

Disciplinary Committee
Constituted wider Part V of
Professional Accountants Ordinance

Disciplinary Proceedings No. D-06-195C

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 of
Certified Public Accountants

and

Complainant

Respondent

Date of Written Decision with Reasons: 9 January 2009

DECISION

1. The disciplinary complaint against the Respondent laid pursuant to section 34(1)(a)(vi) of the Professional Accountants Ordinance states as follows:-

"Section 34(1)(a)(vi) of the Professional Accountants Ordinance ('PAO') applies to [the Respondent] in that he failed or neglected to observe, maintain or otherwise apply paragraph 4 of the Fundamental Principles set out in Statement 1.200 'Professional Ethics - Explanatory Foreword' (Revised April 1999 with effect from May 1999)".

2. Section 34(1)(a)(vi) of the PAO provides that a complaint that a certified public accountant "failed or neglected to observe, maintain or otherwise apply a professional standard" shall be made to the Registrar appointed under section 21 of the PAO who shall submit the complaint to the Council of the Hong Kong Institute of Certified Public Accountants which may, in its discretion, refer the complaint to the Disciplinary Panels constituted under section 33(1) of the PAO.
3. Section 34(1A) of the PAO further provides that where the Registrar has reason to believe that section 34(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.
4. The current complaint against the Respondent is submitted by the Registrar to the Council and referred to the Disciplinary Panels for consideration by the Council under section 34(1A) of the PAO.
5. Paragraph 4 of the then applicable Statement 1.200 "Professional Ethics - Explanatory Foreword" states as follows:-

"The following are the Fundamental Principles on which the ethical guidance of the Hong Kong Society of Accountants is based:-

 4. *A member should follow the ethical guidance of the Society and in circumstances not provided for by that guidance should conduct himself in a manner consistent with the good reputation of the profession and the Society."*
6. By way of explanation, it should be noted that under section 3 of the PAO, the persons registered as certified public accountants under section 22 of the PAO shall be known as the Hong Kong Society of Accountants before 8 September 2004 and the Hong Kong Institute of Certified Public Accountants with effect from 8 September 2004.

7. The complaint against the Respondent stems from his conviction in Hong Kong of an offence under the Securities and Futures Ordinance, Cap.571 (the "SFO") on [Date]. His conviction relates to a charge of holding out by [Company B], between 1 April 2003 and 22 July 2004, as carrying on a business in a regulated activity under the SFO, namely, advising on corporate finance, when it was not licensed for such activity contrary to sections 114(1)(b), 114(8) and 390 of the SFO . The Respondent was a director of [Company B] and the allegation against him was that he, as such director, consented to or connived in the commission of the said offence by [Company B] or that the said offence was attributable to his recklessness.
8. The Respondent pleaded guilty to the criminal charge laid against him in the Eastern Magistrates' Courts on [Date] based on a set of agreed facts. On his conviction, he was fined HK\$10,000 and ordered to pay a contribution towards the Securities and Futures Commission's costs of HK\$10,000.
9. As a result of the said conviction, the Respondent had his licence to practise as a certified public accountant in the State of Washington, USA, suspended by the Washington State Board of Accountancy for 5 years pursuant to an order dated [Date].
10. Notice of commencement of the current disciplinary proceedings was given to the Respondent on 16 May 2008.
11. On or about 13 June 2008, the Respondent indicated in writing that he admitted the disciplinary complaint laid against him.
12. On or about 10 July 2008, the Registrar and the Respondent submitted an Agreed Statement of Facts for consideration by the Disciplinary Committee, a copy of which is annexed hereto.
13. On the basis of the Agreed Statement of Facts, on or about 2 October 2008 the Disciplinary Committee found the complaint against Respondent proved.

14. With the consent of the parties, the Disciplinary Committee decided to dispense with an oral hearing and directed the parties to make written submissions on the order to be made.
15. The Registrar made his written submissions by letter dated 9 October 2008. The Registrar fairly refereed to the Respondent's admission to the complaint thereby avoiding the necessity of a formal hearing and essentially made no submission as regards the order to be made, save that the Respondent should pay the costs and expenses of and incidental to the proceedings of the Institute including the costs and expenses of the Disciplinary Committee).
16. The Respondent made his written submissions by letter dated 24 October 2008. The Disciplinary Committee also takes into account an earlier letter from the Respondent dated 23 June 2008, enclosing therewith the written mitigation submitted by his solicitors, [Solicitor], to the Eastern Magistrates' Courts dated [Date]. It is not proposed to repeat the points which have been made by or on behalf of the Respondent in the foresaid documents. In deciding on the appropriate order to be made in his case, the Disciplinary Committee has taken into account all the salient points in the case mentioned in paragraphs 5 to 7 of the written mitigation dated [Date] (including the limited extent of the holding out, that either the Respondent nor [Company B] has solicited or received any money from any client, and that no person has suffered any loss), as well as the point emphasised in the Respondent's letter of 24 October 2008, namely, that the "holding out" by [Company B] had commenced before the change of the law (i.e. the coming in force of the section 114 of the SFO on 1 April 2003). As admitted on behalf of the Respondent in the written mitigation, that state of affairs was permitted to continue thereafter due to the recklessness of the Respondent.
17. The Disciplinary Committee also bears in mind the following factors: (i) the offence committed by the Respondent is a serious one, (ii) the Respondent has his licence to practise as a certified public accountant in the State of Washington, USA suspended for 5 years by the Washington State Board of Accountancy (although according to the Respondent that order was made in his absence because he had moved his house and did not receive any notice of the proceedings from the Board), and (iii) as a certified public accountant, the Respondent ought to have kept abreast of changes in the law affecting his practice and business.

18. In all the circumstances, the Disciplinary Committee decides to make the following orders under section 35(1) of the PAO:

- (1) that the name of the Respondent be removed from the register kept under s.22 of the PAO for a period up to 31 January 2012, such order to take effect 7 days after the date of notification of this Decision to the Respondent;
- (2) the Respondent shall pay the costs and expenses incurred by the Complainant and the Clerk to the Disciplinary Committee of and incidental to these proceedings. Within 14 days from the date hereof, the Complainant and the Clerk to the Disciplinary Committee should each submit a final statement of his costs to the Disciplinary Committee and provide a copy thereof to the Respondent, who shall be at liberty to make submissions to the Disciplinary Committee on the costs within 14 days hereafter. The Disciplinary Committee shall fix the costs after considering submissions from the Respondent in the absence of any agreement on costs by the parties concerned.

Disciplinary Committee
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Professional Accountants Ordinance

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BETWEEN

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

and

Respondent

DECISION

Dated the 9th day of January 2009.