Proceedings No. D-20-1603H

IN THE MATTER OF

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

BETWEEN

The Registrar of the Hong Kong Institute of Certified Public Accountants	COMPLAINANT
AND	
Yeung Chun Wai, Anthony (F05518)	RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants

Members: Ms. Ho Man Kay Angela (Chairman)
Ms. Chui Hoi Yee
Ms. Eva Lee
Mr. Lee Ka Keung Daniel
Ms. Tang Kwan Lai

ORDER AND REASONS FOR DECISION

INTRODUCTION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (the "**Institute**") as Complainant against Dr. Yeung Chun Wai, Anthony, a certified public accountant (the "**Respondent**").

2. The particulars of the complaint are set out in a letter dated 11 May 2021 ("**Complaint Letter**") from the Institute (the "**Complainant**") under section 34(1A) of the Professional Accountants Ordinance (Cap. 50) ("**PAO**"), and elaborated in the Complainant's Case dated 20 August 2021. The relevant particulars are summarised at paragraphs 3 to 28 below.

BACKGROUND

3. Great Wall Belt & Road Holdings Limited (formerly known as e-Kong Group Limited) is a Hong Kong listed company (stock code: 524) (the "**Company**"). At the relevant times, the principal activities of the Company and its subsidiaries (collectively, the "**Group**") included investment holding. The Group held material trading investment in securities in Hong Kong.

4. The Respondent was the then executive director and Chairman of the Company (having resigned from both posts in November 2017). He was entrusted with the management of the Company's securities investment business and he had standing authorisation to operate the securities account of e-Kong Pillars Holdings Limited, a wholly-owned subsidiary of the Company (the "**Subsidiary**"). He was in control of the securities account on a day-to-day basis.

5. On 13 March 2020, the Respondent was sanctioned by the Listing Committee of the Stock Exchange of Hong Kong Limited (the "**Listing Committee**") concerning a number of connected transactions in Hong Kong listed-companies' shares, as entered into between the Respondent and the Subsidiary from August 2015 to June 2017.

6. The sanctions indicated a breach of professional standards and other improper conduct on the part of the Respondent.

THE COMPLAINTS

7. The Complainant filed 2 complaints against the Respondent, as follows:-

First Complaint

7.1. Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain, or otherwise apply a professional standard, namely the fundamental principle of Professional Behavior under section 100.5(e) and as elaborated in section 150.1 of the Code of Ethics for Professional Accountants ("**COE**").

Second Complaint

7.2. Section 34(1)(a)(x) of the PAO applies to the Respondent in that he was guilty of dishonourable conduct.

FACTS AND CIRCUMSTANCES IN SUPPORT OF THE FIRST COMPLAINT

8. The connected transactions in question consisted of two sets, being (1) a disposal transaction of certain shares held by the Subsidiary which was executed by the Respondent in June 2017 but ultimately not approved by the Company's shareholders (the "**Disposal**"); and (2) seven other connected transactions executed by the Respondent and the Subsidiary without the Company's board of director's (excluding the Respondent) (the "**Board**") approval/knowledge from August 2015 to June 2017 ("**Additional Transactions**").

9. The Complaints stemmed from the findings and sanctions imposed by the Listing Committee in respect of the Respondent. The Listing Committee censured the Respondent, and it was also of the opinion that had the Respondent remained in office, his retention of office would have been prejudicial to the interests of investors.

10. According to the findings of the Listing Committee and the Company announcements on the Hong Kong Exchanges and Clearing Limited ("**HKEX**"):-

10.1. On 9 June 2017, the Board approved a disposal ("**Disposal**") of 5.7 million shares of SingAsia Holdings Limited (stock code: 8293) ("**SingAsia**") by the Subsidiary to the Respondent at $4.65 per share ("**Agreed Price**"). The written resolutions did not state when the Disposal would take place.

10.2. The Respondent executed the Disposal on 9 June 2017 (i.e. the same day), without knowledge of the Board, on the market at an average price of around $7.316 per share ("**Transaction Price**"). According to the Company, the Disposal should have been done by way of a bought and sold note transaction, yet the Respondent alleged that this approach could not be processed in his personal securities account with his brokerage firm, and therefore resorted to executing the Disposal in the market. The Agreed Price represented a 36.44% discount on the Transaction Price. The Respondent then proposed a mechanism for the Company to refund to him the amount he had paid over and above the Agreed Price ("**Refund Mechanism**").

10.3. The Disposal was announced on 16 June 2017 by the Company ("**June Announcement**"). The Company noted in the announcement that this was a connected transaction, however it stated that it was exempt from shareholders' approval given that all the applicable percentage ratios (as defined under the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited ("**Listing Rules**")) were less than 5%. The Company also did not disclose the Transaction Price and the Refund Mechanism.

