

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

BETWEEN

REGISTRAR OF THE HONG KONG
INSTITUTE OF CERTIFIED PUBLIC
ACCOUNTANTS

Complainant

AND

1st Respondent

2nd Respondent

Dates of Hearing: 23 and 31 January 2009

Date of Decision: 22nd May 2009

DECISION

The Charges

1. Each of the 1st Respondent and 2nd Respondent faces three disciplinary complaints, namely, that he/she:
 - (1) as a certified public accountant, falsified or caused to be falsified documents, in breach of section 34(1)(a)(iii)(A) of the Ordinance ("Complaint 1");
 - (2) was guilty of professional misconduct, in breach of section 34(1)(a)(viii) of the Ordinance ("Complaint 2"); and
 - (3) was guilty of dishonourable conduct as a certified public accountant, in breach of section 34(1)(a)(x) of the Ordinance ("Complaint 3").

Relevant provisions of the Ordinance

2. Section 34(1) of the Ordinance, so far as material, provides as follows:-

"A complaint that -

- (a) a certified public accountant -
 - (iii) whether as a certified public accountant or not -

(A) falsified or caused to be falsified any document;
(viii) has been guilty of professional misconduct;
(x) was guilty of dishonourable conduct;
shall be made to the Registrar who shall submit the complaint to the Council which may, in its discretion ... refer the complaint to the Disciplinary Panels."

3. Section 34(2) of the Ordinance provides that for the purposes of (inter alia) subsection 1(a)(x), "dishonourable conduct" means "an act or omission of a certified public accountant, whether or not in the course of carrying out professional work or as a certified public accountant, which would reasonably be regarded as bringing or likely to bring discredit upon the certified public accountant himself, the Institute or the accountancy profession".

The 1st Respondent denies the Complaints

4. In the 1st Respondent's Case dated 18 February 2008, the 1st Respondent denied all three Complaints laid against him. The 1st Respondent has maintained his denial of the three Complaints throughout these disciplinary proceedings.

The 2nd Respondent admits the Complaints

5. In the 2nd Respondent's Case dated 11 February 2008, the 2nd Respondent:-
- (1) in relation to Complaint 1, admitted altering two documents, namely, (a) a bank confirmation, and (b) a corresponding bank reconciliation statement;
 - (2) in relation to Complaint 2, admitted the same in so far as it related specifically to the alteration of the two documents;
 - (3) in relation to Complaint 3, admitted the same in so far as it related specifically to the alteration of the two documents.

Undisputed background facts

6. The 1st and 2nd Respondents were at all material times certified public accountants.
7. The 1st Respondent was qualified and registered as a certified public accountant in 2001 and has since been a member of the Hong Kong Institute of Certified Public Accountants ("Institute"). He joined [A CPA firm] as Semi-Senior Accountant in January 2000 and was subsequently promoted to the position of Senior Accountant II until his summary dismissal by [A CPA firm] on 24 March 2003 as a result of the allegations giving rise to these disciplinary proceedings.
8. The 2nd Respondent began her employment with [A CPA firm] on 24 February 2003 as Semi-Senior Accountant.
9. [A CPA firm] were the auditors of [Company C ("Co. C")]. The audit team from the

Hong Kong office of [A CPA firm] in relation to the audit of [Co. C] consisted of [Ms. A] (Senior Audit Manager), the 1st Respondent (Senior Accountant II, and the Accountant in Charge of the audit in question), the 2nd Respondent and Mr F. In addition, other staff members of [A CPA firm]'s offices in Beijing and Shanghai were involved in the audit of [Co. C].

