

IN THE MATTER of a complaint made under section
34(1)(a) of the Professional Accountants Ordinance
(Cap. 50)

BETWEEN

THE REGISTRAR OF THE HONG KONG
INSTITUTE OF CERTIFIED PUBLIC
ACCOUNTANTS Complainant

and

1st Respondent
2nd Respondent

Hearing dates: 17 and 31 March 2009

ORDER

UPON hearing the solicitors of the Complainant and the 1st Respondent and the 2nd
Respondent appearing in person

AND UPON reading the Statement of Costs of the Complainant of 12 May 2009 and the two
letters from the 2nd Respondent of 16 June 2009

IT IS ORDERED that:-

1. The 1st Respondent and the 2nd Respondent be reprimanded under section 35(1)(b) of the Ordinance;
2. The 1st Respondent be fined a sum of HK\$25,000.00 in respect of the 1st Complaint and HK\$25,000.00 in respect of the 2nd Complaint under section 35(1)(c) of the Ordinance;
3. The 2nd Respondent be fined a sum of HK\$10,000.00 in respect of the 1st Complaint and HK\$10,000.00 in respect of the 2nd Complaint under section 35(1)(c) of the Ordinance;
and
4. The 1st and 2nd Respondents do pay the costs and expenses of and incidental to these proceedings but only up to the dissolution of the first Disciplinary Committee. It is further directed that the Complainant should provide within 21 days a revised Statement of Costs covering only such costs and expenses for the consideration of this Disciplinary Committee.

Dated the 20 day of October 2009.

IN THE MATTER of a complaint made
under section 34(1)(a) of the *Professional
Accountants Ordinance, Cap. 50*

BETWEEN

THE REGISTRAR OF THE HONG KONG INSTITUTE
OF CERTIFIED PUBLIC ACCOUNTANTS Complainant
and
1st Respondent
2nd Respondent

REASONS FOR DECISION

1. Formal complaints were lodged by the Complainant in writing to the Council of the Hong Kong Institute of Certified Public Accountants by letters both dated 27th November 2006 against respectively the 1st Respondent and the 2nd Respondent. In the complaints, the same 2 charges were laid against the 1st and 2nd Respondents, namely,
 - (1) They both failed or neglected to observe, maintain or otherwise apply the fundamental principles set out in paragraphs 1 to 4 of Statement 1.200 "Professional Ethics – Explanatory Foreword" and were hereby in breach of section 34(1)(a)(vi) of the Professional Accountants Ordinance; and/or
 - (2) They were both guilty of dishonourable conduct in breach of section 34(1)(a)(x) of the Professional Accountants Ordinance in that their acts brought discredit upon themselves, the Institute or the accountancy profession.

Background

2. The 1st Respondent has been the sole proprietor of [A CPA Firm] ("the Firm") since 20th February 1990. The 2nd Respondent was at all material times employed by the Firm as a "principal".
3. The Firm was a "Group B" firm under the Official Receiver's open tender scheme or the outsourcing of smaller court-ordered insolvency liquidations under section 194(1A) of the Companies Ordinance.
4. The estimated realisable assets of complaints in liquidation under the Panel B Scheme are no more than HK\$200,000 in value.
5. During the period from 7th April 2003 to 31st March 2004, the 1st and 2nd Respondents were appointed as Joint and Several Provisional Liquidators in the summary winding-up by court order of 28 companies.
6. In summary, the basis of both complaints is the failure of the 1st and 2nd Respondents in the discharge of their office as Joint and Several Provisional Liquidators of the 28 companies, and their conduct generally in the period from April 2003 to March 2006 when they were removed from their office by the Court upon an application by the Official Receiver.
7. By 28 identical Summonses, the Official Receiver applied for the removal of the 1st and 2nd Respondents as the Joint and Several Provisional Liquidators of each of the 28 companies in question. The applications were heard together before the Honourable Madam [Justice K] on 21 March 2006, and her Ladyship ordered their removal, holding that *"I agree with the Official Receiver that the performance and conduct of Yeung and Lie as provisional liquidators in the 28 summary liquidations are so unsatisfactory as to justify their removal"*. [Justice K] handed down the reasons for her decision on [Date] ("the Reasons for Decision").

Basis of Complaints

8. In arriving at the decision to remove the 1st and 2nd Respondents as the Provisional

Liquidators of the 28 companies, [Justice K] made various factual findings (which form the factual basis of the present complaints against the Respondents), including the following:-

- (1) a failure to complete the winding-up of the 28 companies in question and to submit an Explanation Report in each case to the Official Receiver's Office as to why the case could not be completed as required by clause 7(b) of the Contract (see: paragraph 18 of the Reasons for Decision)
 - (2) a failure in 19 of the 28 cases to submit any statements of accounts as required under section 203 of the Companies Ordinance, and in the remaining 9 cases where first accounts were submitted, a failure to comply with the requirements prescribed for those accounts (see: paragraphs 19-22 of the Reasons for Decision)
 - (3) a failure to co-operate with the Official Receiver's Office in arranging field audits leading to the frustration of the field audits (see: paragraphs 23 and 26 of the Reasons for Decision); and
 - (4) a failure in one of the cases to respond to a petitioning creditor's enquiry about progress and his follow up letters asking for a reply, even though the Official had requested the Respondents to furnish a response to the petitioning creditor (see: paragraph 25 of the Reasons for Decision).
9. As submitted by the Solicitors for the Complainant (to which this Disciplinary Committee agrees) the said findings of fact made by [Justice K] constitute strong *prima facie* evidence of the existence of such facts for the purpose of the present proceedings.
 10. Having carefully considered the oral and written materials provided by them, this Disciplinary Committee is not satisfied that [Justice K] was in any way in error in making the said findings of fact.
 11. The 1st Respondent submitted in writing that the 21st March 2006 Court Order was unjust because he and the 2nd Respondent were "*unable to attend ... and prepare a proper submission*". In this regard, the Official Receiver's application to Court by Summonses was made *inter partes* and according to paragraph 2 of the Reasons for

