
Enforcement News

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The SFC fines and reprimands Chung Nam Securities Ltd and Henry Chuang Yueheng

The Securities and Futures Commission (SFC) has issued a reprimand to Chung Nam Securities Ltd and Henry Chuang Yueheng and fined them \$700,000 and \$350,000 respectively following the determination of the Securities and Futures Appeals Tribunal (SFAT) (Notes 1 and 2).

The disciplinary action follows the unauthorised withdrawal of more than \$30 million in client securities held by Chung Nam. The SFC found that:

- Chuang had no formal role or responsibility within Chung Nam in relation to client securities or settlement responsibilities and yet he was allowed to initiate the process of withdrawing \$30 million in client securities;
- Chuang said he acted on the basis of instructions given to him by a person (unauthorised by the client) in a telephone call made to an unoccupied desk which he had answered;
- Chuang handed the \$30 million in securities over to another person (also unauthorised by the client) who went to Chung Nam's offices to take delivery of the securities purportedly on behalf of the client;
- neither Chung Nam nor Chuang had any authorisation from Chung Nam's client who was the beneficial owner of the \$30 million in securities to withdraw those securities or to deliver them to the unauthorised person; and
- Chung Nam failed to verify the identity or authority of the unauthorised persons on whose instructions Chuang was acting and to whom the client's securities were delivered and Chung Nam's procedures did not require any such verification.

The SFC concluded that Chung Nam had failed to institute proper or sufficient systems to safeguard client assets and failed to establish an effective procedure for ensuring client securities are protected from misappropriation. The SFC did not find Chuang or Chung Nam dishonest in relation to the misappropriation of the \$30 million in securities nor that they received or were trying to receive any benefit from the misappropriation (in

fact the \$30 million in securities were recovered without the beneficial owner suffering any loss). The SFC did find they had been grossly negligent and that clients are entitled to expect their assets will be held in safe custody.

The SFAT confirmed the SFC's findings against Chung Nam and Chuang but Chung Nam and Chuang argued that the SFC's penalty was too harsh. The SFAT reduced the amount of the penalty imposed on Chung Nam from \$1 million to \$750,000 and on Chuang from \$500,000 to \$350,000 with no order as to costs (Note 3).

The SFAT in its Reasons for Determination said that "...sloppy and wholly negligent behaviour, of the type as has been evidenced in this case, as to the safeguarding of client assets will not be tolerated and is not regarded as acceptable" (Note 4).

Chung Nam and Chuang have lodged an appeal against the decision in the Court of Appeal.

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Notes:

1. Chung Nam is licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) regulated activity.
2. Chuang is the chairman of Chung Nam's ultimate holding company and was not an employee or officer of Chung Nam nor a person licensed by the SFC although he occupied an office in Chung Nam's premises. Chuang is liable to the SFC's disciplinary sanctions because he falls within the Securities and Futures Ordinance's definition of 'regulated person' as he is involved in the management of Chung Nam.
3. Chung Nam and Chuang lodged applications for review with the SFAT on 10 December 2007 and the hearing was conducted on 23 September 2008. The SFAT was chaired by The Honourable Mr Justice Stone and included two lay members, Mr Philip Tsai Wing Chung and Mr Joseph Pang Yuk Wing, JP. The SFAT's decision was issued on 10 October 2008 and is available on the SFAT's website (www.sfat.gov.hk).
4. Following the decision, Chung Nam and Chuang applied to the SFAT for a stay on the orders imposing the reprimand and requiring them to pay the fines. They also lodged an appeal with the Court of Appeal. The SFAT rejected the application for a stay on the orders on 11 November 2008 and so the disciplinary orders are operative. Their appeal before the Court of Appeal remains on foot. The SFAT's Decision refusing the Application for Stay of Execution is available on the SFAT's website (www.sfat.gov.hk).

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