IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2019-404-647
[2024] NZHC 2126

UNDER	the Financial Markets Conduct Act 2013
BETWEEN	FINANCIAL MARKETS AUTHORITY Plaintiff
AND	WEI (WALKER) ZHONG Defendant
	LEI (REGINA) DING Second Defendant

Hearing:	20 February 2024
Appearances:	N R Williams and S Chapman for the Plaintiff A Barker KC as Amicus No appearance for the Defendants
Judgment:	31 July 2024

JUDGMENT OF ROBINSON J

This judgment was delivered by me on 31 July 2024 at 4.15 pm
pursuant to Rule 11.5 of the High Court Rules

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Registrar/Deputy Registrar

Solicitors/counsel:
N Williams, Auckland
A Barker KC, Auckland

Copy to:
Mr Zhong by email
Ms Ding by email
FMA

Introduction

Background

[1] In this proceeding, the Financial Markets Authority (FMA) succeeded in all but one cause of action pleaded against the defendants under the Financial Markets Conduct Act 2013 (FMCA): six market manipulation and three breach of disclosure causes of action against Mr Zhong, and six market manipulation and five breach of disclosure causes of action against Ms Ding.[1]

[2] On 13 July 2023, the Court imposed pecuniary penalties of $1,330,000 on Mr Zhong and $760,000 on Ms Ding.[2] The Court also made the mandatory order pursuant to s 493 of the FMCA that the pecuniary penalties be applied first to pay the FMA's actual costs in bringing the proceeding.

[3] The FMA now applies for banning orders and costs.

Banning orders

[4] The FMA applies under s 517 of the FMCA for banning orders prohibiting Mr Zhong and Ms Ding for a period of not less than five years from being a director or promoter of an entity,[3] or being concerned with or taking part in the management of an entity without the leave of the Court.

Costs

[5] The FMA also seeks costs on a 3C basis in the amount of $277,105, together with disbursements of $194,271.52. As discussed further below, Mr Williams for the FMA submits that the Court can, and should, make an award of costs notwithstanding the mandatory order under s 493.

[6] Mr Zhong and Ms Ding were self-represented throughout the trial and at the penalty hearing. At trial, they appeared via VMR from Australia. At the penalty

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1 *Financial Markets Authority v Zhong* [2023] NZHC 766 (Liability Judgment).

2 *Financial Markets Authority v Zhong* [2023] NZHC 1841; and *Financial Markets Authority v Zhong* [2023] NZHC 2196 (Penalty Judgment).

3 As defined in s 6 of the Financial Markets Conduct Act 2013.

hearing, they appeared via VMR from China. They have not taken any steps since then. They have not opposed the FMA's applications for costs and banning orders, nor did they appear at the hearing for those applications.

[7] Because the defendants did not oppose or otherwise engage with the FMA's present applications, the Court appointed Andrew Barker KC as counsel to assist the Court on the narrow issue of whether the FMA is entitled to costs under the High Court Rules 2016 when the Court has made the mandatory order under s 493. Mr Barker was not appointed to assist the Court in relation to the FMA's application for banning orders, or in relation to the quantum of costs sought.

The FMA's application for banning orders

Principles

[8] The primary purposes of prohibitional banning orders are to protect the public, deter others from committing breaches, and set appropriate standards of behaviour.[4] In *Davidson v Registrar of Companies*, Miller J observed that the prohibition of directors was "aimed at those who through some want of integrity, skill, judgment or industry are not suitable directors or managers".[5] In *Australian Securities and Investments Commission v Adler*,[6] Santow J set out a number of banning order principles that have since been adopted in New Zealand:[7]

(a) disqualification orders are designed to protect the public from the harmful use of the corporate structure or from use that is contrary to proper commercial standards;

(b) the banning order is designed to protect the public by seeking to safeguard the public interest in the transparency and accountability of companies and in the suitability of directors to hold office;

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4 *Davidson v Registrar of Companies* [2011] 1 NZLR 543 at [91].
5 At [97].
6 *Australian Securities and Investments Commission v Adler* [2002] NSWSC 483, (2002) 42 ACSR 80 at [56].
7 *Registrar of Companies v Blake* [2019] NZHC 680 at [43]; and *Registrar of Companies v Bublitz* [2022] NZHC 2177 at [78]. Both cases concerned the disqualification of directors under s 383 of the Companies Act 1993.

