

IN THE MATTER OF

A Complaint made under section 34(1A) of the Professional Accountants Ordinance (Cap. 50)

BETWEEN

The Registrar of the Hong Kong Institute of Certified Public Accountants

Complainant

And

Ms. Han Heli
(Membership No. A42630)

Respondent

DECISION ON SANCTIONS AND COSTS

A. Introduction

1. On 6 October 2020, the Complainant by way of a letter (“the **Letter**”) submitted a complaint (“the **Complaint**”) against the Respondent to the Council (“the **Council**”) of the Hong Kong Institute of Certified Public Accountants (“**HKICPA**”) in accordance with section 34(1A) of the Professional Accountants Ordinance (Cap. 50) (“the **Ordinance**”). The Complaint is set out as follows:-

“Section 34(1)(a)(vi) of the Professional Accountants Ordinance (“PAO”) applies to the Respondent for her failure or neglect to observe, maintain or otherwise apply a professional standard as she knowingly provided false medical certificates in support of her sick leave applications to her former employer.”

2. Subsequently, the Complaint was referred by the Council to the Disciplinary Panels. On 8 January 2021, the Complainant and the Respondent were notified about the commencement of the disciplinary proceedings herein.
3. On 11 January 2021, the Respondent confirmed in writing that she admitted the Complaint as set out in the Letter (“the **Admission Confirmation**”).
4. On 25 February 2021, upon the parties’ joint application, the Disciplinary Committee directed that the procedures under Rules 17 to 30 of the Disciplinary Committee Proceedings Rules (“**DCPR**”) be dispensed with and gave directions (“the **Directions**”) on paper disposal and filing written submissions on sanctions and costs.
5. On 24 March 2021, the Respondent wrote to the Clerk to the Disciplinary Committee, making the representations that:-

“I am writing to the Disciplinary Committee to accept the sanctions and costs which would be imposed by the Disciplinary Committee under the Complaint D-20-1580C.” (“the **24 March Representation**”)

Save these representations, the Respondent has not filed any other written submissions on sanctions and costs.

6. On 25 March 2021, the Complainant filed detailed written submissions on sanctions and costs, together with a Statement of Costs dated 25 March 2021 showing that costs in the sum of HK\$44,590 (including the costs of the Clerk to the Disciplinary Committee in the sum of HK\$3,548) were incurred.
7. This is the decision on sanctions and costs.

B. The Complaint

8. The Complaint was fully set out in the Letter, which enclosed among others:-
- (1) Table A – Chronology of communications between HKICPA and the Respondent;
 - (2) The Complaint Form lodged by the informant on 9 January 2020; and
 - (3) Various correspondence relating to the Complaint.
9. As submitted by the Complainant, the facts and circumstances in support of the Complaint are summarised as follows:-
- (1) At the material times, the Respondent was employed by the Bank of Shanghai (Hong Kong) Limited (“the **Bank**”) as AVP, Internal Audit.
 - (2) On 4 November 2019, the Respondent provided copies of two medical certificates purportedly issued by Union Hospital (“the **Hospital**”) in support of her sick leave applications for 27 September and 29 October 2019. The medical certificates in question stated that the Respondent was recommended with:-
 - (a) 1 day sick leave on 27 September 2019; and
 - (b) 3 days sick leave on 29 October 2019.
 - (3) The Bank subsequently requested the Hospital to verify the authenticity of the medical certificates. On 7 November 2019, the Hospital confirmed in writing, among others, that:-
 - (a) The medical certificates provided by the Respondent were not official medical certificates issued by the Hospital;
 - (b) The Respondent had not attended the Hospital or its polyclinics; and
 - (c) the Hospital does not have any branches in mainland China.

