

IN THE MATTER OF

A Complaint made under Section 34(1)(a) 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

The Respondent

RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants (“the Institute”)

Members:

REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (“the Institute”) against [the Respondent] as the Respondent, a certified public accountant. Section 34(1)(a)(vi) of the PAO applied to the Respondent.
2. The particulars of the Complaint as set out in a letter dated 26 October 2012 (“the Complaint”) from the Registrar to the Council of the Institute for consideration of referring the Complaint to the Disciplinary Panels, are as follows:-

- (a) On 16 December 2011, the Institute received a complaint about a promotional email sent out by [Company A] ("[Company A]").
- (b) The promotional email stated:
" ... 我們是一班專業的會計師 ... 我們還提供會計，審計和 ... 等服務 ...
[Respondent]
[XX]會計事務所
[Company A]" (Underline added)

(English translation:

"... we are professional certified public accountants... We also provide accounting, audit and... services...

[Respondent]
[Company A]"

- (c) The email also referred the reader to a website (www.[xxx]cpa.com) which contained the following information:

"[XX]會計 - [Respondent]會計師

我們的使命：

專為企業提供優質的會計和審計服務，稅務計劃和香港公司法的諮詢。

服務範圍：...

審計服務...

服務特色：...

4. 審計工作 - 提供額外增值服務，分析財務報表..." (Underline added)

(English translation:

"[Company A] - [Respondent] Certified Public Accountant

Our mission:

Providing high quality accounting and audit services, tax planning and consultation on Hong Kong Companies Ordinance to enterprises.

Types of services:

Audit service...

Characteristics of services:...

4. Audit service - provide analyses on financial statements as a value added service... ")

- (d) [Company A] is a sole proprietorship owned by the Respondent.
- (e) A check of the Institute's records revealed that [Company A] was not a member practice and the Respondent is only a non-practising member.
- (f) In reply to an enquiry from the Institute dated 7 February 2012, the Respondent advised, by letter dated 18 February 2012, that she would remove the word "審計" (audit) from [Company A]'s website and undertook that future promotional emails would not contain the statement that "we will provide auditing services".

- (g) Section 150 "Professional Behavior" of the Code of Ethics for Professional Accountants (June 2010 Revision) (the "Code") states:

"150.1 The principle of professional behavior imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession. 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 adversely affects the good reputation of the profession" (Underline added)

- (h) Section 42 (Offences and penalties) of the PAO provides:

"(1) Subject to this section, any person who-...

(i) not being a certified public accountant holding a practising certificate or not being a practice unit the firm name of which is registered under section 28A-

(i) advertises, publishes or represents himself as qualified to practise as a certified public accountant (practising) or knowingly permits himself to be so advertised, published or represented...

shall be guilty of an offence..."

- (i) Neither [Company A] nor the Respondent was qualified to render "audit services". However, the Respondent allowed both the promotional email and [Company A]'s website to advertise, publish or represent that [Company A] and the Respondent could provide audit services which only firms of CPAs (practising), corporate practices, or certified public accountants (practising) are qualified to provide.
- (j) In the circumstances, the Respondent failed to comply with section 150.1 of the Code.

3. The Respondent admitted the Complaint against her. She 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. On 15 April 2013, 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. Both the Complainant and the Respondent have made written submissions as to the sanctions and costs respectively dated 30 April 2013 and 2 May 2013 for the consideration by the DC. The Respondent submitted that the misrepresentation of [Company A] being able to provide audit services was due

to her careless mistake. She further asked the DC to have regard to her personal circumstances including that she has suffered from stomach aches and depression and the poor business of [Company A]. Apart from admitting to the Complaint against her thereby saving the time and resources of all parties concerned, the DC did not find the other submissions of the Respondent amounted to mitigating factors for the purpose of sanctioning.

6. 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, the conduct of the Complainant and the Respondents throughout the proceedings.

7. The DC orders that:-

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

2) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$23,727 under Section 35(1)(iii) of the PAO.

Dated the 25th day of June 2013

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A Complaint made under Section 34(1)(a) 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

The Respondent RESPONDENT

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

Members:

ORDER

Upon reading the complaint against [the Respondent], a certified public accountant, as set out in a letter from the Registrar of the Hong Kong Institute of Certified Public Accountants ("the Complainant") dated 26 October 2012, the written submissions of the Complainant and the Respondent dated 30 April 2013 and 2 May 2013 and the relevant documents, the Disciplinary Committee is satisfied by the documentary evidence adduced before it that the following Complaint is proved:

Section 34(1)(a)(vi) of the PAO applies to the Respondent in that she failed or neglected to observe, maintain or otherwise apply a professional standard namely section 150 "Professional Behaviour" of the Code when the promotional email sent out by [Company A] could bring herself in breach of section 42(1)(i)(i) of the PAO by advertising, publishing or representing that she and [Company A] could provide audit services.

IT IS ORDERED that:-

1. the Respondent be reprimanded under Section 35(1)(b) of the PAO; and
2. the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$23,727 under Section 35(1)(iii) of the PAO.

Dated the 25th day of June 2013