

IN THE MATTER OF

A Complaint made under Section 34(1)(a) of the Professional Accountants Ordinance (Cap.50) ("the PAO") and referred to the Disciplinary Committee under Section 33(3) of the PAO

BETWEEN

The Registrar of the Hong Kong Institute of
Certified Public Accountants COMPLAINANT

AND

Mr. Tip Tze Wai Andy
Membership No. F02689 RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants ("the Institute")

Members: Mr. Ko Ming Tung Edward (Chairman)
Ms. Chow Man Ling Irene
Ms. Hui Ming Ming Cindi
Mr. Clementson Rex Alexander
Mr. Tsang Tin For

ORDER

Upon reading the complaint against MR. YIP TZE WAI ANDY, a certified public accountant, as set out in a letter from the Registrar of the Hong Kong Institute of Certified Public Accountants ("the Complainant") dated 6 December 2012, the written submissions of the Complainant and Respondent dated 31 July 2013 and 16 August 2013 respectively, and the relevant documents, the Disciplinary Committee is satisfied by the documentary evidence adduced before it that the following Complaint is proved:

Section 34(1)(a)(x) of the PAO applies to the Respondent in that between 11 August 2009 and 7 September 2009, knowing or having reasonable grounds to believe that property, namely the sum of US\$239,033.75, in whole or in part directly or indirectly represented the proceeds of an indictable offence, he dealt with the said property.

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COMPLAINANT

AND

Mr. Yip Tze Wai Andy
Membership No. F02689

RESPONDENT

ORDER

Dated the 2nd day of October 2013

The Disciplinary Committee ORDERS that:-

1. the name of the Respondent be removed from the register of certified public accountants for a period of four years on the 42th day from the date of this order under Section 35(1)(a) of the PAO; and
2. the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$35,351 under section 35(1)(iii) of the PAO.

Dated the 2nd day of October 2013

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REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants ("the Institute") against Mr. Yip Tze Wai Andy as the Respondent, a certified public accountant. Section 34(1)(a)(x) of the PAO applied to the Respondent.
2. The particulars of the Complaint as set out in a letter dated 6 December 2012 ("the Complaint") from the Registrar to the Council of the Institute for consideration of referring the Complaint to the Disciplinary Panels, are as follows:-

- (1) On 8 December 2011, the Institute received a letter dated 5 December 2011 from Yip reporting his conviction of the offence of "Dealing with property known or believed to represent proceeds of indictable offence" in the case of DCCC1211/2010.
- (2) Yip was convicted, after trial, of dealing with property known or reasonably believed to represent the proceeds of an indictable offence, contrary to section 25(1) and (3) of the Organized and Serious Crimes Ordinance (Cap 455). He was sentenced to imprisonment for 2 years and 9 months. His co-defendant, Ms. Chiu Mei-ling ("Chiu") was also convicted of the same offence and sentenced to 9 months imprisonment, but with the sentence being suspended for 2 years.
- (3) Yip appealed against his conviction and sentence. The appeal was dismissed by the Court of Appeal on 18 May 2012. Yip was at all material times a practising member of the Institute. He was one of the two partners of a CPA firm formerly known as Yip, Ng & Company'. He has also established a consultancy company named Pro-Vision Corporate Services Limited ("Pro-Vision") which was partly owned and managed by his aunt.
- (4) In July 2009, Yip set up a company named Thomas Moore Limited ("TML") under the instruction of a client named Mr. Chris Combe ("Combe").
- (5) The company secretary of TML was Pro-Vision. The nominee director of TML was Chiu, a friend of Yip and the second defendant in the criminal case.
- (6) In early August 2009, under Yip's instructions, Chiu opened a company bank account for TML with Standard Chartered Bank ("SCB"). Chiu was the account's sole authorized signatory. The bank correspondence were sent to TML's registered address which was the same as the address of Yip's CPA firm.
- (7) Between 11 August and 7 September 2009, there were 5 offshore deposits amounting to US\$239,033.75 transferred into TML's SCB account. These offshore funds were proceeds of an indictable offence.
- (8) In early September 2009, under Yip's instructions, Chiu made several attempts to transfer some of the money held in TML's SCB account to a bank account in Indonesia. Yip was arrested on 17 September 2009.

