

由此

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

Application No 4 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  
195(1)(a)(i) of the Securities and  
Futures Ordinance, Cap 571, (the  
Ordinance)

And

IN THE MATTER of s 217 of the  
Ordinance

---

BETWEEN

HO YUK CHOI

Appellant

and

SECURITIES AND FUTURES COMMISSION

Respondent

---

Before: Hon Saunders J, Chairman

Dates of Hearing: 19 October 2009

Date of Decision: 19 October 2009

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

---

DECISION

---

*Background:*

1. On 18 May 2009, the SFC made a decision, pursuant to s 195(1)(a)(i) of the Ordinance to suspend Ms Ho’s licence as a representative for such period as a bankruptcy order made against her on 9 September 2008, remains in effect.

2. Ms Ho has appealed against that decision to this Tribunal. With the consent of both Ms Ho and the SFC, pursuant to the provisions of s 31, Schedule 8 of the Ordinance, the hearing was conducted by the Tribunal consisting of the Chairman alone.

*The power to suspend:*

3. Under 195(1)(a)(i) of the Ordinance the SFC has a discretionary power to suspend a licensed person’s licence if a bankruptcy order is made against that person. This power is in addition to the power of the SFC to suspend a person’s licence under s 194 of the Ordinance for misconduct or failure to satisfy the SFC that that person is a fit and proper person to hold a licence.

4. The SFC has issued formal guidelines, called the “Fit and Proper Guidelines”, (the Guidelines), containing matters which are likely

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

to give rise to concerns about a person’s fitness and propriety to hold a licence. The Guidelines contain the following particular provisions:

Para 1.3: “In simple terms, a fit and proper person means one who is financially sound, competent, honest, reputable and reliable.”

Para 4.1.1(a) “The SFC is not likely to be satisfied that a person is a fit and proper person if that person... is an undischarged bankrupt...”

Para 8.1 “A person licensed or registered under the SFO... must continue to be fit and proper.”

5. Having learned of Ms Ho’s bankruptcy, and following representations made by her, and properly following the appropriate procedure, the SFC made its decision to suspend her licence during the period of the bankruptcy.

*The grounds of appeal:*

6. Before me today, Ms Ho has sought, as she describes it, a chance to mend her ways and allow her to continue to hold and renew her licence so that she may continue to work. In her written and oral submissions to me she has reiterated a number of matters that were brought to the attention of the SFC.

7. Ms Ho petitioned for her own bankruptcy because she was unable to pay her credit card debts which at that time totalled in excess of \$650,000. Her indebtedness, she said, had arisen because her son and husband had been unemployed since 2002, and she has had to bear responsibility for all of the family expenses. She acknowledges that since

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

2007, she was spending beyond her means. She says that at first she borrowed from friends and sold property but still was unable to resolve her financial position.

8. Ms Ho has drawn my attention to the fact that in working in the financial industry she is responsible simply for executing client orders, and does not have access to clients' cash or securities, nor does she have her own clients. In this respect I have regard to a letter from Ms Ho's employer who seeks to retain her services.

9. Ms Ho has also challenged certain assertions made by the SFC in the course of the procedure by which the SFC arrived at the decision. She says those assertions present an unfair and unreasonable judgment of her.

10. First, she referred to statements made in the SFC's Letter of Mindedness, dated 6 April 2009. Three of those statements, described as paragraphs 10(d), 11 & 12, were in part simple statements of fact, and in part reference to statements made by Ms Ho herself. The fourth, paragraph 13, sets out the position of the SFC as to its concerns arising from the bankruptcy.

11. Next, she referred to statements made by the SFC in its formal Notice of Final Decision dated 18 May 2009. The statements comprised items 8, & 10, which are accurate summaries of representations made by Ms Ho to the SFC. The statements set out in paragraphs 15, 16 & 17, contain the reasons for the final decision of the SFC.

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

*Discussion:*

12. In both documents, in so far as the statements reflect statements made by Ms Ho, they are accurate, and in so far as they express the views of the SFC, they constitute the basis upon which the decision was made. It is the purpose of this hearing to determine whether or not those statements were and unfair or unreasonable judgment of Ms Ho.

13. Inevitably, one has a deep sense of sympathy for the position in which Ms Ho finds herself. It is undoubtedly most unfortunate that her son and her husband have both lost jobs, although it appears that her husband now has a job and is able to make some contribution to family expenses.

14. But notwithstanding that sympathy, I am obliged, as was the SFC, to have regard to the fact of the bankruptcy. It is simply not possible to separate that bankruptcy, a personal matter, from Ms Ho's professional position. That is because bankruptcy is a personal financial matter, and the personal financial integrity of persons in the financial industry is inevitably a matter with which the SFC and the general public are entitled to be concerned. That is a concept that applies widely; it applies equally to professionals such as lawyers or accountants, each of whom deal with financial matters on behalf of members of the public.

15. The SFC is of the view, correctly in my view, that bankruptcy casts doubt on the financial integrity, reputation and reliability of a person, consequently placing in question that person's fitness and propriety to remain licensed.

