

Court of Final Appeal rules on warrant traders' appeals

24 May 2012

The Court of Final Appeal today allowed the appeals of Mr Patrick Fu Kor Kuen and Mr Francis Lee Shu Yuen against their convictions for manipulating derivatives warrants (Note 1).

Fu and Lee were convicted on 20 counts of creating a false and misleading appearance of active trading in derivative warrants issued by Macquarie Bank Limited and sentenced to 33 and 36 months imprisonment respectively in May 2010. They later appealed against both conviction and sentence to the Court of Appeal which dismissed their appeals against conviction but varied their sentences to 20 months and 21 months imprisonment respectively (Note 2).

The Court of Final Appeal today said that although the defendants' conduct gave rise to a false and misleading appearance of active trading, there was evidence that their purpose was not or did not include the purpose of creating a false or misleading appearance of active trading. Accordingly, the earlier findings by the trial judge and the Court of Appeal were in error.

The Court of Final Appeal's decision is an important one for practitioners because of its observations about the proper function of expert witnesses in market misconduct cases and the burden of proof in these cases.

The Court of Final Appeal agreed with the prosecution that defendants bear a persuasive burden of proof in establishing they had an innocent purpose when their trading created such a false appearance of active trading.

Having allowed the appeals, the Court of Final Appeal quashed the convictions of Fu and Lee and set aside their sentences.

End

Notes:

1. The Court of Final Appeal judgment is available on the Judiciary website (http://www.judiciary.gov.hk/en/legal_ref/judgments.htm).
2. Please see SFC's press releases dated 7 May 2010, 13 May 2010, 23 December 2010 and 3 March 2011 regarding the convictions, appeals and sentences.

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