

IN THE MATTER OF

Complaints made under sections 34(1)(a) and
34(1)(A) of the Professional Accountants
Ordinance, Cap.50

BETWEEN

Registrar of the Hong Kong
Institute of Certified Public
Accountants

COMPLAINANT

AND

Chan Kin Hang, Danvil

RESPONDENT

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

Members : Mr. Tsang Man Hing, Johnson (Chairman)

Mr. Chan Wai Tong, Christopher

Mr. Sit Dick Sang, Raymond

Mr. Chan Ho Yin, Graham

Date of hearing : 15th May 2012

REASONS FOR DECISION

(1) The Complaints

The three complaints made by the Registrar of the Hong Kong Institute of Certified Public Accountants against the Respondent, a certified public accountant, are as follows :-

- (a) First Complaint: Section 34(1)(a)(vi) of the Professional Accountants Ordinance ("PAO") applies to the Respondent in that he had failed or

neglected to observe, maintain or otherwise apply professional standards namely the Fundamental Principles set out in Statement 1.200, paragraph 5 of the Professional Ethics set out in Statement 1.291 and paragraph (a) of section 100.4 “Fundamental Principles” as elaborated in sections 110.1 and 110.2 of the Code in respect of a Declaration on Details of Tenderer (Form A) (“Form A Declaration”) he signed on 24th January 2006.

- (b) Second Complaint: Section 34(1)(a)(viii) of the PAO applies to the Respondent in that he had been guilty of professional misconduct in relation to his conduct as a joint and several liquidator/provisional liquidator in HCCW 35/2007.
- (c) Third Complaint: Section 34(1)(a)(viii) of the PAO applies to the Respondent in that he had been guilty of professional misconduct in relation to his conduct as a joint and several liquidator/provisional liquidator in HCCW 331/2006 and HCCW 455/2006.

(2) Sections 34(1)(a)(vi) and 34(1)(a)(viii) of PAO reads as follows :-

- (1) A complaint that-
 - (a) a certified public accountant-
 - (i) ...
 - (vi) failed or neglected to observe, maintain or otherwise apply a professional standard;
...
 - (viii) has been guilty of professional misconduct;
...

shall be made to the Registrar who shall submit the complaint to the Council which may, in its discretion but subject to section 32D(7), refer the complaint to the Disciplinary Panels.

(3) Relevant Professional Standards

- 1. In respect of the period before 30th June 2006:

The then applicable Statement 1.200 “Professional Ethics – Explanatory Foreword” (Revised April 1999 with effect from May 1999 and Revised

September 2004 (name change)) (“Statement 1.200”) (withdrawn on 30th June 2006) is as follows:

“The following are the Fundamental Principles on which the ethical guidance of the Hong Kong Institute of Certified Public Accountants (HKICPA) is based:-

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

...

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

The then applicable Statement 1.291 “Professional Ethics – The Ethical Responsibilities of Members in Business” (Revised September 2004 (name change)) (“Statement 1.291”) (withdrawn on 30th June 2006) is as follows:

“5. An employed member, including one working outside the areas normally associated with accountancy, must maintain a high standard of conduct. In conforming with this standard, an employed member should not knowingly mislead or misrepresent facts to others and should use due care to avoid doing so unintentionally. At all times, an employed member should be conscious that integrity must be an overriding principle.”

2. In respect of the period on or after 30th June 2006:

The Code of Ethics for Professional Accountants (issued December 2005, effective on 30th June 2006) (the “Code”) is as follows:

“Section 100.4 “Fundamental Principles”

(a) Integrity

A professional accountant should be straightforward and honest in all

professional and business relationships”

“Section 110 “Integrity”

110.1 The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in professional and business relationships. Integrity also implies fair dealing and truthfulness.

110.2 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 required to be included where such omission or obscurity would be misleading”

“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 bring discredit to the profession. This includes actions which a reasonable and informed third party, having knowledge of all relevant information, would conclude negatively affects the good reputation of the profession.”