- (4) On 7 November 2019, the Bank held a meeting with the Respondent. At that meeting, she explained that she had a surgery in Shenzhen. She asked a friend, who was a doctor in Hong Kong, to help issue the two medical certificates. Having considered her explanation, the Bank summarily dismissed her. The Respondent did not appeal the Bank's decision to dismiss her summarily.
- (5) The Bank did not report the incident to the police.
- (6) The medical certificates in question are false documents, being purportedly issued by the Hospital when they were not. The Respondent's purported attendance of the Hospital on 27 September and 29 October 2019, as shown on the medical certificates, was untrue. The Respondent knew the documents were false but knowingly put them forward in support of her sick leave applications.
- (7) The Respondent was dishonest when she submitted her sick leave applications to her employer on 4 November 2019; and she knowingly associated herself with the materially false or misleading information contained in the purported medical certificates, contrary to the fundamental principle of integrity under sections 110.1A1(a), R110.2, and R111.2 of the Code of Ethics for Professional Accountants ("the **Code**"). As such, section 34(1)(a)(vi) of the Ordinance applies to the Respondent for her failure or neglect to observe, maintain or otherwise apply the fundamental principle of integrity stated in the Code.
- (8) Despite the HKICPA's repeated efforts in contacting the Respondent and requesting her to provide her representations on this matter, the Respondent declined or refused to do so, making some incomprehensible representations, and saying that she would not be back in Hong Kong due to the pandemic.

10. As mentioned earlier, the Respondent admitted the Complaint in full. Accordingly, the summary of facts set out in the preceding paragraph shall form the factual basis on which the Disciplinary Committee shall consider for the purpose of imposition of the appropriate sanctions on the Respondent.

C. The legal principles

11. The legal principles are well established.

12. Section 34 of the Ordinance provides that:-

“(1) A complaint that—

(a) a certified public accountant —

...

(vi) failed or neglected to observe, maintain or otherwise apply a professional standard...”

13. Section 110 of the Code provides that:-

“SECTION 110

THE FUNDAMENTAL PRINCIPLES

General

110.1 A1 There are five fundamental principles of ethics for professional accountants:

(a) Integrity – to be straightforward and honest in all professional and business relationships.

...

R110.2 A professional accountant shall comply with each of the fundamental principles.

...

SUBSECTION 111 – INTEGRITY

R111.1 *A professional accountant shall comply with the principle of integrity, which requires an accountant to be straightforward and honest in all professional and business relationships.*

111.1 A1 *Integrity implies fair dealing and truthfulness.*

R111.2 *A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the accountant believes that the information:*

- (a) Contains a materially false or misleading statement;*
- (b) Contains statements or information provided recklessly; or*
- (c) Omits or obscures required information where such omission or obscurity would be misleading.”*

14. When it comes to an offence involving dishonesty of a professional, it is useful to set out the frequently quoted passage by Sir Thomas Bingham MR (as he then was) in his judgment in *Bolton v Law Society* [1994] 1 WLR 512 (at 518B-E), which was applied by the Hong Kong Court of Appeal in *Chan Cheuk Chi v. The Registrar of HKICPA* CACV 38/2012 (unreported), 8 February 2013 (at §§35-38):-

*“Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. **The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of***

Solicitors. *Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension.” (Emphasis added)*

D. The parties' submissions on sanctions

15. In summary, the Complainant submits that:-

- (1) This is a very serious case where there was a clear breach of integrity on 2 distinct occasions. The offence was premediated and involved the very sophisticated forgery of 2 medical certificates.
- (2) The Respondent derived an economic benefit of 4 days of sick leave.
- (3) The offence involved a breach of trust on the part of Respondent as an employee of the Bank. Worse still, the Respondent was working in the Internal Audit Division and she had submitted the forged medical certificates to her supervisor, namely the Head of the Internal Audit Division.

- (4) The fact that the Respondent has not been convicted of any criminal offence for the subject matter should not be considered a mitigating factor.
 - (5) The Respondent has been less than cooperative with HKICPA during its investigation of the Complaint.
 - (6) The fact that the Respondent admitted the Complaint once she was notified of the commencement of the disciplinary proceedings should not be regarded as a mitigating factor as it was not made on during the investigation stage but only made after the matter was referred to the Disciplinary Panels.
16. The Complainant specifically draws the attention of the Disciplinary Committee to the following previous disciplinary decisions:-
- (1) D-15-1053C;
 - (2) D-14-0987H;
 - (3) D-07-0287H.
17. Accordingly, the Complainant suggests the Disciplinary Committee adopt the approach in D-14-0987H and proposes a period of removal from the register of no less than 5 years.
18. Despite the Directions, the Respondent has not filed any written submissions on sanctions and costs apart from the 24 March Representations.