- (9) The District Court considered that based on Yip's prior experience with Combe, he should have reasons to believe that funds generated by TML represented proceeds from indictable offence. In particular, Yip had previously set up another company named Scott Fitzgerald Limited ("SFL") for Combe. The Prosecution provided evidence showing that in handling the business affairs of SFL, Yip had received letters from the Hong Kong Securities and Futures Commission ("SFC") in July and August 2008 warning that SFL was operating illegal investment activities and that Yip should submit to SFC all information relating to SFL and cease providing services for this company.
- (10) Yip was charged with one charge of "Dealing with property known or believed to represent proceeds of indictable offence". In *HKSAR v Lai Kam Yee Teresa* [2010] 4HKLRD 165, the Court of Appeal considered the elements of the offence. In proving the charge, the prosecution did not have to prove that the property in question was in fact the proceeds of an indictable offence. As for the state of mind of a defendant, it would be enough if a defendant either knew that the property was the proceeds of an indictable offence, or that he had "reasonable grounds to believe" that the property to be the proceeds of an indictable offence. The Court agreed that this offence was meant to be harsh.
- (11) When the court determines whether a defendant has "reasonable grounds to believe", it has to take into account two factors. The first is an objective one, i.e. whether a reasonable person with common sense and in his right thinking will think that the circumstances suffice to cause him to believe that the money is the proceeds of an indictable offence. The second is a subjective one, i.e. whether the defendant knows the existence of those circumstances that will cause him to believe that the money is the proceeds of an indictable offence.
- (12) If the prosecution can prove the above two factors, the court is entitled to find that the defendant has the requisite state of mind for the charge. The prosecution does not have to prove that the defendant "actually believes" that the money involved represents the proceeds of an indictable offence.
- (13) It was mentioned by the prosecution in the present case that they did not intend to prove that Yip actually knew that the proceeds in the SCB account were proceeds of indictable offences. Instead, they contended that Yip had "reasonable grounds to believe" that they were. The Court of Appeal dismissed Yip's appeal because it agreed with the reasoning of the District Court, i.e. that Yip had reasonable grounds to believe that the funds transferred into the SCB account represented proceeds from indictable offence, and that without Yip's cooperation, the bank transfers could not have happened, as Chiu only acted upon Yip's directions.

3. The Respondent admitted the Complaint against him. He did not dispute the facts as set out in the Complaint. The parties agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
4. On 11 July 2013, the Clerk to the Disciplinary Committee (“DC”), under the direction of the DC, informed the parties that they should make written submissions to the DC as to the sanctions and costs and that the DC would not hold a hearing on sanctions and costs unless otherwise requested by the parties.
5. The Complainant and the Respondent made submissions on 31st July 2013 and 16th August 2013 respectively.
6. Since a confirmation was signed by the Respondent dated 4th January 2013 that he admitted the Complaint, anything said in the Respondent’s submission dated 16th August 2013 amounting to denial of the offence was disregarded.
7. The Guideline to Disciplinary Committees for Determining Disciplinary Orders was issued in November 2002 and revised lately in February 2011. The starting point for a breach under section 34(1)(a)(x) is a reprimand. There are also guidelines to consider aggravating and mitigating factors. It emphasizes these are guidelines, not a tariff.
8. The Complainant submitted that the Respondent be removed from the Register is warranted.
9. In fact, most of the respondents involved in a section 34(1)(a)(x) breach were removed from the Register. The most similar case (“the similar case”) submitted by the Complainant is to remove the respondent therein permanently.
10. The money involved in this case is much less than the similar case. The Respondent has no benefit at all (perhaps except his professional fee charged). The duration of the offence was relatively short.
11. In considering the proper order to be made in this case, the DC has had regard to all the aforesaid matters, including the particulars in support of the Complaint, the Respondent's personal circumstances, and the conduct of the Complainant and the Respondent throughout the proceedings.

12. The DC orders that:-

- 1) the name of the Respondent be removed from the register of certified public accountants for 4 years, to take effect on the 42th day from the date of this order under section 35(1)(a) of the PAO; and
- 2) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$35,351 under section 35(1)(iii) of the PAO.

Dated the 2nd day of October 2013

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