

IN THE MATTER OF

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

BETWEEN

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

COMPLAINANT

AND

Leung Wah
(Membership No. A07045)

RESPONDENT

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

Members: Ms. LAM Ding Wan Catrina (Chairman)
Ms. CHAN Wai Kam Caroline
Ms. LAI Nadine
Mr. LEES John Robert
Mr. CHAN Ting Bond Michael

ORDER AND REASONS FOR DECISION

A. INTRODUCTION

1. This is a complaint made by the Practice Review Committee of the Hong Kong Institute of Certified Public Accountants ("**Institute**") as Complainant against Mr. Leung Wah, a practising certified public accountant ("**Respondent**").
2. The particulars of the complaint are set out in a letter dated 12 June 2020 ("**Complaint**") from the Practice Review Committee ("**Complainant**") to the Registrar. The Registrar submitted the Complaint to the Council of the Institute who referred it to the Disciplinary Panels pursuant to section 34(1) of the Professional Accountants Ordinance (Cap. 50) ("**PAO**").
3. On 2 September 2020, the Disciplinary Committee ("**Committee**") constituted to deal with this matter under section 33(3) of the PAO issued a Notice of Commencement of Proceedings and a Procedural Timetable for the proceedings.

4. Under the Procedural Timetable, the Complainant's Case and the Respondent's Case were required to be submitted on 7 October 2020 and 11 November 2020 respectively. The Complainant filed its Case on 7 October 2020 accordingly.
5. The Respondent did not file his case on 11 November 2020. Instead, by a letter dated 11 November 2020, the parties jointly proposed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules ("Rules") be dispensed with. Attached to this letter was a confirmation signed by the Respondent whereby he admitted to the complaints made against him as set out in the Complaint. The parties invited the Committee to dispose of the Complaint on the basis of the Respondent's admission.
6. By letter dated 20 November 2020, the Committee informed the parties that it agreed to their joint proposal to dispense with paragraphs 17 to 30 of the Rules in light of the Respondent's admission to the Complaint. The Committee further directed the parties to file written submissions on sanctions and costs within 28 days.
7. The Complainant and the Respondent provided their written submissions on sanctions and costs on 17 December 2020 and 18 December 2020. Neither the Complainant nor the Respondent requested for an oral hearing.

B. BACKGROUND

8. The Respondent was the sole practitioner of Leung Wah & Co. ("LWC")¹ and is also the managing director of a corporate practice, Hong Kong Wan Long CPA Limited ("HKWL"). LWC and HKWL (collectively, "Practices") shared the same quality control system, audit methodology and staff resources.
9. The Respondent's Practices were selected for an initial practice review in June 2017 and the site visit of the review was concluded on 11 September 2018. The practice reviewer ("Reviewer") found a number of deficiencies including those concerning LWC's audit of Client K's financial statements for the year ended 30 September 2016 ("**2016 Financial Statements**") and compliance work for Client K for the same year. Client K is an insurance broker company regulated by the Insurance Authority ("IA").
10. Having considered the Reviewer's report dated 27 May 2019 setting out the practice review findings and all available information, including the Respondent's working papers in relation to Client K, his submissions and the additional documents provided subsequent to the practice review ("**Additional Documents**"), the Complainant decided to raise a complaint against the Respondent for non-compliance with professional standards.

¹ LWC was deregistered from the Institute in January 2019.

C. THE COMPLAINTS

11. There are 4 complaints against the Respondent, namely:

Complaint 1

- (1) Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply professional standards in relation to his compliance work of Client K.

Complaint 2

- (2) Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply professional standards in relation to his audit of the 2016 Financial Statements of Client K.

Complaint 3

- (3) Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard for his failure to maintain an adequate quality control system.

Complaint 4

- (4) Section 34(1)(a)(vi) of the PAO applies to the Respondent because he is guilty of professional misconduct.

D. FACTS AND CIRCUMSTANCES IN SUPPORT OF THE COMPLAINTS

D1. Complaint 1

12. The fundamental principle of professional competence and due care under sections 100.5(c) and 130.1 of the COE² requires a professional accountant to (i) maintain professional knowledge and skill at the level required to ensure that the client receives competent professional services; and (ii) act diligently in accordance with applicable professional/technical standards when providing professional services.
13. On 30 March 2017, LWC issued an independent assurance report for Client K for the year ended 30 September 2016 (“**Compliance Report**”). The Compliance Report indicated that Client K met the minimum requirements (“**Minimum Requirements**”) specified by the IA in section 70(2) of the Insurance Companies Ordinance in respect of (i) capital and net assets, (ii) professional indemnity insurance, (iii) keeping of separate client accounts, and (iv) keeping of proper books and accounts.