10. The 2nd Respondent was junior to the 1st Respondent and worked under his direction or supervision, whereas the 1st Respondent reported to [Ms. A]. [Ms. A] was a demanding supervisor and had a high expectation of the junior members in her team. In his evidence, the 1st Respondent described his overall relationship with [Ms. A] as "quite good", and he said that she also recognized his performance.
11. As at March 2003, the 2nd Respondent was a relatively new employee in [A CPA firm]. The 1st Respondent said in his evidence that his relationship with the 2nd Respondent was "not so good" because he thought that the 2nd Respondent asked too many questions which should not be necessary in view of her grade, and they had some work related arguments, but there were no personal issues between them. He got the impression that the 2nd Respondent did not like to work with him.
12. The audit of [Co. C]'s financial statements for the year ended 31 December 2002 was conducted during the course of early 2003. The field work in respect of the audit of [Co. C] took place at Zhizhaji in the PRC in February and March 2003, whereas the review work was carried out in Hong Kong. It seems clear from the evidence that the conditions faced by the audit team in the PRC were quite difficult. Both the 1st and 2nd Respondents had to work long hours during the course of the audit field work and apparently had a tight deadline to meet for completion of the audit.
13. The 1st and 2nd Respondents returned to Hong Kong from the PRC on 17 March 2003 (Monday). The 1st Respondent assigned to the 2nd Respondent the work of reviewing the "bank section" of the audit file.
14. It is not in dispute that on 19 March 2003 (Wednesday), the 2nd Respondent altered a bank reconciliation statement and prepared a falsified bank confirmation in relation to [Co. C]'s bank account at the Zhizhaji Branch of [Bank M]. It appears from the "unaltered" version of the bank reconciliation statement and bank confirmation provided by [A CPA firm] that the bank balance of the current account as at the balance sheet date on 31 December 2002 as confirmed by [Bank M] should be RMB2,461,065.54, whereas the bank balance as per the company's books was RMB16,795,649.25. The difference included an unrecorded withdrawal in the amount of RMB10 million. This reconciling item was described in the "unaltered" bank reconciliation statement as a "loan repayment".
15. The above reconciling item of RMB10 million should have been tested and adjusted during the course of the audit work. However, instead of doing that, the 2nd Respondent simply changed the "unaltered" bank reconciliation statement and prepared a falsified bank confirmation. In the "altered" bank reconciliation statement, the unrecorded withdrawal of RMB10 million was removed, and the bank

balance was changed to RMB 12,461,065.54, which agreed with the figure as stated on the falsified bank confirmation. For the purpose of this Decision, it is not necessary to set out the precise mechanics by which the above alteration or falsification was effected, because there is no dispute that such alteration or falsification was, as a matter of fact, carried out by the 2nd Respondent. The main issue in these proceedings is whether she carried out the alteration or falsification upon the instruction of the 1st Respondent.

16. In the morning of 24 March 2003, there was first a meeting between [Ms. A] and the 2nd Respondent, then a meeting between [Ms. A] and the 1st and 2nd Respondents, followed by a third meeting between [Ms. A], [Ms. C] (a Senior Manager of [A CPA firm] and the counsellor of the 1st Respondent at the material time), and the 1st Respondent. It is the Complainant's case that at these meetings, the 1st Respondent admitted that he had instructed the 2nd Respondent to alter or falsify the said bank reconciliation statement and bank confirmation, whereas the 1st Respondent denies that he made any admission as alleged. We shall look at the evidence of the witnesses as regards the meetings more closely below.
17. On 24 March 2003, the 1st and 2nd Respondents were both summarily dismissed by [A CPA firm]. In the letter of dismissal to the 1st Respondent, it was stated that "*It comes to our knowledge that you have admitted that you instructed another staff member to produce falsified documents in connection with an audit engagement*". There was, apparently, no written response or reply sent by the 1st Respondent to [A CPA firm] in respect of this allegation.
18. Also on 24 March 2003, [A CPA firm] reported the matter to both the Hong Kong Society of Accountants and the Association of Chartered Certified Accountants in England.
19. On 27 October 2004, the Institute wrote to the 1st Respondent referring to the allegations which had been made by [A CPA firm] and asking him whether he admitted those allegations.
20. By a letter dated 24 November 2004 to the Institute, the 1st Respondent stated that he "[does] not admit to the allegations ". In response to further inquiries by the Institute, the 1st Respondent, through his solicitors, made further representations by letter dated 1st February 2005.
21. On 18 April 2005, the Complainant made a formal complaint of this matter against the 1st and 2nd Respondents to the Council of the Institute. The present disciplinary proceedings were eventually formally commenced on 28 November 2007 by a Notice of Commencement of Proceedings.