(4) The Factual Background

(A) The Complainant’s case

Background

1. The Respondent was at all material times a member of the Institute and a director of Honest Joy Accounting Services Co. Limited (“Honest Joy”) which had on 15th March 2006 been accepted by the Official Receiver (“OR”) for appointment as Provisional Liquidators under section 194(1A) of the Companies Ordinance, Cap 32 (“CO”). Subsequently, the OR appointed the Respondent and [Mr. A], who were the appointment takers of Honest Joy, as

joint provisional liquidators over seven companies. A schedule listing the details of the seven companies is shown on page 49 of the Hearing Bundle.

2. On the 12th November 2009, the OR wrote to the Institute and made allegations regarding the professional conduct of the Respondent and [Mr. A] as joint liquidators/provisional liquidators of the seven companies and that the Respondent had made a false declaration to the OR when Honest Joy had admitted its tender to be appointed as a Provisional Liquidator for the OR on 24th January 2006. The full details of the OR's allegations are set out in 3 reports (together with Exhibits) prepared by the OR dated 2nd September 2009 (pages 29 to 56 of the Hearing Bundle).
3. In view of the above, the OR applied for and obtained court orders to remove the Respondent and [Mr. A] as the joint liquidators/provisional liquidators of the seven companies:
 - (1) On 20th October 2009, Master Hui ordered the removal of the Respondent and [Mr. A] as the joint liquidators/provisional liquidators of six of the seven companies (pages 11 to 28 of the Hearing Bundle); and
 - (2) On 2nd December 2009, Madam Justice Kwan J heard the OR's application to remove the Respondent and [Mr. A] as the joint liquidators of the HCCW 35/2007 proceedings and made an order granting the application (pages 352 to 355 of the Hearing Bundle).
4. In granting the OR's application and disallowing the Respondent & [Mr. A]'s fees as joint liquidators, Kwan J found that the Respondent had made a false declaration to the OR on 24th January 2006, that the Respondent and [Mr. A] had committed "serious professional misconduct" and had "failed to perform with professionally acceptable standard in their conduct of the [HCCW 35/2007] liquidation. A copy of Kwan J's decision is included at pages 346 to 351 of the Hearing Bundle.
5. As joint liquidator/provisional liquidator, the Respondent is accountable for any actions undertaken by [Mr. A], who is not a member of the Institute, in respect of the liquidation of the seven companies.

Facts and circumstances in support of the First Complaint

6. On the 24th January 2006, Honest Joy submitted a tender (pages 61 to 79 of the Hearing Bundle) to the OR for its inclusion on the OR's panel of provisional liquidators. The tender was supported by a Form A Declaration signed by the Respondent, as director authorized to sign on behalf of Honest Joy, which declared and confirmed that Honest Joy had two directors (the Respondent and [Mr. B]) who were both its recognized professionals (pages 95 to 104 of the Hearing Bundle). The Form A Declaration further stated that [Mr. B] had served Honest Joy for a period of one year.
7. It was a requirement of the Tender (per Clause 1 of the Qualification Criteria contained in the Schedule to the Tender (page 71 of the Hearing Bundle)) that Honest Joy had two recognized professionals, one of whom had to be its director. A recognized professional was defined in the Tender as a registered member of the accountancy profession, legal profession, company secretarial profession or any other professional recognised in writing by the OR as a registered profession for the purposes of the Tender (page 62 of the Hearing Bundle).
8. A company search conducted by the OR on 10th July 2009 revealed that [Mr. B] had never been a director of Honest Joy (pages 105 to 188 of the Hearing Bundle). The directors of Honest Joy, at the relevant time, were the Respondent and [another person]. Further, [Mr. B] has denied, in correspondence dated 19th June 2009 and 24th July 2009 to the OR, that he had consented to be a director of Honest Joy or had ever been employed by that company (pages 93 to 94 and pages 193 to 194 of the Hearing Bundle).
9. In his written replies to OR's letters dated 17th July and 20th July 2009 (pages 198 to 225 of the Hearing Bundle), the Respondent accepted that [Mr. B] was never a director of Honest Joy. However, the Respondent disputes what [Mr. B] has told the OR and suggests there was an alleged agreement with [Mr. B] that he would join Honest Joy as a director if the Tender was successful (an agreement which [Mr. B] subsequently reneged from). Subsequently, in his written reply to the Institute dated 20th January 2010, the Respondent added that [Mr. B]'s appointment was to be effected by filing a late application for the appointment of [Mr. B] as Director at the Companies Registry, if Honest Joy's tender application was successful. Copies of the correspondence between the Respondent and the Institute are included at pages 356 to 379 of

