

IN THE INSURANCE APPEALS TRIBUNAL

IN THE MATTER OF Decisions made by
the Professional Insurance Brokers
Association dated 14 May 2019 and 22
August 2019

AND IN THE MATTER OF sections 115
and 117 of Schedule 11 to the Insurance
Ordinance, Cap. 41

BETWEEN

TSUI PUI KUEN

1ST APPELLANT

CHIU YUNG

2ND APPELLANT

EVER FOUNTAIN GLOBAL WEALTH
MANAGEMENT LIMITED

3RD APPELLANT

AND

INSURANCE AUTHORITY

RESPONDENT

Tribunal: Mr Douglas Lam Tak Yip, SC, Chairman

Ms Julienne Jen, Member

Dr Samuel Yung, Member

Date of Hearing: 12 November 2020

Date of Determination: 13 March 2024

DETERMINATION

A. Introduction

1. These are appeals by the Appellants, namely, Ms Tsui Pui Kuen (the 1st Appellant) (“**Ms Tsui**”), Mr Chiu Yung (the 2nd Appellant) (“**Mr Chiu**”) and Ever Fountain Global Wealth Management Limited (the 3rd Appellant) (“**Ever Fountain**”) against the decisions of the Disciplinary Committee (the “**Committee**”) of the Professional Insurance Brokers Association (the “**Association**”) dated 14 May 2019 and 22 August 2019 (the “**Decision**” and “**Sentencing and Costs Decision**”), respectively. The Association is one of the former self-regulatory organisations which were responsible for the regulation of insurance intermediaries before the Insurance Authority (the “**Authority**”) took over such tasks pursuant to the Insurance Ordinance (the “**Ordinance**”) on 23 September 2019.
2. The disciplinary proceedings arose from complaints made by Ms Liang Xizhi (“**Ms Liang**”) to the Association in June 2014 against the three Appellants concerning the sale of a policy under the investment-linked assurance scheme. Ms Liang purchased policy PULF25 (the “**Policy**”) issued by AXA China Region Insurance Co (“**AXA**”), through Ever Fountain as intermediary¹ after a meeting at AXA’s Causeway Bay office on 29 June 2013 (the “**June 29 Meeting**”).
3. In short, Ms Liang alleged that, inter alia:

¹ Ms Liang was first introduced to Ever Fountain and the proposed Policy through Ever Fountain’s associated entity in Shenzhen.

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(1) Mr Chiu, the insurance intermediary representative named in the Policy, never met with Ms Liang during the sale process despite signing a declaration on the Policy application form that he was personally involved in the sale of the Policy to Ms Liang.

(2) Rather, she met only Ms Tsui, who represented herself as a representative of Ever Fountain. Ms Tsui not only failed to explain properly the terms of the Policy to her but in fact misrepresented certain material terms to her.

A. The Disciplinary Proceedings and Decision

4. The Association brought disciplinary proceedings, and the complaints against the Appellants were summarised in the Decision as follows:

(1) against Ms Tsui, for (a) selling the Policy to Ms Liang and handling her Policy application purportedly as an employee or representative of Ever Fountain, despite the fact that she was not a registered representative of Ever Fountain²; and (b) failing to explain to Ms Liang clearly the contents of the Policy, including premium payment terms and the right to authorise a third party to change the investment fund composition;

(2) against Mr Chiu, for (a) signing a declaration on the Policy application form that he was personally involved in the sale of

² She was a licenced representative for another insurance intermediary.

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the Policy³ despite never having met Ms Liang and not having participated in the sale of the Policy; and (b) not providing proper after-sales service to Ms Liang, including not sending to Ms Liang directly the online login details to view her Policy but only through a third party⁴; and

(3) against Ever Fountain, for (a) failing to supervise the sale of the Policy, including allowing Ms Tsui to sell the Policy to Ms Liang notwithstanding that she was not its representative and allowing Mr Chiu to sign the Declaration despite never having met her or participated in the sale of the Policy; and (b) failing to properly handle the after-sales process, including failing to send to Ms Liang online login details to view the Policy directly but only through a third party⁵.

5. The proceedings concluded with a 3-day hearing on 10-12 October 2018 (the “**Disciplinary Hearing**”). The Appellants were then represented by counsel, Mr Osmond Lam, and the Association was represented by counsel, Mr Joe Chan. The Committee heard the evidence of Ms Liang, Ms Tsui and Mr Chiu, who were subject to cross-examination by counsel and questioning by the Committee.

