

**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;

and

IN THE MATTER of an Application for Review pursuant to s 217 of the Securities and Futures Ordinance

Between:

Ramesh SADHWANI

Applicant

and

SECURITIES AND FUTURES COMMISSION

Respondent

Before: Chairman, Hon Wright J

Date of applicant's written submissions: 24 and 25 April 2012

Date of respondent's written submissions: 26 April 2012

Date of applicant's supplementary submission: 2 May 2012

Date of decision: 9 June 2012

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RULING ON COSTS

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1. The applicant had been accredited to Citigroup Global Markets Asia Ltd and Citigroup Global Markets Hong Kong Futures and Securities Ltd (CITI) and had been licensed, under the Securities and Futures Ordinance, Cap. 571, to carry on Type 1 and Type 2 regulated activities.

2. In a Decision Notice dated 14 October 2011 the respondent advised the applicant that it had resolved to prohibit him for life from doing certain identified acts which it is unnecessary to repeat here.

3. The applicant, who had absented himself from Hong Kong, applied, by letter dated 7 November 2011, for review of that decision by this Tribunal. The then Chairman, Saunders J, ordered that the matter be dealt with by the Chairman sitting alone and without the necessity of the applicant appearing before this Tribunal.

4. The applicant specifically sought a reduction of the period of operation of the penalty to 2 years. I determined the matter. In a decision dated 23 March 2012, I rejected *seriatim* the applicant's grounds of review. However, I ordered the period be reduced to 10 years on the basis not of the applicant's submissions but because I took the view that, without in any way detracting from the seriousness of the applicant's conduct which was fully deserving of condemnation and a meaningful

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penalty, when one considers all the factors in the round a ban for an indefinite period was not justified.

5. In regard to costs, my decision was in the following terms:

34. The applicant asserted in his representations that there had been no indication to him that if he was unsuccessful in his application to review he might be ordered to pay the costs occasioned by and, further, that had been so aware he may have reconsidered his position. Such a submission is naive.

35. There will be an order *nisi*, returnable within 21 days, that the applicant pay the costs of the respondent, such costs to be taxed on a party and party basis.

6. The Securities and Futures Commission awaited, correctly, the expiry of the 21 day period. During that period the applicant did nothing whatsoever to seek any variation of the rule *nisi*. Consequently, the order became final and the applicant liable for payment of the costs in terms of that final order.

7. By letter dated 16 April 2012 the Commission sent a schedule of its costs to the applicant and demanded payment on or before 30 April. The applicant responded by way of a letter dated 24 April addressed to the Commission: a letter dated 25 April in similar terms was addressed to the Tribunal. The Commission responded pointing out that the rule *nisi* had become final and this Tribunal is *functus officio*. This prompted a further letter, dated 2 May, from the applicant: it contained no valid response and demonstrated a lack of understanding of the order made.

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8. In essence, the applicant asserts that because the period of operation of the penalty was reduced the order for costs was not "justified". That is a matter which may have been advanced as the basis of a submission to vary the order *nisi*: it does not avail the applicant to seek to advance it at this stage.

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9. This Tribunal has no power to vary the order which became final by virtue of the applicant's acquiescence in it.

10. The application is dismissed.

  
(A R WRIGHT)

Chairman, Securities and Futures Appeals Tribunal  
Judge of the Court of First Instance  
High Court