

IN THE MATTER OF

A Complaint made under Section 34(1) and 34(1A) 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

Mr. Tam Tak Kuen Alfred
(Membership no.: F02942)

FIRST RESPONDENT

Alfred T.K. Tam & Co.
(Firm no. 1475)

SECOND RESPONDENT

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

Members: Mr. Kwong Chi Ho Cecil (Chairman)
Mr. Hong Wing Kwong Wallace
Ms. Law Wing Yee Wendy
Mr. Chan Kin Man Eddie
Mr. Shen Ka Yip Timothy

ORDER & REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (the “**Institute**”) against Tam Tak Kuen Alfred (the “**First Respondent**”) and Alfred T.K. Tam & Co. (the “**Second Respondent**”, together with the First Respondent, the Respondents).

2. The Complaint as set out in a letter dated 8 November 2016 from the Registrar to the Council of the Institute (the “**Complaint**”) are as follows:-

THE COMPLAINT

- (1) The Institute’s attention was drawn to three occasions on which the Respondents breached their statutory obligations as an employer under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“**MPFSO**”). The three occasions are as follows:
- (a) In February 2012, the First Respondent trading as the Firm was fined for breaching sections 7(1) and 7AA(7) of the MPFSO after he pleaded guilty to 30 counts of failing to enroll one employee in an MPF scheme and make MPF contributions to the Mandatory Provident Fund Schemes Authority (“**MPFA**”) for the employee over an extended period. (the “**First Breach**”)
 - (b) In March 2016, the Small Claims Tribunal ordered the Second Respondent to pay mandatory contributions in arrears and surcharges payable for 10 employees. (the “**Second Breach**”)
 - (c) In August 2016, the Small Claims Tribunal ordered the Second Respondent to pay mandatory contributions in arrears and surcharges payable for 6 employees, plus a financial penalty for the breach. (the “**Third Breach**”)
- (2) The First Respondent is the sole proprietor of the Second Respondent.

Professional Standard

- (3) The Fundamental Principle Professional Behaviour set out in section 100.4(e) of the Code of Ethics for Professional Accountants (Effective on 30 June 2006) (the “**Code**”) and elaborated in section 150 of the Code, provides the following:

Section 100.4(e) – “Professional Behaviour

A professional accountant should comply with relevant laws and regulations and should avoid any action that discredits the profession.”

Section 150.1 – “The principle of professional behaviour imposes an obligation on professional accountants to comply with relevant laws and regulations and avoid any action that may bring discredit to the profession. This includes actions which a reasonable and informed third party, having knowledge of all relevant information, would conclude negatively affects the good reputation of the profession.”

- (4) The Fundamental Principle Professional Behavior set out in section 100.5(e) of the revised Code (Effective on 1 January 2011) and elaborated in section 150 of the revised Code provides as follows:-

Section 100.5(e) – “Professional Behavior – to comply with relevant laws and regulations and avoid any action that discredits the profession.”

Section 150.1 - “The principle of professional behavior imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession. This includes actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession.”

The Complaint

- (5) Section 34(1)(a)(vi) of the Professional Accountants Ordinance (“PAO”) applies to the Respondents in that they had failed or neglected to observe, maintain or otherwise apply section 100.4(e) of the Code (Effective on 30 June 2006) and section 100.5(e) of the revised Code (Effective on 1 January 2011), as elaborated in section 150 thereof, because of their failure as an employer to comply with sections 7(1), 7AA(7) and 7A(8) of the MPFSO which resulted in criminal convictions and civil proceedings, which the Respondents knew or should have known may discredit the profession.

Facts and Circumstances in Support of the Complaint

Relevant Background

- (6) In February 2012, the First Respondent was fined a total of **HK\$122,000** for breaching sections 7(1) and 7AA(7) of MPFSO. He pleaded guilty to 30 counts of failing to enroll one employee in an MPF scheme as required by the MPFSO and failing to make MPF contributions to MPFA for the employee (who was not a member of a registered scheme) within the prescribed time during the period from February 2009 to June 2011.
- (7) In March 2016, the Small Claims Tribunal ordered the Second Respondent to pay to MPFA a sum of **HK\$39,332.23**, being mandatory contributions in arrears and surcharges payable for 10 employees. A failure to make such employer's contributions was a breach of section 7A(8) of the MPFSO.
- (8) In August 2016, the Small Claims Tribunal ordered the Second Respondent to pay **HK\$40,899.47** to the MPFA. The sum represented mandatory contributions in arrears and surcharges payable for 6 employees for the months of April, June, July, and September to December 2015. A failure

to make such employer's contributions was a breach of section 7A(8) of the MPFSO. The Second Respondent was also ordered to pay a financial penalty of **HK\$5,000** to the MPFA.

- (9) The MPFA website states: "Defaulting on contributions is a criminal offence and the defaulter is liable to a maximum penalty of a \$450,000 fine and imprisonment for four years. The MPFA can also impose a financial penalty of \$5,000 or 10% of the default amount, whichever is greater, on the defaulting employer."
- (10) The First Respondent explained that the non-compliance was mainly due to "shortage of manpower to handle administrative matters and cash flow problem during off-peak seasons".
- (11) In the circumstances, the Respondents' acts were in breach of the relevant laws and a reasonable and informed third party, weighing all the facts and circumstances available at the time, would be likely to conclude that those acts adversely affects the good reputation of the profession. The Respondents knew, or should have known, about the adverse effect on the profession. On this basis, the Respondents were in breach of sections 100.4(e) / 100.5(e) and 150.1 of the Code.