The Complainant's evidence

22. The Complainant called 3 witnesses to give evidence at the hearing before the Disciplinary Committee.

23. The first witness was [Ms. F]. She is currently a partner of [A CPA firm]. In February/March 2003, [Ms. F] was an audit manager working in [A CPA firm]. She took part in the interview of the 2nd Respondent and was treated as her counselling manager. She was not involved in the audit of [Co. C]. According to [Ms. F], on 22 March 2003 (Saturday), the 2nd Respondent came to her office and told her that she had encountered some problem in the audit engagement relating to [Co. C]. The 2nd Respondent told [Ms. F] that she had found that there was a problem on some working papers and thus she sought the 1st Respondent's advice. [Ms. F] said in evidence that the impression she got was that "*[K] (the 2nd Respondent) tried to refer the problem to him, and [A] (the 1st Respondent) just mentioned that because of the timeframe that need to finish the work as soon as possible, so it would be better that she remove the working paper in boardroom and then replace it with one that there is no problem*".
24. [Ms. F] could not recall the exact words that were used by the 2nd Respondent on 22 March 2003. She did not state, either in her written statement dated 5 May 2005 or in her oral evidence, that the 2nd Respondent had told her that she had been asked to "falsify" or "forge" any document. [Ms. F] also said that she was not aware, at the time of the meeting or at the time of her statement, that anything had been falsified.
25. The second witness was [Ms. A]. As earlier mentioned, she was at the material time a Senior Audit Manager and is currently a partner of [A CPA firm], having been promoted to that position in October 2003. According to [Ms. A], the problem first came to her attention on 21 March 2003 (Friday) while she was carrying out a standard review of the files in relation to the audit of [Co. C]. In reviewing the list of outstanding and potentially significant items that had not at that time been resolved, she noticed that certain bank confirmations were outstanding. On a closer examination of the relevant papers, she noticed something unusual in respect of a bank reconciliation (i.e. the altered bank reconciliation statement), which in the normal course of events would have been prepared by the client, i.e. [Co. C]. What she noticed was that there was a gap in the bank reconciliation statement and there was also a hand written annotation on the otherwise typed reconciliation which made a "2,461,065.54" figure look instead like "12,461,065.54" by the addition in manuscript of an extra digit "1" at the beginning. She then looked at the bank confirmation in the audit working files (i.e. the falsified bank confirmation) and noted that the figure of the bank balance was written in manuscript. This caused her concern because any alteration made to the manuscript figure on the bank confirmation would not be readily identifiable. Since she was unable to speak to [Mr. W] (the audit partner) on that day, she spoke to [Mr E], the Financial Controller of [Co. C], about the aforesaid bank reconciliation issue. [Mr E] told [Ms. A] that he would make enquiries with his PRC staff and revert, but he failed to get back to her on that day.
26. In the morning of 24 March 2003 (Monday), [Ms. A] spoke to [Mr W] and was told to speak to the 1st and 2nd Respondents personally to get their explanation of what had happened. [Ms. A] first met the 2nd Respondent in a partners' vacant room. According to [Ms. A], the 2nd Respondent voluntarily told her that the 1st Respondent had asked her to alter the bank confirmation and the bank reconciliation.

[Ms. A] said that the 2nd Respondent was very emotional at that time and was crying. She also said that the 2nd Respondent gave her the unaltered versions of the bank reconciliation statement and bank confirmation at the meeting.

27. Later, the 1st Respondent joined the meeting. According to [Ms. A], the 1st Respondent admitted that he had actually asked the 2nd Respondent to alter the bank confirmation and the bank reconciliation statement.
28. After that, [Ms. A] asked the 2nd Respondent to leave, and [Ms. C] to join, the meeting. [Ms. A] then explained to [Ms. C] what had happened and asked the 1st Respondent again whether he had actually instructed the 2nd Respondent to alter the bank confirmation and the bank reconciliation statement. The 1st Respondent admitted that he had done so. When asked for an explanation of his conduct, the 1st Respondent said that he had been working under extreme pressure, that he saw no other way of handling matters and that he was frightened that he would be scolded if he could not finish all the matters relating to the [Co. C] audit engagement on time given the upcoming 25 March 2003 deadline.
29. After the aforesaid meetings, [Ms. A] spoke to [Mr. E] again and was told that the bank reconciliation statement that she had on file (i.e. the altered one) had not been provided by [Co. C]'s staff. [Ms. A] then reported the matter to her Group Partner, [Mr T].
30. When cross examined by [Mr. H] acting for the 1st Respondent, [Ms. A] accepted that there was no contemporaneous record of what was said at the meetings, in particular the alleged admission made by the 1st Respondent. When [Ms. A] was asked whether the 1st Respondent simply sat there at the meeting and admitted the allegation, she said that the 1st Respondent said that he was sorry doing things like that. [Ms. A] also denied the suggestions, when they were put to her by [Ms. H], that in fact (i) what the 1st Respondent had told her was that he had merely asked the 2nd Respondent to correct, not falsify, some documents, and (ii) the 1st Respondent had denied any falsification or alteration of documents when that was suggested by [Ms. A] at the meeting.
31. The third witness was [Ms. C], who was interposed to give evidence in the middle of [Ms. A]'s cross examination by [Ms. H]. She is currently working as a senior manager in the Listing Division of the Hong Kong Stock Exchanges and Clearing Limited. At the material time, she was an Audit Senior Manager in [A CPA firm] and was the counselling manager of the 1st Respondent.
32. According to [Ms. C], the first time that she had any idea that there was a difficulty with the [Co. C] audit was in the morning of 24 March 2003 when [Ms. A] came to her office to inform her that she had identified some serious problems regarding the audit. Pausing here, [Ms. A]'s evidence, in her cross examination, was that she could not recall such a meeting with [Ms. C], or that prior to the meeting with the 1st Respondent she had told [Ms. C] that she was aware of some very serious problems in relation to the audit of [Co. C].

