

IN THE MATTER OF

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

BETWEEN

The Practice Review Committee of the Hong Kong Institute of Certified Public Accountants (“HKICPA”) COMPLAINANT

AND

Ng Kay Lam (A02682) RESPONDENT

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

Members:

Mr. KWONG Chi Ho Cecil (Chairman)
Mr. HUI, Cheuk Kit, Frederick
Mr. KAM, Hugh Alexander Tsun Ting
Mr. CHAN, Kee Sun, Tom
Mr. POGSON, Timothy Keith

Date of Hearing: 3 March 2020

REASONS FOR DECISION

1. This is a complaint made by the Practice Review Committee (“**PRC**”) of the Hong Kong Institute of Certified Public Accountants (the “**Institute**”) against Mr. Ng Kay Lam (the “**Respondent**”).
2. The Respondent faces a complaint under section 34(1)(a)(v) of the Professional Accountants Ordinance (Cap. 50) (“**PAO**”) in that he, without reasonable excuse, failed or neglected to comply with the direction issued by the PRC dated 26 March 2018 under section 32F(2)(b) of the PAO.

Facts and circumstances of the Complaint

3. The facts and circumstances of the Complaint are straightforward.
4. The Respondent is a sole proprietor of K.L. Ng & Company (Firm no. 0653) (“**Practice**”).
5. The Practice was required to undergo a follow up practice review (“**follow up visit**”):
 - 5.1 On 11 September 2015, the Respondent was found to have failed to comply with a PRC direction without reasonable excuse and was ordered by another disciplinary committee to enable a practice review be carried out on his Practice or otherwise be removed from the CPA register (“**DC Order**”).
 - 5.2 The Respondent cooperated and enabled a practice review to be carried out on his Practice which was completed in December 2015 (“**2015 practice review**”). During this review, the practice reviewer identified areas which required follow up. As a result, PRC directed the Respondent to perform certain follow up actions, including submission of a monitoring review report on the monitor’s assessment of those follow up actions by 31 December 2016.
 - 5.3 In a letter dated 8 January 2016 responding to the PRC’s findings, the Respondent agreed to have the monitoring review report available by 31 December 2016.
 - 5.4 However, the Respondent did not submit the monitoring review report. Consequently, PRC directed that a follow up visit on the Practice to take place in the second half of 2017.
6. In a letter dated 24 October 2017, the Respondent had been notified that a follow up visit on the Practice was scheduled to commence on 27 December 2017 (“**Notification Letter**”).
7. According to the Notification Letter, the Respondent was required to submit information necessary for the practice reviewer to carry out the follow up visit within a specified time. However, the Respondent did not do so.
8. In fact, the Respondent claimed that it would be inappropriate for the practice reviewer to carry out the follow up visit when he had lodged a complaint with the Institute against certain individuals involved in the 2015 practice review process leading to the follow up visit.
9. A summary of events in respect of his complaints is as follows:
 - 9.1 On 12 December 2016, the Respondent complained about the manner in which the 2015 practice review was carried out. He claimed that the filing of the monitoring review report was a result of the 2015 practice review and therefore, he refused to submit the report unless his complaint was resolved.

- 9.2 In a number of occasions between March to May 2017 the Respondent was notified of PRC's decision that his complaint was a separate issue and that the monitoring review report was a legitimate request made by the PRC with which he had a duty to comply. Without a monitoring review report verifying that appropriate follow up actions had been taken to address the 2015 practice review findings, a follow up visit would need to take place.
- 9.3 In November 2017, the Respondent lodged complaints against individuals involved in the 2015 practice review with the Institute. The Respondent used this complaint as an excuse not to enable the follow up visit to take place on the scheduled date. Notwithstanding, the Respondent was notified, on 22 December 2017, that the follow up visit would need to take place as it was directed by the PRC which was not a party to his complaint.
10. Due to the Respondent's refusal, the follow up visit scheduled on 27 December 2017 could not take place and the matter was reported to PRC in March 2018.
11. Having considered the available information, PRC considered that the Respondent did not have a reasonable excuse not to cooperate with the practice reviewer to conduct the follow up visit.
12. As such, the PRC issued a direction under section 32F(2)(b) of the PAO requiring the Respondent to (i) cooperate with the practice reviewer to accommodate a follow up visit to start on 28 May 2018 for three days; and (ii) provide the materials set out in the Notification Letter no later than three weeks before the date of the site visit ("**Direction**").
13. Despite having received the Direction, the Respondent still refused to allow the practice reviewer to conduct a follow up visit on 28 May 2018.
14. On the basis of the above, PRC concluded that the Respondent, without reasonable excuse, failed to comply with its Direction.

