

IN THE MATTER OF

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

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BETWEEN

The Registrar of HKICPA

Complainant

AND

WONG TAM YEE (A33301)

Respondent

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Disciplinary Committee:

Mr. WONG Tim Wai (Chairman)

Ms. CHAN Wai Kam, Caroline

Ms. CHUI Hoi Yee

Mr. CHOW Dennis Chi In

Mr. NG Chi Keung, Victor

Date of Decision on Sanctions and Costs: 22 June 2020

**DECISION ON SANCTIONS AND COSTS**

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants as the Complainant against the Respondent pursuant to Section 34(1A) of the Professional Accountants Ordinance Cap. 50 ("PAO") in relation to the breach of fiduciary duties and/or failure to observe, maintain or otherwise apply the fundamental principle of integrity as the director of Excel Courage Holdings Limited ("Excel") in respect of the disposal of certain shares on or about 25<sup>th</sup> September 2013.

2. There are altogether 3 complaints, as listed below:
  - (1) 1<sup>st</sup> Complaint: the Respondent failed to comply with the relevant laws and regulations and failed to avoid any action that discredits the profession, in breach of sections 100.5(e) and 150.1 of the Code of Ethics for Professional Accountants ("COE"), when he was found to have breached his fiduciary duties as a director in disposing of the Shares;
  - (2) 2<sup>nd</sup> Complaint: the Respondent was in breach of the fundamental principle of integrity under sections 100.5(a), 110.1 and 110.2(a) of the COE, as his breach of fiduciary duties above was dishonest, and he made false statements in the Sold Notes to the Shares that the sales were for full market value and that consideration had been received, when the same was not true.
  - (3) 3<sup>rd</sup> Complaint: the Respondent was guilty of professional misconduct under section 34(1)(a)(viii) of the PAO, by reason of his conduct under the 1<sup>st</sup> and 2<sup>nd</sup> Complaints above.
3. The Committee delivered its Decision as to liability on 16<sup>th</sup> December 2019. In the last part of the Decision after finding that all the 3 Complaints were proved against the Respondent, the parties were directed to file their written submissions on sanctions and costs.
4. The Complainant filed their written submissions and statement of costs dated 30<sup>th</sup> December 2019. On the other hand, the Respondent did not file any written submission.
5. The following is the unanimous decision of the Committee on sanctions and costs.
6. The Committee has considered all the submissions made by the parties and does not propose to set out herein all the submissions made.
7. The Committee acknowledges that every case of professional misconduct is different in regard to facts and circumstances such that the previous decisions as to sanctions imposed are of reference value only. The Committee has a wide discretion in deciding on appropriate sanctions.

8. The Committee considers that as the director of Excel in a fiduciary relationship with the company, the Respondent was required to act honestly, in good faith and in the best interests of Excel. Despite being the registered shareholder of 974,180,000 shares in Luxey International (Holdings) Limited (stock code: 8041) (“Luxey”) and 147 million shares in China Railsmedia Corporation Limited (stock code: 745) (“Railsmedia”) (collectively “the Shares”) in Excel, and the sole director of Excel between 21<sup>st</sup> February 2011 and 25<sup>th</sup> September 2013, even relying on the Respondent’s own case, the Respondent at all material times held part of the Shares in Excel for the benefit of another person.
9. Notably, the Respondent’s own case is that the Respondent was beneficial owner of only 50% of the Shares, and he disposed of 100% of the Shares on 25<sup>th</sup> September 2013 without any prior consent from the other alleged beneficial owner. There was no suggestion that the financial position of Excel was materially different on 25<sup>th</sup> September 2013 yet the Shares were sold in one day.
10. Moreover, the Respondent did not act in the interests of Excel in disposing of the Shares. The Respondent sold the Shares at a 60% discount of the market price without first attempting to sell the Shares in the market; and no good reason was advanced for this.
11. In addition, the Respondent sold the Shares to Sun Xiao Xiang (“Sun”), a non-Hong Kong resident previously unknown to the Respondent or Excel, who was apparently introduced through a bank manager in mainland China. The terms of the sale were to be completed 7 days later and there was no security for the payment other than a deposit of HK\$4 million.
12. Deputy High Court Judge R Ismail SC (“the Court”) considered in the Judgment under HCCL 34/2013 on 26<sup>th</sup> February 2016 (“the Judgment”) that the allegation against the Respondent was characterized as “theft of shares” in Paragraphs 47 and 50 of the Judgment and as misappropriation in Paragraphs 53 and 54 of the Judgment. The Committee is of the view that theft and misappropriation of the Shares clearly amount to dishonesty as dishonesty is one of the elements in order to commit the offences of theft and misappropriation.

13. Furthermore, the Court found that two other defendants, namely the 2<sup>nd</sup> and 5<sup>th</sup> Defendants, had dishonestly assisted the Respondent in his breach of fiduciary duties. If the Court found the accessories, i.e. the 2<sup>nd</sup> and 5<sup>th</sup> Defendants to have acted dishonestly, it seems clear that the main defendant, i.e. the Respondent, was also found to have acted dishonestly.
14. Moreover, the Committee considers that there was dishonesty on the part of the Respondent given that an honest person would not participate in a transaction if he knows it involves a misapplication of trust assets to the detriment of the beneficiaries. An honest person would not deliberately turn a blind eye and proceed with the transaction either as held in Paragraph 171(b) of the Judgment.
15. The Committee is of the view that integrity and honesty are cornerstones of the accountancy profession. The Committee is of the opinion that the Respondent was in dereliction of his duties by breaching the fundamental principles of integrity and honesty as stated hereinabove. The Committee is also of the view that the Court's findings and the Respondent's blatant disregard for his fiduciary duties have no doubt damaged the reputation of the accountancy profession.
16. The Committee takes into account the fact that the Respondent has no previous disciplinary record.
17. Lastly, the Committee also takes into account the totality principle having regard to individual charges established against the Respondent, the gravity of individual charge and cumulative effect of them and the ultimate sanction to be imposed on the Respondent.
18. Having considered and balanced all the above matters and the submissions of the parties, the Committee considers that the Respondent should be removed from the register of certified public accountants for a period of 2 years.
19. The Committee finds that there is no reason not to impose an order for the Respondents to pay costs to the Complainant and for the investigation and the present disciplinary proceedings according to the usual rule of costs to follow the event.

20. The Complainant submitted a statement of costs which set out the respective hourly charging rates of the staff members of the Institute who had worked on this matter and the respective amount of time spent by them. Based on the statements and submissions by the Complainant, and bearing in mind the volume of documents involved and the necessity for a hearing, the Complainant's costs shall be in the sum of HK\$116,866 and the costs of the Clerk of the Committee shall be HK\$11,336. The total costs awarded against the Respondent shall be in the sum of HK\$128,202.
21. The Committee therefore orders that:-
  - (1) The name of the Respondent be removed from the register of certified public accountants for a period of 2 years with effect from the 60<sup>th</sup> day of the date of this Order under section 35(1)(a) of the PAO.
  - (2) The Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant/Clerk of the Committee in the sum of HK\$128,202 under section 35(1)(iii) of the PAO.

DATED this 22nd day of June 2020.

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Mr. WONG Tim Wai

Chairman

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Ms. CHAN Wai Kam, Caroline

Member

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Ms. CHUI Hoi Yee

Member

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Mr. CHOW Dennis Chi In

Member

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Mr. NG Chi Keung, Victor

Member