³ The declaration reads as follows: “I HEREBY CERTIFY that I have personally asked all the questions on the application form, verified the identity of the Proposed Insured and Proposed Owner against their original documents, and witnessed their signatures on this application.” (the “**Declaration**”)

⁴ As the Authority accepts, the alleged failure to send to Ms Liang directly the online login details to view her Policy was not a complaint included in the Notices of Disciplinary Proceedings against the 2nd and 3rd Appellants dated 7 December 2016. See below.

⁵ See fn2 above.

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6. The Committee summarised material aspects of Ms Liang’s case in the Decision as follows:

(1) Ms Liang was 34 years old at the time and was an administrative director in the building materials industry. On 29 June 2013, together with her friend, namely, one Ms Yu (“Ms Yu”) and Ms Yu’s son, she attended AXA’s Causeway Bay office to meet with Ever Fountain’s representatives. She was then taken to a room where Ms Tsui introduced herself as “Bonnie” and as a representative of Ever Fountain. Ms Tsui was the only person they met on that occasion, and the only individuals in the room were Ms Liang, Ms Tsui, Ms Yu and her son.

(2) Ms Tsui did not explain to her the terms and risks of the Policy. Much of the application had already been completed prior to the meeting, and Ms Tsui merely asked Ms Liang to sign at various places, which she did. Ms Liang emphasised that she had all along adopted a casual attitude towards her investments and principally relied on others to handle such matters for her.

(3) According to the Policy schedule, Ms Liang was required to pay an annual premium of HK\$288,000 for a payment term of 25 years. However, Ms Tsui misrepresented to her that she only needed to pay the annual premium for the first three years and no premiums would be payable thereafter.

(4) Ms Tsui also told her that she must sign a form authorising Ever Fountain to act on her behalf to change her investment fund

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composition (the “**Third Party Authorisation Form**”). Ms Tsui never explained to her, and it was only afterwards that Ms Liang discovered that, Ever Fountain stood to earn a commission from any change in fund composition.

(5) Afterwards, Ms Tsui asked her for her travel documents for photocopying. It was then that Ms Liang discovered that she did not have her immigration entry slip which was issued to her when she crossed the border into Hong Kong from the Mainland. Ms Liang therefore had lunch and did some shopping, crossed the border back to the Mainland, came back into Hong Kong, obtained a new immigration entry slip, and gave the same to Ms Yu to submit to Ever Fountain.

(6) Ever Fountain and Mr Chiu also did not provide proper after-sales service to her in relation to the Policy, including in particular, not sending her directly the online login details, but only to her through a third party, namely, Ms Yu.

(7) Notwithstanding that Mr Chiu signed the Declaration, Ms Liang never in fact met him. Indeed, Ms Liang was under the mistaken belief that “Chiu Yung” was the Chinese name of Ms Tsui who, as mentioned above, introduced herself at the meeting by her English name, “Bonnie”.

7. The Committee summarised material aspects of the evidence of Ms Tsui and Mr Chiu as follows:

(1) Ms Tsui did not dispute that she was not the representative of Ever Fountain or that she met with Ms Liang that day. Her case

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was that Mr Chiu was present at the June 29 Meeting and she was merely assisting him. She admitted that some of the writing on the Policy application form was hers, whilst she said that some were not. She also explained that she would normally fill in part of the application form in advance and only leave certain matters in blank, such as the client's monthly income.

(2) Mr Chiu did not have any specific recollection of the events on that particular day. However, he explained that the normal procedure would be that after a client arrived at AXA's office, he would greet the client and take him or her to a room or the lobby. He would then take the client's travel documents for photocopying. After the application documents were nearly completed, he would explain the product to the client face to face. When the client was prepared to sign, Ms Tsui would explain the purpose of the signatures. After signing, he would check again that it had all been signed correctly, and then he would take the documents and the travel documents to be witnessed by AXA's witness.

(3) Neither Ms Tsui nor Mr Chiu had any specific recollection on the information that had been filled onto the Policy application form. However, both denied acting in breach of any regulations.

8. Ever Fountain did not file any evidence but referred the Committee to its training and guidelines for employees. In Ever Fountain's Internal Compliance Guide for Technical Representatives, it was stated that all employees must be familiar and comply with all regulations. All employees of Ever Fountain needed to attend annual training and development, which Mr Chiu attended in 2013, 2014 and 2015. Also,

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Ever Fountain’s counsel pointed out that there was no specific requirement in the regulations requiring it to send the online registration details directly to Ms Liang. Ever Fountain denied any breach of regulations.

