

IN THE MATTER OF

A complaint made under section 34(1)(a) 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 COMPLAINANT
Institute of Certified Public
Accountants

AND

1st Respondent 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 [1st] Respondent, who is a certified public accountant. Section 34(1)(a)(vi) of the PAO applied to the [1st] Respondent.
2. The particulars of the Complaint as set out in a letter dated 11 January 2010 (“the Complaint”) 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:-
 - (a) On 8 July 2009, the [1st] Respondent and the [2nd Respondent] were found by the Market Misconduct Tribunal (“MMT”) to be culpable of insider dealing, which is a market misconduct, contrary to section 270(1)(e)(i) of the Securities and Futures Ordinance (Cap 571) (“SFO”), in that :

- (i) they had information which they knew was specific, non-public and price sensitive information in relation to [a listed company];
 - (ii) the information was received from another person whom they knew was connected with [the listed company], and whom they knew or had reasonable cause to believe held the information as a result of being connected with [the listed company]; and
 - (iii) they had dealt in the securities of [the listed company].
- (b) In the MMT hearing, the MMT also found Mr. A, not a member of the Institute) culpable of insider dealing, contrary to section 270(1)(c) of the SFO, in that he, being a person connected with [the listed company], and knowing that certain information constituted specific, non-public and price sensitive information in respect of [the listed company], disclosed the information to the [1st] Respondent and [the 2nd] Respondent], knowing or having reasonable cause to believe that [the 1st] Respondent and [the 2nd] Respondent] would make use of the information for the purpose of dealing in the securities of [the listed company].
- (c) On 20 August 2009, the MMT made the following orders against the [1st] Respondent:
- (i) pursuant to section 257(1)(a), that for a period of eight months he shall not, without the leave of the Court of First Instance, be concerned or take part in the management of [Company A] or of any company that is now or becomes a subsidiary of [Company A];
 - (ii) pursuant to section 257(1)(b), that for a period of eight months he shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities or an interest in any securities;
 - (iii) pursuant to section 257(1)(e), that he shall pay the Government the sum of \$2,069,582.42;
 - (iv) pursuant to section 257(1)(f), that he shall pay the Securities and Futures Commission the sum of \$361,854.00; and

- (v) pursuant to section 257(1)(g), that the Hong Kong Institute of Certified Public Accountants, CPA Australia, the Hong Kong Society of Financial Analysts; the Hong Kong Securities Institute; and the Hong Kong Institute of Directors be recommended to take disciplinary action against him.
3. The [1st] Respondent appealed against the determination of MMT to the Court of Appeal in case No. [case number] (“the said Appeal”).
 4. The said Appeal was dismissed on 18 April 2012.
 5. The [1st] Respondent on 22 June 2012 admitted to the Complaint against him. He does not seek to dispute the facts as set out in the Complaint. He agrees that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules may be dispensed with.
 6. By a letter dated 13 July 2012 addressed to the Complainant and the [1st] Respondent, the Clerk to the Disciplinary Committee (“DC”), under the direction of the DC, informed the parties that they should make written submissions to the DC as to the sanctions and costs and that the DC would not hold a hearing on sanctions and costs unless otherwise requested by the parties.
 7. The DC has read, considered and taken into account the Submissions made by the Complainant dated 27 July 2012 and [1st] Respondent dated 23 July 2012.
 8. In considering the proper order to be made in this case, the DC has had regard to all the aforesaid matters, including the particulars in support of the Complaint and the findings of the MMT.
 9. The DC considers this to be a serious case in which public interest is involved. The DC accepts that there is an element of breach of trust and whilst there is no evidence of direct benefit accrued to the [1st] Respondent from his insider dealing, his conduct has benefited the fund and would ultimately be reflected by monetary reward by way of bonus.
 10. The DC also takes into account the [1st] Respondent’s submissions that he is not a practicing accountant and his licenses with the SFC have been revoked. He also had a clear disciplinary record with the SFC and the HKICPA.
 11. The DC orders that:-
 - (1) the [1st] Respondent be reprimanded under section 35(1)(b) of the PAO;
 - (2) the name of the [1st] Respondent be removed from the register of certified public accountants for 12 months effective from 42 days from the date hereof under section 35(1)(a) of the PAO;

- (3) the [1st] Respondent pay a penalty of HK\$100,000 under section 35(1)(c) of the PAO;
- (4) the [1st] Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$34,159 under section 35(1)(iii) of the PAO.

Dated the 19th day of September 2012

IN THE MATTER OF

A complaint made under section 34(1)(a) 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 COMPLAINANT
Institute of Certified Public
Accountants

AND

1st Respondent RESPONDENT

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

ORDER

Upon reading the complaint against the 1st Respondent, being a certified public accountant, as set out in a letter from the Registrar of the Institute ("the Complainant") dated 11 January 2010, the parties' joint application dated 22 June 2012, the written submission of the Respondent dated 23 July 2012, the written submission of the Complainant dated 27 July 2012, and other relevant documents, the Disciplinary Committee is satisfied by the admission of the Respondent and the evidence adduced before it that the following complaint is proved:

"Section 34(1)(a)(vi) of the PAO applies to the 1st Respondent in that he failed or neglected to observe, maintain or otherwise apply the Fundamental Principles set out in Statement 1.200 "Professional Ethics–Explanatory Foreword"."