33. At some point in the morning of 24 March 2003, [Ms. C] was invited by [Ms. A] to join a meeting with the 1st Respondent. She said that at the meeting, the 1st Respondent appeared to be a bit frightened and very nervous. According to [Ms. C], [Ms. A] told her (in the presence of the 1st Respondent) that the amount confirmed by the PRC bank appearing on the bank confirmation had been amended and she asked the 1st Respondent whether he had made any changes to that document. To that, the 1st Respondent admitted that he had changed the bank confirmation, or was involved in the process of changing the bank confirmation. [Ms. C] also confirmed paragraph 10 of her statement where she stated that at that time, [Ms. A] produced some documents relating to bank reconciliations and bank confirmations regarding the [Co. C] audit and the 1st Respondent admitted that he had been involved in the alteration and falsification of some documents. In cross examination, [Ms. C] said the 1st Respondent said, in Chinese, "我有做,係呀,我有做". She also said that the 1st Respondent explained that he had a very tight timeline to carry out the work and was working under great pressure because the deadline had been set and he had to send to [Ms. A] the audit files and the audit work and report to her. In her statement, paragraph 12, she said that the 1st Respondent apologized to [Ms. A] for his actions.
34. According to [Ms. C], the meeting was concluded on the basis that a report had to be made to [Mr. T], the Group Partner, which [Ms. A] did.
35. In the course of the cross examination of [Ms. C] by [Ms. H], she was asked whether it was possible that there might have been some misunderstanding between [Ms. C] and [Ms. A] about what was said by the 1st Respondent (his case being that he never admitted to [Ms. C] or [Ms. A] that (i) he had instructed the 2nd Respondent to falsify any documents or (ii) he had been involved in falsifying documents). Her answer was that she did not think there was any misunderstanding. In this regard, it is relevant that [Ms. C] said, in cross examination, that she and [Ms. A] had asked the 1st Respondent many times, "did you do that" and "why you do that", and she also said that the 1st Respondent expressed regret for what he had done. Also relevant is her confirmation, in response to a question raised by a member of the Disciplinary Committee, that at the meeting the 1st Respondent was given an opportunity to speak up, explain himself and defend the accusation against him.
36. In addition to the above mentioned three witnesses, the Complainant also relied on a written statement made by [Mr. T] dated 7 May 2005. In that statement, [Mr. T] said that on 24 March 2005 (which we believe was a typing error and should read "2003" instead), he had a meeting with the 1st Respondent during which "*the Respondent had no objection about the complaint made by [Ms. A]*". [Mr. T] was not called to give evidence and thus was not subject to any cross examination by either [Ms. H] or [Mr. G] (acting for the 2nd Respondent).

The 2nd Respondent's evidence

37. The 2nd Respondent began her employment with [A CPA firm] on 24 February 2003. On 26 February 2003, she was assigned to join an audit team in relation to the audit of [Co. C], and was sent to the city of Zhizhajang in the PRC to carry out field audit work. She stayed in the PRC for about two weeks, during which time she worked

under the instruction of the 1st Respondent. She confirmed that the audit team was working under great time pressure and they had to work long hours every day. She complained of an occasion when she felt unwell and had a fever and requested to see a doctor, but she was told by the 1st Respondent that she could only see an "in-house" factory doctor. Her request to return to Hong Kong to seek medical treatment was also refused by the 1st Respondent.