9. On 14 May 2019, the Committee issued its Decision, comprising some 21 pages in Chinese. The Committee found in favour of the Association and that each of the complaints had been made out against the Appellants:

(1) Ms Tsui failed to conduct business with utmost good faith and dishonestly misled Ms Liang into believing that she was a representative of Ever Fountain. She further failed to explain the contents of the Policy clearly to Ms Liang, including her right as to who to authorise to change investment funds composition. Ms Tsui was therefore in breach of sections (IV)(A)(b), and (IV)(E)(a) of the Minimum Requirements for Insurance Brokers laid down pursuant to the then Insurance Companies Ordinance (currently, the Ordinance) (the “**Minimum Requirements**”), Articles 3(a)-(b) of the Confederation of Insurance Brokers Membership Regulations and Code of Conduct (the “**Code of Conduct**”), and section 5.2 of the Code of Conduct for Insurance Brokers Conducting Investment-Linked Business (the “**Professional Code**”).

(2) Mr Chiu failed to conduct business with utmost good faith, having dishonestly signed the Declaration, despite not having met Ms Liang or having participated in the sale of the Policy. His conduct was dishonest. He also did not explain the terms of the Policy to Ms Liang and did not use his best and diligent

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efforts to meet Ms Liang’s insurance needs. He failed to place the interests of his client first and therefore was in breach of the sections (IV)(A)(b), (IV)(B)(a), (g), (IV)(C)(a), and (IV)(E)(a) of the Minimum Requirements. Further, his dishonest conduct placed him in breach of Articles 3(a)-(b) of the Code of Conduct and Section 5.2 of the Professional Code.

(3) Ever Fountain failed to supervise the sale process and wrongfully allowed Ms Tsui sell the Policy to Ms Liang and Mr Chiu to sign the Declaration. Ever Fountain thus failed to take all steps to ensure that the sale of the Policy was handled by qualified and appropriate persons in breach of section (IV)(B)(b) and (IV)(C)(a) of the Minimum Requirements. Further, as Ever Fountain did not use its best efforts to supervise its employees and to establish systems and policies to prevent breaches of regulation, Ever Fountain was in breach of Sections 4.1 and 4.2 of the Professional Code.

10. By the Sentencing and Costs Decision, the Committee ordered that (1) Ms Tsui be suspended for 3 months and fined HK\$100,000; (2) Mr Chiu be suspended for 3 months and fined HK\$130,000; (3) Ever Fountain be fined HK\$200,000; and the Appellants pay the Association costs in the sum of HK\$400,000 within 28 days.

C. The Appeal

11. On 17 September 2019, the Appellants filed Notifications of Appeal (with Grounds of Appeal) through their solicitors, Messrs Clyde & Co., with the Appeal Committee of PIBA, together with supporting affirmations. The grounds of appeal spanned over 30 pages. The

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Appellants seeks orders that the Decision be quashed and that they be awarded the costs of the appeal and the Disciplinary Hearing.

12. Pursuant to Section 115 and 117 of Part 7 of Schedule 11 of the Ordinance, if an appeal has been made by has not been finally disposed by the Association before 23 September 2019, this Tribunal will handle the appeal as if it were an appeal made to the Tribunal, but this Tribunal must determine the appeal by reference to the applicable rules of the Association.

13. There is no dispute between the parties that the applicable basis and standard of review by this Tribunal are by way of a *de novo* hearing and determination on the merits and not simply by way of review (see e.g. *Li Wai Hung Cesario v. Administrative Appeals Board & Another* (unreported), CACV 250 of 2015, 15 June 2016 at paras 6.1 to 6.2, 7.6).

14. In the Working Manual of the Appeal Committee (December 2011) (the “**Manual**”), it is provided that, inter alia:

“3. Powers and duties of the Appeal Committee in respect of decision appealed against

(1) In determining an appeal against any decision, the Appeal Committee:

(a) shall assess and evaluate the decision of the [Committee];

(b) shall confirm, vary or reverse the decision and, where it reverses the decision, it shall substitute its own decision.

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12. Evidence

The Appeal Committee may proceed and act upon evidence given by affidavit provided that the Appeal Committee may require the attendance of any deponent to any such affidavit for such purpose of giving oral evidence and of being cross-examined, unless the Appeal Committee can be satisfied that the deponent is absent from Hong Kong or is for any other good and sufficient reason unable to give evidence in person at the hearing. In such event, the Appeal Committee shall have power to admit such affidavit as evidence but shall have absolute discretion to give such weight to the affidavit as the Appeal Committee sees fit.”

