

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

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 the complainant against the Respondent, a certified public accountant. Section 34(1)(a)(ii) of the PAO applied to the Respondent.
2. The particulars of the Complaint as set out in a Letter dated 4th September 2009 ("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 [Date], the Respondent was convicted after trial in the District Court of one charge of "Conspiracy to Defraud" contrary to Common Law and punishable under section 159C(6) of the Crimes Ordinance, Cap. 200.
 - b) On [Date], the Respondent was sentenced to imprisonment for 18 months.
 - c) The Respondent's appeal to the Court of Appeal was dismissed on [Date].
 - d) Based on the material facts found by the District Court, a [corporate practice] was at all material times a corporate practice registered with the Institute ["corporate practice"], and [Company A] was a client of [the corporate practice]. Mr. [X] was a partner of [the corporate practice]. The Respondent was the Director of Group Finance of [Company A].
 - e) The charge of which the Respondent was convicted related to his conspiring with Mr. [X] in January, 2005 to defraud [Company A] by (1) falsely representing a debit note that accounting services had been rendered by [the corporate practice] for [Company A's] entities in China for an agreed fee of \$432,000.00 and (2) submitting or causing to be submitted a request for payment for accounting

services allegedly performed by [the corporate practice] and thereby causing [Company A] to make payment to [the corporate practice] for settlement of the said debit note.

- f) In convicting the Respondent, the Court was satisfied that (1) the said debit note was presented to [Company A] for payment and the Respondent had approved the payment; (2) no accounting services had been performed by [the corporate practice] as stated in the said debit note; and (3) the Respondent was aware of the false representation in the said debit note.
- g) On the basis of the above, the Registrar have reason to believe that section 34(1)(a)(ii) of the PAO applies to the Respondent.
3. The Respondent admitted the Complaint against him through his legal counsel on 21st October, 2009. He did not dispute the facts as set out in the Complaint. The parties agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
 4. By a letter dated 26th January 2010 addressed to the Complainant and the 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.
 5. In the Respondent's written submission on sanctions and costs from his legal counsel dated 2nd February, 2010, the DC is informed that the Respondent has already served his term imposed by the Court and had requested for a withdrawal of membership from the Institute after his release. His counsel urged upon the DC to consider (1) his previous clear disciplinary record; (2) that he has been a member of good standing since his joining the Institute some 25 years ago; (3) his full cooperation with the Committee in the captioned complaint; (4) that he had fully compensated [Company A] and did not cause any prejudice to the interest of the public nor did it conceivably give rise to any issue of confidence on the overall financial system; and (5) that the Respondent's 30 years career in the accountancy profession has been ruined. His counsel further asked on his behalf that no costs be imposed.
 6. The Complainant in their submission on sanctions and costs dated 9th February, 2010 pointed out that the criminal offence involving dishonesty committed by the Respondent in this case is serious and could impact gravely on the reputation of the Institute and the accountancy profession. They further submitted that all costs and expenses of and incidental to the proceedings be borne by the Respondent.
 7. 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 all matters put forward in mitigation by counsel on behalf of the Respondent.
 8. The DC takes a serious view of the criminal offence committed by the Respondent and

the disrepute it must have brought upon the profession generally. The Respondent was in breach of trust as the Director of Group Finance of [Company A] at all material times of the offence.

9. The DC would have no hesitation in removing the Respondent's name from the register permanently had he been found guilty of the Complaint after a hearing. In the light of his early admission of the Complaint and the facts in support thereof, the DC makes a recommendation to the Council that any application for readmission for membership by the Respondent should not be approved within a period of 2 years after the permanent removal of his name from the register. The DC also considers this to be an appropriate case where the Respondent should pay the costs of the Complainant on an indemnity basis.
10. The DC orders that:
 - 1) the name of the Respondent be removed from the register of certified public accountants permanently under section 35 (1)(a) of the PAO and that such removal shall take effect after the 45th day from the date of this order; and
 - 2) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$42,102.00 under section 35(1)(iii) of the PAO.

Dated the 27th day of April 2010