THE PROCEEDINGS

3. The Notice of Commencement of Proceedings and Procedural Timetable was issued to the parties on 19 April 2017.
4. The Complainant filed his case on 10 May 2017.
5. The Respondents did not file their case according to the procedural timetable. The First Respondent orally informed the Clerk in late May 2017 that he would not file any Respondent's Case. On 2 June 2017, the Respondent indicated by phone to the Clerk that he would admit the Complaint. On 7 June 2017, the Clerk reminded the First Respondent by phone that he should sign the relevant admission documents sent to him earlier on 13 December 2016 by the Institute if he intended to admit the Complaint. On 14 June 2016, the Chairman directed that the proceedings would continue unless the Respondents provide any written submissions by 28 June 2017. No replies were received.
6. The Chairman directed the parties to file checklists by 12 July 2017.
7. On 5 July 2017, the First Respondent signed a letter to the Clerk which states that he admitted the Complaint as set out in an attached confirmation ("**Confirmation**"). However, the Respondents did not attach any confirmation in the aforementioned letter to the Clerk.

8. The Clerk telephoned the First Respondent on 6 July 2017 to follow up the matter. The First Respondent represented that he would send the signed Confirmation. However, there was no further response from the Respondents.
9. The Complainant filed the checklist on 12 July 2017.
10. The Chairman directed on 18 July 2017 that the proceedings would continue unless any party raised any objection before 1 August 2017. None of the parties made any objection.
11. The Respondents have not disputed the Complaint throughout the proceedings. On 25 August 2017, the Disciplinary Committee found the Complaint proven. The Chairman directed that no oral hearing was necessary and parties would make written submissions sanctions and costs.

SANCTIONS AND COSTS

12. The Complainant made submissions on 8 September 2017 and 4 October 2017. There was no response from the Respondents despite reminders sent by the Institute.
13. In considering the proper order to be made in this case, the Disciplinary Committee had considered all the aforesaid matters, including the particulars in support of the Complaints, and the conduct of the Respondents throughout the proceedings.
14. The Disciplinary Committee noted that, while the First Respondent has made an initial verbal admission of the Complaint, none of the Respondents have responded to further correspondence of the proceedings. It appears to the Disciplinary Committee that the Respondents chose to ignore the proceedings against them, and did not attempt to mitigate sanctions by way of submission. Accordingly, the Disciplinary Committee is of the view the Respondents were not remorseful of their wrongdoings.
15. Further, the Respondents have not demonstrated that they may not repeat same or similar offence in the future. In fact, the Complaint was in connection of multiple failures to pay statutory contributions under the MPFSO.
16. The First Respondent's explanation of "shortage of manpower to handle administrative matters and cash flow problem during off-peak seasons" is unconvincing. After the First Breach in 2009 to 2011, the Respondents ought to have known to comply with its statutory requirement and the need to handle statutory contribution seriously, either through allocating sufficient resources or by the First Respondent directly as the sole proprietor of the Second Respondent. In addition, the explanation by the First Respondent imply the practice does not encounter cash flow problem during peak seasons. There has been no attempt to rectify the missed contributions during peak seasons – for the Second Breach and the Third Breach, the contributions were overdue until the Small Claims Tribunal

ordered the Second Respondent to pay contributions in arrears in the year following.

17. In the eyes of the society, compliance with making statutory contributions is a fundamental obligation to an employer. Professionals are expected by the society to adhere to their basic statutory obligations. In the present Complaint, the Respondents have failed to do so repeatedly. The Disciplinary Committee is of the view that the Respondents may commit same or similar offence in the future, and potentially bring the profession into disrepute. The Complaint is therefore of a serious nature that the extent of sanctions should not be light nor inadequate.
18. The Disciplinary Committee is of the view that sanctions imposed by the MPFA and the Small Claims Tribunal, including fines, contribution in arrears, surcharges, financial penalties (collectively, the “MPF Sanctions”) shall be the base starting point of the penalty imposed by the Institute against complaints of failure to make social contributions by members of the profession. In the present Complaint, the Respondents have repeatedly failed to make social contributions for a long period of time (February 2009 to June 2011, April to December 2015) involving multiple employees. Accordingly, the Disciplinary Committee is of the view that a penalty doubling the MPF Sanctions against the Respondents set out in paragraphs 2(6), 2(7) and 2(8) above is appropriate in the circumstances.
19. As a general note, the Disciplinary Committee is of the view that heavy sanctions (including cancellation of practicing certificate) should be imposed against members of the profession who repeatedly and knowingly fail to make statutory contributions or fail to meet their statutory obligation, to deter members bringing the profession into disrepute, and to maintain the public’s confidence in the profession.

ORDER

20. The Disciplinary Committee orders that:-
 - (a) that the Respondents be reprimanded under section 35(1)(b) of the PAO;
 - (b) that the Respondents, on a joint and several basis, do pay a penalty of **HK\$414,463.40** under section 35(1)(c) of the PAO, which would represent a sum doubling the MPF Sanctions against the Respondents in connection with the First Breach, the Second Breach and the Third Breach; and
 - (c) the Respondents, on a joint and several basis, do pay the costs and expenses of and incidental to the proceedings of the Complainant of **HK\$32,781** under Section 35(1)(iii) of the PAO.

The above shall take effect on the 40th day from the date of this order.

Dated the 16th of January 2018