15. Ms Tsui, Mr Chiu and Ever Fountain (through its authorised representative) filed affirmations and short witness statements in support of their appeals to this Tribunal. Neither the affirmations nor witness statements contained any substantive evidence, but merely referred to the Grounds of Appeal and the reliefs sought in the appeals. More significantly, none of the parties sought directions from this Tribunal for further information under section 6 of the Manual or requiring any of the witnesses to appear at the appeal hearing for cross-examination. That being the case, the Tribunal is left primarily with the materials placed before the Committee and the transcripts of their *viva voce* evidence.

16. As explained by the Court of Appeal in *Li Wai Hung Cesario* at §7.6:

“In an appeal on the merits, the appellant has to say why the decision below is wrong and the tribunal will address those grounds on appeal. But it does not follow from that that the tribunal is required to perform the task of a first instance decision maker afresh and set out its own findings and reasons for the decision. This is not how a tribunal works in reality. This is more so when the

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tribunal has rejected the grounds of appeal advanced by the appellant. If it disagrees with the finding of the decision-maker then it is expected to set out its own finding on a particular matter. But if it agrees with the finding, then it can simply adopt these findings as its own. Generally speaking, it is not even necessary for the Board to state that it confirms or adopts such finding. By saying, for example, the decision maker is not wrong on an issue, by implication, it must have confirmed or adopted the finding...”

17. We agree and would also add the following observations:

(1) In a case such as the present where the decision appealed against is premised upon findings of disputed fact by the decision-maker below, and the decision-maker had the benefit of seeing and hearing the witnesses and made findings as to credibility, an appellate body not having the same benefit would be slow to disturb such findings in the absence of clear or palpable error.

(2) An appellate body, having before it only the transcripts of the evidence, is plainly handicapped in evaluating the credibility of the witnesses who appeared before the decision-maker below. Much time and ink has been expended by Mr Pun SC⁶, counsel for the appellants, in his English opening submissions (comprising some 60 pages of single space type) in forensically analysing the evidence, including the transcripts of the Disciplinary Hearing, and criticising every aspect of Ms Liang’s evidence and the Committee’s reasons for accepting her evidence over that of Ms Tsui and Mr Chiu. As the Court of Appeal have emphasised on numerous occasions, such

⁶ Appearing together with Mr Lee Siu Him

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attempts to “nit-pick” at the evidence and the Decision are rarely fruitful or helpful to an appellate tribunal.

(3) The carriage of the appeal and the burden of showing that the Committee’s decision was wrong rest squarely on the Appellants. It is for the Appellants, if they wish this Tribunal to reassess *de novo* the credibility and evidence of the witnesses, to seek directions from the Tribunal for them to attend before the Tribunal and be made available for cross-examination. It is for the Tribunal then to decide whether to allow such evidence, which will depend significantly on the nature of the decision appealed against and the grounds of appeal. However, without a proper opportunity for the Tribunal to form its own assessment, it will to a large extent be constrained by the assessments and findings of credibility made by the Committee below. The evaluation of evidence is a multi-faceted and holistic exercise, and arguments that the Committee should have given more weight to the consistencies of one aspect of the evidence as opposed to inconsistencies of another are of little moment in the absence of clear or palpable error below.

18. The question for the Tribunal, therefore, is whether the Appellants have demonstrated such clear or palpable errors by the Committee.

D. The Issues before this Tribunal

19. The Tribunal respectfully adopts (with minor modifications) the summary of issues in the Opening submissions of Ms Queenie Lau, counsel for the Authority, as follows:

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(1) Issue 1: Did the Committee err with respect to the standard of proof by failing to have regard to certain inherently improbable matters in Ms Liang’s evidence as compared to the Appellant’s evidence?

(2) Issue 2: Did the Committee fail to consider, either sufficiently or at all, alleged inconsistencies in Ms Liang’s evidence?

(3) Issue 3: Did the Committee fail to consider, either sufficiently or at all, the alleged sudden improvement in Ms Liang’s memory?

(4) Issue 4: Did the Committee fail to give sufficient reasons?

20. In summary, the Appellants contend that the Committee failed to apply the proper standard of proof, failed to sufficiently consider the fact that Ms Liang’s evidence had entirely or substantially overturned most of the complaints in her letters of complaint, failed to sufficiently analyse and cast doubts on Ms Liang’s new allegations and failed to or to sufficiently consider the Appellants’ evidence. It is said that the Decision thus amounted to a “structural failing” and is blatantly wrong. Moreover, the Appellants contend that the Decision did not contain or contain sufficient reasons.

21. On the other hand, the Authority submits that none of the matters complained of by the Appellants are meritorious or justify the appeal being allowed.

