

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

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 (practising). Sections 34(1)(a)(vi), 34(1)(a)(iii)(B) and 34(1)(a)(viii) of the PAO applied to the Respondent.
2. The particulars of the Complaint as set out in a letter dated 5 February 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 were as follows:-
 - (a) The Institute received a letter from the Law Society of Hong Kong (“LawSoc”) dated 9 March 2012 lodging a complaint against the Respondent for failure to report non-compliance with the Solicitors’ Accounts Rules (“SAR”) by a firm of solicitors (“the Solicitor’s Firm”).
 - (b) On 16 November 2011, the Respondent issued an Accountant’s Report under the Accountant’s Report Rules (“ARR”) to the LawSoc on the client’s accounts of the Solicitor’s Firm for the 12 months ended 31 March 2011 (“Accountant’s Report”). In the Accountant’s Report, the

Respondent reported (in accordance with the format prescribed in ARR) that :

“ In compliance with section 8 of the Legal Practitioners Ordinance and the Accountant’s Report Rules, I have examined the books, accounts and documents of the firm produced to me and I certify that from my examination and from the explanations and information given to me :

- (1) I am satisfied that during the accounting period the firm has complied with the provisions of the Solicitor’s Accounts Rules, except for trivial breaches due to the clerical errors or mistakes in book-keeping, all of which were rectified on discovery and which I am satisfied did not result in any loss to any client.
 - (2) I am not aware of any matter which appears to affect adversely any client account or any trust money held by the firm to a material extent.”
- (c) The LawSoc subsequently discovered that the Solicitor’s Firm could not provide any client’s ledgers, client’s cashbooks, monthly and client bank reconciliations statement, and office cash books and ledgers of the relevant period. The LawSoc therefore concluded that there were breaches of Rule 10 (Obligation to Keep Accounts) of the SAR by the Solicitor’s Firm.
- (d) The LawSoc did not regard the Solicitor’s Firm’s failures to keep proper books and records as “trivial breaches due to clerical errors or mistakes in book-keeping “. In addition, the statement made in the Accountant’s Report by the Respondent that “ all of which were rectified on discovery “ was not true. The Council of the LawSoc rejected the Accountant’s Report on the ground that it was not prepared in compliance with Rule 4 of the ARR.
- (e) First Complaint : Section 34(1)(a)(vi) of the PAO applies to the Respondent in that the Respondent failed or neglected to observe, maintain or otherwise apply professional standards, namely, paragraphs 100.5(c), 110.2 and 130 of the Code, when issuing an Accountant's Report under the Accountant's Report Rules.
- (f) Second Complaint : Section 34(1)(a)(iii)(B) of the PAO applies to the Respondent in that the Respondent, in respect of the books, accounts and documents of the Solicitor's Firm produced to him, made statements which were material and which he knew to be false or did not believe to be true.
- (g) Third Complaint : Section 34(1)(a)(viii) of the PAO applies to the Respondent in that he was guilty of professional misconduct, by reason of the above complaints.

3. 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.
4. By a letter dated 12 September 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.
5. 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. Also, the DC takes the view that the Respondent has committed serious professional misconduct.
6. The DC orders that :-
 - 1) the Respondent be reprimanded under section 35(1)(b) of the PAO;
 - 2) the Respondent pay a penalty of HK\$30,000.00 under section 35(1)(c) of the PAO; and
 - 3) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$34,980.00 under section 35(1)(iii) of the PAO.

Dated the 7th day of January 2014

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BETWEEN

The Registrar of the Hong Kong
Institute of Certified Public
Accountants

COMPLAINANT

AND

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 (practising), as set out in a letter from the Registrar of the Institute ("the Complainant") dated 5 February 2013, the written submission of the Respondent dated 2 October 2013, the written submission of the Complainant dated 17 September 2013 and other relevant documents, the Disciplinary Committee is satisfied by the admission of the Respondent and the evidence adduced before it that the following complaints are proved:

- 1st Complaint: Section 34(1)(a)(vi) of the PAO applies to the Respondent in that the Respondent failed or neglected to observe, maintain or otherwise apply professional standards, namely, paragraphs 100.5(c), 110.2 and 130 of the Code, when issuing an Accountant's Report under the Accountant's Report Rules.
- 2nd Complaint: Section 34(1)(a)(iii)(B) of the PAO applies to the Respondent in that the Respondent, in respect of the books, accounts and documents of the Solicitor's Firm produced to him, made statements which were material and which he knew to be

false or did not believe to be true.

3rd Complaint: Section 34(1)(a)(viii) of the PAO applies to the Respondent in that he was guilty of professional misconduct, by reason of the above complaints.

IT IS ORDERED that:-

1. the Respondent be reprimanded under section 35(1)(b) of the PAO;
2. the Respondent pay a penalty of HK\$30,000.00 under section 35(1)(c) of the PAO;
3. the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$34,980.00 under section 35(1)(iii) of the PAO.

Dated the 7th day of January 2014