

IN THE MATTER OF

A complaint under section 34(1A) of the
Professional Accountants Ordinance, Cap.50

BETWEEN

Registrar of the Hong Kong
Institute of Certified Public
Accountants

COMPLAINANT

AND

The Respondent

RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants.

Members :

REASONS FOR DECISION

Background

1. These proceedings were initiated by a complaint letter dated 19th November 2012 submitted by the Registrar of the Hong Kong Institute of Certified Public Accountants (“HKICPA”) to the Council of the HKICPA setting out, inter alia, the background and complaints against the Respondent, a certified public accountant. Apparently, the complaints were lodged as a result of the provision by the Independent Commission Against Corruption (“ICAC”) of a copy of its Operations Review Committee Report Summary (“Report”) on the Respondent containing a recommendation that the Report should be forwarded to the President of HKICPA for consideration of taking any

administrative or disciplinary actions against the Respondent.

2. The Report disclosed that ICAC had investigated Madam X (“[X]”), a consultant engaged by [Company A] (“[Company A]”) over allegations that she may have offered advantages to the Respondent and Madam Y (“[Y]”) for the latter turning a blind eye to the falsified records of [Company A]. The Respondent and [Y] were at the material time, respectively the senior manager and assistant manager of [a CPA firm] tasked with the assignment of preparing an Accountant’s Report for [Company A]’s Initial Public Offering (“IPO”) on the Hong Kong Stock Exchange (“HKSE”). On [Date], [Company A] was successfully listed on the Main Board of HKSE (stock code:xxx). After the listing, [the CPA firm] had been retained by [Company A] to audit its accounts.
3. On 20th February 2010, the Respondent had received two packets from [X] containing cash of \$300,000 and \$100,000, respectively. The Respondent subsequently handed over the packet containing \$100,000 to [Y]. On 24th February 2010, [Y] voluntarily reported the matter to [the CPA firm] and handed the money over to [the CPA firm]. Following an investigation by [the CPA firm], the Respondent admitted that he had received two cash sums of \$300,000 and \$100,000 from [X] as bonuses for the successful listing of [Company A]. Upon request, the Respondent surrendered the \$300,000 to [the CPA firm]. Upon re-examining the [Company A] accounts, [the CPA firm] found that [Company A] may have furnished false or misleading information in relation to its financial position in the prospectus for the IPO. The ICAC investigation revealed no evidence to suggest that there had been any misconduct on the part of the Respondent or [Y] in preparing the Accountant’s Report for the IPO.
4. On 1st April 2010, the ICAC arrested the Respondent and charged him with offering an advantage to an agent ([Y]) and accepting an advantage from an agent ([X]) contrary to section 9 of the Prevention of Bribery Ordinance. On 28th April 2011, after trial in the District Court in Case No. DCCC [XXX], the Respondent was acquitted of both charges. On 28th December 2011, HKICPA sent a letter of enquiry to the Respondent requesting for his representation on the matter and the Respondent replied on 20th January 2012.

Relevant Professional Standards

5. The extracts of the Code of Ethics for Professional Accountants (issued December 2005) (“Code”) relevant to these proceedings read as follows :-

“100.4 A professional accountant is required to comply with the following fundamental principles :

(a) Integrity

A professional accountant should be straightforward and honest in all professional and business relationships.

...

(e) Professional Behaviour

A professional accountant should comply with relevant laws and regulations and should avoid any action that discredits the profession.”

“150.1 The principle of professional behaviour imposes an obligation on professional accountants to comply with relevant laws and regulations and avoid any action that may bring discredit to the profession. This includes actions which a reasonable and informed third party, having knowledge of all relevant information, would conclude negatively affects the good reputation of the profession.”

“260.1 A professional accountant in public practice ... may be offered gifts and hospitality from a client. Such an offer ordinarily gives rise to threats to compliance with the fundamental principles. For example, self-interest threats to objectivity may be created if a gift from a client is accepted; intimidation threats to objectivity may result from the possibility of such offers being made public.”

“260.3 If evaluated threats are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in public practice should not accept such an offer.”

“290.213 Accepting gifts or hospitality from an assurance client may create self-interest and familiarity threats. When a firm or a member of the assurance team accepts gifts or hospitality, unless the value is clearly insignificant, the threats to independence cannot be reduced to an acceptable level by the application of any safeguard. Consequently, a firm or a member of the assurance team should not accept such gifts or hospitality.”

