

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

The Respondent

RESPONDENT

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

Members:

REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (“the Institute”) against [the Respondent] as the Respondent, a certified public accountant. Section 34(1)(a)(vi) of the PAO applied to the Respondent.
2. The particulars of the Complaint as set out in a letter dated 10 April 2013 (“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 21 September 2012, it came to the Institute's attention that [the Firm] ("[the Firm]") (firm no. [xxxx]) had provided fee information at its website's homepage (www.[xxxxxxx].com.hk) ("[the Firm]'s Homepage") in breach of section 450 of the Code of Ethics for Professional Accountants (February 2012 Revision) (the "Code").
- (2) [The Firm] is a sole proprietor firm owned by [the Respondent].

RELEVANT PROFESSIONAL STANDARDS

- (3) Section 450 of the Code states:

"450.5 Members to whom this section applies will be held responsible for the form and content of any advertisement, publicity, or solicitation, whether undertaken personally or by another person or organisation on behalf of the member or his practice. Any practice promotion activity or material relating to a member or member practice shall be presumed, subject to proof by the member to the contrary, to have been issued (in the form in which it was issued) with his authority.

450.17 As the "Homepage" of a website of a member or member practice is considered analogous to a newspaper advertisement, it is not allowed to contain any references to scale charges or amounts of fees. However, information on scale charges or amounts of fees contained in a separate file on the website which is linked to "Homepage" is allowed as the user is required to act to gain access to such information by clicking the relevant "icon" on the "Homepage"."

THE COMPLAINT

- (4) Section 34(1)(a)(vi) of the Professional Accountants Ordinance applies to [the Respondent] in that, as the sole proprietor, he had failed or neglected to observe, maintain or otherwise apply a professional standard namely section 450 "Practice Promotion" of the Code in that [the Firm]'s Homepage contained information on fees.

FACTS AND CIRCUMSTANCES IN SUPPORT OF THE COMPLAINT

- (5) [The Firm]'s Homepage had contained the following information:

" 成立香港有限公司 (Translation: Incorporation of Hong Kong Limited Company)
HK\$2,000" (underline added)

- (6) On 8 October 2012, the Institute wrote to [the Respondent] seeking his representations.

(7) In his response to the Institute dated 10 October 2012, [the Respondent] did not deny the transgression and apologized for "the careless mistake". By way of explanation, [the Respondent] wrote:

"Refer to your letter on 8 Oct 2012 to us regarding the website issue, we feel very sorry for this careless mistake. After the year 2008 event, we outsource the company web design and maintenance work to third party companies. Since we don't have browse our own company website time by time, this minor issue was overlooked carelessly."

(8) [The Respondent] further confirmed that immediate corrective action had been taken and provided the Institute with the latest print out of Eden's Homepage which showed the removal of all fee information.

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 5 September 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. Both parties have since put in their written submissions. Neither party requests for a hearing.
5. The Disciplinary Committee have carefully considered the Respondent's case that he had outsourced the company web design and maintenance work to third party companies, but hold the view that it is the duty of the Respondent to supervise the contractor's work. In any event, information in respect of the Respondent's scale charge could only have come from the Respondent. This accordingly does not amount to a mitigating factor.
6. The Disciplinary Committee gives weight to the fact that the Respondent has a record of improper practice promotion in 2008 which resulted in the Council issuing to the Respondent a letter of disapproval.
7. The Disciplinary Committee has nevertheless taken into account the fact that a formal hearing was dispensed with upon the Respondent's admission to the complaints which saved time and costs. The Respondent did take immediate corrective action. Further, the Respondent also agrees to pay the costs and expenses of and incidental to the proceedings.
8. Taking into account all the circumstances, the Disciplinary Committee regards that the appropriate disciplinary order is for the Respondent to be reprimanded.
9. On the question of cost, the Disciplinary Committee shall allow HK\$23,481 for the professional work of the complainant's legal advisor, the Institute's staff cost and clerk to the Disciplinary Committee and photocopying charges.

10. The Disciplinary Committee orders that :-

1. The Respondent be reprimanded under Section 35(1)(b) of the Professional Accountants Ordinance.
2. The Respondent do pay the allowed costs and expenses of and incidental to the proceedings in the sum of HK\$23,481 under Section 35(1)(iii) of the Professional Accountants Ordinance within 14 days of this Order.

Dated the 11th day of November 2013

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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

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], 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 10 April 2013, the written submissions of the Complainant and the Respondent dated 9 and 16 September 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)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard namely section 450 "Practice Promotion" of the Code in that [the Firm]'s homepage contained information on fees. [The Respondent] is the sole proprietor of [the Firm].

The Disciplinary Committee ORDERS that:-

1. The Respondent be reprimanded under Section 35(1)(b) of the PAO;
2. The Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$23,481 under Section 35(1)(iii) of the PAO within 14 days of this Order.

Dated the 11th day of November 2013