38. The audit team returned to Hong Kong from the PRC on 17 March 2003. On 19 March 2003, the 1st Respondent asked her to review the "bank section" work papers. In the course of her work on the "bank section", she discovered that there were a lot of unrecorded items in the bank reconciliation statements that had been prepared by the client and this had caused substantial differences with the client's accounting records, including in particular one bank loan payment which had not been entered in the ledger by the client although the payment had in fact been made before the end of the financial year. She immediately reported this fact to the 1st Respondent. According to the 2nd Respondent, the 1st Respondent instructed her to remove the original bank confirmation from the file, delete the unrecorded bank loan payment on the bank reconciliation statement, and make a copy of an unconfirmed bank confirmation and file the confirmation as part of the working papers, so that it would appear that the bank had not given any reply to the bank confirmation as requested. The 2nd Respondent said that she told the 1st Respondent that she did not want to do it, but the 1st Respondent said that that was the only alternative available to them in order to be able to complete the file, and he ordered her to make the changes. She then complied with the 1st Respondent's instruction. Later, she tried to persuade the 1st Respondent to undo the alteration/falsification, but the 1st Respondent told her that it could not be done because the papers were already with [Ms. A].
39. On 22 March 2003, she spoke to [Ms. F]. The 2nd Respondent said that she had related the whole matter in great detail to [Ms. F] and was advised to try to convince the 1st Respondent to undo the alteration/falsification, but if he refused she should report the matter directly to the engagement manager, [Ms. A]. The 2nd Respondent followed the advice of [Ms. F] and talked to the 1st Respondent again about her proposal to undo the alteration/falsification and requested that he informed [Ms. A] of the truth, but was told that if he reported the matter to [Ms. A], he would be subject to punishment. Hence, she eventually reported the matter to [Ms. A] on 24 March 2003. The 2nd Respondent also said that at the meeting on 24 March 2003 at which she, [Ms. A] and the 1st Respondent were present, the 1st Respondent admitted that he had instructed her to do what she had done (i.e. altering the bank reconciliation statement and falsifying the bank confirmation).
40. It is the 2nd Respondent's case that she was the person who first brought to [Ms. A]'s attention the alteration/falsification of documents in the audit papers of [Co. C] on 24 March 2003, and she disputes [Ms. A]'s suggestion that she discovered the discrepancies in the documents independently on 21 March 2003. However, the 2nd Respondent accepted that in her evidence that the audit files were sent to [Ms. A] for review on 19 or 20 March 2003. The 1st Respondent's evidence was that the audit files were passed to [Ms. A] for review on 22 March 2003 but he accepted that the files were in the Hong Kong office and [Ms. A] could have had access to them

prior to 22 March 2003, although the 1st Respondent also said that the possibility of this happening was "minimal".

The 1st Respondent's evidence

41. In gist, the 1st Respondent's evidence is that he never instructed the 2nd Respondent to alter or falsify any audit working papers in relation to the audit of [Co. C] as she alleged or at all.
42. According to the 1st Respondent, a few days after the audit team returned to Hong Kong from the PRC in March 2003, he asked the 2nd Respondent to review the "bank section" audit work carried out by the PRC supporting staff. He recalled that on or about 19 March 2002, the 2nd Respondent told him that she had found a discrepancy in one bank reconciliation prepared by the client but she did not tell him what the discrepancy was. In response, the 1st Respondent told the 2nd Respondent to "change" or "alter" it ("改咗佢囉"). The 1st Respondent said that that was the only instruction he gave the 2nd Respondent in relation to this matter, and he never asked the 2nd Respondent to falsify any document.
43. The 1st Respondent said that a few days later, on or about 22 March 2003, the 2nd Respondent mentioned again a discrepancy in some bank reconciliation, saying that it related to some "bank loan payment". She did not, however, explain the exact nature of the discrepancy. The 1st Respondent, believing that the discrepancy to be trivial and related only to a time difference and the 2nd Respondent was able and competent to handle the matter, told her to "correct it" ("改咗佢"). Again, he did not ask her to falsify any document.
44. On 24 March 2003, the 1st Respondent was summoned to a meeting with [Ms. A]. When he arrived at the room where the meeting took place, the 2nd Respondent was already there. He said that [Ms. A] started by asking him if he had knowledge of the fact that the 2nd Respondent had been responsible for reviewing the "bank section" in the audit of [Co. C] and had some of the documents altered. He answered both questions in the affirmative, not understanding at that stage that the allegation was that documents had been falsified. However, when [Ms. A] then accused him of having instructed the 2nd Respondent to falsify or alter documents, he immediately protested his innocence. The 1st Respondent said that [Ms. A] ignored his protestation, and asked the 2nd Respondent to leave the room. She then asked [Ms. C] to join the meeting.
45. During this subsequent meeting, according to the 1st Respondent, it was pretty much a case of [Ms. A] pronouncing him as the main culprit and mastermind of the 2nd Respondent's falsification of documents. The 1st Respondent denied that he had made any admission of wrongdoing to [Ms. A] and [Ms. C] as alleged by them.
46. The 1st Respondent got the impression that [Ms. A] had already made up her mind that he was guilty and was not interested in listening to him any further by the time that he met [Ms. A] in the morning of 24 March 2003.

