

Wan Ten Lok ("**Wan**"), who was the head of the corporate finance department and an executive director. Respondent left CPYC in October 2004 and joined Macquarie Bank. For reasons referred to below, he was no longer a licensed individual since 24 December 2006.

- (2) Wan was likewise a licensed individual under the SFO. He joined CPYC in 1998 and assumed the position of head of corporate finance department in July 2002. Wan left CPYC to join Macquarie Bank in August 2004. For reasons referred to below, Wan was not a licensed individual since 1 January 2006.
- (3) On 22 May 2008, the Securities and Futures Commission ("**SFC**") issued to the Respondent a Notice of Proposed Disciplinary Action ("**NPDA**") containing a preliminary finding that he was guilty of misconduct and/or was not fit and proper to be licensed because he had misled the SFC by providing false or misleading information in a statutory declaration dated 19 October 2006, and in an interview with the SFC on 30 November 2006 ("**False Information Charge**"). A few days earlier, on 16 May 2008, SFC also issued a NPDA against Wan, with a preliminary finding that he was guilty of misconduct and/or was not fit or proper to be licensed because, inter alia, he had misled the SFC by providing false or misleading information and documents in his interviews and statements to the SFC ("**False Documents Charge**"). The NPDAs proposed prohibiting the Respondent and Wan from entering the industry for periods of 8 and 10 years respectively.
- (4) Both the Respondent and Wan made representations or submissions to the SFC in response to the above NPDAs. On 9 September 2009, SFC issued its final decisions ("**NFD**") to the Respondent and Wan respectively, maintaining their preliminary conclusions that they were both guilty under the False Information Charge and the False Documents Charge. The periods of prohibitions were reduced to 4 years for the Respondent and 6 years for Wan.
- (5) The Respondent and Wan applied to the Securities and Futures Appeals Tribunal ("**SFAT**") to review the NFDs issued against them. After a 16-day hearing held from November 2010 to July 2011, the tribunal dismissed their applications in a decision dated 7 October 2011 ("**Decision**").
- (6) The Respondent filed an appeal against the Decision on 2 November 2011. However, despite subsequent correspondence from the Institute repeatedly urging the Respondent's solicitors to provide an update of the progress of the appeal or the appeal hearing date, no such information has been provided. In a letter from the Respondent's solicitors dated 3 November 2014, it stated that the Respondent "has not proceeded with the appeal till now", though he "still reserves all his rights and remedies in his appeal against the decision....".
- (7) By that letter, which was some 3 years after the filing of the Notice of Appeal, it was clear that the Respondent had effectively abandoned his appeal, despite him purportedly "reserving his rights". The appeal remains unprosecuted as of the date of the letter of the Complaint.
- (8) The Respondent refused to co-operate with the Institute in the investigation into this

matter¹. Therefore the present complaint is made primarily on the basis of facts, evidence and findings in the Decision.

B. Complaint

- (9) Section 34(1)(a)(x) of the Professional Accountants Ordinance applies to the Respondent in that he was guilty of dishonourable conduct, by reason of him giving false or misleading information to the SFC as particularized below in paragraphs 16 and 17, in a statutory declaration dated 19 October 2006, and in an interview with the SFC on 30 November 2006.

C. Facts and Circumstances in support of the Complaint

C1. Background to the SFAT Proceedings

- (10) In July 2002, Tungda Innovative Lighting Holdings Ltd. ("**Tungda**") was listed on the Growth Enterprise Market board for which CPYC acted as sponsor. Wan was one of the 3 persons from CPYC who signed a sponsor's declaration declaring that Tungda was suitable for listing. CPYC acted as the continuing sponsor for Tungda after the listing. In August 2003, Wan signed a form listing him as a principal supervisor actively involved in the continuing sponsorship of Tungda.
- (11) On 23 May 2003, the Stock Exchange of Hong Kong ("**SEHK**") wrote to CPYC in respect of a complaint made that alleged the overseas sales of induction lamps, which formed a significant part of sales disclosed in Tungda's prospectus for listing, had been overstated. The essence of SEHK's inquiry ("**Inquiry**") required an examination of whether sufficient due diligence work had been undertaken by CPYC prior to the listing, particularly in relation to the due diligence work concerning the substantiation of sales.
- (12) The Inquiry was handled within CPYC by various persons under the charge of Wan. Three submissions to SEHK dated 13 June, 27 June, and 22 July 2003 were sent to SEHK (collectively, the "**3 Submissions**"), all of which were signed by Wan. The complaint and the 3 Submissions were subsequently examined by SFC, which took the view that the 3 Submissions gave SEHK an unjustified impression that CPYC had conducted sufficient due diligence work in relation to the substantiation of sales. SFC considered that the verification work done by CPYC was severely limited, but the limitations were not properly conveyed to SEHK in the 3 Submissions.
- (13) Being dissatisfied with CPYC's response to the complaint, SFC commenced an investigation in January 2005 into persons connected with the Tungda's listing at CPYC, and the 3 Submissions. A number of persons were interviewed, including Wan who was interviewed on 3 occasions in 2005.

