

**IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE
FINANCIAL MARKETS TRIBUNAL**

Case FMT15003

BETWEEN:

MAS CLEARSIGHT LIMITED (IN LIQUIDATION)

Appellant

-and-

THE DUBAI FINANCIAL SERVICES AUTHORITY

Respondent

INTRODUCTION TO DECISIONS

1. On 13 September 2015 MAS ClearSight Limited (“MAS”) gave Notice of Appeal seeking a review of a Decision Notice issued by the Dubai Financial Services Authority (“DFSA”) dated 17 August 2015. In that Decision Notice the DFSA decided to take the following action against MAS:
 - (1) Under Article 90(2)(b) of the Regulatory Law, the DFSA decided to issue a public censure that MAS has contravened legislation administered by the DFSA (“the public censure”); and
 - (2) Under Article 90(2)(c) of the Regulatory Law, the DFSA directed MAS to effect restitution and compensate 20 investors for the loss of their initial investments in Opus Books entitled “The Journey to Makkah” and “Sachin Tendulkar”. The total value of the restitution was USD3, 200,000 and the 20 investors were specified in Appendix A to the Decision Notice. The DFSA directed the restitution to be paid to the investors no later than 60 days from the date of the Decision Notice.
2. The Notice of Appeal set out briefly MAS’ grounds but described them as “preliminary”. MAS sought a period of further time within which to put forward more detailed grounds once it had appointed lawyers and they had had an opportunity to study all the relevant materials. By **Decision dated**

25 September 2015 the Tribunal extended time for service of extended grounds until close of business on Sunday 25 October.

3. Detailed grounds challenging the Decision Notice were served by MAS on 25 October.
4. On 1 November 2015, the DIFC Court appointed Mr. Shahab Haider of Sajjad Haider Chartered Accountants LLP as Provisional Liquidator of MAS. On 19 November 2015, the DIFC Courts confirmed the appointment of Mr. Haider as Liquidator and ordered that MAS be wound up.
5. Issues arose between DFSA, the Liquidator and a major shareholder about the effect of the liquidation on this review and appeal. Those issues are dealt with in the Tribunal's **Decisions of 19 November, 28 November and 10 December 2015**.

David Mackie, President. 16/12/2015

DECISION OF THE FINANCIAL MARKETS TRIBUNAL-25 September 2015

1. On 13 September 2015 MAS ClearSight ("MAS") appealed against a decision of the DFSA dated 17 August. That appeal was made within the 30 day time limit and, although brief, the Notice of Appeal sets out clearly MAS' grounds but describes them as "preliminary". In effect what MAS seeks is a period of further time within which to put forward more detailed grounds once it has appointed lawyers and they have studied all the relevant materials.
2. DFSA argues that the Tribunal does not have power to grant an extension longer than 30 days because of Article 29 of the Regulatory Law. The provisional view of the Tribunal, subject to correction once a full panel has been appointed, is that it does have power to extend time. Article 29 is concerned with the commencement of a reference. In this case the reference has already been commenced and so the Tribunal does have power to allow further time for an existing appeal to be developed.
3. The Tribunal does not accept that MAS' lawyers once appointed should have or will need 6 to 8 weeks to prepare more detailed grounds of appeal. MAS has been aware of the Decision since 17 August and has had an opportunity to appoint lawyers before now. MAS has had access to the

documents since July. MAS' provisional grounds of appeal indicate an understanding of the potential issues. Given the context of the appeal and the important but limited issues which appear to arise it should not be necessary for every document, many of which will be familiar to MAS, to be evaluated in detail before grounds of appeal are put forward. Further if, during the appeal process, MAS' lawyers find that one or more documents that they had not fully understood indicate additional grounds for appeal they will be free to apply to the Tribunal to amend their case. Moreover the appeal document is intended to explain the grounds of appeal and does not have to set out every documentary reference which MAS will rely on for its case.

4. MAS' time for lodging its further grounds of appeal will therefore be extended to close of business on Sunday 25 October. DFSA will not be required to answer or respond to the substance of the appeal until after those grounds have been lodged.

David Mackie, President. 25/09/2015

DECISION OF THE FINANCIAL MARKETS TRIBUNAL-19 November 2015

1. MAS is in liquidation and Mr Haider was appointed as Provisional Liquidator on 1 November. For the moment the Appeal is alive but it is not clear whether Mr Haider will pursue it on the company's behalf.
2. This development does not immediately interrupt or affect the conduct of the Appeal or the timetable as the Response of the DFSA is due on 22 November and the Reply of MAS is not due until 28 days after that. The Panel has however indicated that it will consider the future conduct of the case once the Response has been served and has encouraged the parties to discuss possible directions. The current uncertainty will shortly start to affect the progress of the case. We also accept that it would be unfortunate for time and money to be spent on this appeal if it is not going to be pursued further.
3. The Panel has considered the letters sent to Mr Haider by DFSA giving him notice of the existence of the appeal. The fact remains however that he was only appointed on 1 November and we consider that he needs a reasonable time to consider the company's position. Consideration of the Response may also enable Mr Haider to form a view about what course the

company should take. We are not in a position to know how long he needs unless he tells us what the practicalities of the liquidation are. We therefore ask Mr Haider to write to us within one week to tell us what the position is as he sees it. DFSA should then write further to us in the light of what, if any, letter Mr Haider sends.