E. Discussion

19. The Disciplinary Committee accepts the Complainant's submissions that this is a very serious instance of offence involving dishonesty and breach of trust. The Respondent forged two medical certificates and used them respectively on two different occasions. It is beyond doubt that the Respondent acted in contravention of the fundamental principle of integrity under sections 110.1A1(a), R110.2, and R111.2 of the Code.

20. The Disciplinary Committee has the benefit of carefully viewing the two false medical certificates. Any reasonable person who has looked at the two false medical certificates will be misled into believing the purported authenticity of same. One could hardly spot the falsity and forgery, which may only be discoverable by making an enquiry with the issuing Hospital, as the Bank had done so in the present case. The sophistication of the forgery is clearly an aggravating factor in the present case.
21. It is noted the Respondent has not been convicted of any criminal offence regarding the Complaint (as the Bank had not reported the matter to the police for investigation). However, were the matter reported to the police, it is very likely that the Respondent would face charges of forgery (contrary to section 71 of the Crimes Ordinance (Cap. 200) (“CO”)), using a false instrument (contrary to section 73 of the CO) and/or fraud and other deception type of offences under the Theft Ordinance (Cap. 210). The gravity of the misconduct is something which the Disciplinary Committee should duly take into account. For the avoidance of doubt, the Disciplinary Committee is not to substitute the role of a criminal court and punish the Respondent for transgression of criminal laws.
22. It remains for the Disciplinary Committee to address the Complainant’s criticism of the Respondent for her uncooperative attitude during the HKICPA’s investigation and her failure to admit the Complaint upon the first available opportunity. So far as the investigation process is concerned, it is observed that:-
- (1) On 4 February 2020, Ms Brenda Leung (“**Leung**”), Associate Director, Compliance of HKICPA sent the enquiry letter dated 4 February 2020 to the Respondent by email and by post.
 - (2) In reply, on 19 February 2020, the Respondent by email informed Leung that:-

“The reply was sent to you by mail on 17th Feb, please notify once you receive.”

("the 19 February Reply")

- (3) On 27 February 2020, the Respondent by email wrote further to Leung, stating that:-

"Please kindly advice if you could be reached through email. The previously mentioned mail has been returned. I'm out of HK and won't be back in the near future due to the crownavirus. I've tried to call but failed."

("the 27 February Reply")

- (4) On 27 February 2020, Leung by email replied the Respondent that HKICPA had not received reply from the Respondent to date and that HKIPCA requested for the Respondent's cooperation on the matter. The email went on to invite the Respondent to provide her representations by replying to the email and expressly referred to the contact details of HKICPA printed in the footer of the enquiry letter. The enquiry letter was again attached to the email.
- (5) On 1 March 2020, the Respondent replied by email stating *"I hereby authorize my representation on the allegation."* ("**the 1 March Reply**")
- (6) On 16 March 2020, Leung by email wrote further to the Respondent stating that HKICPA had not yet received any representations from her and that the matter would be reported to the Professional Conduct Committee ("**PCC**") for consideration. The email also informed the Respondent of the complaint handling process. The email specifically said that, if no reply was received from the Respondent within the next 14 days, HKICPA would process the matter based on the information provided by the informant.
- (7) Subsequently, on 20 May 2020, Leung, by post and by the email, wrote to the Respondent informing her that the findings on the complaint would be reported to the PCC for consideration of appropriate action and that

recommendation would be made to the PCC for consideration of disciplinary action. A document titled “Key Facts and Observations” and relevant extracts of the Code were appended to the letter. The letter requested the Respondent to confirm the accuracy of the facts stated in the “Key Facts and Observations” and provide written submissions in the event the Respondent had any comment on the matter and on HKICPA’s observations.