(c) protection of the public also envisages protection of individuals that deal with companies, including consumers, creditors, shareholders and investors;

(d) the banning order is protective against present and future misuse of the corporate structure;

(e) the order has a motive of personal deterrence, though it is not punitive;

(f) the objects of general deterrence are also sought to be achieved;

(g) in assessing the fitness of an individual to manage a company, it is necessary that they have an understanding of the proper role of the company director and the duty of due diligence that is owed to the company;

(h) longer periods of disqualification are reserved for cases where contraventions have been of a serious nature such as those involving dishonesty;

(i) in assessing an appropriate length of prohibition, consideration has been given to the degree of seriousness of the contraventions, the propensity that the defendant may engage in similar conduct in the future and the likely harm that may be caused to the public;

(j) it is necessary to balance the personal hardship to the defendant against the public interest and the need for protection of the public from any repeat of the conduct; and

(k) a mitigating factor in considering a period of disqualification is the likelihood of the defendant reforming.

[9] In *Registrar of Companies v Bublitz*, Fitzgerald J said:

> [79] …when considering whether a prohibition order ought to be made (and if so for how long), the Court is engaged in a forward-looking exercise.

> The respondent's predilection to engage in future conduct of the nature giving rise to the application will therefore be highly relevant to whether a prohibition order ought to be made and if so, for how long. For example in *Blake*, Venning J considered there was a "high likelihood" that Mr Blake would engage in similar conduct to that giving rise to the application. A 12 year prohibition order was imposed. In *Downsview*, Gault J said it was "not a situation where the Court might safely rely on contrition and a determination [on Mr Russell's part] to reform his practices", and imposed a five-year prohibition order.
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> …
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> [81] In all of these contexts, the seriousness of the conduct in question will be relevant. It will, for example, provide the "baseline" from which the Court will consider the respondent's propensity to engage in similar conduct in the future. Further, those involved in the management of companies ought to be aware that serious misconduct will likely result in a prohibition order.
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> (footnotes omitted)

Analysis

[10] Mr Zhong was the chief executive officer of ONL and chairman of its board, while Ms Ding was a senior marketing manager. Mr Zhong and Ms Ding each manipulated market shares in Oceania Natural Limited (ONL) in contravention of s 265 of the FMCA on six separate occasions.[8] Mr Zhong also breached his disclosure obligations in contravention of s 297 of the FMCA on three occasions, whilst Ms Ding did so on 16 occasions.[9] As explained in the previous judgments, Mr Zhong and Ms Ding carried out each contravening transaction with actual knowledge and a deliberate intention to manipulate the market.[10] They did so in order to increase, or prop up, ONL's share price and to create the appearance of active trading in ONL shares.[11]

[11] Mr Zhong and Ms Ding's manipulative trading began shortly after ONL was listed on the NXT market. They went to significant lengths to hide their involvement in the manipulative trading. They recruited others to participate and assist. They used Ms Ding's parents' ASB Securities (ASBS) accounts to carry out the trades, each pretending to be one of her parents when they called ASBS to make trades.[12] Even

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8 Penalty Judgment, above n 2, at [5].
9 Penalty Judgment, above n 2, at [6]. The 17th cause of action against Ms Ding involved 12 breaches of her disclosure obligations under s 297.
10 At [56].
11 At [57].
12 At [58].

after ASBS had cancelled their trades and suspended Ms Ding's parents' securities accounts, they engaged others to continue their scheme.[13]