10.4. The Company issued a further announcement on 21 July 2017 ("**July Announcement**"), stating that the previous calculation of the size test (consideration test) was wrong, and that when the size test was correctly measured, the Disposal should require shareholders' approval, and accordingly the Company would seek that approval. The announcement also disclosed the Refund Mechanism.

10.5. The shareholders subsequently refused to ratify the Disposal. As a result, the Respondent agreed to return the SingAsia shares to the Company.

10.6. It was further found by the Listing Committee that during the period from August 2015 to June 2017, the Subsidiary and the Respondent executed Additional Transactions. The Additional Transactions required disclosure and/or independent shareholders' approval, yet the disclosures were not made and the shareholders' approval were not obtained. Details of the Additional Transactions were announced by the Company on 24 November 2017.

Applicable Legal/ Regulatory Principles

11. Under section 100.5(e) of the COE, a fundamental principle of a professional accountant is to comply with relevant laws and regulations and avoid any action that discredits the profession. Section 150.1 of the COE further elaborates that this includes actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude that such actions adversely affect the good reputation of the profession.

12. Rule 3.08 of the Listing Rule requires the directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by the laws of Hong Kong. This requires a duty to (i) avoid actual and potential conflicts of interest and duty (Rule 3.08(d)), (ii) disclose fully and fairly his interests in contracts with the issuer (Rule 3.08(e)), and (iii) to apply such degree of skill, care, and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the issuer (Rule 3.08(f)).

13. Directors are also under an obligation, pursuant to their undertakings, to comply to the best of their abilities with the Listing Rules and to use their best endeavours to procure the Company's compliance with the Listing Rules ("**Undertaking**").

14. The Respondent was the then executive director, Chairman, as well as the Chief Executive Officer of the Company as well as a director of the Subsidiary. Therefore, he was a connected person of the Company. He had standing authorisation to operate the securities account of the Subsidiary, and was in control of the securities account on a day to day basis.

Disposal

15. As admitted by the Company, in the June Announcement, the statement namely, "*all of the applicable percentage ratios ... of the Disposal are more than 0.1% and less than 5%, the Disposal is subject to reporting and announcement requirements but is exempted from independent shareholder's approval requirement under the Listing Rules*" was wrong. In fact, the Company admitted that as one or more of the applicable percentage ratios under the Listing Rules would exceed 5%, and the aggregate consideration of the disposal was above HK$10 million, the Disposal is required to comply with the reporting, announcement, and shareholder's approval requirements under Chapter 14A of the Listing Rules.

16. As the Listing Committee had found, the events surrounding the aforesaid mistake in the Company's announcement showed the Respondent's failure to exercise due skill, care and diligence with regard to the Disposal, thereby in breach of Rule 3.0B(f) of the Listing Rules:-

    16.1. The Respondent executed the Disposal in apparent haste on 9 June 2017, and he did not inform the other directors of the execution or bring the matter back to the Board for consideration;

    16.2. The Respondent failed to clarify with the legal advisers drafting the Company's announcement as to the Listing Rule requirements for the Disposal when the initial wrong conclusion that the Disposal was exempt from disclosure was made;

    16.3. When the Respondent was shown a draft of the 16 June 2017 announcement which correctly used the Transaction Price for the calculation of the size test, he instructed his staff to replace the size test calculated by reference to the lower Agreed Price without explanation. This resulted in a percentage ratio below 5%, and as such the issuance of a circular and shareholder's approval would not be required under the Listing Rules;

    16.4. The Respondent failed to ensure the June Announcement and July Announcement were accurate and complete in all material respects and not misleading; and

16.5. The Respondent failed to comply with and to ensure the Company's compliance with the Listing Rules.

Additional Transactions

17. Upon a review of securities account statements by the Group, it was found that from August 2015 to June 2017, the Subsidiary and the Respondent executed seven other connected transactions with respect to the purchase and sale of shares of other listed companies without the Board's knowledge or approval summarised as below:-

Date	**Purchase of shares by the Subsidiary from the Respondent**	**Consideration**
17 August 2015	3,972,000 shares of Kingston Financial Group Limited (stock code: 1031)	HK$11,161,320
9 September 2015	7,100,000 shares of Sincere Watch (Hong Kong) Limited (stock code: 444)	HK$9,978,600
5 October 2015	8,720,000 shares of Sincere Watch (Hong Kong) Limited	HK$7,935,200
5 October 2015	4,440,000 shares of Tech Pro Technology Development Limited (stock code: 3823)	HK$7,992,200
22 March 2017	2,000,000 shares of SingAsia	HK$9,060,000

