

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 Certified Public Accountants

COMPLAINANT

AND

Cheung Hing Chik, Charles (F01073)

RESPONDENT

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

Members: Mr. Wong Hing Wai, Newman (Chairman)
Ms. Lee, Eva
Mr. Lee Tze Hong, Nathan
Mr. Wong Yan Wah
Mr. Guen Kin Shing

ORDER AND REASONS FOR DECISION

INTRODUCTION

1. This is a complaint made by the Registrar (the "Complainant") of the Hong Kong Institute of Certified Public Accountants (the "Institute") against Mr. Cheung Hing Chik, Charles, a certified public accountant (the "Respondent").
2. Particulars of the Complaints as set out in a letter from the Registrar to the Council of the Institute dated 7th April 2022 are set out below.
3. The Respondent is found guilty, on his own pleas and admission of 3 complaints made by the Registrar of the Institute.

BACKGROUND

4. At all material times, the Respondent was a practising member of the Institute. He carried on his practice both as the sole proprietor of C&N Certified Public Accountants (“C&N CPA”) and one of the 2 practising directors of Charles H.C. Cheung & CPA Limited (“CHCC”).
5. On 3rd February 2021, the Respondent, pursuant to s.28 and 30 of the Professional Accountants Ordinance Cap. 50 (the latter of which has since been repealed) filed an annual return (“Return”) for the renewal of his membership with the Institute and the issuance of a practising certificate (“PC”) for the year of 2021. In the Return, the Respondent declared that he was not a bankrupt, nor had he become bankrupt. Acting on the representations, including the aforesaid declaration, made by the Respondent in the Return, the Institute renewed his membership and issued him a PC which was collected by the Respondent’s authorized representative on 3rd March 2021.
6. However, it was subsequently discovered that a bankruptcy order (“BO”) was issued against the Respondent by the High Court on 3rd August 2020. Although the Respondent had applied to rescind the BO, his application was dismissed by Au-Yeung J. on 28th September 2020. The Respondent’s appeal against the said dismissal was also rejected by the Court of Appeal on 8th July 2021. And leave to appeal to Court of Final Appeal was refused on 2nd November 2021.
7. In the meantime, having discovered the BO, the Institute cancelled the Respondent’s PC on 4th May 2021. As a result, C&N CPA was removed from the Institute’s registration of firms, and CHCC was subsequently changed to a sole-practising member corporate practice.

THE COMPLAINTS

8. The 3 complaints brought by the Registrar of the Institute are as follows:

Complaint 1

This is brought under s.34(1)(a)(vi) of the Professional Accountants Ordinance Cap. 50 (“PAO”) by which the Respondent is said to have failed or neglected to observe, maintain or otherwise apply the fundamental principle of Integrity under Chapter A of the Code of Ethics for Professional Accountants (“COE”) by falsely declaring to the Institute that he was not a bankrupt or had not become bankrupt when he renewed his PC for the year 2021.

Complaint 2

This is also brought under s.34(1)(a)(vi) of the PAO by which the Respondent is said to have failed or neglected to observe, maintain or otherwise apply the fundamental principle of Professional Behaviour under Chapter A of the COE by failing to resign as a director of CHCC in accordance with the requirements of the Companies Ordinance when he had become bankrupt.

Complaint 3

This is brought under s.34(1)(a)(viii) of the PAO by which the Respondent is said to have been guilty of professional misconduct.

THE FACTS RELATING TO COMPLAINT 1

9. Under s.30(7) of the PAO, an applicant is required to confirm in the Return his/her solvency status and sign a standard declaration to the effect that, inter alia, he/she is not a bankrupt or has not become bankrupt.

10. The standard declaration in the Return for 2021 reads as follows:

“In support of my application for a practising certificate for 2021, I hereby declare undertake that:-

A. Bankruptcy (section 30(7) of the PAO)

I am not a bankrupt nor have 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 voluntary arrangement with my creditors within the meaning of the Bankruptcy Ordinance at any time during the year 2021.”

11. At the time when the Respondent submitted the 2021 Return, there can be no question that he was a bankrupt under the Bankruptcy Ordinance. Despite the fact that he had lodged an appeal, the BO remained in force. Therefore, he was not eligible for being issued with a PC. The declaration that the Respondent made in the 2021 Return stating that he was not a bankrupt or had not become a bankrupt is very clearly false.