¹ The letter dated 16 February 2015 from the Respondent's solicitors stated that the Respondent "is not prepared to assist the HKICPA in conducting any investigation relating to this matter".

- (14) In about April 2006, Wan resigned from Macquarie Bank and joined BOCI Asia Ltd. ("**BOCI**"). When he applied to SFC to transfer his various licenses to BOCI, he was informed that the transfer would be put on hold because he was the subject of an SFC investigation, which could lead to disciplinary proceedings. In May and June 2006, Wan submitted a total of 4 supplemental statements to SFC enclosing a number of new documents not hitherto disclosed to SFC. Among them were 3 internal memoranda ("**3 Memos**") and 3 checklists ("**3 Checklists**") allegedly signed by another director of CPYC Ms. Carol Tsang Sze Man ("**Tsang**"), and 3 draft submissions ("**3 Draft Submissions**") allegedly endorsed by the CEO of CPYC, Mr. Lin Ko Ming ("**Lin**") (collectively referred to as the "**New Evidence**").
- (15) Wan explained the New Evidence as follows. He said the Inquiry from May to July 2003 was in fact handled under the supervision of Tsang, who was also responsible for the contents of the 3 Submissions. After she had done the work, she filled out the 3 Checklists to verify all the work done, and submitted to him the 3 Memos which stated that all the necessary work in relation to the 3 Submissions had been done, and recommended Wan to sign the 3 Submissions. The contents of the 3 Submissions were also approved by Lin in the 3 Draft Submissions, who purportedly endorsed the same by his handwriting in Chinese. After receiving these documents, Wan then signed the 3 Submissions in an "administrative capacity" only because he was the head of corporate finance. In other words, the relevant work on the 3 Submissions was not done by him and he was not responsible for their contents.
- (16) In October 2006, Wan submitted to the SFC a statutory declaration from the Respondent dated 19 October 2006 ("**Declaration**"). In it the Respondent deposed that he had kept some CPYC documents whilst he was working as Wan's personal assistant, and those documents included the New Evidence, which copies he had kept even after leaving CPYC. The documents were passed to Wan sometime in about April to June 2006 upon Wan's request. Respondent also said he was present at the discussion between Wan and Tsang, when Tsang reported to Wan that she had done the work on the 3 Submissions, passed to Wan the 3 Checklists and the 3 Memos, and recommended Wan to sign the 3 Submissions.
- (17) Due to the ground-breaking nature of the New Evidence, SFC re-interviewed all the protagonists involved in the 2003 events, including Wan, Tsang, and others. SFC also interviewed the Respondent for the first time, on 30 November 2006 ("**Interview**"). In the Interview the Respondent basically repeated and further explained what he said in his Declaration, in particular the statements as summarized in the paragraph above. On the other hand, Tsang emphatically denied having any or any substantial involvement in the Inquiry, or that she had signed or even seen any of the New Evidence. Lin also had no recollection of seeing the 3 Draft Submissions, and did not believe the endorsements thereon were written by him.
- (18) SFC concluded that the New Evidence were "fabricated or forged", and did not exist back in 2003 when the Inquiry occurred. It was on that basis that SFC pressed the False Documents Charge against Wan. And if the New Evidence were fabricated or forged by Wan after 2003, it necessarily follows that the Respondent's statements in the Declaration and the Interview – that he was present in the meetings in which Tsang explained the 3 Checklists and the 3 Memos to Wan, and that he had kept those

documents after leaving CPYC and passed them to Wan in 2006 -- were false. On that basis the False Information Charge was pressed against the Respondent.