The Complainant's Case

15. The Complainant submitted that, as a matter of fact, the Respondent did not comply with the Direction. There is no dispute of this fact before the Disciplinary Committee.
16. The Complainant submitted that the Respondent has adopted an uncooperative attitude because of his dissatisfaction with the progress of those complaints that he has lodged against staff of the Institute and committee members over the conduct of the enforcement of the previous DC Order, which gave rise to the 2015 practice review. The question is whether this was a reasonable excuse not to comply with the Direction.
17. Before it made the Direction, the PRC had considered the Respondent's criticisms over the handling of his complaints and had decided that there was no reasonable excuse to prevent a follow up visit (which serves the purpose of ensuring audit quality) to take place on his Practice.

18. In the 2015 practice review, a site visit had been completed and recommendations made. The Respondent, at the time, had accepted the conclusions of that visit. The Complainant submitted that it is without reasonable excuse for the Respondent to subsequently lay criticisms over the handling of that visit in order to justify his present uncooperative behavior and non-compliance with the Direction.
19. The Complainant also submitted that in seeking to follow the PRC direction, the practice reviewer had made many attempts not only to remind the Respondent of his duty to comply with the PRC Direction but also to explain to him that his complaint was not a reasonable excuse not to comply with the PRC Direction.
20. Notwithstanding, the Respondent refused and continues to refuse to allow the follow up visit to take place.
21. The Complaint also pointed out that on 5 June 2018, the Respondent was notified that his complaints against the individuals were found to be unsubstantiated and were dismissed in accordance with the Institute's due process. Since then, the Respondent lodged further complaints about the same subject matter and used that as a further excuse not to respond to the present complaint.
22. It is the Complainant's view that the Respondent's behavior shows that he had no intention to uphold his duty to enable the PRC to carry out its statutory obligation to ensure his Practice meets the expected quality standards.

The Respondent's Grievances

23. Throughout the proceedings, the Respondent submitted numerous what he perceived to be 'grievances' that led to the non-compliance of the Direction. These 'grievances', in a nutshell, include:
 - (i) Continuous clarification requests in connection with past proceedings
 - (ii) A clarification as to what the Respondent perceived to be a policy issue that needs clarification from the Institute to find an excuse in avoiding the practice review
 - (iii) A typo in the DC Order of the Respondent's past disciplinary proceedings (D-13-0818P) ("**Past Proceeding**")
 - (iv) An error in the description in a sentence in the DC Order
 - (v) Various timing and procedural issues that potentially led to the Respondent's failure to lodge a review against the same Past Proceeding
 - (vi) The conduct of various staff of HKICPA in handling past and current proceedings of the Respondent
 - (vii) Conflict of interests of certain staff of the Institute
 - (viii) 'Double jeopardy'

Findings of the Disciplinary Committee

24. Under Part IVA of the PAO, the Institute is empowered to carry out practice review on practice units.
25. The PRC is a statutory committee set up under section 32A of the PAO responsible for exercising the statutory powers and duties in relation to practice review under the PAO.
26. The practice reviewers, being staff members of the Quality Assurance Department ("QAD") of the Institute, assist and report to the PRC in carrying out those statutory powers and duties.
27. Under section 32E of the PAO, person(s) subject to a practice review must give to the reviewer all assistance in connection with the practice review which he is reasonably able to give.
28. Where there is a dispute arising from how the powers of a reviewer under section 32E of the PAO may be exercised, section 32F of the PAO empowers the PRC to deal with the dispute by issuing a direction.
29. The Respondent refused to allow the practice reviewer to carry out a follow up site visit despite repeated requests. This is a fact undisputed between the Complainant and the Respondent.
30. The PRC issued a direction under section 32F(2)(b) of the PAO which required the Respondent to (i) cooperate with the QAD to accommodate a follow up site visit to start on 28 May 2018 for three days; and (ii) provide certain information in relation to the visit.
31. The Respondent did not comply with this direction. This is a fact undisputed between the Complainant and the Respondent.
32. In respect of the Respondent's grievances, the Disciplinary Committee will not repeat the details here but have the following brief observations:
 - (i) Continuous clarification requests in connection with past proceedings - These proceedings were concluded by other disciplinary committees. The Disciplinary Committee cannot see how these proceedings relate directly to the Respondent's failure of attending the practice review.
 - (ii) A clarification as to what the Respondent perceived to be a policy issue that needs clarification from the Institute – that issue concerns the role of sole practitioners carrying both audit and review functions. This issue has been separately dealt with by the Institute. The Disciplinary Committee does not see how this issue relates directly to the underlying reasons for the Respondent's failure to attend to the follow up visit. In the contrary, the Disciplinary Committee is of the view that the Respondent is trying to find an excuse in avoiding the follow up visit.