47. The 1st Respondent agreed that he had a meeting with [Mr. T] on 24 March 2003. He said that the meeting was a matter of formality in dismissing him, it was less confrontational, and not much was said.

The burden and standard of proof

48. The burden is on the Complainant to prove the Complaints.
49. The standard of proof in disciplinary proceedings is the civil standard of a preponderance of probability under the *Re H & Others* ([1996] 2 WLR 8) approach. The more serious the act or omission alleged, the more inherently improbable must it be regarded. And the more inherently improbable it is to be regarded, the more compelling would be the evidence needed to prove it on a preponderance of probability. See the recent decision of the Court of Final Appeal in *Solicitor v Law Society of Hong Kong* [2008] 2 HKLRD 576.
50. In view of the serious nature of the act complained of in this case, we consider that we should not lightly find the Complaints proved on a preponderance of probability unless the evidence is compelling to establish that the 1st Respondent did commit the act alleged against him.

Good character and service records of the 1st Respondent

51. The 1st Respondent gave evidence, confirmed by witnesses called by the Complainant, about his previous good character and service records, including the a number of service awards or commendations that he received while he was in the employment of [A CPA firm]. The 1st Respondent's good character and service records are relevant in two aspects: (i) it is less likely that he would commit the act alleged against him (propensity), and (ii) it is more likely that his evidence is truthful (credibility). These matters will be taken into account when considering the evidence in this case, and when determining ultimately whether the Complaints have been proved.

Discussion of the evidence

52. As earlier mentioned, there is no dispute that alteration or falsification of documents in the course of the audit of [Co. C] was carried out by the 2nd Respondent. The issue before the Disciplinary Committee is whether she did it upon the instruction of the 1st Respondent.
53. The evidence against the 1st Respondent comes from two sources: (i) the 2nd Respondent's direct evidence, and (ii) the 1st Respondent's admissions.
54. In respect of the 2nd Defendant's evidence, she is in the position of an "accomplice". Generally speaking, an accomplice's evidence should be viewed with caution because he or she would have an obvious motivation to lessen his/her role in the matters complained of and /or to put the blame on the other co-defendants. Thus, it is generally dangerous to find a co -defendant guilty upon the uncorroborated

evidence of an accomplice.

55. In the 1st Respondent's final submissions, paragraphs 31 to 36, [Ms. H] has referred to various aspects of the 2nd Respondent's evidence which is suspect or unsatisfactory. It is not necessary to refer to those matters in detail in this Decision. Had the Complainant rested its case against the 1st Respondent entirely upon the evidence of the 2nd Respondent, the Disciplinary Committee would not have been prepared to find the Complaints proved against the 1st Respondent in view of her position as "accomplice" and the said criticism of her evidence.
56. In respect of the 1st Respondent's "admissions", it is submitted on behalf of the 1st Respondent that, in cases in which a confession is advanced as evidence of guilt, certain pre-requisites must be established before such confession is admitted and before any weight can be attached to it. It is said that the following are usually addressed:
- (1) Is the confession voluntary?
 - (2) Is the confession fair?
 - (3) Is the confession accurately recorded?
 - (4) Has the confessor been given an opportunity to acknowledge the accuracy of the record?
57. It is further submitted on behalf of the 1st Respondent that the evidence of what may have been said by the 1st Respondent by way of admission is far from clear. In particular, it is said that:-
- (1) There was nothing in the nature of a "caution" administered;
 - (2) There was absolutely no written record;
 - (3) Accordingly, there was no acknowledgement by the 1st Respondent of the terms or content of the alleged admission.
58. The strict rules of evidence do not apply in these disciplinary proceedings. Accordingly, the Disciplinary Committee considers that the evidence of the 1st Respondent's admissions tendered by the Complainant is admissible, even though there was no "caution" administered. The Disciplinary Committee accepts, however, that the matters raised on behalf of the 1st Respondent are relevant to the weight to be attached to the "admissions".
59. In so far as the evidence of [Ms. F] is concerned, the Disciplinary Committee considers that what was said by the 2nd Respondent, as recalled by [Ms. F], is not clear enough to prove that the 2nd Respondent had told her that she was instructed by the 1st Respondent to alter or falsify documents. In any event, [Ms. F]'s evidence is based on what she was told by the 2nd Respondent. As earlier mentioned, the Disciplinary Committee is not prepared to find the 1st Respondent guilty on the basis of the 2nd Respondent's words alone.
60. The written statement of [Mr. T] is reasonably clear that the 1st Respondent had no objection to the complaint of falsification of documents committed by him.

