

IN THE MATTER OF

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

BETWEEN

The Practice Review Committee of the
Hong Kong Institute of
Certified Public Accountants

COMPLAINANT

AND

Mr. Lam Kin Kun Arthur
Membership No. F05360

RESPONDENT

ORDER & REASONING

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

Members: Ms. Queenie Fiona Lau (Chairman)
Mr. Kan Siu Lun
Mr. Ng Chi Keung Victor
Mr. Tsang Tin For

Date of Hearing: 8 June 2016

Date of Order and Reasoning:

1. This is a complaint made by the Practice Review Committee (the “**PRC**”) of the the Hong Kong Institute of Certified Public Accountants (the “**Institute**”) against Mr. Lam Kin Kun Arthur (the “**Respondent**”), a practising certified public accountant, pursuant to section 34(1)(a)(v) of the Professional Accountants Ordinance (Cap. 50) (the “**PAO**”). The PRC complains that the Respondent, without reasonable excuse, failed or neglected to comply with a direction issued by the PRC under section 32F(2)(b) of the PAO.
2. The PRC brought the complaint against the Respondent by a letter to the Council of the Institute dated 24 August 2015.

3. On or about 26 January 2016, the PRC filed its Case.

Relevant provisions

4. Section 34(1)(a)(v) of the Ordinance provides for complaints where a certificated public accountant, *“without reasonable excuse, failed or neglected to comply with any direction issued under section 32F(2) and with which he was required by the Practice Review Committee to comply”*.
5. Pursuant to section 32F(2)(b) of the PAO, the PRC *“may issue directions relating to the matter in dispute to such practice unit or the reviewer concerned and require such unit or reviewer to comply with them”*.

Background

6. Under Part IVA of the PAO, the Institute is empowered to carry out practice reviews in respect of practice units.
7. The PRC is a statutory committee set up under section 32A of the PAO, and is responsible for exercising the statutory powers and duties in relation to practice reviews.
8. The practice reviewers, being staff members of the Quality Assurance Department of the Institute, assist and report to the PRC in carrying out those statutory powers and duties.
9. The Respondent was the sole proprietor of Arthur Lam & Co. By a letter dated 24 January 2014, Arthur Lam & Co. was notified that it was selected for a practice review. The letter explained the process and requirements of a practice review.
10. According to the Institute's records, the firm Arthur Lam & Co. was deregistered on 24 February 2014 and the Respondent practises in his own name on a part-time basis. As such, the Respondent was notified that a practice review was to be performed on his own name practice (the **“Practice”**).
11. The practice review was initially scheduled to take place in April 2014, but was subsequently postponed to 3 June 2014 as the Respondent explained that he needed to undergo surgery.

However, the review did not take place on 3 June 2014 either as the Respondent was absent from his office due to sickness.

12. Despite numerous requests during the period from June to September 2014, the Respondent did not provide the reviewer with a confirmed date for the review visit. Consequently, on 30 September 2014, the PRC issued a direction to the Respondent under section 32F(2)(b) of the PAO that the Respondent shall:

(1) co-operate with the Quality Assurance Department; and

(2) make himself available for a practice review visit to be carried out from 21 to 23 October 2014.

(the “**Direction**”)

13. The Respondent confirmed that he was available for the practice review on 21 to 23 October 2014.

14. The reviewer visited the Respondent’s registered office as scheduled, but was informed by the Respondent that the audit working papers were not kept in the office. The Respondent agreed that the working papers would be delivered to the reviewer at a later date, but did not provide a reasonable excuse to explain why those documents could not be made available at the time of the visit, especially when he had been reminded of the review requirements.

15. Despite repeated reminders from October 2014 to March 2015, the Respondent continued to fail to provide the working papers which were necessary for a review to be carried out on the Practice.

16. The matter was reported back to the PRC which considered that the Respondent had failed to comply with its direction to co-operate with the reviewer to enable a practice review to be carried out.

17. The PRC complains in these proceedings that the Respondent, without reasonable excuse, failed or neglected to comply with the Direction, which was issued by the PRC under section 32F(2)(b) of the PAO.