[12] Mr Zhong and Ms Ding's manipulative trading continued for almost a year until they were discovered and regulators intervened. Their failure to disclose those transactions breached their obligations under s 287 of the FMCA, as well as the NXT Market Rules and ONL's Financial Product Trading Policy and Guidelines.[14]

[13] For these reasons I am satisfied that a banning order against both Mr Zhong and Ms Ding is appropriate. Neither are presently suitable persons to hold the role of director or officer of a New Zealand-registered company, and a banning order is required to protect the public from their harmful use of the corporate structure. Here, a banning order is required not so much to set standards, but because Mr Zhong and Ms Ding have flagrantly and repeatedly breached those standards.

[14] In practical terms, it would seem unlikely that Mr Zhong or Ms Ding will hold (or seek) any significant managerial role in a New Zealand-listed entity in the future. However, evidence adduced by the FMA in support of its application for banning orders show that they are still involved in the management of New Zealand-registered companies. Mr Zhong is a director of four New Zealand-registered companies (four of which are in liquidation) and Ms Ding is a director of five New Zealand-registered companies.

Length of banning orders

[15] The FMA has applied for a banning order of not less than 5 years. Noting the Court's discretion, Mr Williams submits that a banning order of between 8–10 years may be appropriate.

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[13] At [60].
[14] At [64].

Principles

[16] A banning order may be permanent or for a specified period.[15] However, the Court may make a banning order permanent or for a period longer than 10 years only in the most serious of cases in which a banning order may be made.[16] In this regard, the seriousness of the index case is to be considered against other "cases for which an order may be made".[17] This is not limited to just the most serious cases of the type before the Court, but includes all cases in which a banning order may be made, irrespective of seriousness.[18]

[17] The Court may make banning orders against a person already subject to a pecuniary penalty order.[19] It may also make banning orders against a person who:

(a) has been convicted of an offence under any Act referred to in pt 1 of sch 1 of the Financial Markets Authority Act 2011 (FMAA);[20]

(b) has been convicted of an offence under any Act referred to in pt 2 of sch 1 of the FMAA (where the person is or has been a financial markets participant);[21]

(c) has, while the director of an entity, persistently contravened or been involved in the contravention of any Act specified in pt 1 of sch 1 of the FMAA (or, where the person is or has been a financial markets participant, persistently contravened any of the Acts specified in pt 2 of sch 1 of the FMAA);[22] or

(d) has been convicted of a crime involving dishonesty as defined in s 2(1) of the Crimes Act 1961 (where the person is or has been a financial markets participant).[23]

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15 Financial Markets Conduct Act, s 518(1).
16 Financial Markets Conduct Act, s 518(2).
17 *Registrar of Companies v Bublitz*, above n 7, at [88].
18 *Registrar of Companies v Bublitz*, above n 7, at [88].
19 Financial Markets Conduct Act, s 517(1)(a).
20 Financial Markets Conduct Act, s 517(1)(b).
21 Financial Markets Conduct Act, s 517(1)(c).
22 Financial Markets Conduct Act, s 517(1)(d).
23 Financial Markets Conduct Act, s 517(1)(e).

The ASIC cases

[18] In *Australian Securities and Investments Commission v Adler*, Santow J had to determine the length of banning orders to be imposed on directors found to have breached the relevant Australian legislation.[24] Santow J set out the following factors relevant to determining the length of disqualification:[25]

> (a) factors which lead to the longest periods of disqualification (that is, in the Australian context, disqualifications of 25 years or more) were:
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> > (i) large financial losses;
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> > (ii) high propensity that the defendants may engage in similar activities or conduct;
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> > (iii) activities undertaken in fields in which there was potential to do great financial damage such as in management and financial consultancy;
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> > (iv) lack of contrition or remorse;
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> > (v) disregard for law and compliance with corporate regulations;
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> > (vi) dishonesty and intent to defraud; and
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> > (vii) previous convictions and contravention for some of the activities.
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> (b) in cases in which the period of disqualification ranged from 7–12 years, the factors leading to the conclusion that these cases were serious though not "worst cases", included:
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> > (i) serious incompetence and irresponsibility;

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24 The Corporations Act does not have an equivalent provision to s 518(2) of the FMCA that imposes a seriousness threshold for bans of a certain length.

