

Before the Financial Services Review Panel

2016 FSRP 1

In the matter of –

CityGate Securities Ltd

Applicant

v

Financial Services Commission

Respondent

DETERMINATION

The Applicant, CityGate Securities Ltd (“CSL”) (now in liquidation) held a Category 1 Global Business Licence and an Investment Dealer (Broker) Licence. On 17th March 2016, the Enforcement Committee informed the Applicant that its licences had been revoked pursuant to sections 7(1)(c)(vi) and 52(3) of the Financial Services Act.

The Applicant is seeking the review of the decision of the Enforcement Committee. The application dated 5th April 2016 was signed by a director of the Applicant, Mr Law How Hung (hereafter referred to as “Mr Law”).

The Financial Services Commission (Respondent) moved that the application be set aside on the following grounds:

- 1. According to records held by the Commission, winding up proceedings in relation to the applicant were commenced on the 26th January 2016 under Section 137(1)(b) of the Insolvency Act. On the same day, and by way of a written resolution of the sole shareholder of the applicant, a liquidator was appointed for the purposes of winding up the affairs of the applicant.*
- 2. The purported application, dated 5th April 2016, has been made by a director of the applicant.*
- 3. Pursuant to Section 140(2) of the Insolvency Act, the directors of the applicant do not have the power to enter the present application except in so far as the liquidator or, with his consent, the company in general meeting may otherwise determine.*

4. *The purported application (ex facie the purported application itself) has not been made by the liquidator, nor in such manner as the applicant (with the consent of the liquidator) in general meeting has determined.*
5. *In the circumstances, no valid application has been made to the Financial Services Review Panel.*

The case was fixed for hearing to 4th July 2016.

By way of letter dated 28th June 2016 signed by Mr Law, the Applicant sought a postponement of the matter. On 30th June 2016 the liquidator of CSL was informed in writing, that the motion should be made in presence of the Respondent on the date scheduled for the hearing.

At the very outset, Learned Counsel for the Respondent objected to the application for postponement in view of the point of law raised regarding the locus standi of the said Mr Law and submitted that the powers of the directors of CSL which is in voluntary winding up, are restricted. Learned Counsel referred to section 140(2) of the Insolvency Act ("the Act"), which provides as follows –

"On the appointment of a liquidator, all the powers of the directors shall cease except so far as the liquidator or, with his consent, the company in general meeting may otherwise determine."

Learned Counsel also referred to Section 154(1) (b) of the Act which provides –

(1) With effect from the commencement of the liquidation of a company –

(b) the directors remain in office but cease to have powers, functions, or duties other than those required or permitted to be exercised by this Part;

Learned Counsel further referred to sections 91(2) (in relation to voluntary winding up) and 103 (in relation to creditors winding up) of the Insolvency Act 1986 of the United Kingdom which are couched in terms similar to section 140(2) of our Insolvency Act.

Section 91(2) provides –

"On the appointment of a liquidator all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanctions their continuance."

Section 103 provides –

"On the appointment of a liquidator, all the powers of the directors cease, except so far as the liquidation committee (or, if there is no such committee, the creditors) sanction their continuance."

Learned Counsel found support from the following cases –

1. The Queen on the application of Masspower Limited v. Chief Registrar Baister of the Companies Court [2009] EWHC 1405 (Admin); and
2. 44 Condliffe and Another v Sheingold [2007] EWCA Civ 1043.

Learned Counsel submitted that the above cases are not on all fours with the case at hand but made reference to the interpretation of the above provisions of the UK Insolvency Act where the Court observed:

"However the power to bring proceedings on behalf of a company rest in its Board of Directors or importantly after a winding up order, in its liquidator. Masspower Limited was wound up by the court on 27th February 2007 and the official receiver was appointed liquidator. The powers of any directors therefore ceased by virtue of section 103 of the Insolvency Act 1986 on 27th February 2007, save to the extent, if any, that their continuance has been sanctioned by the official receiver."

The Applicant, represented by Mr Law left the matter in the hands of the Panel.

It is not denied that the Applicant company is in voluntary winding up and that one, Mr Jingree, was appointed as liquidator on 26th January 2016. Therefore, by virtue of the provisions of sections 140(2) and 154(1)(b) of the Act, as rightly submitted by Learned Counsel for the Respondent, all the powers of the director ceased on 26th January 2016, save to the extent, if any, that their continuance has been sanctioned by the liquidator or the company in general meeting. There is no evidence before this Panel that Mr Law had been authorised, by the liquidator or the company in general meeting, to make the application.

Therefore, this Panel cannot but agree with the submissions of Learned Counsel for the Respondent.

We accordingly hold that Mr Law was not empowered to apply for the review of the decision of the Enforcement Committee or to move for a postponement.

This application is therefore purely and simply set aside.

Date: 12.08.2016