

Case Review (JH/32248/02)
Magistracy Appeal Against Sentence

1. **Case Type:**
Criminal – Appeal – From Magistracy to High Court – Bribery – Conspiracy to Defraud

2. **Relevant Law:**
Prevention of Bribery Ordinance Cap. 201 ss. 9(1)(a) and 12(1)
Conspiracy to defraud under common law

3. **Case Discussion:**

In one evening of last September, we received a call from a woman seeking for our legal advice in respect of the convictions of her husband of 2 charges of “Agent Accepting an Advantage” (contrary to ss. 9(1)(a) & 12(1) of Prevention of Bribery Ordinance Cap. 201) and 3 charges of “Conspiracy to Defraud”. Client was sentenced to 15 months’ imprisonment.

Facts of the case

As for the 2 charges of “Agent Accepting an Advantage”, client was an agent of a telephone company in Hong Kong and accepted 3 boxes of Chinese New Year puddings, a “lai see” of \$500, one box of cigars and a sweater from a person as an inducement or reward for reserving certain telephone numbers for that person. In addition, client was also alleged to have conspired with another person to defraud the Inland Revenue Department, by producing false receipts of traveling expenses so that that person could make an application to his employer under a travel allowance scheme and thereby enabled him to evade part of his income tax.

Our strategies and actions

We fully appreciated the anxiety of client and his family in the matter. Upon obtaining confirmation to act and arranging all necessary papers and documents to be transferred over to us from the previous handling firm, we then reviewed the initial trial materials. We laid down a strategy as to how the appeal should be proceeded with. We contacted the counsel who previously handled the trial for purpose of getting a comprehensive report on the trial proceedings; the statement of findings and reasons for

sentence by the Magistrate.

Upon our own case review and analysis of the case with counsel and client's wife, we formulated a cost proposal for client to consider. We devised a fee structure proposal which was spilt in two parts to suit the client's needs. Part I dealt with our costs for the preliminary review which included requesting for case transcripts and advising on the chance of success of appeal against both conviction and sentence. Client and his family were fully briefed and advised throughout. Part II dealt with our costs and counsel's fee for all matters pertaining to the appeal and the hearing of the Appeal.

During the Part I services, we had several discussions and meetings with counsel regarding the appeal and arrived at the view that the chance of success of appeal against conviction was slim. However, there was a better chance to the appeal against sentence.

By the time Part I of the case preparation was completed, both client and his family were in a better position to make an informed decision as to whether to proceed with the appeal against both conviction and sentence, or whether to just proceed with the appeal against either one. Prior to reaching any decision, client also had sufficient time to consider all issues concerned and matters that had been previously discussed in conferences. Eventually, client instructed us to abandon the appeal against conviction.

The Appeal Hearing

The appeal hearing was finally heard before a single judge at High Court in last December. With the able submission from the Appellant's counsel, the presiding judge allowed the appeal and reduced the sentence by one-fifth to that of 12 months' imprisonment.

We were pleased to have achieved such a pleasing result for client within a budget of no more than \$75,000. On this, we also express our gratitude towards counsel concerned for giving almost to be pro bono services so willingly and generously, without which, client and his family could not be subsidised.

Written by Simon Wong, Trainee Solicitor

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