Date	**Sale of shares by the Subsidiary to the Respondent**	**Consideration**
14 December 2016	7,000,000 shares of Beijing Enterprises Clean Energy Group Limited (stock code: 1250)	HK$1,329,060
12 June 2017	26,256,000 shares of Beijing Gas Blue Sky Holdings Limited (stock code: 6828)	HK$13,653, 120

18. The Company had admitted that the Additional Transactions entered into by the Respondent and the Subsidiary, constituted connected transactions for the Company under Chapter 14A of the Listing Rules. The Respondent never disclosed the Additional Transactions to the Board for it to understand the nature of them and the relevant implications on Listing Rules compliance, resulting in these transactions not complying with the relevant reporting, announcement, circular and independent shareholders' approval requirements under the Listing Rules.

19. As the Listing Committee had found, the events surrounding the Additional Transactions showed the Respondent had breached Rules 3.08(d) and 3.08(e) of the Listing Rules by:-

    19.1. placing himself in a position of conflict of interest;

    19.2. failing to disclose his interest in such transactions to the Company;

    19.3. failing to follow the Company's internal policies on monitoring, identifying, and reporting the notifiable transactions under Chapter 14 and 14A of the Listing Rules.

Breach of Professional Standard

20. The Respondent was also in breach of the Undertaking of directors:-

    20.1. to comply to the best of his ability with the Listing Rules; and

    20.2. to procure the Company's compliance of the same.

21. The Listing Rules and the Undertaking constitute "relevant regulations" under sections 100.5(e) and 150.1 of the COE. As such, the Respondent has failed to comply with relevant laws and regulations as a certified public accountant acting in the capacity as the Chairman and an executive director of the Company.

22. The Respondent's breaches herein were serious, in particular the Company was publicly listed in the HKEX and the Respondent held an important role within the Company. This is further expressed by the Listing Committee, who opined that given the Respondent's willful and/or persistent failure to discharge his responsibilities under the Listing Rules, had he remained in office, his retention of office would have been prejudicial to the interests of investors.

23. Therefore, the actions of the Respondent, which resulted in publicized sanctions against him, would adversely affect the good reputation of the accounting profession.

24. The Respondent has not provided any explanation to the Institute for his conduct and matters as raised in the Complaint Letter. Based on the above, the Respondent failed to comply with the fundamental principle of Professional Behaviour in section 100.5(e), as elaborated by section 150.1 of the COE.

FACTS AND CIRCUMSTANCES IN SUPPORT OF THE SECOND COMPLAINT

25. Dishonourable conduct is defined under section 34(2) of the PAO as "*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.*"

26. The case reveals a serious concern over the competence of the Respondent, as a director and the Chairman of the board, to ensure that notifiable and connected transactions were identified and reported to the board for approval, and the Company fully complied with the applicable Listing Rules.

27. The Listing Rules are designed to ensure that investors have a continued confidence in the market and are kept fully informed of material information concerning the Company. The Respondent's breaches herein have prevented the Listing Rules from achieving their purpose and intention.

28. In light of the above, the acts and/or omissions of the Respondent would reasonably be regarded as bringing or likely to bring discredit not only upon the Respondent himself but, to the extent that he was a certified public accountant, also the Institute or the accountancy profession. Therefore, the Respondent was guilty of dishonourable conduct.

THE PROCEEDINGS

29. The Notice of Commencement of Proceedings was issued on 23 July 2021.

30. The Complainant filed the Complainant's Case on 20 August 2021.

31. The Respondent did not file the Respondent's Case on 17 September 2021 in accordance with the Notice of Commencement of Proceedings and the procedural

timetable.

32. On 28 September 2021, the Clerk to the Disciplinary Committee (the "**Clerk**") communicated to the parties herein that:-

    32.1. Numerous attempts had been made to contact the Respondent in September 2021 through the mobile phone number and office telephone number provided by the Respondent. The Clerk found that the telephones lines have all been stopped; and

    32.2. The Notice of Commencement of Proceedings was sent to the Respondent's email address, residential address and office address registered with the Institute. The correspondence sent to Respondent's office address was returned and marked "unclaimed" by the post office. The correspondence sent using the Respondent's email address and residential address have not been returned.

33. Having considered the above, the Disciplinary Committee made the directions on the same day that:

    33.1. future correspondence should be sent to the Respondent to his last known contactable addresses registered with the Institute;

    33.2. the Complainant to file the checklist; and

    33.3. the Complainant to suggest how the proceedings should be conducted given the lack of response of the Respondent.