25 At [56(xiii) – (xv)], citations ommitted.

(ii) substantial loss;

(iii) defendants had engaged in deliberate courses of conduct to enrich themselves at others' expense, but with lesser degrees of dishonesty;

(iv) continued, knowing and wilful contraventions of the law and disregard for legal obligations; and

(v) lack of contrition or acceptance of responsibility, but as against that, the prospect that the individual may reform.

(c) the factors leading to the shorter disqualifications, that is disqualification for up to three years, were:

(i) although the defendants had personally gained from the conduct, they had endeavoured to repay or partially repay the amounts misappropriated;

(ii) the defendants had no immediate or discernible future intention to hold a position as manager of a company; and

(iii) expressing remorse and contrition, acting on advice of professionals and not contesting the proceedings.

[19] Counsel also refers to *Australian Securities and Investments Commission v Soust (No.2)*.[26] Mr Soust was managing director and chief executive officer of Select Vaccine Limited. In contravention of s 104(1)A and 181(1) of the Corporations Act, Mr Soust took part in a transaction that had the effect of creating an artificial price for shares in Select Vaccine in order to qualify him for a short-term bonus. His trading contravened the company's Share Trading Policy, and he deliberately concealed that trading from his co-directors.

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[26] *Australian Securities and Investment Commission v Soust (No.2)* [2010] FCA 388, (2010) 78 ACSR 1.

[20] ASIC sought an eight-year ban. Mr Soust argued that he should be banned for no more than five years. Goldberg J imposed a 10-year ban. In determining the period of disqualification, Goldberg J referred to the significance of Mr Soust's contraventions, and his "dishonesty, bad faith, self-interest, and a desire for personal gain and improper purpose of conduct".[27] He also took into account that there was no evidence of any remorse or contrition from Mr Soust.[28]

[21] However, Goldberg J also assessed the case as not being amongst the "worst" cases, because the impact on the commercial and investing community was insignificant.[29] Rather, he found the gravamen of the case to lie in the "litany of personal dishonesty calculated to obtain and maintain personal gain".[30]

Analysis

[22] Mr Zhong and Ms Ding's misconduct was flagrant, and dishonest. Shortly after ONL shares were listed on the NXT, Mr Zhong and Ms Ding commenced a deliberate campaign to manipulate the market in order to maintain or increase ONL's share price. They colluded, and each recruited others to assist.

[23] I also take into account their complete lack of remorse and contrition. As previously noted, Mr Zhong and Ms Ding each pleaded that the transactions were legitimate and carried out on behalf of Ms Ding's parents. They suggested that the market maker was responsible for any implied or apparent market manipulation. They maintained that position throughout trial, although ultimately neither elected to give nor to call evidence. [31]

[24] Similarly, Mr Zhong and Ms Ding suggested for the first time at trial, and contrary to the evidence, the FMA withheld relevant data from Ms Ding's laptop.[32] They maintained their challenge to the accuracy and reliability of WeChat messages detailing their scheme and to which they were both party, but neither gave evidence

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27 At [68].
28 At [70].
29 At [73].
30 At [73].
31 Liability Judgment, above n 1, at [88] – [93].
32 At [84] – [87].

that their messages were incorrect.[33] This lack of contrition and remorse is relevant to the Court's forward-looking assessment of the need to protect the public from Mr Zhong and Ms Ding's misconduct.

[25] On the other hand, the defendants' misconduct was relatively unsophisticated. There is no evidence of significant financial loss.

[26] Nevertheless, strong response is required. It must be clear that misconduct such as that carried out here will be met with severe sanction. I also accept Mr William's submission for the FMA that Mr Zhong and Ms Ding's culpability and collusion is such that they should each be banned for the same period of time.

