

IN THE MATTER OF

A Complaint made under section 34(1A) of the Professional
Accountants Ordinance (Cap. 50)

BETWEEN

The Registrar of the Hong Kong Institute of COMPLAINANT
Certified Public Accountants

AND

Sze Lin Tang (A14573) 1ST RESPONDENT

Zhonghui Anda CPA Limited (M2082) 2ND RESPONDENT

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

Members: Ms. CHAN Ka Man (Chairman)
 Mr. Chu Pak Ning Ian
 Ms. Ng Yuen Chun
 Mr. Choi Wai Wing
 Mr. Miu Liong Nelson

REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (“**Institute**”) against Mr. Sze Lin Tang (“**1st Respondent**”) and Zhonghui Anda CPA Limited (“**2nd Respondent**”), a corporate practice (collectively the “**Respondents**”).
2. On 5 May 2020, the Complainant submitted a complaint (“**the Complaint**”) to the Council of the Institute on the basis that the Respondents failed or neglected to observe, maintain or otherwise apply professional standards under section 34(1)(a)(vi) of the Professional Accountants Ordinance (“**PAO**”) as set out further below.
3. The Notice of Commencement of Proceedings was issued on 25 August 2020 with the Procedural Timetable (“**Procedural Timetable**”) by the Disciplinary Committee (“**Committee**”) constituted for these proceedings.

Background

4. The Complaint concerned the consolidated financial statements of National United Resources Holdings Limited (“**Company**”) and its subsidiaries (collectively the “**Group**”) for the year ended 31 December 2015 (“**2015 Financial Statements**”), which were audited by the 2nd Respondent, whilst the 1st Respondent was the engagement director.
5. The 1st Respondent was the newly appointed auditor of the 2015 Financial Statements which expressed an unmodified opinion on 30 March 2016.
6. The subject of the Complaint was a transaction in which the Company, on 25 August 2015, sold 140,000 metric tons of straight run fuel oil to

Wealthy Union PTE. Ltd. (“**Customer**”) at a unit price of US\$270 of a total consideration of US\$39,098,870.10 (“**Transaction**”). The Transaction gave rise to HK\$305 million of revenue being recognized in the 2015 Financial Statements. By a purchase contract also dated 25 August 2015, the Company purchased 140,000 metric tons of straight run fuel oil from Huge Power Co., Ltd. (“**Supplier**”) at a unit price of US\$269. The Company recorded HK\$302 million as cost of sales in the 2015 Financial Statements which had been fully settled at the year-end date, i.e. 31 December 2015.

7. The sales invoice dated 21 September 2015¹ to the Customer for the said HK\$305 million (“**Receivable**”) stated 19 March 2016 to be the settlement due date.
8. The due date was after the year-end date but before the sign-off date of the 2015 Financial Statements.
9. On 18 and 23 March 2016, the Customer made two partial payments of about HK\$49.5 million and HK\$74.5 million respectively, totalling around HK\$124 million and constituting about 40% of the Receivable.
10. With respect to the remaining 60% of the Receivable, the Respondents concurred with the management of the Company (“**Management**”) that no impairment was necessary.
11. On 9 November 2018, the Financial Reporting Council (“**FRC**”) referred to the Institute a report of the Audit Investigation Board (“**AIB Report**”) in respect of certain suspected auditing irregularities in the 2015 Financial Statements.

¹ p.111 of the hearing bundle

The Complaint

12. In the Complaint, it was said that section 34(1)(a)(vi) of the PAO applies to the 1st Respondent and, through section 34(1AA), applies to the 2nd Respondent, that they failed or neglected to observe, maintain or otherwise apply professional standards in respect of the audit of the 2015 Financial Statements, namely, the Respondents failed to perform adequate audit procedures to support their concurrence with the Management's assessment that no impairment was necessary for the unpaid portion of the Receivable.