- (8) For the avoidance of doubt, HKICPA at all material times communicated with the Respondent via the email address which the Respondent had registered with HKICPA.
23. From the above correspondence, the Respondent’s response, at the investigation stage, was confined to the 19 February Reply, the 27 February Reply and the 1 March Reply. The Respondent, though not out of reach, appeared to be evasive. The 1 March Reply was incomprehensible. Should the Respondent intend to admit the Complaint, she would (and did) have plenty of opportunities to give a clear indication at an earlier stage. Having said that, by the Admission Confirmation, the Respondent still admitted the Complaint at the beginning of the disciplinary proceedings whereby saving the parties from incurring further costs. This is still something to which credit should be given.
24. The Disciplinary Committee is aware of its wide range of disciplinary powers provided by section 35 of the Ordinance:-

“(1) If a Disciplinary Committee is satisfied that a complaint referred to it under section 34 is proved, the Disciplinary Committee may, in its discretion make any one or more of the following orders—

(a) an order that the name of the certified public accountant be removed from the register, either permanently or for such period as it may think fit;

(b) an order that the certified public accountant be reprimanded;

(c) an order that the certified public accountant pay a penalty not exceeding \$500,000 to the Institute;

(d) an order that the certified public accountant —

(i) pay the costs and expenses of and incidental to an investigation against him under Part VA; and

(ii) where the disciplinary proceedings were instituted as a result of an investigation under the Financial Reporting Council Ordinance (Cap. 588), pay to the FRC the sum the Disciplinary Committee considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the FRC;

(da) an order that the practising certificate issued to the certified public accountant be cancelled;

(db) an order that a practising certificate shall not be issued to the certified public accountant either permanently or for such period as the Disciplinary Committee may think fit,

(e) (Repealed)

and the Disciplinary Committee may in any case—

(i) provide for an order to take effect on such date as the Disciplinary Committee thinks fit;

(ii) provide for an order to take effect only upon the happening or non-happening of such event within such period as may be specified by the Disciplinary Committee;

(iii) make such order as the Disciplinary Committee thinks fit with regard to the payment of costs and expenses of and incidental to the proceedings, whether of the Institute (including the costs and expenses of the Disciplinary Committee) or of any complainant or of the certified public accountant, and any costs and expenses or penalty ordered to be paid may be recovered as a civil debt.”

25. As rightly submitted by the Complainant, the Respondent's dishonest breach *per se*, whether or not leading to criminal proceedings and criminal penalties, warrants a removal from the registry. The Disciplinary Committee considers that removal for a period of 5 years would be appropriate in all the circumstances.

F. Costs

26. The Complainant seeks costs in the sum of HK\$44,590 (including the costs of the Clerk to the Disciplinary Committee in the sum of HK\$3,548). In this regard, the Complainant submits that:-
- (1) Costs incurred by HKICPA in disciplinary proceedings are financed by membership subscriptions and registration fees.
 - (2) Since it was the conduct of the Respondent which has brought her within the disciplinary process, it is only fair that she should pay the costs and expenses and not have them funded or subsidized by other members of HKICPA.
27. The Complainant also draws the attention of the Disciplinary Committee to a complete list of past cases from 2016 to 2021 published at HKICPA's website, which shows that costs were awarded to HKICPA for all complaints proved.
28. The Respondent has not raised any objection to the costs sought by the Complainant.
29. Having regard to all the circumstances, the Disciplinary Committee would allow costs of HK\$44,590 in full in accordance with section 35(1) of the Ordinance.

G. Disposition

30. For the reasons set out hereinabove, the Disciplinary Committee hereby makes the following orders pursuant to section 35(1) of the Ordinance:-
- (1) The name of the Respondent be removed from the register of the Certified Public Accountants for a period of 5 years effective from 42 days from the date hereof under section 35(1)(a) of the Ordinance; and
 - (2) The Respondent do pay the costs of the Complainant and of the Clerk to the Disciplinary Committee in the sum of HK\$44,590 under section 35(1)(iii) of the Ordinance.

Dated 28 May 2021.

Mr. FAN Hoi Kit
Chairman of the Disciplinary Committee
Disciplinary Panel A

Mr. LAM, Wai Chin, Raymond
Disciplinary Panel A

Mr. DAVIDSON, Calum Muir,
CPA (Practising)
Disciplinary Panel B

Mr. CHAN, Chak Ming
Disciplinary Panel A

Mr. TAM, Tak Wah, CPA
Disciplinary Panel B