[27] In all the circumstances I consider it appropriate to make banning orders against both Mr Zhong and Ms Ding under s 517 of the FMCA for a period of nine years from the date of this judgment.

Costs - Jurisdiction

[28] As required by s 493 of the FMCA, the Court made an order that the pecuniary penalties to be paid by Mr Zhong ($1,330,000) and Ms Ding ($760,000) be applied first towards the FMA's actual costs in bringing the proceedings. Section 493 provides:

> **Court must order that recovery from pecuniary penalty applied to FMA's actual costs**
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> If the Court orders that a person pay a pecuniary penalty, the court must also order that the penalty must be applied first to pay the FMA's actual costs in bringing the proceedings.

[29] The FMA also seeks an order that Mr Zhong and Ms Ding pay scale costs (on a 3C basis) and disbursements. Mr Williams says that s 493 does not constrain the Court's jurisdiction to award costs, and pt 14 of the High Court Rules applies. Mr Williams relies on s 509 of the FMCA which provides:

> **Rules of civil procedure and civil standard of proof apply to civil liability**

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[33] At [75] – [83].

> The proceedings under this subpart are civil proceedings and the usual rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

[30] I agree that s 509 is sufficiently broad to include the usual rules concerning costs.

[31] The Court has not previously had to consider what impact, if any, a s 493 order has on the Court's general discretion to award costs. In all previous cases in which the Court has made pecuniary penalty orders under the FMCA, together with the s 493 order, it has done so by consent (or at least in accordance with an agreement between the parties and without opposition, although some of the cases saw argument over the quantum of the penalty itself). In none of those cases did the FMA seek costs in addition to the pecuniary penalty and mandatory s 493 order.[34] As noted, the Court appointed Mr Barker to assist with this particular issue.

General principles

[32] Costs are at the discretion of the Court.[35] That discretion is not unfettered. It must be exercised judicially, and it is qualified by specific rules.[36]

[33] Costs follow the event.[37] Rule 14.2(1)(a) of the High Court Rules sets out the general principle that: "the party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds". Another important principle is that an award of costs must not exceed the costs incurred by the party claiming them.[38]

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34 *Financial Markets Authority v ANZ Bank New Zealand* [2021] NZHC 399, (2021) 16 TCLR 28; *Financial Markets Authority v AIA New Zealand* [2022] NZHC 2444; *Financial Markets Authority v Cigna Life Insurance New Zealand* [2022] NZHC 3610; *Financial Markets Authority v Zhong* [2022] NZHC 480; *Financial Markets Authority v Vero Insurance New Zealand Ltd* [2023] NZHC 2837; *Financial Markets Authority v Kiwibank* [2023] NZHC 2856; *Financial Markets Authority v Medical Assurance Society New Zealand* [2023] NZHC 3312; *Financial Markets Authority v CBL Corporation Ltd (in liq)* [2023] NZHC 3842; and *Financial Markets Authority v Hill* [2024] NZHC 1353.

35 High Court Rules 2016, r 14.1(1).

36 *Manukau Golf Club v Shoye Venture Limited* [2012] NZSC 109, [2013] 1 NZLR 305 at [7].

37 At [8].

38 High Court Rules, r 14.2(1)(f).

Does an order under s 493 override or qualify the Court's general discretion to award costs?

[34] Mr Williams submits that an order under s 493 does not preclude an award of costs under the High Court Rules. He points out that neither s 493 nor s 509 refers to or qualifies the other. He submits that the purpose of s 493 is to incentivise the FMA to investigate and prosecute civil pecuniary penalty cases by providing the FMA with an additional, but not exclusive, form of cost recovery. He refers to the New Zealand Law Commission's *Civil Pecuniary Penalties*:[39]