Facts and Circumstances in Support of the Complaint

13. In respect of the Receivable, it is the Respondents' case that they had conducted the auditing work by way of discussion(s) with Management, obtaining audit confirmation from the Customer and reviewing the relevant agreements, invoices and shipping documents. However, contemporaneous evidence to support management discussions could not be provided as the Respondents stated that the relevant working papers were seized by another regulator at the time when the Respondents were still in the process of reviewing and finalizing the audit files.
14. The payment of the Receivable became due on 19 March 2016, which was after the year-end date but before the audit sign-off date of 30 March 2016. A portion of the Receivable was paid on 18 March 2016 but the balance was not settled at the due date. The Respondents submitted that once Management became aware of the overdue payment, they followed up with the Customer. On 23 March 2016, the Customer made a further partial payment, totalling around HK\$124 million.

15. Under the circumstances, it is averred that the Respondents simply relied on the two partial payments and concluded that the Customer intended and would be able to settle the remaining balance, on the basis that the partial payment was significant (accounted for approximately 40% of the Receivable) and was made within a short period. As such, they concurred with Management that no impairment of the Receivable in the 2015 Financial Statements was necessary.
16. Notwithstanding the aforesaid, it was averred in the Complaint that timing of the partial payments would have raised concerns for an auditor exercising professional skepticism as one of the two partial payments² was made after the due date, and a substantial and material amount (60% of the Receivable) still remained outstanding at the time the audit report was signed off. As such, the Respondents should have performed further procedures to support their acceptance of Management's position that the remaining outstanding balance was collectible.
17. It was further averred in the Complaint that the Receivable balance was material to the 2015 Financial Statements and the outstanding amount (approximately \$181 million) when the Respondents signed off the 2015 Financial Statements in late March 2016 was also well over the audit materiality.
18. In the circumstances, the Complainant said that the procedures performed by the Respondents surrounding the Company's impairment assessment of the Receivable were inadequate and the Respondents failed to recognize the need to perform a thorough assessment of the collectability of the remaining Receivable and failed to perform an audit

² It had been clarified at the hearing that the first partial payment was made before the due date and the assertion in §14 of the Complaint (p.3 of the hearing bundle) was inaccurate.

with professional skepticism recognizing that circumstances may exist that causes the financial statements to be materially misstated, in contravention with paragraph 15 of Hong Kong Standard on Accounting (“HKSA”) 200 Overall Objectives of the Independent Auditor and the Conduct of an Audit in accordance with Hong Kong Standards on Auditing, which states:

“The auditor shall plan and perform an audit with professional skepticism recognizing that circumstances may exist that cause the financial statements to be materially misstated.”

19. It is further averred in the Complaint that by their failure to critically assess the collectability issue, the Respondents also failed to obtain sufficient appropriate audit evidence in relation to the Receivable as recorded in the 2015 Financial Statements, and breached paragraph 6 of HKSA 500 Audit Evidence, which states:

“The auditor shall design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence.”

The Proceedings

20. As directed under the Procedural Timetable, the Complainant and the Respondents submitted their respective written submissions as follows:
- (1) Complainant’s Case dated 22 September 2020;
 - (2) Respondents’ Case dated 20 October 2020;
 - (3) Complainant’s Reply dated 10 November 2020;
 - (4) Respondents’ Reply dated 1 December 2020.

21. Further, the parties were directed to attend the substantive hearing on 22 February 2021 (“**Hearing**”). The Complainant and the Respondents were represented by Mr. Kenneth Ng and Mr. Adrian Lai respectively.

The Parties’ Submissions

22. The parties’ written and oral submissions had been duly considered and the Committee does not intend to repeat and recite them in this Decision.
23. In the course of the Complainant’s opening submissions, it was said that the relevant facts of the Complaint were simple and the Complaint was a breach of fundamental auditing principles.
24. In a nutshell, it is the Complainant’s case that the Respondents should have performed additional and further procedures to support their concurrence with the Management’s decision that no impairment was necessary for the unpaid portion of the Receivable when signing off the 2015 Financial Statements.
25. The Complainant submitted that under the circumstances that 60% of the Receivable remained unpaid after the due date the Respondents should have obtained audit evidence in respect of the reason of default. If there was evidence to show that the Customer was not unwilling or unable to pay, the next step should be to ascertain when and how the balance would be paid. To the contrary, as said by the Complainant, the Respondents simply relied on what the Management stated without obtaining further audit evidence.
26. The Complainant further submitted that an auditor’s duties would be the same regardless of a receivable being partially paid or wholly unpaid. In addition, an auditor is still under a duty to obtain all relevant audit

evidence after the year end but before signing off of the auditor's report. Whilst the Respondents did obtain some information in this regard, it is the Complainant's submission that such was insufficient.