- (iii) A typo in the order of the Respondent's Past Proceeding – the typo related to the name of Mr. Paul Chan Mo Po being mistyped as Mr Paul Chan Mo Bo. The Disciplinary Committee cannot see how the typo arising from a mistaken identification of any person and hence leading to the unfairness of that order.
 - (iv) An error in the description in a sentence in the DC Order – that disciplinary committee who handed down that order has expressly re-considered that situation and upheld that order despite the Institute's request for amendments. The current Disciplinary Committee cannot see how this error is material enough to prejudice the Respondent, resulting a justification leading to the Respondent's non-compliance of attending the follow up visit.
 - (v) Various timing and procedural issues that potentially led to the Respondent's failure to lodge a review against the same Past Proceeding – the Disciplinary Committee will not repeat the Respondent's argument here but the fact remains that a review of that decision has not been lodged. Even if a review had been lodged, the fact remains that the Respondent, as a professional, shall be obliged to comply with the practice reviewer's request regardless of whether the review of the Past Proceeding was lodged.
 - (vi) The conduct of various staff of HKICPA in handling past and current proceedings of the Respondent – the complaints of these conducts have been separately dealt with by the Institute and is not the subject of current proceedings. In any case, the Disciplinary Committee cannot see how these complaints of conducts related directly to the non-compliance of the Respondent at the material time.
 - (vii) Conflict of interests of certain staff of the Institute – the Respondent alleged that certain members of staff of the Institute are in conflict as they had prior involvement in the Past Proceeding. This argument cannot be correct as these staff merely carry out their respective clerical, administrative or regulatory functions, without any self-interest or without any personal interests relating to the outcome of any proceedings.
 - (viii) 'Double jeopardy' – the Respondent has not made any sound or legally correct argument regarding this principle despite submission of numerous cases. The Disciplinary Committee second guessed that the Respondent was trying to argue, along the lines, that since the practice review in question was resulted from the Past Proceeding, the Respondent cannot be subject to disciplinary action twice. This line of argument cannot be correct. Compliance with the PAO is a continuous obligation as a professional accountant, regardless of under what circumstances the practice review is carried out. It is unimaginable if one can refuse complying with practice review request or directions simply by pointing out that the review was the result of a past proceeding, and therefore should not be penalised twice.
33. There are many other miscellaneous 'grievances' put forward by the Respondent which the Disciplinary Committee has also considered, but these grievances do not relate directly to the non-compliance of the Respondent to attend the follow up visit. The Disciplinary Committee will not repeat them here.

34. At certain stages of the current proceedings, the Respondent requested calling certain experts or witnesses. The grounds of the Respondent in calling those experts or witnesses are not directly related to the underlying reason of the Respondent's failure to attend the follow up visit. Accordingly, the Disciplinary Committee ruled that the calling of those experts or witnesses as unnecessary and rejected the Respondent's request.
35. To conclude, the Disciplinary Committee cannot see any legitimate reason or any reasonable excuse as to the failure of the Respondent, as a professional accountant, to attend the follow up visit. In addition, the Respondent has put up all sorts of different excuses to divert the Committee's attention from the subject matter of the current Complaint. The Disciplinary Committee has grave concerns over the Respondent's attitude over complying with any directions from the PRC in the future.
36. Accordingly, the Disciplinary Committee is satisfied that the Complaint is proved.
37. The Disciplinary Committee is also concerned with the fact that the follow up visit in question has not been carried out as of today.

Dated: 13 May 2020

Mr. KWONG Chi Ho Cecil
Chairman

Mr. HUI, Cheuk Kit, Frederick

Mr. KAM, Hugh Alexander Tsun Ting

Mr. CHAN, Kee Sun, Tom

Mr. POGSON, Timothy Keith