

IN THE MATTER OF

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

RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants ("the Institute").

ORDER

Upon reading the complaint against [the Respondent], a certified public accountant, as set out in a memo from the Registrar of the Institute ("the Complainant") dated 4 November 2008, the written submission of the Respondent dated 19 August 2009, the written submission of the Complainant's Representative dated 21 August 2009, and relevant documents, the Disciplinary Committee is satisfied by the admission of the Respondent and evidence adduced before it that the following complaint is proved:

That Section 34(1)(a)(x) of the PAO applied to the Respondent in that on [Date] he was convicted in Hong Kong of 4 criminal charges of indecent assault, which act would reasonably be regarded as bringing or likely to bring discredit upon the Respondent himself, the Institute or the accountancy profession.

IT IS ORDERED that:-

1. the name of the Respondent be removed from the register of certified public accountants for 3 years from the date hereof under Section 35(1)(a) of the PAO;
2. the Respondent be fined a sum of HK\$50,000 under Section 35(1)(c) of the PAO; and
3. the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$21,506 under Section 35(1)(iii) of the PAO.

Dated the 12th day of November 2009

IN THE MATTER OF

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

RESPONDENT

REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants ("the Institute") as Complainant against [the Respondent] a certified public accountant, that Section 34(1)(a)(x) of the PAO applied to the Respondent in that on [Date] he was convicted by Her Honour [Judge J] of the District Court of the HKSAR of 4 criminal charges of indecent assault, which act would reasonably be regarded as bringing or likely to bring discredit upon the Respondent himself, the Institute or the accountancy profession ("the Complaint").
2. The particulars of the Complaint as set out in a Memo dated 4 November 2008 ("the Memo of 4 November 2008") from the Registrar of the Institute to the Council of the Institute for consideration of the Complaint for referral to the Disciplinary Panels were as follows:-
 - 1) On [Date], the Respondent was convicted in the District Court of 4 criminal charges of indecent assault on his Indonesian domestic helper during 2005, contrary to Section 122(1) of the Crimes Ordinance (Cap. 200).
 - 2) He was sentenced to a total of 3 years and 3 months' imprisonment.
 - 3) In her reasons for Sentence, Her Honour [Judge J] made the following remarks:-

"Of your conduct I can only say you were vile and contemptible. You should know better, as an educated and purportedly civilized man, to restrain your base urges. With your wife and son either

sound asleep in the bedroom or not at home, you took advantage of a vulnerable person in your employment. You knew she could not afford to jeopardise her employment. You knew her to be timid, naive and fearful. You exploited your position of dominance and persistently threatened her with dismissal in order to have your way with her, coercing her into performing degrading acts of gross indecency. To add insult to injury you offered her money, \$20 to assuage your guilt.”

- 4) On [Date], the Respondent appealed to the Court of Appeal against his conviction and on the same day the Court of Appeal dismissed his appeal.
3. By a written confirmation dated 25 February 2009, the Respondent admitted the Complaint against him. He did not dispute the facts as set out in the report attached to the Memo of 4 November 2008, and agreed that the steps set out in paragraphs 17 to 25 of the Disciplinary Committee Proceedings Rules (“the Rules”) be dispensed with.
4. By a letter dated 10 August 2009 addressed to the Complainant and the Respondent, the Clerk to the Disciplinary Committee (“the DC”), under the direction of the DC, informed the parties to make written submissions to the DC as to the sanctions and costs which should be imposed by the DC pursuant to Rule 31 of the Rules, in light of the admission of the Complaint by the Respondent, and that the DC would not hold a hearing on sanctions and costs unless otherwise requested by the parties.
5. By a letter dated 24 August 2009, the Clerk to the DC informed the DC that the parties did not request the DC to hold a hearing on sanctions and costs, and made written submissions as follows:-
 - A) The Respondent’s case dated 19 August 2009:-
 - 1) the Respondent admitted the Complaint made against him under Section 34(1)(a)(x) of the PAO;
 - 2) he felt remorseful for what he had done. He realized that his previous behaviour had brought devastating effects to the victim, his family, and society as a whole. He decided to repay his debts to society by serving his term of imprisonment and supervision for 3 years and 3 months, and to turn over a new leaf after his release from prison;
 - 3) [Details of private information omitted.]
 - 4) [Details of private information omitted.]
 - 5) [Details of private information omitted.]
 - 6) The Respondent asked the DC to:-
 - (1) levy a legal cost and penalty upon him of not exceeding HK\$30,000 by instalments; and

(2) grant him an opportunity to resume his membership some time in future in order for him to repay the society.

7) The Respondent said that he was very cooperative and had not wasted the time of the Institute in proceedings with the disciplinary action, and as a result, it did not incur a lot of legal cost relating to this matter.

8) The Respondent also enclosed letters from 3 members of the Institute to intercede for him as follows:-

[details of private information omitted.]

B) By his letter dated 21 August 2009 addressed to the Clerk of the DC, the Representative for the Complainant:-

1) submitted a Statement of Costs of the Complaint which amounted to HK\$21,506;

2) stated that:-

(1) the Complainant had no objection to any regard which the DC might have in considering the order to be made;

(2) the Respondent admitted the Complaint, thereby avoiding the necessity of a formal hearing taking place;

(3) the sexual offences committed by the Respondent (being the first such case in the disciplinary records of the Institute) were serious and could impact gravely on the reputation of the Institute and the accountancy profession; and

3) requested the DC to make an order that the Respondent's name be removed from the register for a period to be determined by the DC.

6. In considering the proper order to make in this case, the DC 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 Complainant and the Respondent throughout the proceedings.

7. In particular, the DC considered that:-

- 1) The nature of the offences for which the Respondent was convicted under Section 122(1) of the Crimes Ordinance (Cap.200) was very serious in that the maximum sentence that could be imposed was 10 years' imprisonment.
- 2) The Respondent was convicted of 4 counts of the offence committed against a foreign domestic helper while she was in a vulnerable position physically and mentally ... [details of private information omitted.]
- 3) The offences showed the Respondent's total lack of integrity in his employment relationship with the domestic helper, and in his dealings with a person under his authority. This calls into question his qualification to be registered as a certified public accountant, where one of the requirements of such registration was that of being of good character and a fit and proper person to be a certified public accountant under Section 24(1)(b) of the PAO.
- 4) The Complaint was a serious one as it involved dishonourable conduct whether or not in the course of carrying out professional work, this case being one not involving professional work, but in the other important arena of life, that of the Respondent's home. Because of the Respondent's dishonourable conduct, his home became an oppressive and unsafe place for his domestic helper to work and live. The Respondent seriously breached the trust of his wife and domestic helper on multiple occasions, bringing discredit upon himself, the Institute and the accountancy profession.
- 5) The Respondent should be given a chance to improve himself after having served his term of imprisonment for the criminal offences he committed.
- 6) The sanctions imposed should reflect the gravity of the Complaint and serve as a deterrent against such dishonourable conduct under the principles of totality and proportionality.
- 7) The costs and expenses incurred as set out in the Complainant's letter of 21 August 2009 were reasonable for the necessary work done in the prosecution of the Complaint.

8. The DC orders that:-

- 1) the name of the Respondent be removed from the register for 3 years from the date hereof under Section 35(1)(a) of the PAO;
- 2) the Respondent be fined a sum of HK\$50,000 under Section 35(1)(c) of the PAO; and
- 3) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$21,506 under Section 35(1)(iii) of the PAO.

Dated the 12th day of November 2009

