

Court dismisses appeal by a substantial shareholder against convictions for failing to make disclosure of interests

9 Dec 2015

The Court of First Instance has dismissed an appeal by Mr Lam Fai Man, a substantial shareholder of Victory Group Limited (Victory), against his convictions for failing to disclose to Victory changes in his interests in the shares of Victory, as required by the Securities and Futures Ordinance (Notes 1 & 2).

Lam was convicted on 30 June 2015 after trial at the Eastern Magistracy and fined \$12,000.

The Honourable Mr Justice Zervos dismissed Lam's argument that the trial magistrate erred in law in finding that Lam, who had delegated his duty of disclosure to his account executive, had failed to establish a defence of reasonable excuse for his failure to make disclosures to Victory.

The Court held that the legal obligation was on Lam to ensure that his duty of disclosure and notification was properly performed and that obligation remained on Lam, even if he delegated the task.

In his judgment, Mr Justice Zervos said that, if a person who owes the duty delegates it to another, he must make sure that it is strictly complied with for he bears the ultimate responsibility and liability for any failure to perform the duty (Note 3).

End

Notes:

1. Lam was formerly known as Lin Huiwen.
2. Part XV of the Securities and Futures Ordinance provides that a shareholder who has a notifiable interest in the shares of a listed corporation (more than 5% of the voting shares) is under a duty of disclosure and is required to give notice to the Stock Exchange of Hong Kong (SEHK) and the listed corporation concerned when he acquires an interest in or ceases to be interested in, the voting shares of the listed corporation which results in a change to his notifiable interest. Lam disclosed his interests to the SEHK on time.
3. The judgment (HCMA 465/2015) is available on the Judiciary's website at www.judiciary.gov.hk.

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