> Unlike criminal fines, civil pecuniary penalties can assist in cost recovery for agencies enforcing a regulatory regime. For example, s 160(9) of the Biosecurity Act 1993 provides for all or part of the pecuniary penalty to be paid to the departmental bank account of the Ministry if the Court considers that the breach was a material cause of the Ministry having to undertake a response activity. … The Financial Markets Conduct Bill also provides that in making a pecuniary penalty order the Court must order that the penalty must be applied first to pay the Financial Markets Authority or Commerce Commission's actual costs in bringing the proceedings. By itself, this is not in our view a valid justification for opting for a civil pecuniary penalty regime rather than criminal offences.
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> (footnotes omitted)

[35] On the other hand, Mr Barker submits that the mandatory s 493 order overrides the Court's general discretion to award costs. He says that the substantive effect of the mandatory s 493 order is that the defendants, through the payment of the pecuniary penalty, must pay the FMA's actual costs. If the Court was to award costs as well then the FMA would effectively obtain a double recovery.

[36] Alternatively, putting to one side questions of jurisdiction, Mr Barker says that where the FMA's actual costs will be paid by the application of the pecuniary penalty, there are no additional costs for the FMA to recover. On this analysis, counsel accepts the Court may have discretion to award costs if (and to the extent that) the FMA's actual costs exceed the amount of the pecuniary penalty. Mr Barker suggests that situation does not arise here where the penalties total $2,090,000.

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39 Law Commission *Civil Pecuniary Penalties* (NZLC IP33, 2012) at 4.36.

[37] I do not take such a broad view. An order under s 493 requires that penalties be *applied* to the FMA's actual costs; but it is not, of itself, a costs order. An order under s 493 does not create a payment obligation. Here, Mr Zhong and Ms Ding have been ordered to pay penalties, and the Court has ordered that these be applied first to FMA's costs. But Mr Zhong and Ms Ding have not been ordered to pay the FMA's actual costs.

[38] It follows that an ordinary costs order is not a costs order "on top" of the pecuniary penalty order. Although the costs order itself must not exceed the FMA's actual costs, there is no reason in principle why the costs order, together with the pecuniary penalty order, cannot. I agree with Mr Williams that in such a situation, any balance of funds paid by way of pecuniary penalty remaining after their application towards the FMA's actual costs would be paid to the Crown. But for the mandatory s 493 order, all funds paid by way of pecuniary penalty would be paid to the Crown.[40]

[39] I also agree with Mr Williams that to find otherwise would undermine an important purpose of pecuniary penalties, which is to deter misconduct. It would be incongruous if an unsuccessful defendant was able to avoid the ordinary liability to pay costs by virtue of having been ordered to pay pecuniary penalties under s 489 of the FMCA. I do not consider that Parliament intended this to be the effect of s 493.

[40] Finally, I note that at s 492 of the FMCA, Parliament has set out various matters which the Court must have regard to when determining an appropriate penalty. The FMA's costs of bringing the proceeding is not one of them. This reinforces the conclusion that Parliament did not intend the s 493 order to be a costs order, or otherwise to override the Court's general discretion to award costs.

Costs – Quantum

[41] The FMA seeks an order for costs in the amount of $277,105 together with disbursements of $194,271.52. The FMA's claim for disbursements includes the costs of three expert witnesses in the total amount of $144,701.52.

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[40] *Chief Executive of the Department of Internal Affairs v Mansfield* [2013] NZHC 2064 at [80].

Costs

[42] At the first case management conference, Gault J noted his agreement with counsel (including counsel for Mr Zhong and Ms Ding, who were then represented) that this proceeding should be classified as a 3C proceeding for costs purposes.[41] I also agree that classification is appropriate.

[43] Counsel for the FMA prepared a schedule of relevant attendances for the purposes of calculating costs. The FMA claims a total time allocation of 78.5 days, including an allowance for a second and subsequent counsel. Of those allocated days, 12.4 of them relate to attendances prior to 1 August 2019. Under the High Court Rules as they existed before that date, a daily rate of $3,300 applies to Category 3 proceedings. The rest of the allocated days relate to attendances after 1 August 2019, so a daily rate of $3,530 applies. Applying these rates to the relevant time allocations gives a total costs claim of $274,253. I have reviewed the schedule of attendances and I am satisfied that this is in order.

