

IN THE MATTER OF

Complaints 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

1st Respondent

1st RESPONDENT

2nd Respondent

2nd 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”) as the Complainant against the Respondents, both certified public accountants. Section 34(1)(a)(vi) of the PAO applied to the Respondents.
2. The particulars of the Complaint, as set out in a letter dated 6 September 2012 (“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, are as follows:-

- (1) On 6 September 2011, the Institute received an unsolicited facsimile from [Company A] ("[Company A]") promoting its services which included inter alia auditing services in Hong Kong (the "Promotional Leaflet").
- (2) Investigations by the Institute revealed that the founder members and directors of [Company A] were the 1st and 2nd Respondents.
- (3) [Company A] was not a member practice or registered as a corporate practice with the Institute. However, both the 1st and 2nd Respondents were non-practising members of the Institute.
- (4) On 12 October 2011, the Institute wrote to the 1st and 2nd Respondents respectively seeking their representations.
- (5) The Promotional Leaflet stated:

"我們是一班專業審計 / 會計團隊成員(English Translation: We are a group of professional auditing/accounting team members)

Our Services include:

... Auditing Services for Limited Company ...

We promise that you could enjoy a discount of 20% of your existing fee and such fees will be remained the same for at least 3 years)"

- (6) The clear suggestion is that [Company A] could provide auditing services for Hong Kong companies. As [Company A] was not qualified to provide these services, this would amount to a breach of section 42(1)(ha)(i) of the PAO, a criminal offence.
- (7) In the circumstances, the Respondents failed to observe their obligations under section 150.1 of the Code of Ethics for Professional Accountants (June 2010 Revision) ("the Code") namely to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession and section 34(1)(a)(vi) of the PAO applies to them.
- (8) The Promotional Leaflet was distributed as an unsolicited facsimile in direct contravention of section 450.22 of the Code.
- (9) In the circumstances, the Respondents failed to observe section 450 of the Code and section 34(1)(a)(vi) of the PAO applies to them.

3. The 1st and 2nd Respondents admitted the Complaints against them by letters dated 16 October 2012 and 19 October 2012 respectively. They 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 13 December 2012 addressed to the Complainant and the Respondents, 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. By a letter dated 3 January 2013, the Complainant made submissions on sanctions and costs and invited the DC to consider more severe sanctions as:-
 - (a) The Promotional Leaflet was sent by way of unsolicited facsimile. Whilst the Complainant could not produce any accurate figure on the number of recipients receiving the unsolicited promotional material, that figure was likely to be rather substantial and it would not be a single event; and
 - (b) Apart from denying that they had received any feedback from the promotional facsimiles neither the 1st Respondent nor the 2nd Respondent had provided any explanation how [Company A] was to have provided the audit services offered whilst neither of the Respondents was qualified to provide an audit service.
6. The 1st Respondent informed the Clerk to the DC that he did not have any submission to the DC as to sanctions by email of 10 January 2013. The 2nd Respondent had also informed the Clerk that he did not have any submission to the DC by email of 11 January 2013. No request for a hearing on sanctions and costs was made by the parties.
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, the admission of the Complaint by the Respondents, the submissions on sanctions and costs by the parties, and the conduct of the Complainant and the Respondents throughout the proceedings.

8. The DC orders that:-

- 1) the 1st and 2nd Respondents be reprimanded under Section 35(1)(b) of the PAO; and
- 2) the Respondents do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$22,900 under Section 35(1)(iii) of the PAO. The said costs and expenses shall be borne equally between the Respondents.

Dated the 8th day of May 2013

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AND

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2nd RESPONDENT

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

Members:

ORDER

Upon reading the complaint against [the 1st Respondent] and [2nd Respondent], both certified public accountants, as set out in a letter from the Registrar of the Hong Kong Institute of Certified Public Accountants ("the Complainant") dated 6 September 2012, the written submission of the Complainant dated 3 January 2013, and the relevant documents, the Disciplinary Committee is satisfied by the admission of the Respondents and evidence adduced before it that the following complaints are proved:

1. Section 34(1)(a)(vi) of the PAO applies to the 1st and 2nd Respondents in that they had failed or neglected to observe, maintain or otherwise apply a professional standard namely section 150 "Professional Behaviour" of the Code of Ethics for Professional Accountants by allowing [Company A], to provide, offer to provide or hold itself out as providing audit services.

2. Section 34(1)(a)(vi) of the PAO applies to the 1st and 2nd Respondents in that they failed or neglected to observe, maintain or otherwise apply a professional standard namely section 450 "Practice Promotion" of the Code of Ethics for Professional Accountants by permitting the unsolicited direct mailing of promotional materials.

IT IS ORDERED that:-

1. the 1st and 2nd Respondents be reprimanded under Section 35(1)(b) of the PAO; and
2. the 1st and 2nd Respondents do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$22,900 under Section 35(1)(iii) of the PAO. The said costs and expenses shall be borne equally between the Respondents.

Dated the 8th day of May 2013