

IN THE MATTER OF

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

BETWEEN

Registrar of the Hong Kong Institute of Certified Public Accountants

Complainant

and

Mr. TANG, Chung Wah (F02777)

Ms. LEE, Fung Ying, Alison (F03537)

Respondents

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

Members: Mr. FUNG, Chi Man (Chairman)  
Ms. CHANG, See Mun, Lily  
Mr. CHIU, Shun Ming  
Mr. CHOI, Wai Wing  
Mr. MIU, Liong, Nelson

Date of Decision: The 30<sup>th</sup> day of December, 2019

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**DECISION ON  
SANCTIONS AND COSTS**

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## **I. Background**

1. By its Decision dated 6<sup>th</sup> September 2019, the Disciplinary Committee found the three complaints against each of two Respondents proven<sup>1</sup>. In short, by virtue of their contempt of Court, the two Respondents were found to have discredited the profession, been in professional misconduct and dishonourable conduct.
2. The Complainant and the two Respondents were directed to make submissions on sanctions and costs.
3. The Complainant filed its submissions on 8<sup>th</sup> October 2019<sup>2</sup>. The two Respondents did not file any submissions (and were deemed to have waived their rights to do so) but were allowed to file replies to the Complainant's submissions.
4. The 1<sup>st</sup> Respondent filed his reply on 22<sup>nd</sup> October 2019. The 2<sup>nd</sup> Respondent did not reply but gave notice by e-mail dated 28<sup>th</sup> October 2019 that she was made bankrupt on 21<sup>st</sup> October 2019<sup>3</sup>. The 2<sup>nd</sup> Respondent also informed the Disciplinary Committee on 9<sup>th</sup> October 2019 that her Hong Kong address was no longer valid and direction was given that future exchanges with her could be communicated via e-mails.

## **II. Sanctions**

5. There was no precedent case to assist the Disciplinary Committee to reach its decision on the appropriate sanctions. However, the Complainant had provided a useful summary of various previous decisions regarding breaches of professional standards, professional misconduct etc.

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<sup>1</sup> See Paragraph 9 of the Decision for particulars of the 3 complaints.

<sup>2</sup> The original deadline for filing was 7<sup>th</sup> October 2019 (which was a public holiday). Section 71(c) of the Interpretation and General Clauses Ordinance (Cap. 1, Laws of Hong Kong) provides that where any act is directed to be done or taken on a certain day, if that day is a public holiday, the act shall be considered as done or taken in due time if it is done on the next following day (not being a public holiday). The 1<sup>st</sup> Respondent took a (non)point in his reply and objected to the late filing. The objection was not upheld and time extension would have been granted; if necessary.

<sup>3</sup> To be verified; and the 2<sup>nd</sup> Respondent's bankruptcy has no direct bearing to the present proceedings.

6. The Complainant submitted that a temporary removal of membership (of HKICPA)<sup>4</sup> of the two Respondents would be in order - and the period should be not less than 12 months for the 1<sup>st</sup> Respondent and not less than 9 months for the 2<sup>nd</sup> Respondent.
7. In his reply, the 1<sup>st</sup> Respondent only sought clarification of the meaning of "temporary removal of membership" but made no submissions.
8. Having considered the submissions of the parties and reviewed the other disciplinary cases, the Disciplinary Committee is of the view that:
  - a. the subject of the complaints – contempt of Court – had been purged (and the two Respondents had already been fined and were liable to pay costs of the contempt proceedings);
  - b. there was no dishonesty or fraud involved;
  - c. there was no suggestion that the two Respondents (particularly the 1<sup>st</sup> Respondent who remains a practising accountant) were unfit to remain in practice<sup>5</sup>;
  - d. the contempt of Court was occasioned by virtue of: i) the stubbornness of the 1<sup>st</sup> Respondent<sup>6</sup>; and ii) the failure of the 2<sup>nd</sup> Respondent to pay heed to the Court Orders herself but leaving the matter to be dealt with by the 1<sup>st</sup> Respondent alone; and
  - e. although the 1<sup>st</sup> Respondent was primarily responsible for not complying with the relevant court orders, the 2<sup>nd</sup> Respondent had a non-delegable duty owed to Court<sup>7</sup> and it could not be said that her breaches are less serious in respect of the three complaints.
9. In imposing the sanctions, the Disciplinary Committee had also taken into consideration the practice histories, contributions to the society and the positive comments<sup>8</sup> from the professional acquaintances of the two Respondents.

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<sup>4</sup> Although it was not expressly stated, the removal of membership must be read to mean the HKICPA membership.