the Hearing Bundle.

10. Despite the Respondent's representations, it is quite clear that the Form A Declaration, which he signed as director was misleading as it gave the clear impression that, as at 24th January 2006, [Mr. B] was a director of Honest Joy, had a length of service of one year with Honest Joy and was one of Honest Joy's recognized professionals.
11. Further, at no stage either before or after Honest Joy was notified of its successful tender, had the Respondent rectified the Form A Declaration he made or otherwise notified the OR that [Mr. B] had not jointed Honest Joy. Hence, the OR was and remained, at all material times, under the false impression that [Mr. B] was a director of Honest Joy and its recognized professional.

Facts and circumstances in support of the Second Complaint

12. The relevant facts appear at paragraphs 38 to 52 of a report prepared by the OR in support of its application to remove the Respondent as liquidator/provisional liquidator of seven companies (pages 29 to 44 of the Hearing Bundle). Paragraphs 38 to 52 relate specifically to the handling of the HCCW 35/2007 liquidation. In the Respondent's reply to the Institute dated 20th January 2010 (pages 359 to 379 of the Hearing Bundle), he accepted that, during his conduct of the HCCW 35/2007 proceedings, there had been a failure to review the progress of the liquidation and the position of the assets. He also accepted that there had been a failure in those proceedings to comply with the provisions of sections 195 and 202 CO (shown on pages 391 and 392 of the Hearing Bundle).

Facts and circumstances in support of the Third Complaint

13. The relevant facts appear in the two reports prepared by the OR for the HCCW 331/2006 (at paragraphs 6 to 12) and HCCW 455/2006 proceedings (at paragraphs 6 to 11) (pages 45 to 56 of the Hearing Bundle). In his letter to the Institute dated 20th January 2010 (mentioned above), the Respondent accepted that there was a delay but attributed it to the legal and technical difficulties of converting the applications from a non-summary winding up to a summary winding up. However, even if it was true, this did not excuse his failure to properly report such difficulties to the OR and/or not to have

provided satisfactory explanations, despite the OR's repeated requests to do so.

14. On the basis of the above, sections 34(1)(a)(vi) and 34(1)(a)(viii) of the PAO apply to the Respondent.

(B) The Respondent's case

1. By a letter dated 4th August 2010 from the Respondent to the Institute (page 401 in the Hearing Bundle), the Respondent admitted the Second and Third Complaints but not the First Complaint. In the Respondent's case dated 26th November 2010 filed in these proceedings, the Respondent confirmed that he would only contest the First Complaint.
2. The Respondent has at one stage applied for these proceedings be stayed pending the outcome of a criminal investigation by the police for the same matter arising out of the First Complaint. Such application was refused by this Committee on 28th December 2010.
3. According to the Respondent's case as filed, the Respondent had made the following observations on his case:-
 - (a) First, it was noteworthy that whilst there should be at least 2 recognised professionals working in Honest Joy as the tenderer, it was only necessary for one of them to be a director of the tenderer:
Clause 1 of Part I – Qualification Criteria of the Tender.

In this regard, one can see that the Respondent has not misled the OR as alleged or at all.