“411.2 If a member acquires knowledge indicating that his employer or someone

acting on behalf of his employer may have been guilty of some default or unlawful act he should normally raise the matter with management internally at an appropriate level.”

The Complaints

6. The original complaints against the Respondent as set out in the Registrar’s said letter dated 19th November 2012 are as follows :-

First Complaint

Section 34(1)(a)(vi) of the Professional Accountants Ordinances (“PAO”) applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a Fundamental Principle, namely section 100.4(e) “Professional Behaviour” of the Code and section 150.1 “Professional Behaviour” of the Code by not reporting to [the CPA firm] management that [X] had offered reward monies and/or that he and [Y] had received reward monies of HK\$300,000 and HK\$100,000, respectively.

Second Complaint (alternative to First Complaint)

Section 34(1)(a)(viii) of the PAO applies to the Respondent in that his failure to report that [X] had offered reward monies and/or that he and [Y] had received reward monies of HK\$300,000 and HK\$100,000, respectively amounted to professional misconduct.

Third Complaint

Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a Fundamental Principle, namely section 100.4(a) “Integrity” of the Code when he denied knowledge of [the CPA firm] staff accepting money from [Company A] when that was, in fact, untrue.

The Proceedings

7. By a letter dated 1st March 2013 from the clerk to this Committee to both the Complainant and the Respondent, both parties were notified of the commencement of these proceedings and were given incidental information and documents. The Complainant was required to submit his case by 2nd April 2013 and the Respondent was required to submit his by 2nd May 2013.

8. By a letter dated 2nd April 2013 to the clerk of this Committee, both parties made a joint application to this Committee for variation of procedures in these proceedings (namely, that the procedures set out in Rules 17 to 30 of the Disciplinary Committee Proceedings Rules (“DCPR”) be dispensed with) and for amendment of the First and Third Complaints. Further, the parties confirmed that the Respondent had admitted both amended Complaints against him on the basis of the Respondent’s Admitted Facts enclosed under that letter.
9. As a result, this Committee made an order approving the application to amend the First and Third Complaints and dispensing with the procedures set out in Rules 17 to 30 of the DCPR and requiring both parties to make written submissions as to sanctions and costs within 21 days from 29th April 2013. The parties were duly notified of the above orders by a letter dated 29th April 2013 from the clerk of this Committee to the parties. Both parties filed their respective submissions on sanctions and costs on 20th May 2013.

Amended Complaints and Admitted Facts

10. The amended Complaints now read as follows :-

Amended First Complaint

Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a Fundamental Principle, namely section 100.4(e) “Professional Behaviour” of the Code and section 150.1 “Professional Behaviour” of the Code by not reporting to [the CPA firm] management or other appropriate authorities such as the Police or ICAC that he had received from [X] reward monies of HK\$300,000 and HK\$100,000, for himself and his immediate subordinate, respectively.

Amended Third Complaint

Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he had failed or neglected to observe, maintain or otherwise apply a Fundamental Principle, namely section 100.4(a) “Integrity” of the Code when he denied knowledge of [the CPA firm] staff receiving money from [Company A] when that was, in fact, untrue.

11. The Respondent’s Admitted Facts were set out in a document entitled “RESPONDENT’S ADMITTED FACTS” submitted to this Committee under the joint application mentioned in paragraph 8 above and is appended hereto for the sake of easy

reference.

Findings

12. This Committee noted that neither the Respondent nor the Complainant had requested for an oral hearing on sanction and costs in these proceedings. In fact, the Respondent specifically confirmed that he did not request for an oral hearing by a letter dated 20th May 2013 from his legal representative to this Committee, which enclosed the Respondent's written submissions as to sanctions and costs in these proceedings. After considering all relevant papers submitted to this Committee in these proceedings including the Registrar's complaints, the Reasons for Verdict in Case No. DCCC [XXX] and the transcript of evidence given at the trial of that case, the Amended Complaints, the Respondent's Admitted Facts and the submissions made by both the Complainant and the Respondent, this Committee (with one member dissenting) made the following findings and order :-

- (i) This Committee found Amended First Complaint and Amended Third Complaint set out in paragraph 10 above proved upon the admission of the Respondent; and
- (ii) Second Complaint, as set out in paragraph 6 above, being the alternative to the First Amended Complaint, will remain on HKICPA's record and is not to be proceeded with without an order from either the Court of First Instance or the Court of Appeal.