Disbursements

[44] FMA claims the usual filing fees, scheduling fees and hearing fees in the total amount of $49,570. I am satisfied that these are in order.

Expert witnesses

[45] FMA claim the costs of its expert witnesses:

(a) Yue Wei ($1,518.18);

(b) Philip Solarz ($58,369.50); and

(c) Dr Michael Aitken ($84,813.84).

[46] The FMA has provided invoices from each of these experts and breakdowns of the amount claimed with reference to their hourly rates.

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41 *Financial Markets Authority v Zhong* HC Auckland CIV-2019-404-000647, 10 October 2019 at [5].

[47] The Court must be satisfied that the disbursements paid were both reasonably necessary for the conduct of the proceeding, and reasonable in amount.[42]

[48] Yue Wei translated various communications from Mandarin into English. He prepared a brief of evidence and appeared as a witness in Court. His costs were $1,518.18 based on an hourly rate of $120. His evidence was helpful and his costs are reasonable.

[49] Mr Solarz's costs were $58,369.50 based on an hourly rate of $350. That is a reasonable hourly rate for a professional with Mr Solarz's background and experience. He provided a detailed brief of evidence that was helpful in determining the relevant issues. I have seen each of Mr Solarz's invoices and a breakdown of his various attendances. I am satisfied that his attendances were reasonably necessary and that the costs are reasonable.

[50] Dr Michael Aitken resides in Sydney. He is an internationally recognised expert. He and his colleagues designed the SMARTS Surveillance System used by 50 national exchanges and regulators, including NZX Limited. His technical evidence drew on the algorithms underpinning that system and complimented Mr Solarz's evidence. Amongst other things, Dr Aitken's evidence refuted the defendants' claim that the market maker was responsible for any apparent market manipulation. Mr Zhong's cross-examination of Dr Aitken focused on that point.

[51] Dr Aitken's costs of NZD $84,813.84 are based on his hourly rate of AUD $695 and his assistant's hourly rate of AUD $595. I have seen Dr Aitken's invoices and a breakdown of his attendances. In the circumstances I am satisfied that his evidence was reasonably necessary and his costs are reasonable.

[52] As previously noted, Mr Zhong and Ms Ding did not ultimately give or call evidence. However, they denied all the allegations against them and maintained various defences throughout. In these circumstances I am satisfied it was reasonably necessary for FMA to call the complimentary evidence of both Mr Solarz and Dr Aitken.

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42 High Court Rules, r 14.12(c) and 14.12(d).

Result

Banning Orders

[53] I order that:

(a) for a period of nine years from the date of this judgment, Wei (Walker) Zhong and Lei (Regina) Ding are each prohibited from doing either or both of the following things:

(i) being a director or promoter of, or in any way (whether directly or indirectly) being concerned with or taking part in the management of, an entity (as defined at s 6 of the Financial Markets Conduct Act 2013) other than an overseas company, or other entity, that does not carry on business in New Zealand; and/or

(ii) providing advice services or client money or property services, or contributing as an employee or agent, to the provision of those services.

(b) in accordance with s 521 of the Financial Markets Conduct Act 2013, the Registrar must, as soon as practicable:

(i) give notice to the Registrar of Companies, the Registrar of Financial Service Providers, and the FMA that the order set out at [53(a)] above has been made; and

(ii) give notice in the *New Zealand Gazette* of the names of the persons against whom the order is made and the period or dates for which the order applies.

(c) if either Mr Zhong or Ms Ding intend to apply for the leave of the Court as referred to in the orders set out in [53(a)] above, they must give the

FMA not less than 10 working days' written notice of that person's intention to apply.

Costs

[54] I award the FMA costs on a 3C basis, which I calculate to be $274,253, together with disbursements of $194,271.52.

Robinson J