

Proceedings No.: D-10-0471H

IN THE MATTER OF a complaint
against [the Respondent], a
professional accountant, made under
Section 34(1)(a) of the Professional
Accountants Ordinance, Cap 50

BETWEEN

The Registrar of the Hong Kong Institute of
Certified Public Accountants

COMPLAINANT

AND

The Respondent

RESPONDENT

Proceedings No.: D-10-PR73P

IN THE MATTER OF a complaint
against [the Respondent], a
professional accountant, made under
Section 34(1)(a) of the Professional
Accountants Ordinance, Cap 50

BETWEEN

The Practice Review Committee of the Hong Kong
Institute of Certified Public Accountants

COMPLAINANT

AND

The Respondent

RESPONDENT

Complainants: Represented by [the Legal Counsel]
Respondent: Absent

REASONS FOR DECISION

Date of Hearing: 30th April 2011

Date of Reasons for Decision: 18th May 2011

The Background

1. The Respondent is a certified public accountant. Disciplinary proceedings were commenced against him pursuant to two Notices of Commencement of Proceedings both dated 29th November 2010.
2. There were two cases lodged against [the Respondent]:
 - (a) D-10-0471H
 - i. Complaint 1: Contrary to s.34(1)(a)(vi) of the Professional Accountants Ordinance, Cap 50("PAO"), the Respondent failed or neglected to observe maintain or otherwise apply a professional standard namely the Fundamental Principles as set out in Statement 1.200, and Section 110.2 of the Code of Ethics for Professional Accountant ("COE") in respect of a Declaration for the Renewal of a Practising Certificate he made to the Institute in each of the years 2004 and 2005 when he renewed his annual practising certificate for the years 2005 and 2006 respectively; and in respect of a Declaration for the Re-application of a Practising Certificate in 2006 that he made when he renewed his annual practising certificate for the year 2007.
 - ii. Complaint 2 (alternative to Complaint 1): Contrary to s.34(1)(a)(x) of the PAO, the Respondent was guilty of dishonourable conduct by virtue of a Declaration for the Renewal of a Practising Certificate he made to the Institute in each of the years 2004 and 2005 when he renewed his annual practising certificate for the years 2005 and 2006, respectively; and in respect of a Declaration for the Re-application of a Practising Certificate in 2006 that he made when he renewed his annual practising certificate for the year 2007.

(b) D-10-PR73P

- i. Complaint 1: Contrary to s.34(1)(a)(vi) of the PAO, the Respondent failed or neglected to observe, maintain or otherwise apply a professional standard namely the Fundamental Principles as set out in paragraph (e) of Section 100.4 of the COE as elaborated in Section 150 "Professional Behaviour" of the COE by failing to give the reviewer, assigned to carry out a practise review of [a CPA firm], all the assistance he was reasonably able to give in connection with that practise review, as required of him pursuant to section 32E(1)(a)(iii) of the PAO.
 - ii. Complaint 2 (alternative to Complaint 1): Contrary to s.34(1)(a)(viii) of the PAO, the Respondent was guilty of professional misconduct by failing to give to the reviewer, assigned to carry out a practise review by [the CPA firm] all the assistance he was reasonably able to give in connection with that practise review.
3. The two cases were consolidated at the Directions Hearing on 26th January 2011. Subsequently, a date of 30th April 2011 was fixed for the substantive disciplinary hearing ("the Hearing") to be held. The Complainants were legally represented at the Hearing whereas the Respondent was absent. The Disciplinary Committee ("the Committee") after due consideration decided to proceed with the Hearing in the absence of the Respondent. The reasons for which will be stated hereinbelow.

