

IN THE MATTER OF

A Complaint made under sections 34(1)(a) and section 34(1A) of the Professional Accountants Ordinance (Cap. 50) ("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 hearing the complaint against the Respondent on 3 August 2010, the Disciplinary Committee finds that section 34(1)(ix) of the PAO applies to the Respondent in that he refused or neglected to comply with a direction lawfully given to him by the Council of the Institute under section 18B of the PAO.

IT IS ORDERED that:-

1. the Respondent be reprimanded under section 35(1)(b) of the PAO;
2. the Respondent do pay a penalty of HK\$20,000 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\$68,000 under section 35(1)(iii) of the PAO.

Dated the 30th day of August 2010

IN THE MATTER OF

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

Date of Hearing: 3 August 2010

Date of Written Reasons for Decision: 30 August 2010

REASONS FOR DECISION

The Complaint

1. The Complaint herein is that the Respondent had refused or neglected to comply with a direction lawfully given to him by the Council of the Institute under section 18B of the PAO, as a result of which section 34(1)(a)(ix) of the PAO applies to the Respondent.

Relevant Provisions of the PAO

2. Section 18B of the PAO provides, inter alia, that :
 - (1) The Council may, in connection with the discharge of any of its functions or duties or the exercise of any of its powers, give directions either generally to certified public accountants or to any one or more certified public accountants –
...
 - (c) requiring a certified public accountant to give to the Institute an explanation of any act or omission of the certified public accountant which appears to the Council to be conduct unbecoming of a certified public accountant, or conduct which may affect the

reputation, integrity and status of the Institute or of the accountancy profession or conduct which may fall within section 34(1)(a)(iii) to (xii).

.....

- (2) A direction given under this section shall be a direction lawfully given by the Council for the purpose of section 34(1)(a)(ix).
3. Sections 34(1)(a)(ix) and 34(1A) of the PAO provide:
- (1) A complaint that –
 - (a) a certified public accountant –
 - ...
 - (ix) refused or neglected to comply with the provisions of any by-law or rule made or any direction lawfully given by the Council;
 - ...shall be made to the Registrar who shall submit the complaint to the Council which may, in its discretion but subject to section 32D(7), refer the complaint to the Disciplinary Panels.
- (1A) Where the Registrar has reason to believe that subsection (1)(a).....applies to a certified public accountant...he shall submit the facts to the Council which may, in its discretion, refer the complaint to the Disciplinary Panels.

The Background

4. The Respondent was at all material times a member of the Hong Kong Institute of Certified Public Accountants (the "Institute") and sole proprietor of a practice in the firm name of [Firm C].
5. The Complaint herein arose from the allegations made by a client of the Respondent that the Respondent failed to carry out the client's instructions and that he was withholding documents belonging to the client notwithstanding a request for their return had been made.
6. The information supplied by the client's solicitors also suggested that the Respondent's firm, [Firm C] had conducted audits of the financial statements of a number of the companies of the client since 1997 whilst the same firm had between 1993 and 2007 provided accounting services for at least one of the companies for which audit services had also been provided, thus raising questions of independence and objectivity in respect of the audits.

7. In view of the circumstances, the Institute was concerned that the Respondent might have been in breach of section 130 "Professional Competence and Due Care" of the Code of Ethics for Professional Accountants ("COE") by reason of his failure to carry out his client's instructions and withholding clients' company documents notwithstanding a request for their return had been made.
8. It also appeared from the information supplied by the client's solicitors that the Respondent, by involving himself in providing both accounting as well as audit services to at least one of the companies, was not conducting his professional work in an independent and objective manner and might have been in breach of section 100.4(b) "Fundamental Principles - Objectivity" of the COE, read in conjunction with the independence requirements set out in section 290 "Independence - Assurance Engagements" of the COE.
9. As a result, the Institute made enquiries of the Respondent by a letter dated 14 May 2009, requesting him to provide his representations on the allegations made against him within 21 days (i.e. by 4 June 2009).
10. On 10 June 2009, the Respondent verbally requested for an extension of time to 17 June 2009 for replying to the Institute's letter of enquiry dated 14 May 2009. Acceding to the request, the Institute by letter dated 10 June 2009 to the Respondent extended the time for him to reply to 17 June 2009.
11. The Respondent did not provide a reply by 17 June 2009, and on 8 July 2009 the Institute further wrote to the Respondent requesting him to reply to its enquiries within 7 days, explaining to him, inter alia, that under the PAO there are provisions that empower the Council of the Institute to issue a formal direction to him to explain, and that failure to comply with such a direction is itself a ground for disciplinary action.
12. Thereafter, further attempts by the Institute to contact the Respondent by phone failed, and the Respondent did not respond to the Institute's enquiries on the matters referred to above.
13. As the Respondent did not provide any response to the Institute's enquires, a direction was issued under section 18B of the PAO to the Respondent on 22 July 2009 directing him to give to the Institute within 21 days (i.e. by 12 August 2009) an explanation of the matters set out in the Institute's letter dated 14 May 2009 as referred to above (the "Direction").
14. The Direction was sent to the Respondent by hand on 23 July 2009 to the address of his practice at [Firm C].
15. The Respondent did not return telephone calls made to his office on 11 August and 12 August 2009 to remind him of compliance with the Direction.
16. As on 30 October 2009, the Respondent had not complied with the Direction. Disciplinary proceedings were commenced against the Respondent pursuant to a Notice of Commencement of Proceedings dated 21 April 2010.

The Hearing

17. A date of 3 August 2010 was fixed for the disciplinary hearing (the "Hearing") to be held. The Complainant was legally represented at the Hearing. The Respondent was not legally represented at the Hearing.
18. The Respondent admitted the Complaint at the outset of the Hearing which enabled the Disciplinary Committee to dispense with the Hearing expeditiously.

Findings of the Disciplinary Committee

19. The Disciplinary Committee considered that the Respondent's admission was cost-saving as well as indicative of his regret for the misconduct. Regrettably, the Hearing could have been avoided if the Respondent were to admit the Complaint earlier.
20. Since the Disciplinary proceedings had commenced, costs would be inevitable.
21. The Disciplinary Committee had considered the submission of the Complainant of the sanction and costs.
22. The Disciplinary Committee regarded that the appropriate Order is for the Respondent to be reprimanded with a financial penalty at HK\$20,000.
23. On the question of costs, the Disciplinary Committee would allow 70% of the bill of costs submitted by the Complainant rounding up to the sum of HK\$68,000.
24. In the circumstances, the order made by the Disciplinary Committee is:
 - 1) the Respondent be reprimanded under section 35(1)(b) of the PAO;
 - 2) the Respondent do pay a penalty of HK\$20,000 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\$68,000 under section 35(1)(iii) of the PAO.

Dated the 30th day of August 2010