12. Had the Respondent made a true declaration when he renewed his PC for the year 2021, he would not have been issued with the PC.

13. When the Respondent was asked by the Institute in April 2021 to explain, he submitted that he had communicated to a staff member of the Institute's Membership & Admission Department (“**Staff Member**”) that he had lodged an appeal against the Bankruptcy Order and that if he succeeded in the appeal, his BO would become null and void as if no such order had ever been issued.

14. However, the Respondent's explanation was categorically denied by the Staff Member. According to the latter, the Respondent indicated in a telephone conversation that he was not a bankrupt if he was successful in his appeal against the BO. In response, the Staff Member told the Respondent that if he was successful with his appeal, then he could submit the declaration for renewing his PC for the year 2021. More importantly, the Staff Member denied advising the Respondent that he could submit the Return at the material time (i.e. when the BO was under appeal).
15. As the PC was obtained by the Respondent with the use of a false declaration, the Respondent had been holding an invalid PC for approximately nine months since the BO was issued to him in August 2020.
16. In the circumstances, the Respondent failed to comply with the fundamental principle of Integrity under s.110.1A1(a), R110.2, and R111.2 of the COE. The complaint under s.34(1)(a)(vi) of the PAO against the Respondent is clearly established.

THE FACTS RELATING TO COMPLAINT 2

17. Under s.480(1) of the Companies Ordinance, a person who is an undischarged bankrupt is disqualified for acting as a director of a company.
18. Upon the issuance of the BO against him on 3rd August 2020, the Respondent was disqualified to act as a director of CHCC. However, he did not resign from the directorship of CHCC until May 2021. This is a blatant disregard of the above statutory requirement and the Respondent must be aware that such non-compliance would bring discredit to the profession.
19. By reason of the aforesaid, the Respondent had failed to comply with the fundamental principle of Professional Behaviour under s.110.1A1(e), R110.2, and R115.1 of the COE.

THE FACTS RELATING TO COMPLAINT 3

20. Under s.28A and 28D of the PAO, a firm of CPA (practising) and a corporate practice are qualified to remain registered if and only if the relevant requirements for registration are complied with.
21. Upon the BO made against the Respondent, C&N CPA was not qualified to remain registered because its sole proprietor (i.e. the Respondent) no longer held a valid PC. CHCC was also not qualified to remain registered as a multi-practising member corporate practice because it did not fulfill the required number of practising member directors under s.28D(2)(b)(1) of the PAO and Rule 4(b)(iv) of the Corporate Practices (Registration) Rules.

22. According to the Return, the Respondent undertook to inform the Institute of his bankruptcy within 30 days from the date of his bankruptcy order (“**Undertaking**”). As a result of the Respondent’s failure to notify the Institute of his bankruptcy, he was holding an invalid PC for a period of nine months. His failure had also made it impossible for C&N CPA and CHCC to comply with the requirements under s.28A and 28D of the PAO during the same period of time.
23. As the sole proprietor of C&N CPA and the managing director of CHCC at the relevant time, the Respondent was responsible for ensuring these two practices comply with the relevant registration requirements.
24. In view of his disregard of the Undertaking given to the Institute, his failure to comply with the registration requirements in relation to his practices, and the breach of fundamental requirements on Integrity and Professional Behaviour dealt with in Complaints 1 and 2 above, the Respondent is thus also guilty of professional misconduct under s.34(1)(a)(viii) of the PAO.

THE PROCEEDINGS

25. In a letter signed by the parties dated 3rd May 2022, the Respondent admitted the Complaints against him. The parties also requested the steps set out in paragraphs 17 to 30 of the *Disciplinary Committee Proceedings Rules* (the “DCPR”) be dispensed with.
26. On 29th August 2022, the Disciplinary Committee agreed to the parties’ request to dispense with the steps set out in Rules 17 to 30 of the DCPR in light of the admission made by the Respondent, and directed the parties to make written submissions on sanctions and costs by 26th September 2022.
27. Neither the Complainant nor the Respondent requested for a sanctions hearing.
28. The Complainant and the Respondent filed their respective written submissions on sanctions and costs on 26th September 2022.