<sup>5</sup> The Decision of the Honourable L Chan J in *Re: Chan John Loong Fai* HCB 6991/2017; [2019] HKCFI 1886 dated 2<sup>nd</sup> August 2019 had been referred to the Disciplinary Committee.

<sup>6</sup> Had the 1<sup>st</sup> Respondent agreed to pay his ex-partners the costs to exhume the files / records from storage, he would not have been the subject of contempt of court and the present proceedings.

<sup>7</sup> There was a heavier fine imposed by Court against the 1<sup>st</sup> Respondent.

<sup>8</sup> Various witness statements filed by the 1<sup>st</sup> Respondent before the substantive hearing referred.

10. The Disciplinary Committee accordingly ORDERS:

As against the 1<sup>st</sup> Respondent

- a. that he be reprimanded under section 35(1)(b) of the PAO; and
- b. that he be fined a sum of HKD20,000 for the first complaint; a sum of HKD20,000 for the second complaint and a sum of HKD10,000 for the third complaint under section 35(1)(c) of the PAO.

As against the 2<sup>nd</sup> Respondent

- a. that she be reprimanded under section 35(1)(b) of the PAO; and
- b. that she be fined a sum of HKD20,000 for the first complaint; a sum of HKD20,000 for the second complaint and a sum of HKD10,000 for the third complaint under section 35(1)(c) of the PAO.

**III. Costs**

11. The Complainant submitted that the two Respondents should pay the costs and expenses of and incidental to the disciplinary proceedings as the two Respondents brought themselves within the disciplinary proceedings and there being no reason that the costs and expenses of the proceedings be funded or subsidised by other members of HKICPA. The Complainant had annexed a schedule of costs to its submissions. The total sum claimed is HKD283,730<sup>9</sup>.
12. The Complainant further submitted that the incidence of costs and expenses be spilt against the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent in the proportion of  $\frac{3}{4}$  and  $\frac{1}{4}$ .
13. The 1<sup>st</sup> Respondent challenged the claim for costs and expenses. He objected, amongst others, to the hourly rates of the staff of HKICPA and queried if there was any profit costs element in the claim. He also objected to the photocopying charges.
14. Whilst the award of costs is generally a discretionary matter, the Disciplinary Committee sees no reason to depart from the general rule that "costs should follow

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<sup>9</sup> Exclusive of the costs which were the subject of 2 adverse costs orders against the 1<sup>st</sup> Respondent but inclusive of the costs of the Clerk to the Disciplinary Committee.

event" in the present case. All three complaints were proven against the two Respondents and they should bear the costs of and incidental to the proceedings.

16. The claim for "costs and expenses" under section 35(1)(iii) of the PAO is subject to reasonableness and the Disciplinary Committee can always tax such costs and expenses and allow only a reasonable sum.
17. The assessment of costs and expenses is not rocket science and the Disciplinary Committee is entitled to take a "gross sum assessment" approach. The Disciplinary Committee considers that: i) the hourly rates; ii) the time spent by the staff members of HKICPA and the Clerk to the Disciplinary Committee; and iii) the photocopying charges to be reasonable.
18. As to the incidence of payment of the costs and expenses of HKICPA, the Disciplinary Committee considered that the two Respondents should be jointly and severally liable for the same in this particular case. The Disciplinary Committee is aware that the 2<sup>nd</sup> Respondent is bankrupt and that effectively means that the 1<sup>st</sup> Respondent will likely have to pay the entire costs and expenses of HKICPA. In reaching its decision, the Disciplinary Committee took into account of the conduct of the two Respondents in the proceedings including i) the various unmeritorious applications of the 1<sup>st</sup> Respondent; ii) non-observance / fouling of the directions of the Disciplinary Committee and the delay caused by his various last-minute time extensions; and iii) the irrelevant issues, unwarranted personal comments and non-points raised by the 1<sup>st</sup> Respondent in his various submissions in the proceedings.
19. The Disciplinary Committee accordingly ORDERS that:
  - a. the claim for costs and expenses of the Complainant be allowed and taxed at HKD283,730<sup>10</sup>; and
  - b. the said sum of HKD283,730 be paid forthwith by the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent jointly and severally.

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<sup>10</sup> For the avoidance of doubt, the 2 previous adverse costs orders against the 1<sup>st</sup> Respondent (solely) are / remain unaffected.

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Mr. FUNG, Chi Man  
Chairman

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Ms. CHANG, See Mun, Lily  
Member

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Mr. CHIU, Shun Ming  
Member

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Mr. CHOI, Wai Wing  
Member

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Mr. MIU, Liang, Nelson  
Member