However, [Mr. T] was not called to give evidence and was not subject to any cross examination. Although the Disciplinary Committee would not disregard [Mr. T]'s evidence completely, little weight can be attached to it.

61. This leaves the evidence of [Ms. A] and [Ms. C]. Although neither can fully recall the exact words used by the 1st Respondent, the substance of their evidence is not in doubt, namely, that the 1st Respondent had admitted his part in the alteration or falsification of the bank confirmation and bank reconciliation statement. Indeed, in the course of [Ms. H]' examination in chief of the 1st Respondent, he said that both [Ms. A] and [Ms. C] had "unequivocally" told the Disciplinary Committee that the 1st Respondent had admitted the wrongdoing. Looking at their evidence as a whole, we do not consider that there is any real doubt about the meaning or effect of their evidence. Also, we do not consider that [Ms. A] or [Ms. C] could have been mistaken about what the 1st Respondent had said in the meetings on 24 March 2003. The position, in our view, is that they either lied in their evidence or were telling the truth when they said that the 1st Respondent had admitted his wrongdoing in this matter.
62. There is no credible reason that we can think of why [Ms. A] and [Ms. C] would either individually or in combination give false evidence against the 1st Respondent in this matter. None has been suggested on behalf of the 1st Respondent, although we accept that there is no burden on him to provide such reason. Giving this matter our anxious consideration and bearing in mind the evidence of the 1st Respondent, the Disciplinary Committee has come to the conclusion that the evidence of [Ms. A] and [Ms. C] as regards the "admissions" made by the 1st Respondent is reliable and should be accepted. It follows that we reject the evidence of the 1st Respondent in so far as he denies that he made any admissions of wrongdoing at the meetings on 24 March 2003.
63. On the basis that the 1st Respondent did admit his wrongdoing at the meetings on 24 March 2003, we cannot see why he would make such admissions unless, as a matter of fact, he had instructed the 2nd Respondent to alter or falsify documents as alleged by the Complainant.
64. In relation to the legal submissions made on behalf of the 1st Respondent as regards the weight to be accorded to evidence of "confession", we are satisfied that the 1st Respondent made his "admissions " voluntarily, and the "admissions" are sufficiently clear even though no contemporaneous written record of the same was kept at the meetings and thus the 1st Respondent was not given an opportunity to acknowledge the accuracy of the record there and then. This having been said, it is right to point out that in the letter of dismissal dated 24 March 2003 given to the 1st Respondent, it was stated in unequivocal terms that *"It comes to our knowledge that you have admitted that you instructed another staff member to produce falsified documents in connection with an audit engagement "*. It is clear from the 1st Respondent's evidence in cross examination by [Mr. K] that he did not respond to this accusation in any way at the material time.
65. In passing, we mention that in the 1st Respondent's closing submissions, references

are made to some discrepancies in the evidence of [Ms. A]/[Ms. C]/the 2nd Respondent, in particular (i) whether there was any discussion between [Ms. A] and [Ms. C] in the morning of 24 March 2003 prior to the latter joining the meeting with the 1st Respondent, and (ii) whether [Ms. A] had discovered the alterations by herself on 21 March 2003 prior to her meeting with the 2nd Respondent on 24 March 2003. On the first point, we do not consider it necessary to resolve the discrepancy in the evidence between [Ms. A] and [Ms. C] because it is a peripheral issue only. It would make no difference to the outcome of this case whether we accept the evidence of [Ms. A] or that of [Ms. C]. The same consideration applies to the second point, although we note that in fact there is no necessary inconsistency between the evidence of [Ms. A] and the 2nd Respondent. The 2nd Respondent is simply not in a position to say that [Ms. A] could not have discovered the alterations by herself prior to 24 March 2003.

Conclusions

66. In all, we are satisfied that the Complainant has proved, on a preponderance of probability, that the 1st Respondent did instruct the 2nd Respondent to alter or falsify the bank confirmation and bank reconciliation statement. On this finding, the three Complaints are proved against the 1st Respondent.
67. The three Complaints are also proved against the 2nd Respondent on her own admission before the Disciplinary Committee.
68. On the question of sentence and costs, we will invite the Complainant to make written submissions within 14 days from the date of this Decision, to be followed by the 1st and 2nd Respondents within 14 days thereafter.