Relevant Facts on Service

4. The Committee accepted the following facts relating to service:
 - i. On 24th March 2011, letters notifying the Hearing date were sent by first class post by the Clerk of the Disciplinary Committee ("the Clerk") to the following registered address of the Respondent:

[Address]
 - ii. The Clerk made numerous attempts to contact the Respondent by the last known mobile phone and fixed line of the Respondent. The attempts failed.
 - iii. However a week before the Hearing, the Complainants succeeded in contacting the Respondent to confirm the arrangement of the hearing bundles

to be served on him by hand on the said address. Accordingly, the hearing bundles were served at the Respondent's said address before the Hearing.

5. Section 22(2) of the Professional Accountants Ordinance (Cap. 50) ("PAO") – Register of the Certified Public Accountants provides:

"Upon the making of an order for the registration of an applicant under Section 26 (1); the Register shall enter in the register the following particular of the person to be registered-

- (a) his name;*
- (b) his residential address and any business address or; if he holds a practising certificate; his residential address and his registered office under section 31;*
- (c) the qualification by virtue of which he is registered; and*
- (d) such other particulars as the Council may direct."*

6. Rule 38(1) of the Disciplinary Committee Rules provides:

"(1) Save as provided in Rule 33, any notice or document required to be sent under these rules may be:

- (a) Delivered to the recipient by hand;*
 - (b) Sent to the recipient by post address, in the case of a certified public accountant, to the registered address and, in every other case, to the last known place of business or abode of the recipient;*
 - (c) Sent to the recipient's representative by hand, post or facsimile.*
- (2) Any notice or document sent to a recipient by post shall be deemed to be received at the time when the letter would be delivered in the ordinary course of post.*
- (3) Save as provided in rule 33, the Chairman or the Disciplinary Committee may make such order for substituted service of notices and documents as in the circumstances of the case may appear just and reasonable."*

7. Further, Rule 36 provides:

"If the Chairman or the Disciplinary Committee is of the opinion that a party has failed to appear at the hearing or has failed to comply with a requirement of these rules, (including the procedural timetable) or of any direction or order, the Chairman or the Disciplinary Committee may take such steps as they consider appropriate including dismissing the compliant without requiring the Respondent to answer the allegations, hearing and determining the compliant without hearing from the Complainant or the Register, or making such order as to costs as they think fit."

8. The said address at [address] is the registered (according to the said section 22(1)) and last known address of the Respondent at the material times in this case.
9. By reason of the said procedural rules and provisions, delivery by hand and by post are the proper and prescribed methods of service in these proceedings. By reason of the efforts of the Clerk to serve by post and by hand the relevant notice and hearing bundles on the Respondent at his registered commercial address, particularly that the hearing bundles were served by hand and received at his said address, the Chairman and the Committee are satisfied that proper service and notice of the Hearing were given and that the complainants should be heard and determined notwithstanding the absence of the Respondent, pursuant to the said Rule 36.

The Complaints

i. D-10-0471H

10. Section 34(1)(a)(vi) of the PAO applies to [the Respondent] in relation to the allegation that he failed or neglected to observe, maintain or otherwise apply professional standards, namely the Fundamental Principles as set out in Statement 1.200, and section 110.2 of the COE, regarding a Declaration for the Renewal of a Practising Certificate he made to the Institute in each of the year 2004 and 2005 when he renewed his annual practising certificate for the years 2005 and 2006 respectively; and in respect of a Declaration for the Re-application of a Practising Certificate in 2006 that he made when he renewed his annual practising certificate for the year 2007.

The Statement

11. The fundamental principles under Statement 1.200 on which the ethical guidance of the Hong Kong Institute of Certified Public Accountants ("HKICPA") is based provide, inter alia, that:

Para 1: "In accepting or continuing... occupation a member should always have regard to any factors which might reflect adversely upon his integrity and objectivity in relation to that... occupation"

Para 4: "A Member should follow the ethical guidance of the HKICPA and in circumstances not provided for by that guidance should conduct himself in a manner consistent with the good reputation of the profession and the HKICPA."

