



### *Second Complaint*

- (2) By-law 34(1)(d) of the By-Laws applies to the Respondent for being guilty of conduct which renders her unfit to become a certified public accountant in that she was convicted of a criminal offence involving dishonesty and had been dishonest in her submissions to the Institute.

### **FACTS AND CIRCUMSTANCES IN SUPPORT OF THE FIRST COMPLAINT**

- (3) The Respondent is and has been a student registered under the Qualification Programme of the Institute since 14 August 2014.
- (4) The Respondent worked as an Audit Junior with Lee & Yu Certified Public Accountants ("**Lee & Yu**") for the period from 2 September 2013 to 24 September 2014.
- (5) Subsequently, she worked as an Accounts Clerk with Denso Industry Asia Company Limited ("**Denso**") for the period from 23 February 2015 to 24 April 2015.
- (6) The Respondent created and submitted to Denso a "Reference Letter" purportedly signed by one of the partners of Lee & Yu, namely Mr. Lee Chi Fai ("**Mr. Lee**"), for the purpose of her job application.
- (7) The Reference Letter stated the following:

*"I would like to recommend [the Respondent]....She is an especially professional employee who stood out among her peers for her enthusiasm and eagerness to learn more..."*

*...she demonstrated the ability to manage multiple tasks and accomplish goals efficiently and according to schedule; she demanded a great deal of herself and she worked hard to ensure that she performed her tasks professionally...."*

- (8) However, the positive comments in the Reference Letter did not corroborate with Lee & Yu's appraisal of the Respondent's work performance which was considered as "not satisfactory". The appraisal form completed by Lee & Yu indicated that on a rating scale from 1 to 5, the Respondent scored "2" in most of the related skill areas. A rating of 2 was defined as "Needs Improvement".
- (9) According to Miss Sylvia Lei ("**Miss Lei**"), who was the supervisor of the Respondent at Denso, the Respondent's poor work performance led her to contact Lee & Yu, whereupon she discovered that the Reference Letter was forged.

- (10) Miss Lei confronted the Respondent regarding the Reference Letter, and the Respondent admitted that she created the letter herself. The Respondent stated that her reason for doing so was to enable her to easily find a job. In view of this misconduct, Denso asked the Respondent to resign immediately.
- (11) In August 2015, the matter was reported to the police for investigation. During the course of the police investigation, the Respondent admitted to having falsified the Reference Letter. Consequently, the Respondent was charged with one count of obtaining pecuniary advantage by deception in that she had falsely represented that the Reference Letter was genuine and dishonestly obtained remuneration from Denso (Case Number STCC 1116/2016).
- (12) On the basis of the Respondent's guilty plea, the magistrate imposed an 80-hour community service order against the Respondent and ordered her to pay compensation in the sum of HK\$24,578.25 to Denso.

#### **FACTS AND CIRCUMSTANCES IN SUPPORT OF THE SECOND COMPLAINT**

- (13) In a letter to the Institute dated 6 May 2015, Mr. Lee stated that the Reference Letter had been forged because he had not signed it.
  - (14) During the Institute's enquiry with the Respondent, the Respondent stated that she did not know that the Reference Letter was not genuine, that she had not falsified the Reference Letter, and that she did not know who had falsified the Reference Letter.
  - (15) The Respondent's subsequent admission in the criminal proceedings STCC 1116/2016 that she had falsified the Reference Letter shows that she had been dishonest in her submissions to the Institute.
3. In summary, the Institute's case is that in view of the Respondent's conviction of an offence involving dishonesty and her untruthful submissions to the Institute, the Respondent is guilty of conduct which renders her unfit to become a certified public accountant under By-law 34(1)(d) of the By-Laws.

#### **Events prior to the commencement of these proceedings**

4. Prior to the commencement of these proceedings, by a letter dated 22 September 2016, the Complainant asked the Respondent if she would admit the Complaints against her. If there was an admission, a respondent needs to sign on two pages to confirm the admission. The first is a formal admission to admit the complaint, and the second a joint letter to the Disciplinary Committee to waive paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules.

5. By an email dated 4 October 2016, the Respondent wrote to the Complainant, enclosing a photograph of the joint letter to the Disciplinary Committee which the Respondent had signed, but without any signed formal admission.
6. The Complainant surmised that the Respondent probably wanted to admit the Complaints, but despite trying to clarify her intention through correspondence and numerous telephone calls, the Complainant had not been able to contact the Respondent.
7. As there was uncertainty regarding the Respondent's intention, the Complainant has invited the Disciplinary Committee to proceed on the basis that the Respondent has not admitted the Complaints.