4. It is therefore premature to fix a case management conference. However this can if necessary be arranged at reasonably short notice, although not to take place as soon as the DFSA proposes. It will not be necessary for all members of the Panel to be physically present in Dubai for the conference.

David Mackie, President. 19 November 2015

DECISION OF THE FINANCIAL MARKETS TRIBUNAL-28 November 2015

1. The Panel has considered the communications from Mr Haider, Mr Ali Khan and Mr Alves about the current position.
2. It appears to us that the Liquidator has no wish to pursue the appeal .The Liquidator could have continued the appeal if he had wished. He has not responded to our request to know how long he would need to consider his position. He has not answered our request to know what provision of insolvency law stays the appeal which the company brought (as opposed to an action brought against it). He is not applying to the court for any order which may be required to continue the appeal.
3. It also follows that the suggestion by Mr Ali Khan that the appeal is stayed is mistaken. Further it seems to us that while we are grateful to him and to his firm for their assistance they have no further role in this case unless they are acting for the Liquidator.
4. We indicated at an earlier stage that we would review the progress of the case once DFSA's answer had been received. It seems to us that in practice this appeal is at end. The appropriate course is for DFSA to apply for a determination to that effect and to submit a draft order. The Liquidator may then respond if he wishes.

David Mackie, President. 28/11/2015

DECISION OF THE FINANCIAL MARKETS TRIBUNAL IN CASE NO FMT 15003-10 December 2015

1. In response to our Decisions of 19 and 28 November we have received a submission and a draft order from DFSA and a message from Mr Haider. The Registrar has also forwarded to us a message from Mr Sheikh. We have also now received a further submission from Mr Alves.
2. Mr Haider confirms that the company has no funds and is not in a position to continue with this appeal. He has again not sought an extension of time.
3. The views of Mr Sheikh are not relevant. He is a shareholder in a company in liquidation. Only Mr Haider the liquidator has standing to represent the Appellant.
4. The suggestion that the Panel is uncertain about the effect of Article 56 is incorrect. The Panel kept an open mind on the issue to give the parties a fair opportunity to demonstrate why Article 56 had the effect of staying the appeal despite what appears to be the plain meaning of the language used. No case or other authority has been cited to show that Article 56 has any meaning different to its equivalent provisions under the laws of England or other Commonwealth countries. In those countries the provision means what it says.
5. We remain of the view that this appeal is at an end and that it would be a waste of the time and resources of both parties, and indirectly that of the wider DIFC community for this process to continue. We do not repeat but bear in mind the conclusions reached in our earlier decisions. In deciding how to deal with this situation we bear in mind the overriding objective of the Rules which is to enable the FMT to deal with cases fairly and justly as described in Rule 7.1. This includes avoiding unnecessary formality and seeking flexibility in the proceedings and avoiding delay, so far as compatible with proper consideration of the issues.
6. The DFSA submission relies primarily on Rule 95 which provides that-

“(1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it: (a) by sending or delivering to the FMT a written notice of withdrawal; or (b) orally at a hearing. (2) Notice of withdrawal will not take effect unless the FMT consents to the withdrawal. (3) The FMT must notify each party in writing that a withdrawal has taken effect under this rule.”

DFSAs relies alternatively on Article 27(2)

"(2) The FMT may do whatever it deems necessary for or in connection with, or reasonably incidental to, performing its functions and exercising its powers conferred for the purposes of Article 27(1), including the giving of directions as to practice and procedure to be followed in the FMT in the hearing and determination of references or other proceedings"

7. Neither of these grounds has been specifically addressed by Mr Haider. Rule 95 appears to us to cover an unequivocal decision by an appellant to withdraw and it might be argued that that is not this case. Article 27 appears to be concerned with the Tribunal's wider rule making powers rather than with the conduct of individual cases. We do not think it necessary to examine these two grounds in detail for the following reasons.
8. As we see it, in a situation where the just solution is obvious but not expressly provided for in the Rules, the Tribunal may rely on Rule 4 read in the context of Rule 3.

"3. The FMT Rules describe the procedures that apply generally to the conduct of proceedings brought before the FMT.

4. The FMT has however the discretion to adopt different procedures to ensure the just, expeditious and economical resolution of proceedings brought before the FMT."

9. If and to the extent that the grounds relied upon by DFSA do not meet the facts of the case we dismiss this appeal by adopting a summary procedure to enable us to dismiss any appeal which is in substance at an end and the continuance of which will serve no useful purpose.
10. The appeal is accordingly dismissed. The order, to be drawn up by the Registrar, will record that the appeal has been dismissed for the reasons given in this Decision dated 10 December 2015.

Ali Al Hashimi, John L Douglas, David Mackie