The Code

12. The applicable section of the COE is:

S110.2 "A professional accountant should not be associated with reports, returns, communications or other information where they believe that the information:

- (a) Contains a materially false or misleading statement;*
- (b) Contains statements or information furnished recklessly; or*
- (c) Omits or obscures information require to be included where such omission or obscurity would be misleading."*

Particular of D-10-0471H

13. [The Respondent] was at all material times a member of the Institute. On 18th May 2010, the Institute received a letter from [the Respondent] to which a certificate of Discharge from his bankruptcy was attached.
14. Section 30(7) of the PAO, introduced on 8th September 2004 provides that: *"A practising certificate shall not be issued to, and the Council may cancel the practising certificate of, a certified public accountant who is or has become bankrupt or has entered into a voluntary agreement with his creditors within the meaning of the Bankruptcy Ordinance (Cap 6)."*

15. It was apparent from the documentary evidence that [the Respondent] had been a bankrupt within the meaning of the Bankruptcy Ordinance (Cap 6) for the period from 20th March 2003 until 20th March 2007.

16. By virtue of section 30(7) PAO, a certified public accountant from 2005 onwards is specifically required to confirm his solvent status and sign a standard declaration to the effect that, inter alia:

"I am not a bankrupt nor have I become bankrupt nor have entered into a voluntary arrangement with my creditors within the meaning of the Bankruptcy Ordinance (Cap 6). I undertake to inform the Institute in writing within 30 days if I have become bankrupt or have entered into a Bankruptcy Ordinance at any time during the year ..."

17. Notwithstanding that [the Respondent] was in fact a bankrupt at the relevant time, he did sign and submit three declarations ("Declarations") to the Institute dated 16th November 2004, 16th November 2005 and 12th December 2006 to the effect that, inter alia he was not a bankrupt.

18. Subsequently, upon payment of the requisite fee, [the Respondent] was issued with practising certificates for the years 2005, 2006 and 2007 respectively.

ii. D-10-PR73P

19. Further, Section 34(1)(a)(vi) of the PAO again applies to [the Respondent] in relation to the allegation that he failed or neglected to observe, maintain or otherwise apply professional standards, namely the Fundamental Principles as set out in paragraph (e) of Section 100.4 of the COE as elaborated in Section 150 "Professional Behaviour" of the COE by failing to give the reviewer, assigned to carry out a practice review of [the CPA firm], all the assistance he was reasonably able to give in connection with the practice review, as required of him pursuant to section 32E(1)(a)(iii) of the PAO.

The Code

20. The applicable sections of the COE include:

Section 100

Introduction and Fundamental Principles

100.1 *A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Therefore, a professional accountant's responsibility is not exclusively to satisfy the needs of an individual client or employer. In acting in the public interest a professional accountant should observe and comply with the ethical requirements of this Code.*

Fundamental Principles

100.4 *A professional accountant is required to comply with the following fundamental principles:*

(a) Integrity

A professional accountant should be straightforward and honest at all professional and business relationships.

...

(e) Professional Behaviour

A professional accountant should comply with relevant laws and regulations and should avoid any action that discredits the profession.

Section 150

Professional Behaviour

150.1 *The principle of professional behaviour imposes an obligation on professional accountants to comply with relevant laws and regulations and avoid any action that may discredit to the profession ...*

Particular of D-10-PR73P

21. On 2nd December 2009, [the Respondent] was notified that his firm, [the CPA firm] had been for practice review scheduled to be held on 25th January 2010 ("1st Notification Letter"). [The Respondent] returned the 1st Notification Letter with his handwritten annotations.
22. On 17th December 2009, the Institute sent a second letter ("2nd Notification Letter") to [the Respondent] with reference to his annotations, advising that the scheduled practice review remained unchanged.

