SPC Guiding Case No. 146: Case of Chen Qinghao, Chen Shujuan, and Zhao Yanhai for Operating a Gambling House

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 29, 2020.

Keywords

Criminal / crime of operating a gambling house / "binary options" / gambling website

Holding

Where, in the name of "binary options" trading, a person recruits "investors" over the internet outside statutory futures trading venues, takes the future price trend of a foreign exchange product over a period of time as the trading object, determines profit or loss according to "betting on a rise" or "betting on a fall," so that "investors" who bet correctly on the direction of the rise or fall profit while those who bet incorrectly lose their principal to the website (the banker), and the profit or loss result is not linked to the actual magnitude of the price rise or fall, this is in essence "betting on big or small and gambling on winning or losing," that is, a gambling act dressed in the guise of options trading. The relevant website should be determined to be a gambling website.

Basic Facts

In June 2016, Beijing Longhui Lianchuang Education Technology Co., Ltd. ("Longhui Company") was established to provide customer training, customer maintenance, and customer development services for the operation of the Longhui website, with Zhou Xikun as the actual controller behind the scenes. Zhou Xikun used Shanghai Maixi Business Consulting Co., Ltd. to hire lecturers, managers, customer service personnel, and other staff, and falsely used the payment accounts of Shanghai Zheli Network Technology Co., Ltd. and others with Zhifu Electronic Payment Co., Ltd. to receive the registered trading funds of members nationwide.

The Longhui website operated "binary options" trading as its business, and recruited members to participate in gambling by way of "betting on a rise" or "betting on a fall." After members registered and topped up their accounts on the Longhui website, they downloaded and installed market quotation receiving software and a self-made plug-in of the Longhui website, selected a foreign exchange trading product, and selected an expiration time ranging from 1M (minute) to 60M, placed an order for the trading amount, and clicked the "bet on a rise" or "bet on a fall" button to complete the transaction. After placing the bet, the trading content could not be changed, and profits could not be taken and losses could not be stopped; if one bet correctly on the direction of the rise or fall, one could profit 76 percent to 78 percent of the trading amount, while if one bet incorrectly on the direction, the entire principal would be lost, and the profit or loss situation was not linked to the actual magnitude of the rise or fall of the foreign exchange. The Longhui website established a tiered broker system and a corresponding commission system, with tiered brokers including six grades from SB silver grade to PB platinum three-star grade. By the time of the crime, the Longhui website had approximately 100,000 members nationwide.

In January 2017, Chen Qinghao was hired by Zhou Xikun as a consultant and market director, engaging in the coordination and management of daily affairs, maintaining the relationship between the Longhui website and senior brokers, attending "training sessions" and "briefing sessions" and promoting the Longhui "binary options," developing members, and expanding the market. In January 2016, Chen Shujuan registered an account on the Longhui website and, by developing members, once became a PB platinum one-star broker

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with more than 17,000 member accounts under her. In February 2016, Zhao Yanhai registered an account on the Longhui website and, by developing members, once became a PB platinum-grade broker with more than 8,000 member accounts under him. According to the forensic accounting appraisal by Jiangxi Dazhong Forensic Appraisal Center, from January 1, 2017 to July 5, 2017, Chen Shujuan withdrew USD 180,975.04 from the Longhui website, and Zhao Yanhai withdrew USD 11,598.11. On July 5, 2017, Chen Qinghao, Chen Shujuan, and Zhao Yanhai were arrested. After Chen Qinghao was brought to justice, he returned RMB 350,000 of illegal gains on August 8, 2017.