34. The Complainant filed the checklist on 6 October 2021.

35. Having considered the available information and the submission of the Complainant, the Disciplinary Committee directed on 11 October 2021 that:-

    35.1. The substantive hearing shall be dispensed with unless any written objection is submitted by the parties within the next 14 days; and

35.2. Although the Respondent did not respond to any correspondence and notices issued by the Institute and remained uncontactable, he was given the opportunity to file any written submissions in relation to the complaint within the next 14 days.

36. The copy of the said direction was sent to the Respondent's residential and email address registered with the Institute. Subsequently, the copy sent to the Respondent's residential address was returned by the post office and it was marked "Moved" by someone.

37. No written submissions were received from any parties herein within the period specified. On 10 November 2021, the Disciplinary Committee found that the Complaints against the Respondent were proved, and directed the parties to make written submissions on sanctions and costs.

38. The Complainant provided written submissions on sanctions and costs on 7 December 2021. No response has been received from the Respondent.

SANCTION AND COSTS

39. The Disciplinary Committee notes that it has a wide discretion on the sanctions it might impose and is not bound by the decision of a previous disciplinary committee. Each case is fact specific.

40. Nevertheless, to assist the Disciplinary Committee in exercising its discretion, the Complainant has identified a previous decision with similar features to the current case, namely, Proceedings No.: D-17-1251O (1 April 2019) ("**Ng**"), which may have reference value:-

Ng was the financial controller, company secretary and compliance officer of a Hong Kong listed company. He was reckless in failing to ensure the company's timely disclosure of price sensitive information, namely failing to issue any profit warning announcement when he had known about the company's deteriorating performance from the annual accounts. The Market Misconduct Tribunal had sanctioned Ng for beaching the relevant disclosure requirements under the SFO, and referred the findings to the Institute. Based on these facts, Ng faced one complaint for neglecting or failing to observe, maintain or otherwise apply the

fundamental principle of Professional Behaviour under the COE. The disciplinary committee considered Ng's case to be serious, as he had wholly ignored and disregarded the duties and responsibilities associated with his position as the financial controller and compliance officer. A removal from the register of certified public accountants of 12 months was ordered.

41. The Complainant submitted that the present case is more serious than the case of Ng above, in that the Respondent himself was the party to the connected transactions which took place. Apart from the improper handling of the Disposal transaction, there were 7 Additional Transactions spanning from 2015 to 2017 which were conducted by the Respondent without the Board's knowledge or approval. These facts, together with the censuring of the Respondent and also the opinion expressed by the Listing Committee, support the dishonourable conduct complaint against the Respondent which was not present in the case of Ng.

42. The Complainant submitted this case falls within the "very serious" category as pursuant to the Guidelines to Disciplinary Committee for Determining Disciplinary Orders. Having regard to the above, and considered the nature and gravity of the complaints and to maintain the profession's reputation and standing, the Complainant submitted that the appropriate sanction should be a reprimand and a removal of the Respondent's name from the register of certified public accountants of not less than 15 months.

43. The Complainant also pointed out that the Respondent should pay the costs and expenses of and incidental to the proceedings, including the costs and expenses of the Committee. Costs incurred by the Institute in disciplinary proceedings are financed by membership subscriptions and registration fees. Since it was the conduct of the Respondent which has brought him within the disciplinary process, it is only fair that he should pay the costs and expenses and not have them funded or subsidized by other members of the Institute.

44. The Disciplinary Committee is satisfied that the costs and expenses set out in the Statement of Costs dated 30 November 2021 in the total sum of HK$58,386 were reasonably and necessarily incurred.

45. The Disciplinary Committee having considered all the documents available, the submission made by the representative of the Complainant and the circumstances as a whole in particular the blatant disregard by the Respondent of these proceedings,

orders that:-

45.1. the name of the Respondent be removed from the register of certified public accountants for 15 months on the 42nd day from the date of this Order under Section 35(1)(a) of the PAO;

45.2. the Respondent be reprimanded under Section 35(1)(b) of the PAO; and

45.3. the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK$58,386 under Section 35(1)(iii) of the PAO.

The above shall take effect on the 42nd day from the date of this Order.

Dated the19th day of January 2022

Ms. Ho Man Kay Angela
Chairman
Disciplinary Panel A

Ms. Chui Hoi Yee
Member
Disciplinary Panel A

Mr. Lee Ka Leung Daniel
Member
Disciplinary Panel B

Ms. Eva Lee
Member
Disciplinary Panel A

Ms. Tang Kwan Lai
Member
Disciplinary Panel B