Decision was served on the Respondents. The Respondents had also been put on notice that an application would be made in a letter from the Official Receiver's Office dated 11th January 2006. Further, the Respondents were invited by the Court to make an application to set aside [Justice K]'s Decision by issuing a Summons and filing an affidavit setting out their position. Although in a further letter to the Court dated 12th April 2006 in the name of both of the Respondent it was stated "*we are going to issue a Summons within a few days to set aside and/or vary and/or stay the Order handed down by the Honourable Madam [Justice K] on [Date]*", no such application was ever made. In the circumstances, therefore, [Justice K]'s Reasons for Decision and the conclusions reached therein regarding the conduct of the Respondents stands unchallenged.

12. The 2nd Respondent relies on section 205(3) of the Companies Ordinance to argue that an order of the Court releasing the liquidator shall discharge him from all liability in respect of any default made by him in the administration of the affairs of the companies, or otherwise in relation to his conduct as liquidator. This argument is entirely misconceived. Although an order releasing the liquidator may discharge him from his liability as a liquidator, it would not absolve him from his liability as a professional accountant under the Professional Accountants Ordinance.

Conclusion

13. On the basis of the factual findings as set out in paragraph 8 above, and the matters set out in paragraph 7 above, this Disciplinary Committee is satisfied that both companies against respectively the 1st and 2nd Respondents have been proved. By virtue of their failures, section 34(1)(a)(vi) of the Professional Accountants Ordinance applies to the Respondents in that they failed or neglected to observe, maintain or otherwise apply a professional standard, namely the Fundamental Principles set out in paragraphs 2 to 4 of Statement 1.200 "Professional Ethics Explanatory Foreword", and section 34(1)(a)(x) of the Professional Accountants Ordinance applies to the Respondents in that they were guilty of dishonourable conduct in that their acts brought discredit upon themselves, the Institute and the accountancy profession.
14. This Disciplinary Committee is not, however, satisfied that paragraph 1 of Statement 1.200 is engaged. Paragraph 1 of Statement 1.200 deals with matters which may reflect "*adversely upon [the accountant's] integrity and objectivity*". This Disciplinary

Committee is of the view that the integrity and objectivity of the Respondents have not been called into question in the resent proceedings.

Sanctions

15. This Disciplinary Committee orders that the 1st Respondent and the 2nd Respondent be reprimanded.
16. In view of the fact that the evidence adduced at these proceedings does not reveal any dishonest conduct on the part of the Respondents, this Disciplinary Committee does not feel that it would be appropriate to order the removal of the Respondents from the register, rather, further sanctions in the form of financial penalties should be imposed.
17. Bearing in mind the different positions occupied by the Respondents in the Firm and the different role they played in fact in the liquidations, this Disciplinary Committee orders the Respondents to pay the following penalties:-
 - (a) The 1st Respondent to pay HK\$25,000.00 in respect of the 1st Complaint.
 - (b) The 1st Respondent to pay HK\$25,000.00 in respect of the 2nd Complaint.
 - (c) The 2nd Respondent to pay HK\$10,000.00 in respect of the 1st Complaint.
 - (d) The 2nd Respondent to pay HK\$10,000.00 in respect of the 2nd Complaint.

Costs and expenses

18. This Disciplinary Committee is very surprised by the amount (HK\$981,576.11) being put forward by the Complainant in the Statement of Costs dated 12th May 2009 as the total costs and expenses for these disciplinary proceedings. This Disciplinary Committee is of the view that such costs and expenses are disproportionate to the nature of the complaints against the Respondents, and the matter could well have dealt with under section 35B of the Professional Accountants Ordinance.

19. Accordingly, this Disciplinary Committee orders that the 1st and 2nd Respondents do pay the costs and expenses of and incidental to these proceedings but only up to the dissolution of the first Disciplinary Committee. It is further directed that the Complainant should provide within 21 days a revised Statement of Costs covering only such costs and expenses for the consideration of this Disciplinary Committee.

Dated the 20th day of October, 2009.



IN THE MATTER of a complaint made
under section 34(1)(a) of the *Professional
Accountants Ordinance, Cap. 50*

BETWEEN

THE REGISTRAR OF THE HONG KONG INSTITUTE
OF CERTIFIED PUBLIC ACCOUNTANTS Complainant
and
1st Respondent
2nd Respondent

DECISION ON COSTS

1. Under paragraph 4 of the Order made by this Disciplinary Committee on 20th October 2009, the 1st and 2nd Respondents were ordered to pay the costs and expenses of and incidental to these proceedings but only up to the dissolution of the first Disciplinary Committee. It was further directed that the Complainant should provide within 21 days a revised Statement of Costs covering only such costs and expenses for the consideration of this Disciplinary Committee.
2. On 11th November 2009, a Revised Statement of Costs was duly provided by the Complainant. In the Revised Statement of Costs, the costs incurred by the Legal Advisors to the Complainant was stated to be HK\$16,031, and the expenses incurred by the Clerk to the Disciplinary Committee was stated to be HK\$46,607.60, giving a total sum of HK\$62,638.60.

3. In all the circumstances of this case, this Disciplinary Committee does not feel that the costs and expenses should be assessed on an indemnity basis. This Disciplinary Committee finds it appropriate to assess the costs and expenses to be paid by the Respondents at HK\$30,000, which is slightly less than half of the total costs said to have been incurred. This Disciplinary Committee further is of the view that such an award is proportionate to the penalties imposed in this case

Dated the 13th day of March, 2010.