing IO funds totalling about \$390,000.

Ku Wing-kun, 58, former chairman of the IO of Jade Plaza, was earlier found guilty of two counts of theft.

In passing the sentence, Magistrate Chui Yee-mei said the defendant, whose dishonest acts constituted a serious breach of trust, had intentionally deceived the flat owners.

The case arose from a complaint alleging the defendant of having used false documents to deceive IO funds, contrary to Section 9(3) of the Prevention of Bribery Ordinance. Subsequent ICAC enquiries revealed the above theft offences.

The court heard that at the material time, the defendant was the chairman of the management committee (MC) of the IO of Jade Plaza in Tai Po.

In late May 2008, the MC was dissolved, but the defendant remained to be the administrator of the IO. In the absence of the defendant, some flat owners formed a new MC.

The newly formed MC then filed a lawsuit at the Lands Tribunal to challenge the defendant's status as the IO administrator. The defendant engaged Chung & Kwan Solicitors as his legal representative to contest the lawsuit.

The management company of Jade Plaza agreed to pay \$50,000 as deposit to the solicitors firm on behalf of the defendant for the litigation between the new MC and him. The defendant also paid a total of \$440,000 to the solicitors firm for his legal expenses.

The court heard that on January 2, 2009, the tribunal ruled in favour of the defendant, and ordered the new MC to be dissolved. The tribunal also ordered that the IO and seven office bearers of the new MC had to equally bear the defendant's legal fees.

On seven occasions between February 5 and March 17, 2009, the defendant, in his capacity as the IO administrator and the sole signatory of the IO's bank account, issued seven cheques totalling \$440,000 drawn from the IO's account and were deposited into his personal account for settlement of his legal expenses in the civil suit.

On March 21, 2009, the defendant was elected as the chairman of the new MC, and remained as one of the authorised signatories of the IO's bank account.

On June 16, 2009, the IO was informed by the solicitors firm that the IO had to bear the defendant's legal fees totalling about \$340,000.

A subsequent owners' meeting held on August 29, 2009 resolved to pay the defendant a sum not exceeding \$340,000 to compensate his legal expenses. But he did not mention to the owners about the above withdrawals.

The court heard that on October 29, 2009, the defendant requested the IO to make a repayment of the \$50,000 deposit. Without knowing the defendant's withdrawals of \$440,000 from the IO's bank account, the IO issued a cheque for \$50,000 to the management company accordingly.

Without the knowledge of the above withdrawals and the repayment to the management company, the IO issued another cheque for about \$340,000 to settle the dues with the solicitors firm on January 30, 2010.

In March 2010, the solicitors firm refunded about \$320,000 to the defendant after deducting the

lawyer's fees, But he had never returned to the IO money he obtained from the IO, the court was told.

The prosecution was today represented by Cannise Chan, assisted by ICAC officer Alice Choi.

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法團前主席盜取三十九萬元判囚十八個月

2014年12月8日

一名屋苑業主立案法團(法團)前主席，盜取法團合共約三十九萬元款項，被廉政公署拘控。被告今日(星期一)在粉嶺裁判法院被判處入獄十八個月。

顧永根，五十八歲，翠屏花園業主立案法團前主席，早前被裁定兩項盜竊罪名成立。

裁判官徐綺薇在判刑時表示，被告的不誠實行為嚴重違反誠信，蓄意欺騙業主。

廉署早前接獲舉報，指被告涉嫌利用虛假文件詐騙法團款項，違反《防止賄賂條例》第9(3)條。廉署在調查後揭發上述盜竊罪行。

案情透露，被告在案發時是大埔翠屏花園法團管理委員會(管委會)的主席。

管委會於二〇〇八年五月底解散，但被告仍擔任法團的管理人，並且是法團銀行戶口的其中一名簽署人。一些業主在被告不在場的情況下，成立新的管委會。

新管委會其後向土地審裁處提出訴訟，質疑被告作為法團管理人的地位。被告僱用鍾沛林律師行作為其法律代表反對有關訴訟。

另外，翠屏花園管理公司亦同意代被告支付五萬元予律師行，作為他與新管委會之間訴訟的訂金。被告亦向律師行支付合共四十四萬元的訴訟費用。

案情透露，審裁處於二〇〇九年一月二日判被告勝訴，並頒令新管委會解散。審裁處又命令法團及新管委會的七名成員平均分擔被告的訴訟費用。

被告於二〇〇九年二月五日至三月十七日期間，以其法團管理人及法團銀行戶口唯一簽署人的身分，先後發出合共七張支票，從法團戶口提取共達四十四萬元款項，並將之轉移至其個人戶口，作為被告就有關民事訴訟所支付的訴訟費。

被告於二〇〇九年三月二十一日獲選為新一屆管委會主席，並仍是法團銀行戶口的其中一名獲授權簽署人。

法團於二〇〇九年六月十六日，獲律師行知會法團須要承擔被告約三十四萬元的訴訟費用。

業主於二〇〇九年八月二十九日舉行的會議上，通過議決向被告支付不超過三十四萬元以賠償其訴訟費。不過，被告未有向業主提及上述提款。

案情指出，被告於二〇〇九年十月二十九日要求法團償還該筆五萬元訂金。在不知道被告已從法團戶口提取四十四萬元的情況下，法團隨即向管理公司發出一張五萬元的支票。

在不知道上述提款及已償還款項予管理公司的情況下，法團於二〇一〇年一月三十日向律師行發出另一張約三十四萬元的支票，以繳清律師行的費用。

案情透露，律師行於二〇一〇年三月在扣減律師費後，將約三十二萬元退還給被告。被告從沒有把他從法團所取得的款項交還法團。

控方今日由大律師陳敏兒代表出庭，並由廉署人員蔡志敏協助。

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