C2. SFAT's Proceedings and Conclusions

- (19) The allegations against Wan and the Respondent were serious and tantamount to allegations of criminal behavior. The False Documents Charge against Wan was in essence an allegation of fabrication of documents, forgery of Tsang's signature, and acts tending to pervert the course of justice. The False Information Charge against the Respondent was in essence an allegation of acts tending to pervert the course of justice. Because of their seriousness, the presiding chairman determined that the proceedings, although technically a "review", would proceed by way of a hearing *de novo*, with the SFC carrying the burden of proof in establishing the allegations against Wan and Respondent.
- (20) The SFAT proceedings received extensive materials and evidence in a 16-day hearing stretched over 8 months. Both the Respondent and Wan were legally represented by counsel and solicitors, the latter by Senior Counsel. The main issues concerning the False Documents Charge and the False Information Charge were, whether Tsang was responsible for post-listing at the material time, and therefore also responsible for the Inquiry, and whether she played any role in preparing the 3 Submissions. If the answers were negative, then the New Evidence must be forged, for it suggests that she was directly involved in the Inquiry as well as preparing the 3 Submissions.
- (21) Eventually SFAT reached the conclusion that the "overwhelming inference" was that the New Evidence was fabricated by Wan. Once that conclusion was reached, it necessarily follows that the Respondent was aware of the falsity of the documents, for there was never any suggestion by either the Respondent or Wan during the proceedings that there was any "half-way house" whereby the Respondent might have "innocently" delivered boxes of false documents to Wan without knowledge of their falsity. The Respondent, therefore, was also guilty of the False Information Charge.
- (22) SFAT reached its conclusion based on a careful and comprehensive survey of numerous items of evidence. It is not intended to refer to each and every one of them here.
- (23) It is clear from the SFAT's verdict that the Respondent has given materially false or misleading statements to the SFC. Such acts are clearly dishonourable conduct. The tribunal concluded that the "deceit" practiced by both Wan and the Respondent as "...a thoroughly discreditable and scurrilous course of conduct...", which "...deliberately and unscrupulously sought to blame a completely innocent person for [Wan's] own shortcomings in discharging his duties to the Exchange...".

3. The Respondent admitted the Complaint against him by way of written confirmation signed by him on 20 July 2017. He did not dispute the facts as set out in the Complaint. On 9 November 2017, the parties agreed that the steps set out in Rules 17 to 30 of the Disciplinary Committee Proceedings Rules ("DCPR") be dispensed with.
4. By a letter dated 15 January 2018 addressed to the parties, the Clerk, under the direction of the Disciplinary Committee, informed the parties that the Disciplinary Committee had approved the parties' joint application to dispense with the steps set out in Rules 17 to 30 of the DCPR in light of the admission made by the Respondent and directed the parties to make written submissions on sanctions and costs by 5 February 2018.
5. The Complaint was found proved on the basis of the admission by the Respondent.
6. The Complainant and the Respondent through his solicitors provided their respective submissions on sanctions and costs which should be imposed by the Disciplinary Committee on 5 February 2018.
7. The Disciplinary Committee has considered the submissions by the Complainant and the Respondent.
8. 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, and the conduct of the Respondent throughout the proceedings. The Disciplinary Committee consider that the Respondent's conduct amounts to serious breach of integrity, which is a fundamental requirement of the profession. The sequence of events revealed that had the Respondent been cooperative at an early stage, the Complainant would not have to incur such time and expenses as reflected in the bill of costs. The Disciplinary Committee is of the view that it is reasonable to award full costs and expenses to the Complainant for all the work done.
9. The Disciplinary Committee orders that:-
 - (a) the name of the Respondent be removed from the register of certified public accountants for 5 years with effect from the 42nd date from the date of this Order pursuant to 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\$262,499 as per the particulars set out in the statement of costs submitted by the Complainant on 5 February 2018 under Section 35(1)(iii) of the PAO.

Dated 2 May 2018

Mr. LEUNG, Ka Yau
Chairman
Disciplinary Panel A

Ms. WONG, Tze Ling
Disciplinary Panel A

Ms. LAW, Elizabeth
Disciplinary Panel B

Mr. YU, Tin Yau, Elvin
Disciplinary Panel A

Mr. JAMIESON, Grant Andrew
Disciplinary Panel B