27. In response, the Respondents refuted the Complainant's allegation that the Respondents obtained no audit evidence³ in this regard. Instead of solely relying on the Management's representation, they had analysed it with their professional judgment in the context of the following matters:
- (1) The Receivable was not overdue at the year-end date;
 - (2) The Respondents had the Hong Kong Accounting Standard ("HKAS") 39 in mind;
 - (3) There was an audit confirmation from the Customer;
 - (4) There was a substantial part payment before the due date;
 - (5) There was another part payment shortly after the due date;
 - (6) The two payments in aggregate amounting to 40% of the total Receivable were made within 4 working days, demonstrating the Customer's ability and willingness to pay;
 - (7) The outstanding balance of the Receivable was only overdue for 6 working days when signing off the 2015 Financial Statements.
28. In the circumstances, the Respondents submitted that their analysis was backed by real, concrete and indisputable evidence.
29. The Respondents emphasized that the Complaint was not that an impairment should have been made but that further audit evidence should have been obtained to determine whether an impairment should be made.

³ §26 of p.163 of hearing bundle

In this regard, the Respondents submitted that two equally competent auditors may have performed differently having exercised their respective professional judgment.

30. The Respondents also argued that the timeline of the events would be highly relevant to the determination of the Complaint. For instance, the invoice was only aged for some 3 months and was not due at the year-end date.
31. On the other hand, while the Respondents were engaged for audit for year ended 31 December 2015, the Respondents accepted that events happened after 31 December 2015 would nonetheless be relevant to these proceedings.
32. As a matter of fact, the Respondents did rely on various documents, *inter alia*, the remittance advice slips, the Respondents' working papers and the audit confirmation, to demonstrate what the Respondents had done in relation to the Receivable.
33. The Respondents further contended that it was not fair to treat the Receivable as two separate debts because the 40% part payment was relevant to ascertain the possibility and/or recoverability of the remaining portion. It is the Respondents' case that the Customer's intention and willingness to pay the remaining balance could be inferred from the two substantial payments made within a short period of time.
34. As for the audit confirmation, the Complainant pointed out that the box confirming the Receivable's balance was not checked and there was no evidence that the Respondents had ever clarified this with the Customer.

35. On this matter, the Respondents submitted that the logical inference to be drawn from the return of the audit confirmation with the Customer's chop thereon was that the Customer did not dispute the existence of the Receivable.
36. On the other hand, upon enquiry from the Committee, the Respondents confirmed that there was no information on when the audit confirmation was received but the Respondents said that such must have been received after the date of issue, i.e. 10 March 2016 and before the sign off date.
37. At the Hearing, the Committee also raised enquiry on any further information on the "client" appeared on the record for the Respondents' closing meeting on 25 March 2016, the Respondents confirmed that there was no information or particular of the officer from the Company making such representation.
38. The Respondents advanced that the representation should be considered against the background that the Customer was owned by business associates whom the directors of the Company had known for a long time.
39. On behalf of the Complainant, it was submitted that the major difference between the Complainant and the Respondents was whether the Management's representation was backed by sufficient appropriate audit evidence to support the Respondents' assessment that no impairment to the remaining Receivable was necessary. The Complainant said that the Respondents' logic that the two payments would mean or indicate the intention or ability to pay the remaining Receivable is a faulty one and cannot stand.

40. As for the Respondents' criticism that the additional audit procedures suggested by the Complainant⁴ being unrealistic, the Complainant replied that the details of the suggested additional procedures were not important because the Respondents simply did not do anything in this regard.