Facts and circumstances in support of the Complaint

18. The PRC issued the Direction lawfully under section 32F(2)(b) of the PAO, and failure or neglect to comply with such a direction without reasonable excuse is a disciplinable offence under section 34(1)(a)(v) of the PAO.
19. As stated above, in response to the Direction, the Respondent had confirmed that he was available for the practice review on 21 to 23 October 2014.
20. However, although the Respondent was present at the practice review on 21 October 2014, he did not enable the reviewer to carry out a practice review in accordance with Statement 1.401 *“Practice Review Review Procedures and Conduct of Members”*. He failed to make his working papers available for the review. In particular, according to paragraph 13 of Statement 1.401, a practice review entails an examination or a review of a practice unit’s system of quality control which includes a review of working papers of audit, assurance and related services engagements to determine whether professional standards are being or have been observed, maintained or applied by the practice unit. Further, the powers of the reviewer(s) are set out in section 32E of the PAO.
21. Further, despite numerous reminders from October 2014 to March 2015, the Respondent continued to ignore the reviewer’s request and failed to provide the relevant working papers which were necessary for a review to be carried out on the Practice.
22. The matter was reported back to the PRC which considered that the Respondent failed to comply with the Direction by failing to co-operate with the reviewer for the purpose of the practice review.

The proceedings

23. After the PRC filed its Case dated 26 January 2016, the Respondent did not file any Case in response to the complaint against him.
24. There is however a letter dated 19 August 2015 from the Respondent to the Institute, which is the Respondent’s letter upon being invited to make submissions under Rule 5 of the Disciplinary Committee Proceedings Rules. In that letter, the Respondent put forward his explanation for his difficulties in responding to the PRC and enclosed some medical receipts and medical documents. In that letter, the Respondent claimed that he had medical difficulties, and in particular:

- (1) In early May 2014, he had “surgery for cutting the gallstone”.
- (2) During the first quarter of 2015, he saw a doctor for mental depression.
25. The Respondent also asserted in his letter dated 19 August 2015 that since 2014 to date, he has been transferring clients to others. He stated that he knows it is unacceptable not to cooperate with the PRC, and asked for a chance to cooperate with the PRC.
26. On the morning that the hearing of these proceedings that was due to take place, namely 8 June 2016, by an email of the same date sent at 8:17am, the Respondent wrote to the PRC apologising for informing the PRC so late, and stating that he could not attend the hearing that day. He requested that the PRC forward the message to the Disciplinary Committee.
27. Having considered the Respondent’s email dated 8 June 2016, by a letter of the same date, the Disciplinary Committee stated that it considered that the Respondent had been adequately notified of the date of the substantive hearing, and noted that the Respondent had not provided any reasons for not attending the hearing and offering his representations on the complaint before the Committee. The Disciplinary Committee therefore directed that the proceedings would continue as scheduled.
28. The hearing of these proceedings was held on 8 June 2016 at 2:30pm.

Conflict of interest

29. By a letter dated 24 May 2016, the PRC had written to the Disciplinary Committee, copied to the Respondent, stating that they had learnt that two Disciplinary Committee members, Mr. Fung Wei Lung, Brian (“**Mr. Fung**”) and Mr. Tsang Tin For (“**Mr. Tsang**”), are involved in another set of ongoing disciplinary proceedings (i.e. Case no. D-13-801F). In those proceedings, Mr. Tsang is acting as the Panel B member of the Disciplinary Committee in which Mr. Fung is acting as the Respondents’ expert witness who gave evidence at the substantive hearing held in May 2016. As at the date of the PRC’s letter, a decision was still pending by that Disciplinary Committee. The PRC emphasised that it had absolute trust and confidence in the integrity of both panel members, but that there remained a perceived conflict of interest that would affect both the present proceedings and the other set of proceedings, which concerns the PRC. The PRC invited both panel members to consider whether they would be minded to step down as Disciplinary

Committee members in this set of proceedings so as to avoid any potential future criticisms, and proposed that the substantive hearing scheduled for 8 June 2016 be postponed to a later date until replacement members have been appointed.