23. On 15th January 2010, an email was sent to the Respondent inviting him to attend an open meeting to discuss practice review arrangement. [The Respondent] failed to attend and later sent his apologies.
24. Notwithstanding a reminder being sent to [the Respondent] on 21st January 2010, the practice review did not take place as scheduled on the 25th January 2010. The practice review team could not gain access to the premises of [the CPA firm] since [the Respondent] had unilaterally cancelled the meeting without any explanation.
25. Subsequently, [the Respondent] agreed to attend another meeting with the practice review team on 27th January 2010. However, he refused to attend one hour before the scheduled meeting.
26. The matter was reported to the Practice Review Committee on 15th April 2010 after three aborted meetings. The Practice Review Committee formally required [the Respondent] to attend an open meeting to discuss the practice review arrangements at the premises of the Institute on 26th April 2010 by a letter dated 16th April 2010 ("3rd Notification Letter") which was also e-mailed to him. The Respondent again failed to attend.

The Respondent's Defence

27. During the course of the proceedings the Respondent served on both the Complainants and the Committee numerous documents including Forms of the High Court downloaded by him from the website with handwritten notes, most of which are illegible. During the Directions Hearings the Respondent agreed with the summary of his alleged defences discerned by the Chairman which are reproduced as follows:
 - i. There were procedural errors in the disciplinary proceedings against him;
 - ii. There were no merits to the complaints of which the Complainants were put to strict proof;
 - iii. There was an abuse of process without the proceeding and/or intervention of the High Court.
28. No evidence has been represented by the Respondent both as to facts and law in relation to any of the above alleged defences.

29. The Committee does not consider the High Court Rules in relation to High Court proceedings apply in the present disciplinary proceedings. In the premises, most if not all of the documents served by the Respondent are of no use in defence of his complaints.
30. The Committee doesn't consider that there is any procedural irregularity in the present proceedings or that the proceedings are an abuse of process.
31. In the premises, the Committee considers that there is no substance whatsoever in the said alleged defences raised by the Respondent has no hesitation whatsoever in dismissing the same.

Findings of the Committee

32. In the absence of any explanations on facts from the Respondent to the Committee in relation to the two cases laid against him, the Committee accepted the relevant documentary evidence provided by the Complainants.

D-10-0471H

33. The Declaration for the Renewal of a Practising Certificate [the Respondent] made to the Institute in each of the years 2004, 2005 and a Declaration for the Re-application of a Practising Certificate in 2006 were made over a period of three years.
34. These Declarations must be considered in the context of Statement 1.200 and its successor, the COE. For the sake of clarity, Statement 1.200 applies to 2004 and 2005 declarations signed by [the Respondent] on 16th November 2004 and 2005, whilst the COE applies to the 2006 declarations signed on 12th December 2006. However it is important to note that the underlying professional standards have not changed.
35. The Respondent's applications for practice certificates to which he was not in fact entitled and his filing of a false declaration on each of those occasions was an adverse reflection on his integrity as a professional accountant. As such the Respondent acted in a manner inconsistent with the good reputation of the profession and the HKICPA.

36. Accordingly, the Committee finds that the Respondent acted in breach of Fundamental Principle 1 and 4 of Statement 1.200 for the 2004 and 2005 Declarations.
37. In respect of the 2006 Declaration, the Respondent was clearly in breach of the provisions of s.110.2 COE when the Respondent confirmed in his declaration that he was not a bankrupt when in fact he was.

D-10-PR73P

38. The Institute has a statutory power to review all practice units by virtue of Part IVA (ss. 32A-32I) of the PAO.
39. Further, section 32E(1)(a)(iii) PAO provides that

"(1) The following provisions shall apply as regards any practice review-

- (a) Any person, to whom this paragraph applies, and who is reasonably believed by a reviewer to have in his possession or under his control any record or other document which contains or is likely to contain information relevant to the practice review shall, subject to subsection (3)-*
-*
- (iii) give to the reviewer all assistance in connection with the practice review which he is reasonably able to give."*

40. Therefore there is no discretion on the part of the Respondent as a member to cooperate; it is mandatory in nature.
41. There is no evidence beyond his refusal, that the Respondent could not, for reasons beyond his control, comply with the scheduled practice review. Accordingly, the Committee finds that the Respondent has clearly breached section 32E (1)(a)(iii) PAO.