² Code of Ethics for Professional Accountants

14. Further, the Compliance Report stated that the engagement was conducted in accordance with HKSAE 3000³ and with reference to PN 810.1⁴. However, the working papers did not show that the procedures set out in Appendix 1 to PN 810.1, such as the following, had been performed:
- (1) test on a sample basis, transactions from bank statements and ledgers to check if monies received from clients had been deposited into the client account without delay⁵;
 - (2) test on a sample basis, reconciliations between monies in client account and debtors/creditors to determine if client monies are used for purpose other than for the purposes of clients⁶; and
 - (3) enquiry with Client K the procedures in place for safeguarding books and records for no less than seven years and validate the physical existence for a sample of items⁷.
15. The Respondent provided the Additional Documents in an attempt to show that the compliance work had been done to support the Compliance Report. However, the Additional Documents only represented client's documents such as invoices, receipts and bank statements etc. There were no working papers or any documentation to demonstrate a linkage between the client's documents and the compliance work done.
16. As such, the Respondent failed to comply with paragraphs 64 and 79 of HKSAE 3000 which require an evaluation of the evidence obtained and documentation of work to provide a record of the basis for the Compliance Report.
17. In addition, the Compliance Report did not include the statements pertaining to LWC's compliance with the relevant ethical requirements under the COE and quality control requirements under HKSQC 1⁸, in accordance with paragraph 69 of HKSAE 3000.
18. The Respondent was the engagement partner responsible for the Compliance Report. As such, the above failures by the Respondent to comply with HKSAE 3000 and to carry out procedures according to PN810.1 demonstrate that he did not maintain professional knowledge and skill at the level expected of a CPA to carry out the compliance work in accordance with applicable professional/technical standards, in breach of sections 100.5(c) and 130.1 of the COE.

³ Hong Kong Standard on Assurance Engagements 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*

⁴ Practice Note 810.1 (Revised) *Insurance Brokers – Compliance with the Minimum Requirements Specified by the Insurance Authority under Sections 69(2) and 70(2) of the Insurance Companies Ordinance*

⁵ Page 17 of PN810.1

⁶ Page 16 of PN810.1

⁷ Page 18 of PN810.1

⁸ *Hong Kong Standard on Quality Control 1 - Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance and Related Services Engagements*

D2. Complaint 2

19. The Reviewer also found a number of non-compliances of HKSAs in the Respondent's audit of Client K.

Planning and risk assessment

20. HKSA 300⁹ requires an auditor to establish an overall audit strategy and to develop an audit plan. However, the working papers did not show that LWC had (i) established an audit strategy that sets the scope, timing and direction of the audit of Client K; (ii) developed an audit plan that includes descriptions of the nature, timing and extent of audit procedures; and (iii) documented the audit strategy and plan in accordance with the requirements under HKSA 300.
21. HKSA 315¹⁰ requires an auditor to identify and assess the risks of material misstatement at the financial statement and assertion levels, thereby providing a basis for designing and implementing responses to the assessed risks of material misstatement. However, the working papers did not show that LWC had properly performed risk assessments in the audit of Client K in accordance with HKSA 315.

Revenue recognition

22. Client K's financial statements were prepared in accordance with the Hong Kong Financial Reporting Standard for Private Entities ("HKFRS for Private Entities") issued by the Institute.
23. Client K recognized turnover on a gross basis (i.e. showing gross premiums received and receivables as revenue and premiums to insurance companies as direct expenses in the income statement).
24. Section 23.4 of HKFRS for Private Entities states that in an agency relationship, an entity shall include in revenue only the amount of its commission. Since Client K is an insurance broker, it is reasonable to expect the auditor to consider if Client K was acting as a principal or an agent when evaluating the appropriateness of its revenue recognition basis. There was no evidence in the working papers showing that LWC had performed such an evaluation to determine if Client K's revenue recognition had complied with the applicable financial reporting framework, in accordance with paragraph 12 of HKSA 700¹¹.
25. The working papers indicated that the sales cut-off test was one of the key tests to ensure that income is fairly stated. However, the working papers did not show that the auditor had performed any cut-off tests. As such, the auditor failed to design and perform procedures that were appropriate for the purpose of obtaining sufficient appropriate audit evidence, in accordance with paragraph 6 of HKSA 500¹².

