

Rookie HK investor sues adviser, and wins

Lawyers say same thing could happen in S'pore if appeal against ruling fails

BT exclusive

By Genevieve Cua
[SINGAPORE] Investors here who feel they had been misled into buying financial products can take heart from a recent Hong Kong court ruling, where a client who said she was an inexperienced investor successfully sued her independent financial adviser (IFA).

The High Court ruled that the IFA had failed to discharge his "duty of care" to the investor, and made him make good the investor's losses — nearly \$220,000 (\$660,000) — with interest. The ruling is now under appeal.

Lawyers here said that while the decision is not binding on Singapore, it is likely to be "very persuasive" if the facts surrounding a case here turn out to be similar.

Said Stephen Vine of Hong Kong law firm Angela Wang & Co: "If the decision is upheld at the Court of Appeals, it will carry more weight."

So far, most of the cases where clients sued institutions here for investment losses have involved wealthy or sophisticated clients. They lost their cases.

In the Hong Kong case, where judgement was delivered last June, the client, Susan Field, adopted an investment strategy that she was recommended by Andrew Barber of Barber Asia in July 1998. She made it clear from the initial meeting that she wanted to invest conservatively and had no previous experience of investing.

She invested almost all of her capital — more than US\$306,000 — in a supposedly conservative product recommended by Mr Barber. A few months later, she followed the IFA's advice to gear up her portfolio as collateral for a Japanese yen loan to acquire further UK pound-denominated investments.

The loan would be in a low interest rate currency (yen), but the assets securing the loan would be in the pound and were expected to produce a return higher than the interest rate payable on the loan. With such gearing, it was thought that the rate of return on Ms Field's investments would be enhanced. The IFA called it a "sure winner".

But the yen appreciated sharply against the pound and Ms Field twice faced demands to top up the security for the loan just over a year after the arrangement. On the first instance, she was able to provide the security. But on the second, she did not and the lender switched the loan into the pound, crystallising the exchange loss.

Shortly afterwards, Ms Field repaid the loan by realising the assets against which it was secured. She incurred a substantial loss.

Ms Field who runs a public relations business, was adamant that she never understood the effect of leveraging. She maintained she did not at any time indicate that she wanted to depart from her original instructions for a conservative strategy.

The IFA Barber's contention was that Ms Field was sophisticated. She signed application forms with various risk disclosure statements.

But Deputy High Court Judge Barma found that the IFA's responsibility was to provide Ms Field with financial advice. The judge found the IFA had fallen short of the standard of care expected of him.

Continued on Page 2

Even bankers may fall victim, Page 4

Rookie HK investor sues adviser, and wins

Continued from Page 1

"Notwithstanding (the forms), the Court looked into the whole conduct of the financial adviser and the true level of understanding of such complicated financial documents by the investor," said law firm Angela Wang in a note.

"Mere compliance with the regulatory requirements by financial advisers may therefore be insufficient as a higher duty to act with reasonable care and skill in relation to the advice which they tender to investors is imposed on them as a matter of law."

Stanley Jeremiah, Goodwins Law Corp managing director, said: "If a case of negligence can be made in Hongkong, there is very good reason that a case can be made in Singapore. If you are not sophisticated, you should have a higher level of protection."

Consumers here have, now and again, complained they had been misled into buying products by banks and insurance agents.

Complaints against banks are typically stymied by technicalities such as the various forms that clients may have signed earlier. A settlement by banks may involve a refund of a fund's sales charge, or even partial compensation for investment loss.

In one instance that BT has learnt about, a client was persuaded to open a leveraged currency trading account even though she had indicated that she was not familiar with currencies. The investment was ostensibly to help her recover her losses from investments in unit trusts. But she ended up losing roughly US\$100,000. The case is still under negotiation.

Said Elsie Foh, DBS chief operating officer (consumer banking): "Duty of care is a pretty basic responsibility for anyone who is in an advisory position. People are attracted to anything of potentially higher risk. What is important is to have it documented and understood by the client."

Christopher Tan of Provident, an IFA firm, said: "Someone may be high net worth by definition, but their understanding of products may not be there. That's the scary part. The only way to cover ourselves is to have a good compliance system."

Raffles CONVERSATION

When I sold off the country's assets to foreign investors I was not a champion of globalisation. I was champion of globalisation in its true sense — which is making Indonesia conducive to capital.

Syarifuddin Jamengung, Indonesian Chairman of Ibra

In The Business Times Tomorrow