Issue 1: Standard of Proof and Allegedly Inherently Improbable Matters

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22. It should be mentioned at the outset that the Committee recognised in the Decision that the standard of proof in disciplinary proceedings is the civil standard, namely, on the balance of probabilities. That is, of course, correct. However, as Mr Pun SC stresses, it is also important to have regard to the well-established principle that the more serious the act or omission alleged, the more inherently improbable it must be regarded, and thus the more compelling the evidence needed to prove it (see e.g. *Re a Solicitor v Law Society of Hong Kong* [2008] 2 HKLRD 576). It is plain from the Decision that the Committee has made findings of dishonesty against both Ms Tsui and Mr Chiu. There can be no real dispute that these are findings of serious misconduct.

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23. The first complaint by the Appellants relates to Ms Liang's evidence that she was told by Ms Tsui that there was no risk of investment loss under the Policy. The Appellants contend that it is improbable that Ms Liang, having received tertiary level education, had investment experience in setting up companies, investment in real estate funds and being the administrative director of a building materials company, would have believed that there was no risk of loss, and that after 25 years, she would be guaranteed a substantial return.

24. We agree with the Authority's submission that this is not necessarily implausible given that there are well-known investment products that offer guaranteed returns. Further, as the Authority points out, another reading of Ms Liang's evidence is that Ms Tsui was merely commenting on a successful past track record. It cannot be said that it is so implausible that the Committee could not accept Ms Liang's evidence in this regard.

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25. The next complaint is that it was incredible that Mr Liang would have believed that she only needed to make 3 years of premium payments before she would be entitled to the very substantial amounts set out a schedule of estimated returns in the policy documentation. However, as pointed out by the Authority, there is no evidence that she had actually read the schedule at the time. As the Tribunal noted and was entitled to accept, Ms Liang adopted a rather casual attitude to her investments and relied upon the advice of others.

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26. Mr Pun SC also points to the Policy application form which specifically provided that the premium payment period was 25 years and that there was a minimum payment period of 10 years. Hence, it should have been clear to Ms Liang that the premium period could not have been just 3 years. As the Authority submits, this inconsistency was pointed out to Ms Liang in cross-examination, and she explained that she asked Ms Tsui about the reference to 25 years, who then confirmed that she only had to make payments for 3 years and to leave her money with AXA for 25 years. Ms Liang may have been naïve to believe Ms Tsui’s explanation, but that is not the point here. The point is whether Ms Tsui misrepresented the position to her. In any event, this is at best a forensic point to be weighed in assessing Ms Liang’s overall credibility and cannot show that the Committee was plainly wrong in its assessment of her evidence.

27. All of the above matters were considered and weighed by the Committee in its overall assessment of Ms Liang’s credibility and in reaching the conclusion that her evidence was to be preferred to that of Ms Tsui and Mr Chiu. There is nothing here to militate this Tribunal coming to a different conclusion, nor is there sufficient basis

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here to suggest that the Committee failed to apply the correct standard of proof.

Alleged Inconsistencies in Ms Liang's Evidence

28. As mentioned above, one of the complaints made by Ms Liang, which was found to have been proved, was that she was asked to sign, without proper explanation, a Third Party Authorisation Form at or immediately after the June 29 Meeting.

29. However, there can be no serious dispute that there were shifts in Ms Liang's evidence on this issue. For instance, in a meeting with the Association on 7 July 2015, she said that she remembered well that Ms Tsui specifically requested her to sign a Third Party Authorisation Form, but in a letter dated 5 November 2015, she said she was unsure whether she in fact signed such a form. There was also confusion in her oral evidence at the Disciplinary Hearing as to her recollection concerning the authorisation.

30. Significantly, in correspondence dated 25 November 2014 and 3 January 2017, AXA confirmed with the Association that it never received any Third Party Authorisation Form. Such evidence was not challenged by the Association. However, as Mr Pun SC points out, no mention was made by the Committee of this undisputed confirmation from AXA in the Decision.

31. In response, Ms Lau submits that a fair reading of the totality of Ms Liang's evidence is that she thought she signed a Third Party Authorisation Form, but could not be absolutely sure since the events had taken place some time ago, bearing in mind also that she signed

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a number of documents at the time. In any event, the findings of misconduct against the Appellants “*did not depend on proof that Ms Tsui pressured Ms Liang to sign*” the Third Party Authorisation Form. The form was not “*at all material to the crux of the matter*”.

