

# **COMPLAINT MADE BY SIMBER PRODUCTIONS LIMITED AND SMS PRODUCTIONS LIMITED AGAINST MR DION STAPLE, A REGISTERED PUBLIC ACCOUNTANT**

## **A. THE COMPLAINT**

1. On May 15, 2020 Levy Cheeks, Attorneys for Simber Productions Limited and SMS Productions Limited, wrote to the Registrar requesting that the Board investigate certain breaches by Mr. Dion Staple of the PAB Rules, including
  - Rule 110 (Integrity)
  - Rule 130 (Professional Competence and Due Care)
  - Rule 150 (Professional Behaviour) and
  - Rule 270 (Custody of Client Assets)
2. The letter indicated inter alia that
  - (i) Simber Productions Limited and SMS Productions Limited have common management and control, in that Susan Simes is a shareholder and Managing Director of both companies. Both companies engaged the services of Mr. Dion Staple of DGS Chartered Accountants & Business Advisors (of which Mr. Staple is also the Managing Director) to, among other things, handle the timely filing of tax and corporate returns and payment of taxes.
  - (ii) At all material times, Simber Productions Limited and SMS Productions Limited, delivered to DGS a cheque to satisfy the amount of taxes indicated by the returns prepared by DGS.
  - (iii) Simber Productions Limited and SMS Productions Limited have satisfied all invoices for services rendered by DGS. Therefore, all additional sums paid to DGS are expected to meet the companies' tax liabilities.
  - (iv) On March 7, 2018, Mr. Staple called Ms. Simes to a meeting at his office. In this meeting, Mr. Staple advised Ms. Simes that GCT returns, returns for statutory deductions and assets taxes for Simber Production Limited

and SMS Productions Limited, were not up to date, even though the companies signed all relevant documents for filing and remitted all relevant taxes to DGS.

- (v) On March 16, 2018, Ms. Simes minuted the meeting by way of a letter to Mr. Staple.
- (vi) In response, Mr. Staple wrote to Ms. Simes on March 29, 2018 indicating that there were misdeeds committed at DGS. Mr. Staple claimed that there were cases of misappropriation at his office.
- (vii) Ms. Simes followed up with Mr. Staple consistently regarding rectification and remedial action.
- (viii) In his capacity as her professional advisor, Mr. Staple prepared a letter on June 24, 2018 and requested that Ms. Simes put same on the letterheads of Simber Productions Limited and SMS Productions Limited and submit same to the TAJ. Ms. Simes complied on October 18, 2018. The letters advised the TAJ of the fraud related to the companies' tax filings.
- (ix) Since June 24, 2018 and May 15, 2020, Ms. Simes had not been contacted by Mr. Staple or anyone from his office despite several follow-ups.
- (x) Levy Cheeks wrote to Mr. Staple on October 26, 2018, on behalf of the two companies requesting that action be taken to remedy the situation. To date they had not received a response.
- (xi) Simber Productions Limited and SMS Productions Limited estimate that the total amount of the unpaid taxes for the period for which Mr. Staple was responsible for the filings is \$1,001,023.30. This does not include penalties and interest charges.

## **B. PROCEEDINGS**

- 3. The Registrar brought the matter to the attention of the Board at a meeting on June 26, 2020
- 4. The Board directed that the Registrar
  - (i) Forward a copy of the letter dated May 15, 2020 referred to above to Mr. Staple

- (ii) Invite Mr. Staple to submit to the Board any explanation which he may wish to offer
  - (iii) Inform him that he would in due course be advised of the date when the Board would consider his explanation if any.
5. The Registrar wrote to Mr. Staple on August 12, 2020 in conformity with (i) to (iii) above.
6. Mr. Staple did not reply to the letter of August 12, 2020.
7. On September 28, 2020 the Registrar informed Mr. Staple via email that the Investigations Committee of the Board was inviting him to a Virtual meeting at 6.00 p.m. that same day to hear from him any explanation which he may wish to offer regarding the complaint contained in the letter dated May 15, 2020.
8. Mr. Staple attended the meeting and provided his explanations. The Complainant also attended a meeting with the Committee and provided her explanations.
9. On October 29, 2020 the Board having considered the allegations made by the complainant and the explanations offered by Mr. Staple determined that it was of the opinion that a prima facie case was shown for Mr. Staple to answer to. The Board accordingly fixed January 7, 2021 as the date for the holding of a Disciplinary Enquiry.
10. On December 8, 2020 the Registrar wrote to Mr. Staple and advised him that the Board was of the view that it ought to conduct a disciplinary hearing to fully ventilate the issues outlined in the May 15, 2020 letter in order to determine whether the complaints received that form the bases of the charges against him have been proved. That letter advised Mr. Staple that the Board had set January 7, 2021 for the Disciplinary Enquiry.

