

Leow Kwee Huay v Public Accountants Oversight Committee
[2016] SGHC 180

Case Number : Tribunal Appeal No 1 of 2016
Decision Date : 13 September 2016
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Chia Jin Chong Daniel (Coleman Street Chambers LLC) for the appellant; Lim Jen Hui (Accounting and Corporate Regulatory Authority) for the respondent.
Parties : Leow Kwee Huay — Public Accountants Oversight Committee

Professions – Accountants

Administrative Law – Disciplinary Tribunals

13 September 2016

Judgment reserved.

Choo Han Teck J:

1 This is an appeal against the decision of the respondent, the Public Accountants Oversight Committee (“PAOC”), pursuant to s 52(2)(a) of the Accountants Act (Cap 2, 2005 Rev Ed) to cancel the appellant’s registration as a public accountant. The appellant was an audit manager in the accounting firm of Er & Co at the time of the offences. She had worked at the firm for about 25 years but was only registered as a certified public accountant on 4 September 2008.

2 On 26 July 2010, the Accounting and Corporate Regulatory Authority (“ACRA”) received a complaint from Mr Er Boon Chiew (“Mr Er”), who is the sole proprietor of Er & Co. He alleged that the appellant had committed several instances of misconduct. The PAOC, under the recommendations of the complaints committee, directed for a full inquiry by the disciplinary committee. The disciplinary committee was constituted on 8 November 2012 to inquire into the complaints of Mr Er.

3 In December 2012, ACRA laid five charges before the disciplinary committee. The five charges were brought under s 52(1)(c) of the Accountants Act and alleged that the appellant was guilty of improper conduct rendering her unfit to be a public accountant. The five charges, which pertained to offences committed in the period between 2008 to 2009, were:

(a) The first charge was for accepting the appointment as auditor of JG Homes Pte Ltd and Wynners Home Pte Ltd in the name of public accounting firm Er & Co without its knowledge and authorisation.

(b) The second and third charges were for making unauthorised withdrawals from the account of Er & Co to pay for BizFile transactions for her own clients.

(c) The fourth charge was for appending her signature in the name of Er & Co on the audit reports of JG Realty Pte Ltd and Wynners Homes Pte Ltd without authorisation.

(d) The fifth charge was for applying for a public entertainment and liquor license, as a director of Great Shanghai Entertainment Pte Ltd, from the Singapore Police Force for two

individuals when she knew that they were blacklisted from making such applications.

4 Concurrently, the appellant was separately investigated by the Commercial Affairs Department ("CAD") for crimes of forgery and criminal breach of trust after Mr Er made a complaint to the police. On 1 August 2012, the appellant was charged for 15 charges of forgery and two charges of criminal breach of trust under the Penal Code (Cap 224, 2008 Rev Ed). The appellant claimed trial to the charges. The two charges for criminal breach of trust were subsequently withdrawn by the prosecution. On 29 November 2013, the appellant was convicted on seven charges of forgery and was sentenced to two to three days' imprisonment on those charges with two of the sentences made concurrent. The appellant was thus sentenced to a total of five days' imprisonment. The appellant filed a Notice of Appeal against the conviction. The appeal was heard by Tay Yong Kwang J in the High Court on 14 July 2014 and dismissed.

5 After the conviction of the appellant, ACRA applied to withdraw the second, third and fifth charges against the appellant and to amend the first and fourth charges before the disciplinary committee. The amendments to the two charges were to reflect the criminal conviction of the appellant for forgery in relation to JG Realty Pte Ltd and Wynners Homes Pte Ltd. Both companies were incorporated by Jimmy Lee who sought the appellant's accounting services. The appellant did not object to the application and the two charges were amended from charges brought under s 52(1)(c) to charges brought under s 52(1)(a) of the Accountants Act. Section 52(1)(a) of the Accountants Act states that:

If, at the conclusion of the formal inquiry, the Disciplinary Committee is satisfied that the public accountant has been convicted in Singapore or elsewhere of any offence involving fraud or dishonesty or moral turpitude...the Disciplinary Committee shall report its findings to the [PAOC] and recommend to the [PAOC] to take any of the actions referred to in subsection 2(a) to (f).

6 The disciplinary committee was informed on 6 May 2015 through ACRA that the appellant did not intend to contest the amended charges. At the formal inquiry hearing by the disciplinary committee on 15 September 2015, the disciplinary committee unanimously decided that the appropriate recommendation to the PAOC would be a cancellation of the appellant's registration as a public accountant pursuant to s 52(2)(a) of the Accountants Act. The report and recommendations of the disciplinary committee in relation to the disciplinary proceedings against the appellant were submitted to the PAOC for consideration. The PAOC agreed with the disciplinary committee and issued an order to cancel the appellant's registration as a public accountant pursuant to s 52(2)(a) of the Accountants Act. The appellant filed this appeal pursuant to s 54(1) of the Accountants Act.

