

IN THE MATTER OF

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

BETWEEN

An Investigation Committee of
the Hong Kong Institute of
Certified Public Accountants

COMPLAINANT

AND

The Respondent

RESPONDENT

REASONS FOR DECISION

1. This is a complaint made by an Investigation Committee 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)(vi) of the PAO applied to the Respondent.
2. The particulars of the Complaint as set out in a letter dated 28 August 2013 (“the Complaint”) from the Investigation Committee to the Council of the Institute for consideration of the Complaint for referral to the Disciplinary Panels were as follows:-

(a) *First Complaint*

Section 34(1)(a)(viii) of the PAO applies to the Respondent in that she was guilty of professional misconduct whilst holding a position of an accounting manager of Company A.

(b) *Second Complaint (Alternative to First Complaint)*

Section 34(1)(a)(vi) of the PAO applies to the Respondent in that whilst holding a position of accounting manager of Company A, she failed or neglected to observe, maintain or otherwise apply professional standards, namely:

- (i) paragraph 4 of Statement 1.200 "Professional Ethics - Explanatory Foreword" (*Revised April 1999 and September 2004 (name change)*);
 - (ii) paragraph 2 of Statement 1.290C "Professional Ethics - Unlawful Acts or Defaults By or On Behalf of a Member's Employer" (*Issued January 1998; revised September 2004 (name change)*); and
 - (iii) paragraph 5 of Statement 1.291 Professional Ethics - The Ethical Responsibilities of Members in Business (*Issued January 1998; revised September 2004 (name change)*).
3. The Respondent admitted the Second Complaint (an Alternative to the First Complaint) against her. She did not dispute the facts as set out in the Complaint. She agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
4. By a letter dated 14 July 2014 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.
5. (a) The DC noted that it is only required to decide on the sanctions against the Respondent on the Second Complaint and will not be treating this case as a "professional misconduct" case.
- (b) In the present case, the Respondent was an accounting manager who claimed she acted under and in accordance with orders from the financial controller and the head of the Treasury Department.
- (c) Nevertheless, the Respondent's silence and failure to take any action was incompatible with the professional ethical expectations placed upon a member of the Institute. Under the then applicable Statement 1.200, a member should follow the Institute's ethical requirements and in this instance, the Respondent failed to comply with the following ethical requirements:
- (i) Under Statement 1.290C, if a member acquires knowledge indicating that her employer or someone acting on behalf of her employer may have been guilty of some default or unlawful act, she should raise the matter with management internally at an appropriate level. If her concerns are not satisfactorily resolve, she should report the matter either to non-executive directors or make a report to a third party. In this case, the Respondent failed to report her employer's unlawful acts to an appropriate level of management or to the relevant third party authorities.
 - (ii) Under Statement 1.291, a member in business should not knowingly mislead or misrepresent facts to others and should use due care to avoid doing so unintentionally. In this case, the Respondent was aware that

the information provided to the auditors was either misrepresented or false and she did not do anything to rectify the situation.

- (d) The fact that the Respondent assisted as a prosecution witness at the criminal trial by giving evidence under immunity suggests that she might most probably be a participant in the fraud and did not just fail to blow the whistle.
- (e) Based on the above, the Respondent failed to comply with the Institute's ethical requirements under Statement 1.200, Statement 1.290C and Statement 1.291. The circumstances surrounding the Respondent's breaches of the Institute's aforesaid ethical requirements suggest that her breaches of the Institute's ethical requirements were of the most serious kind. The DC is of the view that a removal order is inevitable.
- (f) The DC however is sympathetic towards the Respondent's financial circumstances and therefore is not going to impose any monetary penalty against her and proposes to only impose a removal order for 24 months.

6. The DC orders that:-

- (a) the name of the Respondent be removed from the register of certified public accountants for 24 months effective from 42 days from the date hereof under section 35(1)(a) of the PAO; and
- (b) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$20,352 under section 35(1)(iii) of the PAO.

Dated the 30th day of October 2014

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

BETWEEN

An Investigation Committee 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 an Investigation Committee of the Institute ("the Complainant") dated 28 August 2013, the written submissions of the Respondent dated 8 and 20 August 2014, the written submissions of the Complainant dated 12 and 29 August 2014, and other relevant documents, the Disciplinary Committee is satisfied by the admission of the Respondent and the evidence adduced before it that the following complaint is proved:

Section 34 (1)(a)(vi) of the PAO applies to the Respondent in that whilst holding a position of accounting manager of Company A, she failed or neglected to observe, maintain or otherwise apply professional standards, namely:

- (i) paragraph 4 of Statement 1.200 "Professional Ethics – Explanatory Foreword" (*Revised April 1999 and September 2004 (name change)*);
- (ii) paragraph 2 of Statement 1.290C "Professional Ethics – Unlawful Acts or Defaults By or On Behalf of a Member's Employer" (*Issued January 1998; revised September 2004 (name change)*); and
- (iii) paragraph 5 of Statement 1.291 Professional Ethics – The Ethical Responsibilities of Members in Business (*Issued January 1998; revised September 2004 (name change)*).

IT IS ORDERED that:-

1. the name of the Respondent be removed from the register of certified public accountants for 24 months effective from 42 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\$20,352 under section 35(1)(iii) of the PAO.

Dated the 30th day of October 2014