Conclusion on Liability

42. Applying the facts as found and relevant rules and regulations to both cases, the Committee finds that the two alternative complaints in respect of each of the two cases are substantiated and established.

43. However, with the agreement of the Complainants, this Committee finds that the Respondent is liable only for complaint 1 of each of the two cases.

Sanctions

44. With respect to sanctions, section 35 of the PAO provides:

"(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 pay the costs and expenses of and incidental to an investigation against him under Part VA;*
- (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;*

and the Disciplinary Committee may in any case-

- (i) provide for an order to take effect on such date as the Disciplinary Committee think fit;*
- (ii) provide for a 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 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.

- (1A) Where any rules made under section 51 provides for a re-hearing by a Disciplinary Committee of a complaint referred to it under section 34, any order or decision made under subsection (1) shall, if a Disciplinary Committee re-hears the complaint, cease to have effect and subsection (1) shall apply to such re-hearing as if it were the original hearing.*
- (2) Nothing in this section shall be deemed to require a Disciplinary Committee to inquire into the question whether a professional accountant was properly convicted but the Committee may consider the record of a case in which such conviction was recorded and such other evidence as may show the nature and gravity of offence.*
- (3) A Disciplinary Committee shall cause a copy of any order made under subsection (1)(a) or, if the order is varied on appeal, the order as so varied to be published in the Gazette together with a summary of the nature of the complaint to which the order relates:
Provided that no order shall be so published before the expiry of 30 days after the date of service of the order on the professional accountant under section 38(1) or, in the case of an appeal made to the Court of Appeal against the order under section 41, before the appeal is finally determined."*

45. The Respondent has no previous record of misconduct. Having taken into consideration the nature of the misconduct, the Committee considers that this is a case of very serious misconduct.
46. No mitigating factors were put forward since the Respondent did not attend the Hearing. There had been very little meaningful response or representation provided by the Respondent throughout these disciplinary proceedings to explain his conduct. As such, the Respondent's written representations mainly consisted of copious amounts of documents in which incoherent handwritten annotations appeared, written presumably by himself. No further explanations were offered by [the Respondent] regarding his conduct in the cases laid against him.

47. Quite clearly, the Respondent was untruthful as to his solvency when he signed the three declarations in that he declared that he was solvent, when he was in fact a bankrupt.
48. In deceiving the Institute, the Respondent was granted practising certificate for a period of three years to which he was not entitled to have. The Institute was deprived of the chance to enquiring the background reasons of his bankruptcy. The Respondent's false declarations made over a period of three years were simply dishonest, disingenuous and dishonourable. As such the Respondent's actions demonstrated a blatant lack of integrity as demanded by the profession's standard.
49. Furthermore, in repeatedly refusing to cooperate with the Institute regarding the scheduled practice review, the Respondent has failed to comply with the Institute's power derived from Part IVA (ss. 32A-32I) of the PAO, to require a review of a member's practice.
50. The power relating to the practice review procedure is important to protect the public's interest regarding the work of accountants. Such power must be duly exercised and any interference by accountants must be seriously dealt with and sanctioned. The Respondent's breach plainly undermines the objective and system of Practice Review.
51. Given the above circumstances, the Committee is of the view that the following sanction is the only appropriate one and the Committee so decides.

Order

52. In the premises, the Committee makes the following orders in respect of the two cases against the Respondent:
 - (1) The Respondent's name be removed from the Register for five years with effect from the 42nd days from the date hereof in respect of both complaints to run concurrently;
 - (2) The Respondent shall pay costs to the Complainants in the sum of HK\$46,000.00 and costs of the disciplinary proceedings in the sum of HK\$20,000.00.

Dated the 18th day of May 2011