7 On appeal, the appellant contends that the PAOC's decision to cancel her registration as a public accountant was manifestly excessive. First, she submits that the PAOC erred in giving insufficient weight to the special facts of this case, namely:

- (a) There was no harm suffered by the victim;
- (b) The wrongful loss in this case was a minor sum of \$7,760, which the victim paid to the appellant for her services, less the value of other services which were provided over two years, or whatever the victim would have paid Er & Co for the audited financial statement;
- (c) There was no evidence that the audited financial statements were inaccurate and no one was put at risk; and
- (d) The forged financial statements were of two dormant exempt companies and hence there

was no market impact.

8 Secondly, the appellant argues that the PAOC erred in giving insufficient weight to the sentences imposed by the court in her criminal proceedings for forgery. Specifically, the appellant relies on the fact that she had been given sentences of two to three days and argues that these were significantly below the sentence of six months' imprisonment usually imposed for the crime of forgery.

9 Thirdly, the appellant submits that the PAOC similarly failed to consider the sentence imposed by the Disciplinary Committee of the Association of Chartered Certified Accountants ("ACCA") in their disciplinary proceedings. The appellant was also a member of the ACCA, which is another professional body for accountants. Disciplinary proceedings were commenced against her by the ACCA after she was convicted of forgery by the criminal court. The ACCA punished the appellant with a severe reprimand and ordered her to pay costs of £2,902 but it did not remove her from its Register of Members. The appellant submits that the PAOC had not given any additional reason beyond what the ACCA had given to justify her striking off. She thus argues that the sentence imposed by the PAOC was manifestly excessive in the light of the ACCA decision.

10 Fourthly, the appellant argues that the PAOC erred in attaching too much weight to the fact of a conviction involving fraud or dishonestly or moral turpitude stated in s 52(1)(a) of the Accountants Act without sufficiently considering the sentencing options available under s 52(2) of the Accountants Act. Finally, the appellant submits that the sentence is not consistent with other precedents dealing with acts of misconduct by professionals that were of equivalent severity.

11 Counsel for the PAOC submits that the cancellation of the appellant's registration as a public accountant is not manifestly excessive and should be upheld. She submits that:

- (a) First, there were no compelling mitigating factors in this case;
- (b) Secondly, the sentence imposed in the criminal proceedings and the censure by ACCA were not relevant in the proceedings before the PAOC; and
- (c) Thirdly, there was no misapprehension or misdirection of facts by the PAOC.

Counsel for the PAOC therefore submits that the sentence imposed was appropriate in the light of the legislative intent of the Accountants Act, the precedent cases and the aggravating factors in the present case.

12 The only issue before me in this appeal is whether the punishment meted out by the PAOC was manifestly excessive given that it is undisputed that the appellant had pleaded guilty to the charges brought forth by ACRA to the disciplinary committee and the PAOC. The present appeal is by way of rehearing and the High Court has broad powers over the decision of the PAOC. The right of appeal to the High Court is provided by s 54(1) of the Accountants Act. Order 55 r 1 and Order 55 r 2 of the Rules of Court (Cap 322, R5, 2014 Rev Ed), which apply to such appeals from disciplinary committees, provide that such an appeal "shall be by way of rehearing".

13 The primary focus of a disciplinary committee is to determine the appropriate professional sanction to be imposed on errant professionals in the light of the offences committed. It has the responsibility of upholding the standard and reputation of the profession. The Court of Three Judges in *Law Society of Singapore v Kurubalan s/o Manickam Rengaraju* [2013] 4 SLR 91 at [48] affirmed the view expressed in *Law Society of Singapore v Tham Yu Xian Rick* [1999] 3 SLR(R) 68 at [22] that –

...because orders made by a disciplinary tribunal are not primarily punitive, considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of the disciplinary jurisdiction than on sentences imposed in criminal cases...

And in *Singapore Medical Council v Kwan Kah Yee* [2015] 5 SLR 201, in the context of the medical profession, the Court of Three Judges held at [58] that –

...[disciplinary tribunals] are primarily concerned with the protection of public confidence and the reputation of the profession. For this reason, mitigating circumstances which weigh in favour of an offender in criminal proceedings are viewed in a qualitatively different light where disciplinary proceedings are concerned.