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

BETWEEN

REGISTRAR OF THE HONG KONG
INSTITUTE OF CERTIFIED PUBLIC
ACCOUNTANTS

Complainant

AND

YIP CHUN FAI, ALEX

1st Respondent

HO SUK YIN

2nd Respondent

Date of Decision: 29 July 2009

DECISION ON SANCTIONS AND COSTS

Sanctions

1. The background facts of this matter are set out in the Disciplinary Committee's Decision of 22 May 2009 and will not be repeated here.
2. The Disciplinary Committee has received and considered the respective submissions of the Complainant and the 1st and 2nd Respondents on the issues of sanctions and costs.
3. In respect of the 1st Respondent, the Disciplinary Committee considers that the disciplinary offences of which he has been found guilty are very serious in nature, involving as they did the falsification of audit papers and documents, which went to the heart of the integrity of the audit process. The Disciplinary Committee considers that an order that the name of the 1st Respondent be removed from the register of certified public accountants pursuant to Section 35(1)(a) of the Professional Accountants Ordinance is appropriate, and the Disciplinary Committee will adopt the starting point of removal for a period of 3 years. There are, however, special circumstances in the present case which justify a substantial discount, in particular:-

- (1) the substantial delay in the prosecution of these disciplinary charges (the

relevant events occurred in March 2003 and the Institute was informed of the same in April 2004);

- (2) the 1st Respondent did not derive any monetary or material gain out of the falsification of documents;
 - (3) the falsification of documents became known to [A CPA firm] soon after the events, no loss has been caused to any third party (including the client), and no third party (including the client) has been misled by the falsified documents.
4. The Disciplinary Committee takes into account the fact that the 1st Respondent has a young family and any period of removal will have an effect not only on him but also on his family members. The Disciplinary Committee also takes into account the 1st Respondent's previous good character and record, and the consequence and impact of the present disciplinary findings on his professional career. The fact that a professional accountant has been found guilty of disciplinary offences of the nature in the present case is itself a severe punishment.
 5. In all the circumstances, the Disciplinary Committee has decided to order that the name of the 1st Respondent be removed from the register of certified public accountants for a period of 18 months, such removal to take effect at the beginning of the 21st day after the day on which this order is made. The Disciplinary Committee wishes to emphasize that this relatively short period of suspension is not to be taken as setting a norm for those found guilty of disciplinary offences of the nature in the present case, but has been imposed only because of the special circumstances mentioned above.
 6. In respect of the 2nd Respondent, she committed the relevant acts under the instruction of the 1st Respondent, who was at the material time her superior. It appears on the evidence that she was at all material times hoping to rectify the situation, and in fact made a voluntary confession to the senior management of [A CPA firm] on 22/24 March 2003. She has admitted the disciplinary charges from the very beginning of these disciplinary proceedings. Taking into account also the matters mentioned in paragraph 3 above, the Disciplinary Committee decides that the appropriate sanction is an order that the 2nd Respondent be reprimanded pursuant to Section 35 (1)(b) of the Professional Accountants Ordinance.

Costs

7. On the question of costs, the Disciplinary Committee considers that the 1st and 2nd Respondents should, prima facie, pay the costs incurred by the Complainant and by the Clerk (including the "Other Costs" referred to in JSM's Statement of Costs dated 3 June 2009).
8. In assessing costs, the Disciplinary Committee adopts the following basis:
 - (1) The costs should be assessed on a "party-to -party" basis instead of "indemnity" basis.

- (2) In so far as the costs of the Clerk are concerned, they would in the first instance be split as to 70% to the 1st Respondent and 30% to the 2nd Respondent (subject to an overall cap in respect of the 2nd Respondent, as to which see below).
9. The number of hours and costs incurred by the Complainant in relation to the 2nd Respondent seem to the Disciplinary Committee to be excessive, having regard to the fact that she admitted the disciplinary charges from day one.
10. The Disciplinary Committee also takes into account the fact that in respect of the "Other Costs", the bulk of which relates to the costs of the transcript, it was not the 2nd Respondent who requested for the preparation of the transcript.
11. The Disciplinary Committee considers that it is appropriate to make a lump sum assessment in each case.
12. In respect of the 1st Respondent, the Disciplinary Committee decides that he should be ordered to pay the total costs of HK\$435,000, made up as follows:-
- (1) HK\$280,000 in relation to the costs of the Complainant;
 - (2) HK\$115,000 in relation to the costs of the Clerk; and
 - (3) HK\$40,000 in relation to "Other Costs".
13. In respect of the 2nd Respondent, the Disciplinary Committee decides that she should be ordered to pay the total costs of HK\$100,000, made up as follows:-
- (1) HK\$50,000 in relation to the costs of the Complainant;
 - (2) HK\$50,000 in relation to the costs of the Clerk and "Other Costs".