

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

BETWEEN

The Registrar of the Council of
the Hong Kong Institute Certified
Public Accountants

Complainant

AND

Respondent

Order

UPON considering the parties' submissions in writing
IT IS ORDERED THAT:

1. The Respondent be reprimanded.
2. The costs and expenses of these proceedings be borne and paid for by the Respondent in the following sums:
 - a. HK\$8,245.00, being the taxed costs and expenses of the Complainant;
and
 - b. HK\$29,346.00, being the taxed costs and expenses of the Clerk to the Disciplinary Committee.

Dated the 29th day of December 2008.

Proceedings No: D-06-0214C

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

BETWEEN

The Registrar of the Council of
the Hong Kong Institute Certified
Public Accountants Complainant

AND

Respondent

Order

Dated the 29th day of December 2008.

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

BETWEEN

The Registrar of the Council of
the Hong Kong Institute Certified
Public Accountants

Complainant

AND

Respondent

Reasons

1. On 29th December 2008, the Committee ordered that: (1) The Respondent be reprimanded; and (2) the costs and expenses of these proceedings be borne and paid for by the Respondent in the following sums: a) HK\$8,245, being the taxed costs and expenses of the Complainants; and b) HK\$29,346, being the taxed costs and expenses of the Clerk to the Disciplinary Committee ("the Order"). Here are our short reasons for the Order.

Background

2. The Respondent is at all material times a certified public accountant. In or around September 2005, the Respondent was the auditor of [Company A].
3. On 22nd September 2005, in support of [Company A]'s application for a Hong Kong Confederation of Insurance Brokers' ("HKCIB") membership, the Respondent issued a certification letter to the HKCIB certifying that [Company A] were in compliance with the institute's minimum capital and net asset requirements as required by its regulations.

4. It was subsequently discovered that [Company A] did not in fact meet the minimum paid up share capital requirement of HK\$100,000 at the time the Respondent made the said certification. The paid up share capital of [Company A] was only HK\$10.
5. Subsequent investigation by the Complainant confirms that the Respondent was aware that [Company A]'s paid up share capital was not HK\$100,000 as she had confirmed.
6. On 29th July 2008, the Complainant commenced the present proceedings.
7. On 18th November 2008, based on facts as agreed by the Complainant and the Respondent, the Committee found the complaint against the Respondent under section 34 of the Professional Accountants Ordinance (Cap. 50) ("PAO") proved.

The Law on Sanction and Costs

8. The relevant parts of Section 35 of the PAO read:

- (1) *If a Disciplinary Committee is satisfied that a complaint referred to it under section 34 is proved, the Disciplinary Committee may, in its discretion make any one or more of the following orders-*
 - (a) *an order that the name of the certified public accountant be removed from the register, either permanently or for such period as it may think fit;*
 - (b) *an order that the certified public accountant be reprimanded;*
 - (c) *an order that the certified public accountant pay a penalty not exceeding \$500000 to the Institute;*
 - (d) *an order that the certified public accountant- (Amended 18 of 2006 s.74)*
 - (i) *pay the costs and expenses of an incidental to an investigation against him under Part VA; and*
 - ...
 - and the Disciplinary Committee may in any case-*
 - ...

(iii) make such order as the Disciplinary Committee thinks fit with regard to the payment of costs and expenses of and incidental to the proceedings, whether of the Institute (including the costs and expenses of the Disciplinary Committee) or of any complainant or of the certified public accountant, and any costs and expenses or penalty ordered to be paid may be recovered as a civil debt.

(2) Nothing in this section shall be deemed to require a Disciplinary Committee to inquire into the question whether a professional accountant was properly convicted but the Committee may consider the record of a case in which such conviction was recorded and such other evidence as may show the nature and gravity of the offence."

9. The relevant paragraphs of the Guidelines for the Chairman and the Committee on Administering the Disciplinary Committee Proceedings Rules (March 2007 issue) ("Guidelines") read:

"69. It is evident from [s. 35 PAO] that any costs order made by the Committee may provide for payment of both another party's legal costs and the expenses of the Committee.

70. With respect to payment of another party's legal costs, the Committee has a discretion to determine the extent to which costs should be recoverable. However, such discretion must be exercised reasonably. The following paragraphs describe how such discretion should be exercised.

(1) Save where there is good reason to do otherwise, the Committee should award costs to the successful party in the proceedings.

(2) Where a number of charges have been brought and some have been successfully defended, it should ordinarily be appropriate to reduce the costs awarded in such proportion as to reflect the outcome of the proceedings.

(3) The starting point in any award of costs should be the actual costs (i.e. indemnity costs) incurred by the successful party, subject to the Committee being satisfied that the actual costs were reasonably and necessary incurred. The Committee may reduce the amount awarded to the extent it considers costs to have been incurred unnecessarily or extravagantly. In deciding what reduction is reasonable, the Committee may consider being guided by the practices of the courts in civil proceedings (which are complex). These are summarized in Annex 5.

72. With respect to payment of the costs and expenses of the Committee, the position is somewhat different. Unlike the legal costs of the parties, it is to be presumed that the entirety of the expenses incurred by the Committee (including expenses for items such as hiring, interpreters, paying for transcription services, and renting premises) are necessary and proper."

Application of the Law to the Present Case

10. Having considered

- a. the nature and gravity of the offence committed, namely, that the professional misconduct committed was not the most serious kind and that the misconduct did not lead to anyone being harmed; and
- b. that the Respondent has not previously committed similar offences; the Committee took the view that it is appropriate to simply order that the Respondent (1) be reprimanded and (2) to pay the costs of the proceedings incurred by the Complainant and the Institute.

11. Having considered the skeleton bill of costs of the Complainant and the Institute, the Committee decided that the Respondent should only bear part of the both sets of costs on the basis that they were both unreasonable and extravagant for the following reasons:

Complainant's Costs:

- a. The solicitor employed by the Complainant was too expensive. At the outset, it was clear that this was a simple case. There was no reason for the Complainant to instruct such highly paid solicitor to deal with the complaint and accordingly, we consider that the Respondent should not be made to pay for such extravagance. We consider that a solicitor charging an hourly rate of HK\$2,500 would have been more than capable in dealing with the present complaint.
- b. The amount of time the Complainant's solicitor took in dealing with the present case was too long. We took the view that 1 hour and 15 minutes is a more reasonable amount of time to spend in dealing with the present complaint.

Institute's Costs

- c. We also consider the Clerk's costs should be reduced to HK \$2,500 per hour.
12. The costs recoverable by the Complainant and the Institute from the Respondent are accordingly reduced.

Dated the 24th day of April 2009.

Proceedings No: D-06-0214C

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(Cap.50)

BETWEEN

The Registrar of the Council of
the Hong Kong Institute Certified
Public Accountants

Complainant

and

Respondent

REASONS

Dated the 24th day of April 2009.