

IN THE MATTER OF

A Complaint made under section 34(1)(a) and section 34(1A) of the Professional Accountants Ordinance (Cap. 50) (“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

The Respondent

RESPONDENT

Members:

REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (“the Institute”) as Complainant against the Respondent, who is a certified public accountant. Section 34(1)(a)(x) of the PAO applied to the Respondent.
2. Section 34(1)(a)(x) of the PAO provides that a complaint against a certified public accountant being guilty of dishonourable conduct shall be made to the Registrar of the Institute who shall submit the complaint to the Council of the Institute which may refer the complaint to the Disciplinary Panels.
3. Section 34(2) of the PAO defines “dishonourable conduct” as follows:-

“ ... an act or omission of a certified public accountant, whether or not in the course of carrying out professional work or as a certified public accountant, which would reasonably be regarded as bringing or likely to bring discredit upon the certified public accountant himself, the Institute or the accountancy profession.”

4. The particulars of the Complaint as set out in a letter dated 8 April 2013 (“the Complaint”) from the Registrar of the Institute to the Council of the Institute for consideration of the Complaint for referral to the Disciplinary Panels include the following:-
 - (1) On 9 July 2012, the Respondent was arrested by the police inside an MTR station for taking underskirt photos of an unknown female using a mobile phone. Further examination of the Respondent’s mobile phone showed inappropriate photos of 35 females.
 - (2) The Respondent was charged with 20 charges of “Behaving in a Disorderly Manner in a Public Place” and was sentenced to an imprisonment term of 4 months. In sentencing, the Magistrate took into account the Respondent’s clear record and guilty plea, but also noted the multiplicity of the offences.
 - (3) As the Respondent’s convictions and the nature of the offences of which the Respondent was convicted brought discredit upon himself, he was guilty of dishonourable conduct under Section 34(1)(a)(x) of the PAO.
5. By a signed Confirmation dated 16 May 2013, the Respondent admitted the Complaint against him. He did not dispute the facts as set out in the Complaint. He agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
6. By a letter dated 27 August 2013 addressed to the Complainant and the Respondent, 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.
7. The Complainant and the Respondent made submissions to the DC on sanctions and costs by letters dated 9 September 2013 and 16 September 2013 respectively. No request for a hearing on sanctions and costs has been made by the parties.
8. In the Complainant’s submissions on sanctions and costs, the Complainant referred the DC to the following comments made by the learned Magistrate when sentencing the Respondent:

“[Underskirt photos] are serious offences. Regrettably they are prevalent offences. ... in the 15 months I have sat in Eastern Magistracy, this is one of the most prevalent offences and this is one of the worst that has come before me during that period of time.” (words in square brackets added)
9. The Complainant also submitted that in arriving at this conclusion, the learned Magistrate had taken into account the fact that there was an element of

premeditation on the part of the Respondent as he had downloaded a specific phone application that enabled him to take photographs without detection and that the Respondent was found to have taken 201 underskirt photos of 35 unidentified females over a period spanning over two weeks.

10. The Complainant invited the DC to consider making an order that the Respondent be temporarily removed from the register of certified public accountants for a period which the DC considers appropriate and the Respondent do pay the costs of the Complainant, and the costs of the DC.
11. In his submissions on sanctions and costs, the Respondent expressed his deep remorse to his dishonourable actions and agreed to be responsible for the costs incurred regarding these proceedings. The Respondent however invited the DC to consider his financial situation in making the orders on sanctions and costs.
12. The DC agrees with the submissions of the Complainant on sanctions that the appropriate sanction shall be removal of the Respondent from the register of certified public accountants for a period of time. In considering the length of time for such removal, the DC has regard to the fact that there was an element of premeditation in the Respondent offences. Further, the Respondent's offence was not a single isolated offence. The learned Magistrate in his Reasons for Sentence stated:-

“I find there are aggravating features in this case from the ordinary case ... First, the fact that this is a multiple offender, this is not a single isolated offence. According to the Admitted Facts, 35 different females had photographs taken of them; there was altogether on the phone 201 photographs resulting in the 20 charges which spanned a 2-week period.” (underlining added)

13. On the other hand, in considering the sanctions, the DC takes into account that the Respondent has admitted the Complaint at an early stage of the proceedings and he has expressed remorse for his conduct.
14. As regards costs, the Complainant has set out in the Statement of Costs that costs and expenses of and incidental to the proceedings are in the sum of HK\$19,976. The Respondent in his submission did not dispute such sum, but has invited the DC to consider partial exemption of the costs incurred or a deferred payment in the light of his financial situation. Having read the aforesaid Statement of Costs, the DC considers that the costs and expenses submitted by the Complainant are reasonable. The DC also agrees with the Complainant's submission that as the costs incurred by the Complainant and the DC in the proceedings are financed by membership subscription and registration fees, it will be unfair to the members if they have to fund the costs of these proceedings which arise as a result of the dishonourable conduct of the Respondent, and as such the DC allows such costs in full.

15. 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 and the conduct of the Complainant and the Respondent throughout the proceedings.
16. The DC orders that:-
 - (1) the name of the Respondent be removed from the register of certified public accountants for 12 months and such removal to take effect 40 days from the date hereof 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\$19,976 under section 35(1)(iii) of the PAO.

Dated the 27th day of November 2013

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BETWEEN

The 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 ("the Institute").

Members:

ORDER

Upon reading the complaint against [the Respondent], being a certified public accountant, as set out in a letter from the Registrar of the Institute ("the Complainant") dated 8 April 2013, the confirmation of admission of the Complaint by the Respondent dated 16 May 2013, the written submission of the Complainant dated 9 September 2013 and the written submission of the Respondent dated 16 September 2013, the Disciplinary Committee is satisfied by the admission of the Respondent and the evidence adduced before it that the following complaints are proved:

Section 34(1)(a)(x) of the Professional Accountants Ordinance applies to the Respondent in that the Respondent was guilty of dishonourable conduct as a result of his conviction of 20 charges of behaving in a disorderly manner in a public place and he was sentenced to an imprisonment term of 4 months.

IT IS ORDERED that:-

1. the name of the Respondent be removed from the register of certified public accountants for 12 months and such removal to take effect 40 days from the date hereof 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\$19,976 under section 35(1)(iii) of the PAO.

Dated the 27th day of November 2013