32. In our view, with all due respect to the Committee, its failure to address in the Decision the undisputed representation from AXA that it never received any Third Party Authorisation Form, especially when viewed against Ms Liang’s lack of certainty in her recollection as to whether she signed it (which as Mr Pun SC, pointed out, was not touched upon by the Committee), was a serious error. Whilst we accept that this issue was perhaps not the most important complaint in the case against the Appellants, we disagree with Ms Lau that it was not at all material to the crux of the matter. Indeed, the Committee made an express finding against the Appellants on this issue, which contributed to the Committee’s findings of breach of the relevant codes and regulations.

33. In the circumstances, we are compelled to overturn the Committee’s findings in this regard. The significance of this to the overall appeal will be considered further below.

34. The next ground relied upon by the Appellants relates to Ms Liang’s complaint against Mr Chiu and Ever Fountain for failing to provide the login details to view her Policy directly to Ms Liang, but rather through Ms Yu. As mentioned above, although the Committee included this allegation in its summary of complaints against Mr Chiu and Ever Fountain, the same is not found in the Notices of Disciplinary Proceedings against the 2nd and 3rd Appellants dated 7 December 2016.

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35. More importantly, it appears that AXA had in fact sent an email directly to Ms Liang concerning her login details, and as the Authority notes, Ms Liang accepted before the Committee that it was possible that AXA had emailed her the login details, but she never received it or simply overlooked the same. Ultimately, the Committee made no findings against the Appellants in respect of this allegation, nor did it feature in the Committee’s findings of breach against the Appellants. Although we believe that the Committee was wrong to include this allegation in its summary of complaints against the Appellants given that it was not contained in the Notifications, the Authority is correct that this allegation was a minor one and not the crux of the Association’s case against the Appellants. In our view, nothing turns on this point.

36. The next ground is perhaps the Appellants’ strongest ground, and this relates to the issue of Ms Liang’s immigration entry slip. We respectfully adopt the Authority’s summary of the issue (with some minor modifications) as follows:

- (1) Ms Liang’s evidence is that towards the end of her meeting with Ms Tsui, she informed her that she could not sign the Policy without a valid immigration entry slip – she having apparently discarded her first entry slip. As a result, Ms Liang decided to do a further round trip to and from the Mainland that very day in order to obtain a valid immigration entry slip.
- (2) Ms Liang said that she never returned to AXA’s offices to sign any documents after obtaining her new immigration entry slip, nor was she subsequently ever asked to sign a copy of her

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passport with the immigration entry slip while she was back in the Mainland. As mentioned above, Ms Liang’s evidence was that she passed the slip to Ms Yu to submit to AXA or Ever Fountain.

(3) However, the copy of Ms Liang’s passport which Mr Chiu produced before the Committee (which he said was obtained from AXA and was not seriously challenged) contains an immigration entry slip dated 29 June 2013. This document was signed by both Ms Liang and Mr Chiu next to a chop of Ever Fountain and a chopped date of 29 June 2013. The document was also “verified” as a “true copy” by AXA as evidenced by AXA’s chop with a date of “29-6-2013” and signed by one Cheri Leung on behalf of AXA (the “**AXA Document**”).

(4) The Appellants thus contend that as forgery was not alleged by the Association, the most likely inference is that Ms Chiu’s copy of Ms Liang’s passport containing the immigration entry slip was signed during the June 29 Meeting, given that the documents were immediately handed over to AXA for processing. Further, the Appellants contends that the natural inference would be that Mr Chiu was in fact present during the sales process, there being no reason why Mr Chiu would refuse to meet with Ms Liang if he were around AXA’s offices that day and signed the AXA Document.

(5) In addition to other alleged minor inconsistencies in Ms Liang’s evidence, Ms Liang’s account of her loss of her first immigration slip and further round trip to and from the

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Mainland to procure a new slip is wholly inconsistent with the existence and contents of the AXA Document.

37. Before considering the Authority’s response, we begin by examining the manner in which the Committee addressed this issue at paragraph 35 of the Decision (English translation):

“[The Appellants] spent a significant amount of time at the hearing to argue that [Ms Liang’s] account of the immigration entry slip was inconsistent with the truth. [The Appellants’] contention is that unless the AXA’s Cheri Leung produced a forged document, that is, signing on the copy without having inspected the original of the passport with the immigration slip, or otherwise, [Ms Liang’s] version of events does not make sense. Of course, as there are presently no allegations of forgery, the Committee cannot draw any adverse inferences against [the Appellants]. However, [the Appellants’] attack on [Ms Liang’s] credibility lacks sufficient basis for the reason that [Ms Liang] was not personally involved in the photocopying of the immigration entry slip. Of course, she is unable to explain why the photocopy has the immigration entry slip. On the one hand, [the Appellants] say that [Ms Liang] is deliberately using her entry into Hong Kong twice on the same day to support her version of events that she only stayed in AXA’s office for a few short hours, and rushed off after signing the documents. [The Appellants’] speculation does not have any basis. In any event, this Committee is of the view that the issue of the immigration entry slip is not an important point. Even if there are errors in [Ms Liang’s] recollection, this Committee does not believe that this adversely affects her credibility and reliability.”