Discussion and Decision of the Complaint

41. The Committee agrees with the Complainant's observation that the relevant facts were simple and straight forward as the Complaint concerned a single transaction.
42. In this regard, the following undisputed or undisputable facts have been taken into account:
- (1) The Company and the Customer entered into the Transaction by a sales contract dated 25 August 2015;
 - (2) The 2nd Respondent was engaged as the auditor of the Company to audit the 2015 Financial Statements with year-end date on 31 December 2015;
 - (3) There was an invoice dated 21 September 2015 of the Receivable of US\$39,098,870.10 (equivalent to HK\$305 million) to the Customer;
 - (4) At the year-end date, the Receivable had not been due;
 - (5) The 2nd Respondent issued an audit confirmation to the Customer on or about 10 March 2016 and the Customer returned the same on a date unknown with its chop but not ticking any box thereon;
 - (6) On 18 March 2016, the Customer made a payment of HK\$49.5 million as part payment of the Receivable;

⁴ §15 of p.4 of the hearing bundle

- (7) The Receivable was due on 19 March 2016;
 - (8) On 23 March 2016, the Customer made a further part payment of HK\$74.5 million. As a result, the remaining Receivable amounted to about HK\$181 million constituting about 60% thereof;
 - (9) The Management made a representation to the 2nd Respondent to the effect that the Customer would “keep settle the payment” as per the record of the 2nd Respondent’s closing meeting on 25 March 2016;
 - (10) The 2015 Financial Statements were signed off on 30 March 2016.
43. Further, the Respondents agreed that their duties as the Company’s auditor did not end on the year-end date and they had indeed considered the recoverability of the remaining Receivable as a major issue/ risk area even after the year-end date but before issue of the 2015 Financial Statements.
44. Notwithstanding that there had been submissions from the parties and exchanges between the Committee and the parties in respect of “loss events”, the Committee has borne in mind that the issue of these proceedings, as framed in the Complaint, is whether the Respondents have failed to carry out additional audit procedure to support their assessment not to impair the remaining Receivable. Simply put, the crux of the Complaint is not that an impairment as to the remaining Receivable should have been made but whether the Respondents should have obtained additional appropriate audit evidence to support their assessment.
45. Upon enquiry from the Committee in respect of the characteristics of the Transaction as identified in the Complainant’s Case, Mr. Ng stated that

such would serve as the background to the Transaction and made no further submissions on the said characteristics. In view of the stance taken by the Complainant, Mr. Lai did not make any submissions in this regard in his opening.

46. Yet during the Complainant's closing submissions, Mr. Ng invited the Committee to consider those characteristics when determining the Complaint and clarified that it is not the Complainant's case that the nature and circumstances of the Transaction were common, and expectably it led to criticisms from the Respondents.
47. Notwithstanding the aforesaid, the Committee considered that it is entitled to give regard to the undisputed and incontrovertible facts of the Transaction that, in particular, it accounted for approximately 80% of the Group's total revenue for 2015 and the Respondents indeed considered the recoverability of the remaining Receivable as one of the major issues/ risk areas as evident on the record of the closing meeting on 25 March 2016⁵.
48. As to the Respondents' contention that the Complaint should be considered in the context of timeline, whilst it is not disputed that the Receivable was due on 19 March 2016 and the 2015 Financial Statements were signed off on 30 March 2016, there was no evidence from the Respondents that additional audit procedures could not be performed due to the tight timeline. Further, the Respondents accepted that a short overdue period did not suggest that there was no risk of impairment.