IT IS ORDERED that:-

1. the Respondent be reprimanded under section 35(1)(b) of the PAO;
2. the name of the Respondent be removed from the register of certified public accountants for 12 months effective from 42 days from the date hereof under section 35(1)(a) of the PAO;
3. the Respondent pay a penalty of HK\$100,000 under section 35(1)(c) of the PAO;
4. the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$34,159 under section 35(1)(iii) of the PAO.

Dated the 19th day of September 2012

- (i) they had information which they knew was specific, non-public and price sensitive information in relation to [a listed company];
 - (ii) the information was received from another person whom they knew was connected with [the listed company], and whom they knew or had reasonable cause to believe held the information as a result of being connected with [the listed company]; and
 - (iii) they had dealt in the securities of [the listed company].
- (b) In the MMT hearing, the MMT also found Mr. A, not a member of the Institute) culpable of insider dealing, contrary to section 270(1)(c) of the SFO, in that he, being a person connected with [the listed company], and knowing that certain information constituted specific, non-public and price sensitive information in respect of [the listed company], disclosed the information to the [2nd] Respondent and [the 1st Respondent], knowing or having reasonable cause to believe that [the 2nd] Respondent and [the 1st Respondent] would make use of the information for the purpose of dealing in the securities of [the listed company].
- (c) On 20 August 2009, the MMT made the following orders against the [2nd] Respondent:
- (i) pursuant to section 257(1)(a), that for a period of nine months he shall not, without the leave of the Court of First Instance, be concerned or take part in the management of [Company B] or of any company that is now or becomes a subsidiary of [Company B];
 - (ii) pursuant to section 257(1)(b), that for a period of nine months he shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, in any way acquire, dispose of or otherwise deal in any securities or an interest in any securities;
 - (iii) pursuant to section 257(1)(e), that he shall pay the Government the sum of \$2,038,429.85;
 - (iv) pursuant to section 257(1)(f), that he shall pay the Securities and Futures Commission the sum of \$174,601.00; and
 - (v) pursuant to section 257(1) (g), that the Hong Kong Institute of Certified Public Accountants and the Hong Kong Society of Financial Analysts be recommended to take disciplinary action against him.
3. The [2nd] Respondent applied for a Judicial Review to challenge the determination of the MMT to the Court of First Instance in case numbered [case number] (“the said Judicial Review”).
4. The said Judicial Review was dismissed on 18 November 2008.

5. The [2nd] Respondent on 22 June 2012 admitted the Complaint against him. He did not dispute the facts as set out in the Complaint. He agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
6. By a letter dated 13 July 2012 addressed to the Complainant and the [2nd] Respondent, the Clerk to the Disciplinary Committee (“DC”), under the direction of the DC, informed the parties that they should make written submissions to the DC as to the sanctions and costs and that the DC would not hold a hearing on sanctions and costs unless otherwise requested by the parties.
7. The DC has read, considered and taken into account the Submissions made by the Complainant dated 27 July 2012 and [2nd] Respondent dated 25 July 2012.
8. In considering the proper order to be made in this case, the DC has had regard to all the aforesaid matters, including the particulars in support of the Complaint, the findings of the MMT.
9. The DC considers this to be a serious case in which public interest is involved. The DC accepts that there is an element of breach of trust and whilst there is no evidence of direct benefit accrued to the [2nd] Respondent from his insider dealing, his conduct has benefited the fund and would ultimately be reflected by monetary reward by way of bonus.
10. The DC also takes into account the report of the Compliance Department of [Company C] in 2004 and the [2nd] Respondent’s submissions that his licenses with the SFC have been revoked in 2007.
11. The DC orders that:-
 1. the [2nd] Respondent be reprimanded under section 35(1)(b) of the PAO;
 2. the name of the [2nd] Respondent be removed from the register of certified public accountants for 12 months effective from 42 days from the date hereof under section 35(1)(a) of the PAO;
 3. the [2nd] Respondent pay a penalty of HK\$100,000 under section 35(1)(c) of the PAO;
 4. the [2nd] Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$21,145 under section 35(1)(iii) of the PAO.

Dated the 19th day of September 2012

IN THE MATTER OF

A complaint made under section 34(1)(a) 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 COMPLAINANT
Institute of Certified Public
Accountants

AND

2nd Respondent RESPONDENT

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

ORDER

Upon reading the complaint against the 2nd Respondent, being a certified public accountant, as set out in a letter from the Registrar of the Institute ("the Complainant") dated 11 January 2010, the parties' joint application dated 22 June 2012, the written submission of the Respondent dated 25 July 2012, the written submission of the Complainant dated 27 July 2012, and other relevant documents, the Disciplinary Committee is satisfied by the admission of the Respondent and the evidence adduced before it that the following complaint is proved:

"Section 34(1)(a)(vi) of the PAO applies to the 2nd Respondent in that he failed or neglected to observe, maintain or otherwise apply the Fundamental Principles set out in Statement 1.200 "Professional Ethics–Explanatory Foreword"."

IT IS ORDERED that:-

1. the Respondent be reprimanded under section 35(1)(b) of the PAO;
2. the name of the Respondent be removed from the register of certified public accountants for 12 months effective from 42 days from the date hereof under section 35(1)(a) of the PAO;
3. the Respondent pay a penalty of HK\$100,000 under section 35(1)(c) of the PAO;
4. the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$21,145 under section 35(1)(iii) of the PAO.

Dated the 19th day of September 2012