- (b) The Complainant had alleged that "the alleged agreement between the Respondent and [Mr. B] mentioned below was not supported by any evidence from the Respondent or at all" and therefore sought to disprove totally the Respondent's (oral) evidence in this respect. This was totally unfair to the Respondent since, if [Mr. B] had not given his agreement to the Respondent to act as the director of Honest Joy, it would be very peculiar for the Respondent to take the risk by unilaterally declaring [Mr. B] as the director of Honest Joy. In fact, what the Complainant's Case relying on was also the (oral) denial of

[Mr. B] to support that there was no such agreement (which was denied by the Respondent).

- (c) The Complainant's Case, on the contrary, relied heavily on the strong denial of [Mr. B], which was also not supported by any evidence. However, the Complainant alleged that "[Mr. B]'s clear denial of the existence of such an agreement was strong rebuttal evidence that such an agreement never existed". It was submitted on behalf of the Respondent that the Complainant's Case was also relying on the unilateral denial of [Mr. B]. Bearing in mind it was the Complainant (but not the Respondent) who had to prove his/her case: Section A in the Notice of Commencement of Proceedings herein dated 15th October 2010 – "The Complainant bears the burden of proving the complaints".
- (d) The Complainant alleged that "there was no need to have denied his [[Mr. B]'s] status as director (if that allegation was true) to advance the explanation he did". And the Respondent would say if he had no agreement with [Mr. B] for his taking up directorship as the director of Honest Joy, there was no reason at all for the Respondent to declare the same and take such a risk. Something behind must have been agreed upon by [Mr. B] with the Respondent.
- (e) Last but not least, the Respondent also submitted that after his proposed stay of the proceedings herein ended subsequent to the completion of the said police investigation, an oral hearing giving opportunity to the Respondent to cross-examine the witnesses of the Complainant should be held to test their credibility and admissibility of the Complainant's evidence before the Council for the proceedings herein formed its view as to the Complainant's Case.

(5) Admitted Facts

- (A) As at 14th December 2011, the parties to these proceedings have agreed on admitted facts in relation to the First Complaint as follows:

Background

1. The Respondent has been a member of the Institute since 1996 (Membership No.F04656). He has held a practising certificate since 2004.
2. A schedule entitled “Summary of Directorship of Honest Joy Accounting Service Co. Ltd.” and copies of company searches by the OR (which can be found at pages 105-188 of the Hearing Bundle) contain a complete record of the directorships and shareholdings of Honest Joy for the period from the inception of the company to July 2009.
3. At all material times, the Respondent was the sole beneficial owner and the managing director of Honest Joy.
4. [Mr. B] has never been a director nor shareholder of Honest Joy.
5. [Mr. B] has never held a position as a recognised professional of Honest Joy.
6. [Mr. B] has never been employed by Honest Joy.

Submission of Tender

7. The Respondent prepared, completed and signed the Form A Declaration dated 24th January 2006 which appears in the Hearing Bundle at pages 97 to 98.
8. The Respondent submitted the Form A Declaration to support a tender, by Honest Joy, to take up appointment as provisional liquidators under s.194 (1A) of the Companies Ordinance, Cap. 32 with the OR’s Office.
9. The Terms of the Tender are contained at pages 61 to 78 of the Hearing Bundle.
10. In addition, the Respondent submitted a Form B Declaration containing the details of [Mr. B] as required under the Terms of the Tender.
11. There are two versions of the Form B Declaration that appear in the Hearing Bundle:
 - a) A version that contains the handwritten word “Director” next to the entry “Position in Firm” (the “Handwritten Version”). This version