### **The proceedings**

8. The Notice of Commencement of Proceedings and procedural timetable was issued to the parties on 21 November 2016.
9. The Complainant filed his case on 9 December 2016.
10. The Respondent did not file her case according to the procedural timetable. The Clerk of the Disciplinary Committee sent reminder letters to the Respondent on 12 December 2016 and 12 January 2017 respectively, and thereafter made various attempts to contact the Respondent by phone. However, the Respondent did not answer the phone and there was no response from her.
11. The Disciplinary Committee is of the view that adequate notice has been given to the Respondent.
12. On 2 February 2017, the Chairman directed that the proceedings would continue.
13. On 8 February 2017, the Complainant filed his checklist in accordance with rule 24 of the Disciplinary Committee Proceeding Rules. Given the Respondent's refusal to participate in the proceedings apart from her aforementioned email dated 4 October 2016 or to communicate with either the Clerk of the Disciplinary Committee or the Complainant, the Complainant invited the Disciplinary Committee to issue a direction to dispense with the oral hearing.
14. By a letter dated 17 February 2017, the Disciplinary Committee stated that based on the available information and given the lack of response by the Respondent, it did not appear that an oral hearing would serve any useful purpose. The Disciplinary Committee stated that there would be no oral hearing in respect of the Complaints unless a party filed an objection within 14 days of the letter.

15. The Disciplinary Committee did not receive any objection by the deadline of 3 March 2017, and thus this matter has proceeded without an oral hearing.
16. On 22 March 2017, the Disciplinary Committee informed the parties that it had found that the Complaints against the Respondent were proved, and directed that the parties make submissions on sanctions and costs within 14 days.
17. The Complainant made submissions on sanctions and costs on 5 April 2017, whilst there has been no response from the Respondent.

### Discussion

18. As stated by Sir Thomas Bingham MR in **Bolton v Law Society [1994] 1 WLR 512**, 518B-E, in respect of solicitors:

*“Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension.”*

19. Like at least one other previous disciplinary committee, this Disciplinary Committee considers that the same principles apply to accountants as they do to solicitors. See **Chan Cheuk Chi v. The Registrar of the Hong Kong Institute of Certified Public Accountants, CACV 38/2012, 8 February 2013**, §36.
20. The Complainant has helpfully referred the Disciplinary Committee to three previous cases concerning dishonesty by members of the Institute, namely

D-14-0987H, D-12-0690H and D-10-0515C, whilst correctly highlighting that past cases are not binding precedents upon this Disciplinary Committee. The Complainant has also rightly pointed out that those past cases relate to members of the Institute rather than registered students.

21. The Complainant submits that this case involves a serious breach of integrity, where the Respondent fabricated the Reference Letter, the contents of which bear no resemblance to her actual performance (which was how the employer discovered the fraud), and that to make matters worse, the Respondent lied about it to the Institute during the investigation, both in correspondence as well as in the interview.
22. The Complainant seeks a declaration that the Respondent is unfit to remain a registered student, and that her name be removed from the register of registered students. The Complainant also seeks the costs incurred by the Complainant and the Clerk of the Disciplinary Committee, and has prepared a Statement of Costs dated 5 April 2017.
23. Even though the Respondent is a registered student rather than a member, the Disciplinary Committee agrees with the Complainant that the present case is at least as serious as the case of D-14-0987H, where the respondent fabricated particulars on two documents to support a reimbursement claim of \$10,000. In that case, the respondent's name was removed from the register of certified public accountants for 5 years.
24. Further, the Disciplinary Committee bears in mind that whilst the Respondent's employment with Denso was terminated relatively quickly in the present case, which meant that the Respondent did not benefit from her misconduct for a lengthy period of time, this was only because Denso discovered the Respondent's misconduct. The Respondent could potentially have kept Denso in the dark for much longer had it not been for the Respondent's own poor performance which caused Denso to look into the matter of the Reference Letter.
25. In addition, the Disciplinary Committee notes another previous case, D-07-0287-H, where the respondent, a registered student, had misled the Institute and its board by falsifying a document for the purpose of obtaining special consideration from the Institute's board in relation to her qualification programme workshop marks. The disciplinary committee found, on the respondent's admission, that she was guilty of misconduct, and on 28 November 2008 ordered that she be declared unfit to remain as a registered student and that her name be removed from the register of registered students, and that she pay the costs and expenses of the disciplinary proceedings. The Disciplinary Committee notes that the sanction ordered in that case, which also involved dishonesty by a registered student, is similar to what the Complainant is proposing in the present case.
26. The Disciplinary Committee would add that whilst the Complainant places reliance on the Respondent's failure to make any appearance in these

disciplinary proceedings, and questions how much she values membership of a profession, the Disciplinary Committee does not place weight on this particular factor in view of the uncertainties surrounding the Respondent's aforementioned email dated 4 October 2016, in particular with regard to the question of whether the Respondent was seeking to admit the Complaints. Although it is not known why the Respondent did not subsequently respond to the Complainant's or the Clerk of the Disciplinary Committee's attempts to contact her, the Disciplinary Committee is prepared to bear in mind that the Respondent did respond to the Complainant once, namely on 4 October 2016.

27. 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 Complaints and the previous cases referred to above, whilst at the same time bearing in mind that each case must be decided upon its own particular facts.

#### **Sanctions and costs**

28. The Disciplinary Committee orders that:-
- (a) the Respondent be declared unfit to remain a registered student, and that the Registrar remove her name from the register of registered students pursuant to By-Law 35(1)(i) of the By-Laws;
  - (b) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$46,908.40 under By-Law 35(1) of the By-Laws.

The above shall take effect on the 28th day from the date of this Order.

Dated the 7th day of June 2017