16. When Ms Ho sold her property in 2004 there was a surplus from the sale. Yet she still spent beyond her means, and incurred debts which became of such an extent that she petitioned for her own bankruptcy. Ms Ho cannot, in that circumstance, blame her predicament on the need to meet the mortgage instalments on her property.

17. While it is right that Ms Ho has been in the industry for 20 years, and that during that time there has been no complaint against her conduct, I accept the submission of the SFC that the fact of the bankruptcy puts her at a higher risk of deviating from the high standards required of a licensed person, during the period of bankruptcy.

18. Although Ms Ho may not have been dealing directly with clients, and is not now giving advice to clients, she is licensed to do so, and the SFC is of the view that the interests of her employer's clients and the investing public may be placed at risk if Ms Ho is permitted to continue as a licensed person during the period of her bankruptcy. I cannot say that that view is wrong. Consequently, although her employer is willing to retain her services I must place the interests of the investing public first. That requires that, during the bankruptcy, Ms Ho should not be exposed to any temptation that might arise through her employment.

19. It is appropriate that I should set out the reasons for the decision of the SFC, challenged by Ms Ho as an unfair and unreasonable judgment. They are:

“15. You did not dispute that your bankruptcy was a result of your poor financial management and your continually spending beyond your means. Your dire financial situation had not

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

improved even after you sold your property at 2004 and stopped paying for the mortgage. You seem to have incurred credit card loans knowing that you could not repay.

16. General Principle 2 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission states that in conducting his business activities, a licensed person should act with due skill, care and diligence, in the best interests of his clients and the integrity of the market. Your poor management of your own financial matters and your irresponsible spending habits cause the Commission to have doubt as to whether you have the necessary skill, care and diligence required of a licensed person.

17. The Commission takes the view that your bankruptcy calls into question your financial integrity, reputation and reliability and therefore your fitness and proper notice to remain licensed. With a bankruptcy order made against you, you are facing significant financial stress. Your financial difficulty and dubious financial ability during the term of your bankruptcy will expose your conduct to a higher risk of deviating from the high standards required of a licensed person.”

20. Having regard to all of the facts and circumstances of this case I am satisfied that the SFC was perfectly entitled to come to those conclusions. They are neither unfair nor an unreasonable judgment of Ms Ho.

21. Ms Lee has drawn to my attention certain aspects Ms Ho’s credit card spending. In the period prior to her bankruptcy, between July 2007 and June 2008, Ms Ho regularly used no less than 11 credit cards each month, spreading her spending between those cards. The effect of that practice was that although the spending on each card may have appeared modest, in fact substantial credit, actually beyond Ms Ho’s means was incurred each month.

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

22. The fact that Ms Ho had 11 credit cards is itself a matter of concern. A person who has proper control over their spending has no need to have more than perhaps 2 or 3 credit cards. The spreading of spending over numerous credit cards, with only the minimum payment being made each month, thereby usually consistently incurring high interest charges, is itself a clear sign of fiscal irresponsibility.

23. A review of the credit card spending shows that much was for items other than those necessary for life, demonstrating that despite difficult financial circumstances Ms Ho was unable to properly control her spending. I refer in particular to the use of the cards for regular charitable donations and the use of credit cards for restaurant and department store spending. Also of particular concern is the linking of a credit card to Ms Ho's daughter's Octopus card, thereby permitting the daughter to spend, apparently freely, with her Octopus card, at her mother's expense. All of these are items which a person, facing straightened financial times, and properly recognising the need to impose personal spending controls, would have eliminated from spending.

24. Ms Ho says that she was repaid by her daughter and those at restaurants with her. First, the repayments on the cards, usually the minimum each month, do not bear out that assertion. If such refunds had been made, they should have been reflected in the credit card repayments. Second, a person in the financial position of Ms Ho, if endeavouring to effect proper control on spending, would simply not place themselves in a position of dependency on others, who may not always make the refunds. To do so demonstrates a lack of financial ability and responsibility.

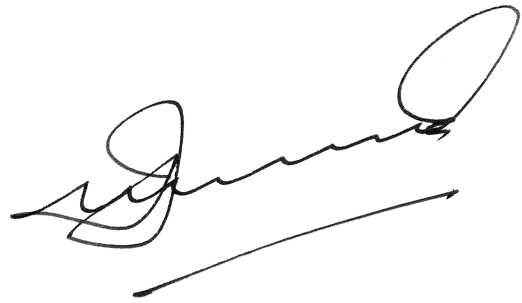


A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

A  
B  
C  
D  
E  
F  
G  
H  
I  
J  
K  
L  
M  
N  
O  
P  
Q  
R  
S  
T  
U  
V

25. I am satisfied that the SFC has taken into account all matters raised by Ms Ho in opposition to the decision. In so doing they have properly exercised the discretion given under s 195(1)(a)(i) reasonably and no grounds exist upon which the Tribunal may interfere with that decision.

26. The decision of the SFC must be confirmed. The appeal is dismissed. Having regard to Ms Ho's financial position, and in accordance with what appears to be the usual practice of the Tribunal, there will be no order for costs.



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

The Appellant, in person

Ms Annabel T M Lee, Counsel, Securities and Futures Commission for the Respondent