can be found at pages 195 to 197 of the Hearing Bundle; and

- b) A version that contains the typewritten word “Director” next to the entry “Position in Firm” (the “Typed Version”). This version can be found at pages 102 to 104 of the Hearing Bundle.
12. It was the Respondent who wrote the word “Director” in the Handwritten Version and it was the Respondent who then instructed his secretary to type in the word “Director” before the same (the Typed Version) was submitted to the OR.
 13. By submitting the Form A Declaration and the Typed Version of the Form B Declaration, the Respondent caused Honest Joy to represent to the OR that [Mr. B], at the time of submitting the tender, was a director of Honest Joy for one year and was one of the appointed recognised professionals of Honest Joy. See pages 97 to 98 of the Hearing Bundle.
 14. On 15th March 2006, the OR’s Office notified Honest Joy that its tender had been successful: See pages 80 to 82 of the Hearing Bundle.
 15. At no stage after Honest Joy’s appointment as provisional liquidator did the Respondent notify the OR that, contrary to the tender documents submitted, [Mr. B] was neither a director nor recognised professional of Honest Joy.
 16. The OR required, at clause 8, to be notified “of any change in or any factor which may affect [Honest Joy’s] qualification status”.
 17. As a result of the Respondent’s actions and omissions, the OR was misled and continued to be misled into believing that [Mr. B] was both a recognised professional and director of Honest Joy.
- (B)** On 30th April 2012, the Respondent through his solicitors, admitted in writing the First Complaint based on the aforesaid admitted facts. Counsel for the Respondent also confirmed the Respondent’s said admission at the hearing.

(6) The Hearing

1. By a letter dated 3rd April 2012 from the Solicitors for the Respondent to the clerk of this Committee, the Respondent confirmed that he has no objection to this Committee to deal with these proceedings in the absence of one member of this Committee. At the time of hearing of these proceedings on 15th May 2012, the aforesaid police investigation on the Respondent appears to have also ended as the Counsel for the Respondent has confirmed at the hearing that the bail money has been returned by the police to the Respondent and no charge was laid against him.

(7) Findings of the Committee

At the hearing, it was agreed by the parties that neither [Mr. B] nor the Respondent be called as a witness to adduce evidence at the hearing or be cross-examined. This Committee was therefore left with evidence which has previously been filed in these proceedings, the admitted facts, the Statutory Declaration of the Respondent dated 11th May 2012 and the Declaration of [another person] dated 11th May 2012. The Complainant's stand was that in view of the Respondent's submission to Complaint 1, the parties will no longer required the attendance of [Mr. B] and the Respondent to give evidence. The relevance of their evidence was to assist the Committee in determining whether there had been an oral agreement that [Mr. B] would join Honest Joy as its director and recognized professional should Honest Joy's tender to OR be successful. [Mr. B] has all along denied that he had entered into such an agreement with the Respondent. The Complainant does not concede that there was an oral agreement as alleged by the Respondent. The Complainant refers to evidence negating the alleged agreement. However, the Complainant does not proceed on the basis of the existence or the non-existence of the alleged oral agreement. Bearing in mind the Complainant's aforesaid stand and giving the Respondent the benefit of doubt, this Committee is prepared to accept, for the purposes of these proceedings, that there had been an oral agreement between the Respondent and [Mr. B] that [Mr. B] would join Honest Joy as its director and recognized professional should Honest Joy's tender to OR be successful. This point was expressly ruled and made known to the parties before they were asked to make submissions on sanction. Subject to this, this Committee can and would rely on facts and evidence which have been admitted by the parties as well as undisputed facts and evidence which has been filed or adduced by the parties for the purpose of assessing and imposing the appropriate sanctions on the Respondent in respect of the three Complaints herein.

(8) Conclusion on Liability

Based on the Respondent's own pleas and admission of facts, this Committee finds that the First Complaint, Second Complaint and Third Complaint against the Respondent proved and the Respondent is guilty of the same accordingly.

