

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

CHEUNG KWOK HUNG EDWARD
MEMBERSHIP NO.: A12789 Respondent

Date of Hearing : 30th November 2009

Date of Written Decision : 18th December 2009

DECISION

Background

1. The Respondent was at all material times practising on his own account under the firm name of Cheung & Associates, Certified Public Accountants ("**Cheung & Associates**").
2. 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 Hong Kong Institute of Certified Public Accountants ("**HKICPA**") under section 18B of the Professional Accountants Ordinance, Cap.50 ("**PAO**"), as a result of which section 34(1)(a)(ix) applies to the Respondent.

3. A date of 30th November 2009 was fixed for the disciplinary hearing (“**Hearing**”) to be held. The Complainant was legally represented at the Hearing, but the Respondent was absent. The Disciplinary Committee after due consideration decided to proceed with the Hearing in the absence of the Respondent.

Relevant Provisions of the PAO

4. 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).
5. Sections 34(1)(a)(ix) and 34(1A) of the PAO provide that :
 - (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 Complaint

6. The Complaint herein arose from a request for “professional clearance” in respect of a company (“**[Company A]**”), for which Cheung & Associates had acted as auditors. Cheung & Associates issued an unqualified audit report dated 11th June 2007 on the financial statements of [Company A] for the year ended 31st December 2006 (“**2006 Financial Statements**”).

7. An allegation was made by a director of [Company A] to the HKICPA on 11th August 2008 that Cheung & Associates had failed to respond to a written request dated 28th April 2008 for professional clearance from [another CPA Firm X] ("**CPA Firm X**"), who had been nominated as the new auditors of [Company A] in place of Cheung & Associates in around April 2008.
8. When the HKICPA made enquiries on this matter, the Respondent stated in his letter dated 9th October 2008 to the HKICPA that upon a review of his audit working papers, he found that "there were several outstanding matters" which he "should follow up" and "resolve". He indicated that he had concerns about the ownership of an investment by [Company A] in a subsidiary in Shanghai. He indicated that he had requested for further information about this subsidiary and when further documents were supplied to him, he found that this investment had not been suitably classified in the 2006 Financial Statements.
9. The Respondent eventually provided a written reply to CPA Firm X dated 21st November 2008 which (i) stated that the audit opinion on the 2006 Financial Statements "has been qualified" as the investment in the subsidiary in Shanghai had not been sufficiently supported to justify the classification, and (ii) drew to attention the "integrity of the directors".
10. In view of the circumstances, the HKICPA was concerned about the propriety of the audit opinion given by Cheung & Associates on the 2006 Financial Statements, particularly in respect of the sufficiency and appropriateness of the audit evidence obtained in support of the unqualified audit opinion, and the Respondent's evaluation of the evidence in the course of the audit. There was thus a suspicion that the Respondent might have been in breach of Paragraph 2 of the Hong Kong Standard on Auditing 500 "Audit Evidence" and Paragraph 11 of the Hong Kong Standard on Auditing 700 "The Independent Auditor's Report on a Complete Set of General Purpose Financial Statements".

11. HKICPA wrote to the Respondent on numerous occasions from late 2008 to early 2009 regarding its concerns but the Respondent did not provide any reply.
12. At its meeting on 17th March 2009, the Council of the HKICPA resolved, at the request of the Professional Conduct Committee of the HKICPA, to issue a direction under Section 18B of the PAO to the Respondent ("**Direction**"). The Direction was then formally issued to the Respondent under cover of a letter dated 30th March 2009 from the HKICPA, by which the Respondent was directed to provide an explanation to the HKICPA within 21 days (i.e. by 20th April 2009) of the following matters :
 1. full details of the outstanding matters relating to his audit of the 2006 Financial Statements including:
 - (a) the 2006 Financial Statements items; and
 - (b) the quantification of the impact of the outstanding matters on the 2006 Financial Statements; and
 2. how these outstanding matters were resolved in his audit to enable him to issue an unqualified audit opinion on the 2006 Financial Statements.
13. The Respondent failed to comply with the Direction by 20th April 2009. During a telephone conversation between the Respondent and the case handler of the HKICPA on 28th April 2009, the Respondent confirmed receipt of the Direction and indicated that he had already answered the HKICPA by his letter to the HKICPA dated 9th October 2008.
14. By a letter dated 29th April 2009, the HKICPA extended the time for compliance with the Direction and urged the Respondent to respond within 7 days, and that failure to do so may itself result in disciplinary action being taken against him. As the HKICPA did not receive any response from the Respondent, disciplinary proceedings were commenced against him pursuant to a Notice of Commencement of Proceedings dated 27th August 2009 ("**Notice**").

Conclusions

15. After careful consideration of the evidence produced namely, oral and written submissions made by the Complainant and a letter from the Respondent to the Disciplinary Committee dated 23rd September 2009, the Disciplinary Committee unanimously found that the Respondent had not complied with the Direction given to him by the Council of the HKICPA. Therefore, the Complaint has been proved against the Respondent.

16. In the circumstances, the Disciplinary Committee ordered as follows :
 - (a) the name of the Respondent be removed from the register of certified public accountants for 6 months from 1 January 2010 under Section 35(1)(a) of the PAO; and

 - (b) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$32,090 under Section 35(1)(iii) of the PAO.

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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

Cheung Kwok Hung Edward
Membership No. A12789

RESPONDENT

DECISION

Dated the 18th day of December 2009

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Institute of Certified Public
Accountants

COMPLAINANT

AND

Cheung Kwok Hung Edward

RESPONDENT

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

ORDER

Upon hearing the complaint against MR. CHEUNG KWOK HUNG EDWARD, a certified public accountant, the Committee finds that Section 34(1)(a)(ix) of the PAO applied to the Respondent in that he refused or neglected to comply with a direction lawfully given to him by the Council under section 18B of the PAO.

IT IS ORDERED that:-

1. the name of the Respondent be removed from the register of certified public accountants for 6 months from 1 January 2010 under Section 35(1)(a) of the PAO; and
2. the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$32,090 under Section 35(1)(iii) of the PAO.

Dated the day of 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
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COMPLAINANT

AND

Cheung Kwok Hung Edward

RESPONDENT

ORDER

Dated the 30th day of November 2009