⁹ HKSA 300 *Planning an Audit of Financial Statements*

¹⁰ HKSA 315 *Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment*

¹¹ HKSA 700 *Forming an Opinion and Reporting on Financial Statements*

¹² HKSA 500 *Audit Evidence*

Recognition of deferred tax assets

26. Section 29.24 of HKFRS for Private Entities states that a deferred tax asset shall be recognized for all deductible temporary differences to the extent that it is probable that taxable profit will be available against which the deductible temporary difference can be utilized.
27. Client K recognized deferred tax assets of HK\$270,200 as at the year-end date. LWC's working papers simply documented the calculation of the deferred tax assets by applying the tax rate of 16.5% on the total accumulated tax losses of Client K. There was no evidence that showed LWC had performed any work to evaluate if Client K's recognition of the deferred tax assets was appropriate under section 29.24 of HKFRS for Private Entities.
28. As the engagement partner, the Respondent was responsible for the audit of Client K. As such, the Respondent failed to comply with the above-mentioned professional standards in the audit of the 2016 Financial Statements of Client K.

D3. Complaint 3

29. HKSQC 1 requires all firms of professional accountants to establish and maintain an adequate system of quality control which meets the requirements under the standard.
30. Paragraph 32 of HKSQC 1 requires a practice to establish policies and procedures designed to provide it with reasonable assurance that engagements are performed in accordance with professional standards, and the reports issued are appropriate in the circumstances.
31. The findings as identified in Complaints 1 and 2 above point to LWC's failure to comply with professional standards in relation to the audit and compliance work of Client K. The findings indicate that the Respondent, as engagement partner, failed to carry out adequate review and supervision of the audit and compliance work of Client K.
32. In addition, the Reviewer's Report also identified significant deficiencies in the Respondent's audit of Client G by HKWL. The number of deficiencies found in the audit of Client K and Client G show that the Respondent's Practices did not meet the requirements stated under paragraph 32 of HKSQC 1.
33. The Respondent was responsible for the quality control system of his Practices. As such, he failed to maintain an adequate quality control system that meets the requirements under HKSQC 1.

D4. Complaint 4

34. The Reviewer's Report identified a number of deficiencies indicating that the Respondent had failed and/or neglected to comply with a number of professional standards.

35. In particular, there were no working papers to demonstrate that the audit team had performed proper compliance work on Client K which involved public interest as it was a regulated entity holding clients' monies. The lack of working papers raised considerable doubt as to whether the Respondent had carried out an effective review to ensure that sufficient work had been performed and documented before issuance of the Compliance Report.
36. The ineffective review and multiple breaches of professional standards demonstrate that the Respondent's quality control and assurance work disregarded the requirements under the professional standards and fell far below the standard expected of a CPA (practising). Such serious lack of regard to professional standards amounts to professional misconduct.

D5. Conclusion

37. All the facts and matters set out in Parts D1 to D4 above were admitted by the Respondent. The Committee finds the Complaint proved on the basis of the Respondent's admission.

E. SANCTION

38. Having regard to the nature and circumstances of the complaints set out in the above, as well as the submissions made by the parties, the Committee considers this case falls within the upper end of the "serious" category under paragraph 6.1 of the Guideline to Disciplinary Committee for Determining Disciplinary Orders ("**Guideline**") warranting, as a starting point, the sanction of a reprimand and cancellation of the Respondent's practising certificate for 12 months.
39. In determining the seriousness of the misconduct and the appropriate starting point for sanction, the Committee considered, in particular, the following matters:
 - (1) The nature of the breaches involved, including the fact that there were no working papers or documentation to demonstrate that (a) the compliance work in respect of Client K had been conducted in accordance with HKSAE 3000 or that the procedures set out in PN 810.1 had been performed; and (b) LWC had established an overall audit strategy or developed an audit, properly performed risk assessments, cut-off tests and evaluations to determine whether Client K's recognitions of revenue and deferred tax assets were appropriate.
 - (2) In this regard, the Committee does not accept the Respondent's contention that the breaches involved in this case could be "excused" on the basis of weak or poor documentation. The importance of preparing proper and adequate working papers and documentation cannot be emphasised enough. One of the main purpose of this requirement is enable an experienced practitioner to understand the nature, timing and extent of the procedures performed, the results thereof, and the significant judgments made in reaching those conclusions¹³, without which there can be no

¹³ Paragraph 79 of HKSAE 3000

assurance that the requisite procedures and evaluations had in fact been performed by the auditor.