⁵ pp.91 & 93 of the hearing bundle

49. Indeed, the Respondents had managed to obtain the relevant remittance payment slips and the Management's representation as per the record of their closing meeting on 25 March 2016 but there was no follow up by the Respondents thereafter or other steps taken apart from the aforesaid.
50. In respect of the Respondents' complaint that it was unfair to treat the remaining Receivable as a separate debt, the Committee does not consider that the Complainant has framed its case as such. Rather, it has sought to challenge the Respondents' argument that the two part payments, without other corroborative audit evidence, would be sufficient to demonstrate or infer the Customer's intention and willingness to pay the balance so as to support the Respondents' conclusion that no impairment being necessary.
51. The Committee is fully conscious of the Respondents' case that they did not solely rely on one single matter to support their decision but had taken into account multiple matters as set out above. Nevertheless, the very issue is whether, in the light of the materiality of the Transaction, what had been done by the Respondents were sufficient to support their assessment.
52. Considering what had been done by the Respondents, the Committee has taken note of the following:
- (1) There was no contemporaneous record of the "thinking process" of the Respondents in coming to the conclusion that no impairment was necessary. At the Respondents' opening submissions, it was said that the thinking process of the Respondents in arriving at the conclusion could be "told" from the relevant audit evidence. Upon the Committee's enquiry, the

Respondents confirmed that there was no record documenting that the Respondents had relied on the two payments within a short period of time to back their decision.

- (2) There was no information or evidence from the Respondents on the details and particulars of the Management's representation that "their customers keep settle the payment".
- (3) There was no evidence or suggestion from the Respondents that they had ever considered making further enquiry with the Company and/or the Customer as to the status or collectability of the remaining Receivable after the closing meeting on 25 March 2016.

53. As to the Respondents' submission that there was no evidence that the Customer had refused to pay the remaining Receivable, it is equally true that there appeared to be no evidence that the Customer was ready, prepared or able to pay the same.
54. Whilst the Committee accepts that the Respondents had obtained some audit evidence on the Receivable, the question remains whether such was sufficient, or additional audit procedures should have been performed.
55. In light of the materiality of the Receivable (or the remaining unpaid portion thereof), and taking the Respondents' case that they had at the material times duly analysed the Management's representation with the seven factors⁶ as submitted on their behalf, the Committee is nonetheless of the view that the Respondents could and should have done more to obtain sufficient appropriate audit evidence in relation to the remaining Receivable.

⁶ §27 above

56. With respect, the Committee cannot agree with the Respondents' argument that the additional audit procedures suggested by the Complainant were unrealistic. For instance, there is no suggestion that it was impossible or impractical for the Respondents to obtain further evidence, such as any correspondence or communications between the Company and the Customer in this respect, to back its Management's representation that the Customer would "keep settle".
57. In the circumstances, the Committee is of the view that the Respondents had failed to perform the audit with professional skepticism recognizing that circumstances may exist that cause the financial statements to be materially misstated. It is also found that the Respondents failed to obtain sufficient appropriate audit evidence in relation to the Receivable as recorded in the 2015 Financial Statements to critically assess the collectability issue.
58. In view of the above, the Committee finds the Complaint proved against the Respondents.

Directions

59. Having considered the joint submissions from the Complainant and the Respondents under the Complainant's letter dated 26 January 2021, the Committee had made the following directions on 1 February 2021 concerning submission on sanctions and costs:
- (1) The parties shall make any submission on sanctions and costs in writing after the Committee has handed down its reasons for decision on the issue of liability. The submission on sanctions shall address the seriousness of the alleged audit failure with reference to the Committee's relevant findings.

(2) The submission on sanctions and costs, if any, shall be dealt with on paper without a hearing, unless otherwise requested by the parties upon further application with justification.

60. In this connection, the Complainant shall file a written submission on the appropriate sanctions and costs within 28 days of service of this Decision. The Respondents shall file a written submission in response to the Complainant's said submissions within 28 days of service of the Complainant's submissions. The parties are at liberty to apply for any further directions in writing to the Committee.

Dated the 22nd day of April 2021.

Ms. Chan Ka Man
Chairman,
Disciplinary Panel A

Mr. Chu Pak Ning Ian
Member
Disciplinary Panel A

Mr. Choi Wai Wing
Member
Disciplinary Panel B

Ms. Ng Yuen Chun
Member
Disciplinary Panel A

Mr. Miu Liong Nelson
Member
Disciplinary Panel B