Sanctions

13. Having read the Respondent's Admitted Facts and the undisputed facts as revealed in the Reasons for Verdict and the transcript of evidence for Case No. DCCC [XXX] setting out the circumstances under which the Respondent received the advantages offered by [X] and offered advantage to [Y] and his subsequent behaviours and having considered that the Respondent had went through the turmoil of defending Case No. DCCC [XXX] in which he was eventually found not guilty of both charges and the fact that he still had to face these proceedings afterwards, this Committee considered that it was unfortunate for the Respondent.

14. As far as the Amended First Complaint is concerned, it is not a case where the Respondent had done nothing to report. He did report to his immediate supervising partner in [the CPA firm] after receipt of reward monies but she acted indifferently.

The complaint the Respondent now faced is that he had not done enough to report. It is therefore a matter of degree. One member of this Committee took the view that the Respondent had done enough by reporting the matter to his immediate supervising partner and he should not be expected to do more in the circumstances. This Committee noted the Respondent's explanation that some channels to report were not appropriate in the circumstances. However, considering further reporting actions available to the Respondent that he could have taken and the Respondent's own admission to the complaint (as he, as a professional accountant, was in the best position to judge whether he had done enough in the circumstances), this Committee (with one member dissenting) found him guilty of the First Amended Complaint but took the view that he fell short of passing the relevant standard only by a narrow margin.

15. After considering all relevant circumstances, including the circumstances under which the Respondent committed the acts being complaint of and other mitigating factors (including the clear record of the Respondent), this Committee (with one member dissenting) saw fit to impose a fine of HK\$1.00 in respect of the Amended First Complaint in addition to imposing a reprimand against the Respondent. One member of this Committee also opined that the Respondent's culpability under this complaint was relatively minor and another more culpable person in the whole matter as revealed in the evidence before this Committee should have been pursued.
16. As regards the Amended Third Complaint, it was clear that the Respondent was not honest when he denied knowledge of [the CPA firm] staff receiving money from [Company A] when interviewed by the Risk Management Partner of [the CPA firm]. However, one chooses not to be truthful for a lot of different reasons. The Respondent's excuse here was that he was trying to protect his immediate subordinate. One member of this Committee took the view that the Respondent's denial of knowledge was understandable and should be excused in the circumstances and he was therefore not in breach of the applicable professional standard or principle. Yet, a lie is a lie. This cannot be tolerated and to excuse a lie would mean encouraging further lies be made in future. Professional accountants are expected to upkeep an appropriate standard of honesty and integrity in all professional and business relationships (section 100.4(a) of the Code). This Committee (with one member dissenting) therefore found the Respondent guilty of the Amended Third Complaint and saw fit to impose a fine of HK\$20,000.00 as sanction in addition to imposing a reprimand. However, considering nature of the complaint (that the Respondent was responding to somebody internally within [the CPA firm] instead of to an outside person or a client of [the CPA firm]), the Respondent's response was spontaneous, the clear record of the Respondent, the reasons for the Respondent's denial, and other mitigating factors submitted by his legal

representative, this Committee (with one member dissenting) would reduce the fine to HK\$10,000.00.

17. In summary, this Committee (with one member dissenting) would impose the following sanctions against the Respondent :-

- (i) the Respondent be reprimanded and fined HK\$1.00 in respect of the Amended First Complaint;
- (ii) the Respondent be reprimanded and fined HK\$10,000 in respect of the Amended Third Complaint; and
- (iii) the above orders are to take effect on the 45th day of this order pursuant to section 35(1) of the PAO.

Costs

18. Under section 35(1)(iii) of PAO, this Committee has a very wide discretion in making any order for costs. After considering the nature and merits of the complaints against the Respondent, the conduct of the present proceedings including the conduct of Respondent in trying to save costs and the time of this Committee and the current financial background of the Respondent, this Committee unanimously rules that the Respondent should only pay the Complainant a sum of HK\$21,606.00 (being 1/3 of the total costs of HK\$64,818.00 submitted by the Complainant) as costs of these proceedings. Such payment to be made on or before the day the order in paragraph 17 takes effect.

Dated this 23rd day of July 2013.