38. In her submissions, Ms Lau fairly accepted that Ms Liang’s account does not explain how Mr Chiu came to be in possession of a photocopy of her passport including the immigration entry slip, i.e. the AXA Document. However, she contended that:

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(1) “Mr Chiu’s account is not convincing at all” since, curiously, the immigration entry slip is missing from a photocopy of Ms Liang’s passport (which was also signed by Ms Liang and Mr Chiu with a date chop of 29 June 2013) produced by Ever Fountain before the Committee (the “**Ever Fountain Document**”). The Ever Fountain Document does not contain AXA’s “Verified True Copy” chop or the signature of Cheri Leung. The Authority submits that “...there is no reason that Ms Liang and Mr Chiu would sign two copies of the same passport, one with the immigration slip and one without, during the same meeting”.

(2) Further, unless Ms Liang’s account is to be believed, there is no good explanation for why she would make a second round-trip to and from Mainland on the same day. It should be mentioned here that it is clear from Ms Liang’s immigration records that she first remained in Shenzhen for 36 minutes upon exiting Hong Kong the first time, then remained in Hong Kong for a further two hours, and then leaving Hong Kong at 9:13 pm.

(3) Finally, even if Ms Liang signed a copy of her passport which contained the immigration entry slip during her meeting with Ms Tsui, this “does not in fact prove that Mr Chiu was in the room during the sales process”. Mr Chiu’s signature on the document does not of itself show when the signature was signed. Mr Chiu could very well have signed on those documents after the conclusion of the sales process with only

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Ms Tsui present, before they were handed to AXA (which is the effect of Ms Liang's evidence).

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39. With respect to the Committee and Ms Lau's valiant submissions, we disagree that the difficulties concerning the immigration entry slip and Ms Liang's evidence in this regard can be so easily brushed aside as inconsequential or irrelevant:

(1) First of all, since there was no or no serious challenge to the AXA Document, it must be accepted as being an authentic document. There is nothing on the face of the document, which was verified as true and correct by an officer of the AXA, giving rise to any doubt as to its authenticity.

(2) Any allegations of forgery must be clearly and distinctly proved. If the Association wished to challenge the AXA Document, there is no apparent reason why it could not have adduced evidence from AXA or Cheris Leung. There is nothing to suggest any interest on the part of AXA in these proceedings, and thus, its evidence would naturally carry significant weight. The Authority could also have adduced evidence from AXA for the purposes of this appeal. However, neither the Association nor the Authority sought to do so. In the circumstances, it is in our view not open to the Authority to cast doubt on the authenticity of the AXA Document by speculating as to the alleged improbability of Ms Liang signing both the Ever Fountain Document and the AXA Document.

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(3) As to the Committee’s reasoning cited above, we disagree that the inconsistency of Ms Liang’s version of events with the AXA Document can be dismissed simply by the fact that she was not involved in the production of the document. Further, the relevance of Ms Liang’s evidence concerning the immigration slip extends beyond merely the length of her stay in Hong Kong.

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(4) Ms Liang’s evidence that she had discarded her first immigration slip and thus had to do a further round trip to the Mainland forms a significant part of her overall description of the events that transpired on 29 June 2013. This is not a minor matter that can be explained away by a memory slip. As the Authority rightly accepts, the AXA Document simply cannot be reconciled with Ms Liang’s version of events.

(5) More importantly, the AXA Document, at least on its face, lends powerful contemporaneous documentary support to (even if it does not prove conclusively) the Appellants’ case that Mr Chiu would have been present for the sale process (or at least a significant part of it). The legal burden was not on Mr Chiu to prove to the Association that he was present at June 29 Meeting, but rather for the Association to prove (despite the Declaration) that he was not and was thus in breach of the relevant code and regulations.

(6) As mentioned above, the allegation against Mr Chiu, namely, that he signed the Declaration knowing it to be untrue, is serious and plainly one of dishonesty. Indeed, the finding of

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dishonesty by the Committee is clear from the Decision itself.
Such a finding must be supported by compelling evidence.