30. As stated in the Disciplinary Committee's letter of the same date, the Disciplinary Committee considers that the perceived conflict of interest would only arise if both Mr. Fung and Mr. Tsang are on the Disciplinary Committee in the present case. Mr. Fung had kindly offered to step down, and although the Disciplinary Committee had no concern about Mr. Fung and Mr. Tsang's ability to act impartially, solely in order to avoid any perceived conflict of interest, the Disciplinary Committee agreed that Mr. Brian Fung would step down. There was no reason why Mr. Tsang could not continue as a Committee member and for the hearing to proceed on 8 June 2016 as scheduled.
31. The Disciplinary Committee would take this opportunity to emphasise that in its view, it is not desirable to have to postpone any hearings, especially not substantive hearings. Thus, best efforts and practical approaches should be taken to enable hearings to proceed as scheduled as far as possible.

Decision

32. There can be no dispute that the Respondent failed or neglected to comply with the Direction that was issued by the PRC under section 32F(2)(b) of the PAO. In particular, not only did the Respondent fail to have the appropriate documents available at the practice review scheduled for 21 October 2014, since then he has continued to fail to cooperate and/or to provide the relevant documents.
33. The only question that arises is whether the Respondent had any reasonable excuse in failing to comply with the Direction.
34. The Disciplinary Committee notes the Respondent's letter dated 19 August 2015 and the enclosures thereto. However, even taking the matters stated therein at their highest, the Disciplinary Committee does not accept that they provide any reasonable excuse for the Respondent's failure to comply with the Direction.
- (1) The surgery in May 2014 took place several months before the issuance of the Direction dated 30 September 2014, and whilst the surgery may have been relevant to the first postponement

of the practice review from April 2014 to 3 June 2014, the Respondent has not sought to explain how it is relevant to the present complaint or the Direction.

- (2) The Respondent's explanations in his letter dated 19 August 2015 do not cover the entire period that he failed to comply with the Direction.
- (3) The documents adduced by the Respondent do not show that the severity of the Respondent's medical condition was such that he could not gather documents and/or procure anyone to assist him in gathering the relevant documents for the practice review, or that he could not otherwise comply with the practice review. For example, the receipts showing that the Respondent attended medical consultations at the MIND PRO Psychological Medicine Centre on 24 January 2015 and 31 January 2015 only refer to the fact of the consultations, and do not show either the diagnosis or the severity of the Respondent's condition.

35. In the premises, the Disciplinary Committee finds that the complaint against the Respondent has been proved.

36. The PRC correctly acknowledged that the Disciplinary Committee has discretion in respect of the question of sanctions and that the Disciplinary Committee is not bound by past decisions. At the same time, the PRC has drawn the Committee's attention to four previous cases:

- (1) D-13-0818P, with the Disciplinary Committee order being dated 11 September 2015;
- (2) D-11-0541C, with the Disciplinary Committee order being dated 12 August 2013;
- (3) D-09-0373C, with the Disciplinary Committee order being dated 30 August 2010; and
- (4) D-08-0336C, with the Disciplinary Committee order being dated 30 November 2009 and the decision dated 18 December 2009.

37. In D-13-0818P, the respondent was found to have, without reasonable excuse, failed or neglected to comply with a direction issued by the PRC under section 32F(2) of the PAO. He was ordered to cooperate with the Institute to complete a practice review on his practice within 4 months from the date of the order, and if he failed to meet that condition, his name would be removed from the register of certified public accountants ("CPAs") for six months. He was also ordered to pay a

penalty of HK\$60,000.00 and costs in the sum of HK\$223,468.00. The Respondent complied with the practice review and his name was therefore not removed from the register of CPAs.

- (1) The facts of D-13-0818P were special. Although the respondent refused to accommodate the practice review, he explained his reasons as recorded at paragraph 7 of that decision. In particular, the respondent was very concerned about whether the Institute had made known to its members its stance in its submissions to the Court of Appeal in a case where the respondent's appeal against a Disciplinary Committee's decision and order in 2009 was dismissed (the "Concern"). See paragraph 7(b) of the decision.
- (2) As recorded in paragraph 11 of that decision, the respondent had written to the Council (after being invited to make submissions under Rule 5 of the Disciplinary Committee Proceedings Rules) stating that if his Concern was addressed, he would comply with the practice review.
- (3) The PRC submitted that the facts of D-13-0818P are very different to the present one in light of that respondent being essentially concerned about a matter of principle, namely the Concern, and because that respondent had made clear that he would comply with the practice review once that matter of principle had been resolved. Unlike the Respondent, the respondent in D-13-0818P actively participated in the proceedings and also attended the hearing.
- (4) Further, even though there was an order for a conditional removal from the register of CPAs in D-13-0818P, the PRC has submitted that in the present case, a similar order would not be appropriate as the Respondent has already asked for time extensions for the practice review twice before yet failed to comply, and there is therefore considerable doubt as to whether he would comply even now.