MITIGATIONS

29. The Respondent has either directly or indirectly brought up 3 matters in his submissions. The first matter relates to the Respondent’s contention that he submitted his Return on 3rd February 2021 “innocently”, purportedly because he believed that as he was appealing against the decision of Au-Yeung J, he was thus entitled to declare in the Return that he was not a bankrupt nor had he become bankrupt.
30. The second matter, which is closely connected to the first one, is the telephone communication the Respondent had with the Staff Member which has been referred to earlier.

31. The third matter is about the claim made repeatedly by the Respondent that he is expecting to receive what he has called his minimum inheritance entitlement of US\$3 million which, he claimed, would have allowed him to make full repayment of his debts to all creditors, and which in turn would allow him to apply for annulment of the bankruptcy order against him.

DISCUSSION

32. As the first two matters are closely connected, it is convenient for the Disciplinary Committee to deal with them together. To begin with, the Disciplinary Committee has absolutely no hesitation in rejecting the Respondent's claim that he made the false declaration in the Return "innocently". Being a professional accountant, the Respondent must realize that he was making a false declaration when he declared in the Return that he was not a bankrupt nor had he become one at the material time. Not only was there a valid BO against him, which he was of course fully aware of, his application to rescind the bankruptcy order had been dismissed by Au-Yeung J on 28th September 2020. Notwithstanding that he had thereafter lodged an appeal against the dismissal by the learned Judge with the Court of Appeal, we find it incredible that the Respondent could have labored under the misimpression that he was entitled to declare in the Return that he was not a bankrupt nor had he become one.
33. In this connection, the Disciplinary Committee has also had no hesitation in rejecting the Respondent's claim that he was, or may have been, led by the Staff Member in the telephone conversation they had to think that he was entitled to declare in the Return that he was not a bankrupt (nor had he become one).
34. As said earlier, the fact that the Respondent was a bankrupt at the time when he made the declaration is clearly beyond doubt. And we cannot imagine how the Respondent could have thought otherwise.
35. As to the third matter raised by the Respondent, all that we need to say is that the Respondent's claim, that he was expecting to receive what he has called the minimum inheritance entitlement, had been made both when he was resisting the bankruptcy petition and when he was making the application to rescind the bankruptcy order and they remained empty words so far. As observed by Au-Yeung J in dismissing the Respondent's application to rescind the bankruptcy order, "there is no proof of availability of funds... and no certainty as to the date when the funds would come in. The Court cannot take the word of the Bankrupt without independent proof, especially when the underlying debt arose out of the Bankrupt's own dishonesty." (para. 22 of Judgment dated 28th September 2020).

36. In the opinion of the Disciplinary Committee, there can be no question that this, in particular the subject matter under Complaint 1, is a very serious matter. Not only has the Respondent's conduct brought the profession into disrepute, it amounts to, or could have amounted to, the criminal offence of fraud, among others. It is a blatant disregard of a clear requirement that a professional member should let the Institute know of one's bankruptcy as soon as possible. As a result, both the Institute and members of the public were left in the dark as to the financial status of the Respondent.
37. On the other hand, the Disciplinary Committee does not overlook the fact that the Respondent has never been subject to any disciplinary action since his first registration with the Institute in 1978. We also bear in mind his co-operation with the Registrar in the course of the investigation. And, lastly, we accept the Respondent's claim that he had not performed any audit work in the 9 months after he was issued with the PC for the year of 2021.

ORDER

38. Taking all the above matters into account, the Disciplinary Committee is of the view that a removal order is an appropriate sanction for all 3 complaints. Having looked at the previous decisions referred to the Disciplinary Committee in the Complainant's Submissions on sanctions and costs, the Disciplinary Committee orders that:-
 - (1) the Respondent be reprimanded under section 35(1)(b) of the PAO;
 - (2) the name of the Respondent be removed from the register of certified public accountants under section 35(1)(a) of the PAO for a period of:
 - (a) 18 months for Complaint 1;
 - (b) 6 months for Complaint 2; and
 - (c) 6 months for Complaint 3.All 3 terms to run concurrently; and
 - (3) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant and that of the Disciplinary Committee in the sum of \$55,630.50 under section 35(1)(iii) of the PAO.

The above shall take effect on the 42nd day from the date of this Order.

Dated the 23rd day of December 2022

Mr. Wong Hing Wai, Newman
(Chairman)

Ms. Lee, Eva
Member

Mr. Lee Tze Hong, Nathan
Member

Mr. Wong Yan Wah
Member

Mr. Guen Kin Shing
Member