- (3) The above deficiencies and failures demonstrate that the Respondent did not carry out the compliance work and audit of Client K with the level of knowledge, skill and due care at the level expected of a certified public accountant in accordance with the applicable professional standards.
 - (4) The Committee views Complaint 1 as particularly serious as there were no working papers or any documentation to demonstrate that any compliance work had been done to support the Compliance Report for Client K. There can be no doubt that significant public interest was at stake as Client K is a regulated insurance broker company holding clients' monies and the Compliance Report is relied upon as an independent assurance that Client K has met the minimum requirements specified by the IA under the Insurance Companies Ordinance. The sanction should reflect the need to protect the public interest at stake as well as to maintain public confidence in the standards and competence of the profession.
 - (5) The Committee notes that the Complainant has additionally relied upon certain significant deficiencies in the audit of another engagement, Client G, to support the breach of HKSQC 1 under Complaint 3, as well as the seriousness of the breaches underlying the professional misconduct charge under Complaint 4. While the Respondent does not appear to dispute the suggestion that there were also multiple audit deficiencies in relation to Client G and that those deficiencies were serious, the alleged deficiencies in the audit of Client G have not been particularised in the Complaint. Accordingly, the Committee considers it would be inappropriate to take this matter into account in assessing the seriousness of the breaches, save to recognise that the Respondent's misconduct was not an isolated, one-off event, but recurring failures that cast doubt on his professional competence.
 - (6) The Complainant has referred the Committee to a number of past decisions with similar features to the present case, namely, Proceedings No. D-15-119P (January 2018), D-14-0963P (August 2017), D-12-0669P (November 2014) and D-17-1294P (June 2019). We have considered these decisions as reference but have reminded ourselves that previous decisions are not binding on the Committee and it is ultimately for the Committee to decide the appropriate sanction to meet the justice of the case. Each case is fact specific.
40. Taking into account the Respondent's admission of the Complaint, made not at the earliest opportunity but after the filing of the Complainant's Case, which has nevertheless obviated the need for a contested hearing and led to a considerable saving of time and costs, the Committee considers a reprimand and a cancellation of the Respondent's practicing certificate for a period of 10 months would be appropriate in the circumstances of this case.

F. COSTS

41. The Complainant submitted that the Respondent should pay the costs and expenses of and incidental to the proceedings (including the costs and expenses of the Committee). As costs incurred by the Institute in disciplinary proceedings are financed by membership

subscription and registration fees, it is only fair that the Respondent, whose own conduct brought him within the disciplinary process, should pay the costs and expenses, instead of having them funded or subsidized by other members of the Institute.

42. The total costs and expenses set out in the Statement of Costs dated 17 December 2020 submitted by the Complainant amounted to HK\$111,134.
43. The Respondent accepts the Complainant's submission but urged the Committee to reduce the amount of the costs and expenses to be borne him on account of the COVID-19 pandemic and the financial impact it has had on his business and income.
44. A party's financial resources is a matter peculiarly within his own personal knowledge. To make out a case of financial hardship, it is in the Committee's view incumbent upon a respondent wishing to rely on this as a ground for lowering a penalty or an order for costs and expenses to produce clear and comprehensive evidence of his financial position to support that contention. The complainant must then be afforded a reasonable opportunity to make submissions about the matter to the disciplinary committee and, if it so wishes, to test the evidence relied upon by the respondent.
45. The Respondent's contention of financial hardship was a bare allegation unsupported by any evidence. In the circumstances, by letter dated 27 January 2021, the Committee made, *inter alia*, directions to the following effect:
 - (1) Unless the Respondent submitted within 14 days from the date of this direction (a) clear and comprehensive evidence of his financial position and (b) an explanation as to why he lacked the means to pay an order for costs and expenses and/or such an order would cause him undue financial hardship, the Committee will not consider the Respondent's bare assertion of financial hardship and/or inability to pay.
 - (2) The Complainant was given leave to file a written reply to the Respondent's submissions (if any) within 14 days thereafter.
46. By letter dated 10 February 2021, the Respondent provided an explanation of his financial position, together with a copy of his HSBC One Account Statement dated 14 January 2021 and a screenshot of his HSBC internet banking account as at 10 February 2021. In summary, the Respondent submitted:
 - (1) As at 10 February 2021, his total current assets stood at HK\$26,261.28 and his effective net current liabilities stood at HK\$62,318.18.
 - (2) He encountered difficulty in repaying his outstanding credit card debt of HK\$88,579.46 and had been paying only the minimum payment every month over the past year.
 - (3) No material income or cash flow is expected from his Practices in the coming year. His anticipates his Practices will cease for a period of time due to these proceedings.