Judgment

On March 22, 2019, the Ji'an Intermediate People's Court of Jiangxi Province rendered the criminal judgment (2018) Gan 08 Xing Chu No. 21, sentencing defendant Chen Qinghao to three years of fixed-term imprisonment and a fine of RMB 500,000 for the crime of operating a gambling house, with deportation; defendant Chen Shujuan to two years of fixed-term imprisonment and a fine of RMB 300,000 for the crime of gambling; defendant Zhao Yanhai to one year and ten months of fixed-term imprisonment and a fine of RMB 200,000 for the crime of gambling; and continuing to recover the illegal gains of defendants Chen Shujuan and Zhao Yanhai. After the judgment was pronounced, Chen Qinghao and Chen Shujuan appealed. On September 26, 2019, the Jiangxi Provincial Higher People's Court rendered the criminal judgment (2019) Gan Xing Zhong No. 93, changing the sentence of appellant Chen Qinghao to two years and six months of fixed-term imprisonment and a fine of RMB 500,000 for the crime of operating a gambling house, with deportation; sentencing appellant Chen Shujuan to two years of fixed-term imprisonment and a fine of RMB 300,000 for the crime of operating a gambling house; sentencing defendant Zhao Yanhai to one year and ten months of fixed-term imprisonment and a fine of RMB 200,000 for the crime of operating a gambling house; and continuing to recover the illegal gains of Chen Shujuan and Zhao Yanhai.

Reasoning

The court's effective judgment held that, according to Articles 1, 4, and 6 of the Regulations on the Administration of Futures Trading as revised by the State Council in 2017, an option contract refers to a standardized contract uniformly formulated by a futures trading venue that stipulates the buyer's right to buy or sell the agreed underlying asset at a specific price at a future time. Futures trading shall be conducted at statutory futures trading venues such as futures exchanges, and futures trading outside futures trading venues is prohibited. Without approval by the State Council or the futures regulatory authority under the State Council, no unit or individual may organize futures trading in any form. In short, an option is a financial product that takes the price of products such as stocks and futures as its underlying asset and is traded at statutory futures trading venues; during the trading process, the transfer of the rights of both buyers and sellers must be completed, and it has the function of hedging price risks and serving the real economy.

The trading method of the Longhui "binary options" was to download market quotation receiving software and a self-made plug-in of the Longhui website; members selected a foreign exchange product and a time period, and clicked the "bet on a rise" or "bet on a fall" button to complete the transaction. Betting correctly on the direction of the rise or fall would yield a profit of 76 percent to 78 percent of the trading amount, while betting incorrectly would cause the principal to belong to the website (the banker), and the profit or loss result was unrelated to the magnitude of the rise or fall of the foreign exchange trading product. In essence, it took the future price trend of foreign exchange, stocks, and other products over a period of time as the trading object, and used the rise or fall of the underlying price trend to determine the property gains or losses of traders; the trading price and profit or loss magnitude were determined in advance, the profit or loss result was not linked to the actual magnitude of the price rise or fall, traders had no link of exercising or transferring rights, and the trading result had the characteristics of contingency, speculation, and aleatory risk. Therefore, the Longhui "binary options" was essentially the same as the gambling act of "betting on big or small and gambling on winning or losing," and was in substance a wagering arrangement between the online platform and investors, a gambling act dressed in the guise of options.

Defendant Chen Qinghao served as the market director for the China region at Longhui Company, engaged in the coordination and management of daily affairs, maintained the relationship between the company and brokers, attended briefing sessions and training sessions in various places and promoted the Longhui "binary options," and developed new members and expanded new markets, which satisfied the act prescribed in Article 2 of the Opinions of the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security on Several Issues Concerning the Application of Law in the Handling of Online Gambling Crime Cases (the "Opinions") of knowing that the website was a gambling website yet providing services such as advertising placement and member development for it, thereby constituting the crime of operating a gambling house; and his illegal gains had reached more than five times the amount of "collecting service fees of RMB 20,000 or more" prescribed in Article 2 of the Opinions, so it should be determined that he operated the gambling house with "serious circumstances." However, considering his criminal facts, the nature of his acts, his status and role in the joint crime, and the mitigating sentencing circumstances, his term of imprisonment was reduced as appropriate while the fine was maintained in accordance with law. Chen Shujuan and Zhao Yanhai recruited gamblers from the public to participate in gambling, which constituted acting as agents for the gambling website and accepting bets, and their acts were organized, continuous, and open, constituting the crime of operating a gambling house and reaching "serious circumstances." The original judgment's determination of the offenses of Chen Shujuan and Zhao Yanhai was improper; the court of second instance changed their offenses in accordance with law, but pursuant to the principle of no increase in punishment on appeal, maintained the first-instance sentencing against them.

Relevant Legal Provisions

Article 303 of the Criminal Law of the People's Republic of China.

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