38. In D-11-0541C, the respondent was found to have breached section 34(1)(a)(ix) of the PAO in that he refused or neglected to comply with a direction lawfully given to him by the Council pursuant to section 18B of the PAO. The respondent was reprimanded, conditional upon the respondent providing the outstanding information within a period of 30 days from the Disciplinary Committee's order, failing which the order of reprimand be substituted with an order of removal for six months. The respondent was also ordered to pay a penalty of HK\$80,000.00 and costs in the sum of HK\$78,116.00. The respondent failed to comply with the condition and was removed.

- (1) As highlighted by the PRC, the respondent in D-11-0541C admitted his failure to respond to the Institute's enquiries.
 - (2) In fact, a formal hearing was dispensed with upon the respondent's admission to the complaint, which saved time and costs. See paragraph 15 of the decision.
39. In D-09-0373C, the respondent was found to have breached section 34(1)(a)(ix) of the PAO in that he refused or neglected to comply with a direction lawfully given to him by the Council pursuant to section 18B of the PAO. The respondent was reprimanded, and also ordered to pay a penalty of HK\$20,000.00 and costs in the sum of HK\$68,000.00.
- (1) As highlighted by the PRC, the respondent in D-09-0373C admitted his failure to respond to the Institute's enquiries and showed regret.
 - (2) Having said that, the respondent admitted the complaint only at the outset of the hearing, and thus the hearing was not avoided. Nevertheless, the respondent's admission enabled the Disciplinary Committee to dispense with the hearing expeditiously, and was cost-saving as well as indicative of his regret for his misconduct. See paragraphs 18 and 19 of the decision.
40. In D-08-0336C, the respondent was found to have breached section 34(1)(a)(ix) of the PAO in that he refused or neglected to comply with a direction lawfully given to him by the Council pursuant to section 18B of the PAO. He was removed from the register of CPAs for a period of 6 months and ordered to pay costs in the sum of HK\$32,090.00.
- (1) The respondent in D-08-0336C did not attend the hearing.
 - (2) The PRC submitted that D-08-0336C is more serious than the present case because:
 - (a) That case arose from a complaint by a third party.
 - (b) There was evidence that there were errors in some of an audit report which the respondent had prepared, and when the Institute wanted to investigate potential breaches of auditing standards, the respondent essentially stopped responding.
41. The PRC explained to the Disciplinary Committee that removal from the register of CPAs is more draconian than the cancellation of a practising certificate. Removal from the register of CPAs, in

other words cancellation of membership, deprives a member of his or her livelihood. By contrast, even if a member's practising certificate is cancelled, he is not necessarily barred from carrying out accounting work, for example for another certified public accountant.

42. The PRC has proposed that the Respondent's practising certificate be cancelled for a period of longer than 6 months, and that the Respondent bear the costs and expenses of the Institute. The Institute has provided a Statement of Costs dated 8 June 2016 totalling HK\$37,648.00.
43. In considering the proper order to be made in this case, the Disciplinary Committee has had regard to all the aforesaid matters, including the particulars in support of the complaint, the Respondent's personal circumstances, the previous cases referred to us (although we bear in mind that each case must be decided upon its own particular facts) and the submissions made. In particular, the Disciplinary Committee has borne in mind that the PRC is asking for cancellation of the Respondent's practising certificate, rather than the more serious measure of removing his membership from the register of CPAs.
44. In respect of the Statement of Costs prepared by the PRC, the Disciplinary Committee considers that the sum of HK\$37,648.00 was incurred reasonably and ought to be borne by the Respondent.
45. The Disciplinary Committee orders that:
 - (1) the practising certificate issued to the Respondent in 2016 be cancelled under section 35(1)(da) of the PAO on the 40th day from date of this order;
 - (2) a practising certificate shall not be issued to the Respondent for 12 months under section 35(1)(db) of the PAO starting from the 40th day from the date of this order;
 - (3) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$37,648.00 under section 35(1)(iii) of the PAO.