(7) In our view, in the absence of any credible explanation as to inconsistency between the AXA Document and Ms Liang's evidence, it cannot be said that there is sufficiently compelling evidence to prove, on a balance of probabilities, that the Declaration signed by Mr Chiu was false, whether knowingly or otherwise. The Association and the Authority could have shed light on this mystery (if there ever was one) by calling evidence from AXA or Cheri Leung, which they chose not to do.

40. In the circumstances, we are satisfied that the Committee failed to give proper and due consideration to the AXA Document and its impact upon Ms Liang's evidence as a whole. This was a clear and palpable error on the part of the Committee such as to justify the intervention of this Tribunal. In our view, the finding by the Committee that Mr Chiu was not present at the June 29 Meeting cannot stand and must be set aside.

41. As Mr Chiu's absence from the June 29 Meeting was the main pillar of the Association's case against the Appellants, it follows that the complaint against Ms Tsui for dishonestly representing herself as Ever Fountain's representative also cannot be sustained. It is not alleged or suggested by the Association, or indeed the Authority, that Ms Tsui would be liable solely for participating in the sale process as Mr Chiu's assistant even if Mr Chiu were present.

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42. Finally, there is the allegation that Ms Tsui failed to explain properly to Ms Liang the terms of the Policy, including the premium payment term. Having regard to our findings above that there was no sufficient basis to show that Mr Chiu was absent or that Ms Liang was improperly asked to sign a Third Party Authorisation Form, in our view, this allegation also cannot safely be sustained. The dynamics of the June 29 Meeting would obviously have been very different from that alleged by Ms Liang. That being the case, the complaints against Ever Fountain for failure of supervision must also fail, and we set aside the Committee’s findings accordingly.

43. In the light of our findings above, it is unnecessary for us to address the other complaints by the Appellants as to the alleged inconsistencies in Ms Liang’s evidence. Suffice it to say that we are not persuaded that those complaints alone would have justified disturbing the Committee’s findings.

Issue 3: Did the Committee fail to consider, either sufficiently or at all, the alleged sudden improvement in Ms Liang’s memory?

44. Again, in the light of our findings above, it is unnecessary for us to address the Appellants’ complaints in this regard in any detail. Ms Lau also complains, rightly it seems, that some of the arguments now being made were never mentioned in the Notifications of Appeal. In any event, we do not believe that the forensic points raised as to the supposed improvements of Ms Liang’s memory at the Disciplinary Hearing would themselves have been sufficient to disturb the Committee’s findings.

Issue 4: Did the Committee fail to give sufficient reasons?

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45. As Ms Lau correctly submits, it is well established that a judge’s reasons should show that the judge has addressed the substantial issues before it and show why the court has come to its decision. There is no duty on the judge in giving reasons to deal with each and every argument presented by counsel (see e.g. *Tao Soh Ngun v HSBC International Trustee Ltd* [2018] HKCA 691, 11 October 2018 at §69 per Kwan JA).

46. Whilst the reasoning of the Committee was relatively brief in parts and did not address all of the arguments made or evidence adduced by the Appellants, but for the errors which we have found above, we would not have found that there were any grounds to set aside the Decision for failure to give sufficient reasons.

E. Conclusion and Costs

47. For the reasons above, we would allow these appeals, set aside the Decision and find that the complaints against the Appellants have not been substantiated.

48. It follows that we also set aside the Committee’s orders in the Sentencing and Costs Decision.

49. As to costs:

- (1) The Appellants are to have the costs of the Disciplinary Hearing, with certificate for counsel.

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(2) As to this appeal, although the Appellants have succeeded on the limited grounds above, the majority of the grounds set out in the lengthy grounds of appeal and submissions have been rejected. As explained above, it is unhelpful in an appeal of this nature to forensically “nit-pick” at the evidence and adopt a “no stone left unturned” approach on findings of credibility. We also agree with Ms Lau that much of Mr Pun SC’s contentions devoted to the Committee’s costs orders were not raised in the Notifications of Appeal and thus should not be allowed.

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(3) In the circumstances, we believe that it would be fair to apportion costs. Adopting a broad-brushed approach, we would order that the Appellants are to have 50% of their costs of this appeal, with certificate for one counsel.

50. Last but not least, the Chairman apologises sincerely for the delay in issuing this Decision, the responsibility for which rests entirely with him alone. The Committee would also like to thank both teams of counsel for their helpful assistance.

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(Mr Douglas Lam Tak Yip, SC)
Chairman, Insurance Appeals Tribunal

(Ms Julienne Jen)
Member

(Dr Samuel Yung Wing Ki)
Member

