

# Investor wins \$3m row with adviser

**David Hilton**

In a landmark case for small-scale retail investors, a financial consultant who placed a client's nest-egg in a high-risk geared investment scheme — after being told to avoid risk — has been ordered by the Court of Appeal to reimburse all of the money the woman lost when the investment collapsed.

The ruling gives hope to investors who lost their capital in the market turmoil of recent years by purchasing dodgy funds on the basis of misleading or wrong advice.

In yesterday's decision, financial consultancy Barber Asia was ordered to repay more than HK\$3 million lost by Susan Field between July 1998 and December 1999.

Her losses amounted to more than 83 per cent of her total investment.

Field testified that she was an inexperienced investor and that she asked Barber to make conservative investments on her behalf, and that she was never told of the risk involved in the geared scheme that subsequently went bust.

"I am overjoyed at this result," said Field, who runs her own marketing and communications business, after the Court of Appeal's decision. "It has been a very hard fight but I felt that it was the right thing to do."

Her lawyer, Ian De Witt, called the verdict a "landmark decision".

"It is unfortunate that sometimes investment advisers do not take their duties seriously enough and these

matters have to come before the courts," he said.

Andrew Barber, who formed Barber Asia in 1995 and represented his firm without a lawyer in the original High Court hearing, argued that he thought the investment brochures alone gave enough warning of risk.

"Worldwide we rely on regulations in whatever jurisdiction to approve the content of brochures, so that there should be no doubt in the client's mind," Barber said.

Gearing, another term for leveraging, works by borrowing additional money to invest, thus increasing the extent of gains — but also potential losses. In the scheme, Field invested additional borrowed funds to try and stop her investment from collapsing.

There was an additional risk: the money borrowed was in a different currency from her initial investment, which meant Field was also left at the mercy of exchange rates when it came to paying back the loan.

Her loan alone, which was taken in yen because of Japan's low interest rates, increased from 91.64 million yen (HK\$6.6 million) to 115 million yen when the yen appreciated by over 20 per cent. Barber Asia had predicted maximum fluctuations of less than 6 per cent.

Justices Anthony Rogers, Doreen Le Pichon and Arjan Sakhrani took just two hours to throw out Barber's appeal and Field's barrister, Jose Maurellet, did not even have to stand up.

**Continued on Page A-3**

## Investor wins \$3m ruling

**From Page A-1**

"The scheme was hare-brained, frankly," Justice Rogers said.

"She should never have been offered that, because she asked for something conservative."

Barber Asia's barrister, Clifford Smith, said Field accepted the risk when she agreed to put more money into the scheme to cover losses in 1999.

The judge rejected the argument on the basis that if Field had not met this call to cover losses, known as a "margin call", she would have locked in her losses, which included a surrender penalty. "She made the margin call because she was locked in," Justice Rogers said.

The Securities and Futures Commission (SFC), which regulates Barber Asia, tells savers to find good advisers in its "Dr Wise" column on the SFC website. "Beware of crooks!" the site warns. "Do not be sweet talked into anything hastily."

The SFC suggests investors not be too reliant on advisers. "Financial advisers can help maintain or even better your financial health, but you also have to do your homework," it says.

A group of 200-odd investors met in Hong Kong this month to explore joining a worldwide suit against another SFC-regulated financial advisory firm, Towry Law.

The judgment is sure to buoy that group, which is seeking redress for hundreds of millions of dollars lost as a result of the collapse of several highly leveraged funds sold by Towry Law, including the firm's Hong Kong office.