14 I agree with the respondent's counsel that the level of integrity and honesty of the accountant as well as the manner in which the offences were committed are significant factors in sentencing in disciplinary proceedings. The absence or lack of damage is not necessarily a major consideration because it might not accurately represent the extent of lapse in integrity or honesty of an errant accountant. For example, an accountant can commit extremely dishonest acts which may not result in damage because the acts are discovered in time. That would be considered a serious breach notwithstanding the lack or absence of harm. Nevertheless, substantial harm to victims or the public would justify a more severe sentence. All these factors must be considered on the facts of each case.

15 In the present case, the appellant was dishonest when she signed on audited financial statements knowing that she did not have the proper authorisation to do so. Those financial statements were subsequently submitted by the client to regulatory bodies in Singapore such as the Inland Revenue Authority of Singapore ("IRAS") and the Building and Construction Authority ("BCA"). The appellant's conduct was deemed a case of forgery because she signed it as though it was Mr Er's signature for the firm. Further, the district judge at [88] of his judgment found that there was indeed some monetary loss to the appellant's client and a loss of earnings caused to Er & Co. The district judge found that the amount of loss that could be attributed to the forged audited financial statements was \$7,760 (which was the total amount paid by Jimmy Lee to the appellant) less the amount for legitimate accounting services rendered by the appellant to Jimmy Lee between 2008 and 2009.

16 The ACCA's decision to let the appellant off with just a reprimand is relevant but the appellant cannot rely on it wholly or without qualification in support of her claim that the punishment determined by the PAOC was manifestly excessive. The decision of the ACCA, a foreign organisation, is not binding on this court or the PAOC, of course, since different policy considerations apply in the disciplinary process. Furthermore, ACCA took into account factors that were not before the PAOC. For instance, it considered the fact that the appellant had travelled from Singapore to London for the disciplinary proceedings as a valid mitigating factor. The ACCA disciplinary proceedings also did not consider the fact that the PAOC had decided to cancel the appellant's registration because the ACCA proceedings were heard on 27 August 2015, before the PAOC made its decision to cancel the appellant's registration on 15 January 2016. What is relevant is that the ACCA obviously believed that there is room for some compassion for the appellant on the facts.

17 The cases cited to me by counsel relate to cases of dishonesty from other professions. These cases are not as helpful as every profession has its own ethical duties and responsibilities and the considerations on what makes an appropriate punishment differ between professions. What is important is that the form and impact of dishonesty vary from case to case, but it is obvious that the ultimate sanction need not be imposed just because the misconduct involves dishonesty.

18 There is a broad range of punishment that the PAOC can avail to on s 52(2) of the Accountants Act. They include cancelling the registration or suspending the errant accountant for up to two years. The punishment of cancellation, being the most severe punishment under the Accountants Act, should be reserved for acts that undermine the trust that is placed within the accountant's hands. The disciplinary committee commented on an unreported disciplinary case of Mr Chng Chor Tong, where cancellation was recommended to the PAOC because of the accountant's convictions for tax evasion offences, and correctly observed that the misconduct in that case was more serious than the appellant's conduct here. This is because tax evasion, especially of a large amount of money demonstrates a serious defect in the integrity and honesty of an accountant and a cancellation of registration would be justified.

19 In the present case, although the signature on the audited financial statements was forged, the contents of those statements were not found to be false or inaccurate. The appellant signed the firm's signature on those financial statements, and the forgery was said to be committed because she signed it as Mr Er (who was until then the only person who could sign the statements) would have signed. This is thus more like an unauthorised signature than a forgery as commonly understood. The dishonesty of the appellant is thus limited to her signing the financial statements when she was then not allowed to do, and involved only that one client.

20 The appellant had worked at Er & Co for over 25 years as an unregistered clerk without blemish. To finally be admitted as a certified public accountant and be struck off the register for the offences she committed within a year of finally becoming a certified public accountant appears harsh in the context of the wrong that she did. Her actions should be punished, but the cancellation of her registration is too harsh. I am of the view that the punishment of the maximum period of suspension of two years under s 52(2)(b) is appropriate and sufficient. The appellant will realise, of course, that given the sporting chance to practise as a certified public accountant when the suspension is over, she must not commit any future misconduct or that will truly end her career for good. All professionals must remember, no matter how eager or excited they may be to sign off as a professional, that signature does not just signify the pride of the profession, but also all its encumbering responsibilities.

21 For the above reasons I am of the view that the cancellation of the appellant's registration is manifestly excessive. I therefore allow the appeal and substitute the PAOC's cancellation with a two year suspension under s 52(2)(b) of the Accountants Act. There will be no order as to costs.