- (4) He owns two company secretarial firms which did not generate any profit in the previous year. No profit is expected from these firms in the coming year due to the current economic environment.
 - (5) He receives a monthly director fee of HK\$10,000 and a net monthly salary of HK\$9,500 for his role as a part-time CFO of a group of private companies. He is married with 3 children and the total income of HK\$19,500 is just sufficient to cover his family expenses.
47. By letter dated 18 February 2021, the Complainant stated it is not in a position to comment on the Respondent's personal financial resources but made two points concerning the ability to pay generally:
- (1) First, the Finance Department of the Institute is responsible for enforcing a disciplinary ruling, including any payment required thereunder. If a respondent alleges that he is unable to pay, the Finance Department would conduct a comprehensive review of his means and if satisfied that a respondent is indeed unable to pay, it may exercise its discretion allow payment by instalments. The Complainant submitted that if the Respondent is given the time to pay, there is nothing to suggest he would not be in a position to meet the costs and expenses of the proceedings.
 - (2) Second, the Complainant further submitted that the Committee is not entitled to take into account a respondent's inability to pay before imposing an order for costs and expenses.
48. In the light of the position taken by the Complainant on the Committee's entitlement to take into account a respondent's inability to pay before imposing an order for costs and expenses, by letter dated 22 February 2021, the Committee invited the parties to file further written submissions on this issue. In particular, the parties were invited to address the Committee on the Court of Appeal's decision in *Solicitor (302/02) v Law Society of Hong Kong* [2006] 2 HKC 40 (in particular, paragraphs 124-125 & 131) and Treverton-Jones, Foster & Hanif, *Disciplinary and Regulatory Proceedings* (8th Ed.), paragraphs 10.94 to 10.97.
49. Both the Complainant and Respondent filed further written submission on 8 March 2021.
50. The Respondent urged the Committee to investigate and consider his ability to pay costs and expenses before reaching a final decision.
51. The Complainant, having considered the authorities, accepted that the Committee is entitled to take into account the means of a respondent, but submitted this is not an invariable rule and no inquiry should be made in this case because the amount of costs and expenses is not high. The Complainant reiterated that the Committee should take into account the existing mechanism where the Finance Department of the Institute would be better placed to inquire into a respondent's means.
52. We agree with the Complainant that it is not an invariable rule that a disciplinary committee must in every case inquire into a respondent's means before imposing an order for costs and expenses, particularly where the respondent has not advanced a case of

financial hardship and/or inability to pay, or where the amount of costs and expenses involved is not high.

53. Although the amount of costs and expenses in this case is only HK\$111,134, the Respondent has, on the Committee's invitation, provided some evidence of his financial position. The evidence provided is not as full or comprehensive as would be expected and there are obvious gaps left unexplained. As an illustration, the opening balance of the Respondent's HSBC account statement was HK\$92,968.15 as at 14 December 2020, but within one month this was quickly depleted to only HK\$1,066.22 as at 14 January 2021. No explanation has been provided as to where this money has gone, which could have been utilised to pay at least part of the costs and expenses. Similarly, the Complainant has pointed out the Respondent has not provided current balances of his Practices or his secretarial firms.
54. That said, the explanation and documentary evidence provided by the Respondent do tend to demonstrate, at least on a prima facie basis, that an order for immediate payment of the costs and expenses would cause him considerable financial hardship. In the circumstances, in ordering the Respondent to pay an amount of costs and expenses as stated in Part G below we suggest the Institute consider allowing the Respondent some flexibility in the timeframe for settling that amount, subject to the Respondent meeting the Institute's requirements for sufficient evidence of his means and/or financial position.
55. We are satisfied that the costs and expenses set out in the Statement of Costs dated 17 December 2020 in the total sum of HK\$111,134 were reasonably and necessarily incurred.

G. ORDERS

56. Accordingly, the Committee makes the following orders:-
 - (1) The Respondent be reprimanded under section 35(1)(b) of the PAO;
 - (2) The current practising certificate issued to the Respondent be cancelled under section 35(1)(da) of the PAO;
 - (3) A practising certificate shall not be issued to the Respondent for 10 months under section 35(1)(db) of the PAO; and
 - (4) The Respondent do pay the costs and expenses of and incidental to the proceedings in the sum of HK\$111,134 under section 35(1)(iii) of the PAO.

Dated the 18th day of June 2021.

Ms. LAM Ding Wan Catrina
(Chairman)

Ms. CHAN Wai Kam Caroline
(Member)

Mr. LEES John Robert
(Member)

Ms. LAI Nadine
(Member)

Mr. CHAN Ting Bond Michael
(Member)