(9) Sanctions

1. Although this Committee accepts the alleged agreement by the Respondent and the Respondent has submitted that there was no need to enter [Mr. B]'s position as a director of Honest Joy in the tender, the Respondent has failed to explain satisfactorily to this Committee what other position [Mr. B] (who qualified as a recognized professional) could have been better described in order to link up his connection with Honest Joy as the tenderer. Further, there was an requirement by the OR that Honest Joy as the tenderer should at least have 2 recognized professionals. In the circumstances, there was a need for the Respondent to join [Mr. B] as one of the 2 recognized professionals in Honest Joy in order for Honest Joy to qualify as a tenderer and there was a need to describe [Mr. B]'s position in Honest Joy and so it was convenient or useful to describe [Mr. B] as a director of Honest Joy. Even though this Committee accepts that there was the alleged agreement between the Respondent and [Mr. B], the fact remains that it was false to describe [Mr. B] as a director of Honest Joy when in fact he was not. Any backdating of [Mr. B]'s directorship with Honest Joy to the date of tender or earlier would again be another false representation to the Registrar of Companies and the public. It was further wrong and false to describe that [Mr. B] has been a director of Honest Joy for one year and this could never have been true notwithstanding this Committee's acceptance of the alleged agreement between the Respondent and [Mr. B].
2. [Ms. C], the other possible candidate for recognized professional for Honest Joy, could not have been used because according to the Respondent through his counsel at the hearing, she was at the material time only working part-time and not for Honest Joy but for the Respondent's firm in a different name. This Committee finds that the Respondent had every intention and need to paint a picture in Honest Joy's tender to the OR that Honest Joy had two recognized professionals and in particular, that [Mr. B] has been a director of Honest Joy for one year, which was admittedly false notwithstanding the existence of the alleged agreement.
3. Further, the Respondent admitted that subsequent to the acceptance of the

tender, he had never notified or attempted to notify the OR that, contrary to the tender document submitted, [Mr. B] was neither a director nor a recognized professional of Honest Joy. Judging from the overall circumstances of this case (based on the admitted facts and evidence and the undisputed facts and evidence of this case) and considering the explanations offered by the Respondent, this Committee finds at a standard of proof commensurate with the allegation charged that the Respondent has been intentional and dishonest (rather than reckless) in committing the First Complaint notwithstanding this Committee's acceptance of the alleged agreement between the Respondent and [Mr. B]. The Respondent's failure to rectify Honest Joy's misrepresentation to the OR after successful tender was consistent with and further supported this Committee's ruling that the Respondent had been dishonest in committing the First Complaint.

4. This Committee considers that the Respondent has, in committing the three Complaints, committed serious mis-conducts and/or failures to observe or maintain a professional standard which have or will adversely affect the reputation of the profession of the accountants. In committing the First Complaint, although the Respondent was not in a position of trust at the time of Honest Joy's submission of tender to the OR, the Respondent intended Honest Joy to solicit such trust from the OR, who eventually gave such trust to Honest Joy when Honest Joy's tender was successful. Based on such trust, the OR appointed, inter alia, the Respondent as one of the two liquidators in handling various winding-up cases when in fact Honest Joy was not qualified to submit such tender and to handle these winding up cases in the first place. The public (including the creditors of companies under winding up in general) were at risks. The Respondent's failure to rectify the misrepresentation to the OR even though he knew that the same was false amounted to misconduct with continuing dishonesty on the part of the Respondent.

(10) Orders

Judging from the above and considering all factors for mitigation submitted on behalf of the Respondent including his clear record, pleas of guilty and his remorse shown and taking into account the totality principle, this Committee makes the following orders on sanctions against the Respondent :-

- (a) In respect of the First Complaint : the name of the Respondent be removed from the Register of Certified Public Accountants for a period of 3 years

commencing from a date falling 45 days from the date of this Order;

- (b) In respect of the Second Complaint : the Respondent be fined a sum of HK\$20,000.00, such fine to be paid within 14 days from the date of this Order; and
- (c) In respect of the Third Complaint : the Defendant be fined a sum of HK\$13,333.33, such fine to be paid within 14 days from the date of this Order.

(11) Costs

This Committee further orders that the Respondent should pay within the next 7 days the Complainant's costs and the costs and expenses of the Disciplinary Committee assessed at the total sum of HK\$282,111.00 as per revised agreed statement of costs submitted by the Complainant on 15th May 2012 plus HK\$6,400.00 (being missing interpreter's costs) totalling HK\$288,511.00.

Dated this 26th day of September 2012.

Tsang Man Hing, Johnson
Chairman

Chan Wai Tong, Christopher
Member

Sit Dick Sang, Raymond
Chairman

Chan Ho Yin, Graham
Member