11. Mr Staple requested the Board to defer the Enquiry as he wished to take the matter to the Supreme Court to get a ruling as to the validity of the Board's proceedings.
12. The Board refused the request and the Enquiry commenced on January 7, 2021 in keeping with the provisions of Section 25 of the Public Accountancy Regulations. This decision was communicated to Mr. Staple. The Enquiry continued on January 14, 2021.

### **C. APPLICATION FOR AN INTERIM INJUNCTION**

13. On January 14, 2021, Mr. Staple filed an application in the Supreme Court seeking an interim injunction restraining the PAB from embarking on any enquiry in respect of the charges framed by the Board until the documentary evidence to support these charges are provided, which includes all documents to support the claim that a prima facie case has been established against him.
14. Members noted that the grounds of Mr. Staple's application were as follows:
  - (a) the actions of the Public Accountancy Board (PAB) are in breach of his constitutional right to a fair hearing by an independent and impartial tribunal of the Board's refusal to provide him with documentary evidence in support of the charges as framed by the PAB.
  - (b) the PAB acted *ultra vires* in particularizing grounds in support of the charges against him when it was the Complainant who should do so in writing
  - (c) the PAB acted in breach of the principles of natural justice.
15. On January 15, 2021 at the first meeting of the Court conducted by Video Conference, the President acting on behalf of the Board and after consultation

with counsel, Mr. Emile Leiba of DunnCox, acquiesced to the request made by the Judge, Ms. Tara Carr (Ag) that the Board defer any further Hearing Meetings until she had the opportunity to hear and rule on the request of Mr. Staple.

#### **D. COURT HEARING OF THE APPLICATION FOR AN INTERIM INJUNCTION**

16.The matter was heard in the Supreme Court on January 18 and 29, 2021.

17.On February 12, 2021, Ag. Justice Tara Carr in handing down her decision indicated that

- (i) all steps as per the regulations were complied with by the Public Accountancy Board
- (ii) Mr. Staple acted to his detriment in not participating in the hearing by providing his own documentation in response to the allegations
- (iii) the material as presented to the Supreme Court does not disclose a case which the court considers to be one that has any real prospect of success.

Ag. Justice Carr ruled that

- (a) she could not find that there was a serious matter to be tried
- (b) that Mr. Staple having not been able to pass the first hurdle of the test must fail in his application for an interim injunction.
- (c) the application for an interim injunction was refused.
- (d) costs to the Public Accountancy Board were to be agreed or taxed.

#### **E. CONTINUATION OF THE PROCEEDINGS**

18.In light of the ruling by the Court, the Board met on February 12, 2021 and agreed, in keeping with the provisions of Regulation 32(1), to consider and determine in relation to each charge which, if any, of the charges had been proved.

19. Members recalled the first charge which reads as follows:

1. “Whether in the performance of his professional duties, Mr. Staple’s conduct amounts to gross negligence or gross incapacity”

The Board having examined all the evidence before it, concluded that the evidence that was led and heard was not sufficient to prove this charge. The Board unanimously agreed that perhaps there may have been some negligence on the part of Mr. Staple/DGS, but such negligence did not rise to the level of gross negligence as stated in the charge.

20. Members then moved to consider the second charge which reads as follows:

2. “Whether in the performance of his professional duties, Mr. Staple is guilty of an act, default or conduct discreditable to the profession.”

21. The Board noted as follows:

(i) On page 5 of the Rules in the second paragraph it is stated: “These Rules of Professional Conduct recognize that the objectives of the accountancy profession are to work to the highest standards of professionalism, to attain the highest levels of performance and generally to meet the public interest requirement”.

(ii) On Page 7 of the Rules dealing with Compliance it is clearly stated in the second paragraph: “Registrants are bound not merely by the terms but also the spirit of the Rules of Professional Conduct. The fact that particular behaviour or conduct does not receive a specific mention within the Rules of Professional Conduct does not prevent it from amounting to a breach of ethics”.

(iii) Rule 130.1 which reads as follows

The principle of professional competence and due care imposes the following obligations on Registrants

- To maintain professional knowledge and skill at the level required to ensure that clients receive competent professional service and
- To act diligently in accordance with applicable technical and professional standards when providing professional services.

(iv) Rule 150.1 The principle of professional behaviour imposes an obligation on all registrants to comply with relevant laws and regulations and avoid any action or omission which the Registrant knows or should know may discredit the profession. This includes actions or omissions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the Registrant at that time would be likely to conclude adversely affects the good reputation of the profession.

(v) Rule 150.3 Registrants must conduct themselves with courtesy and consideration towards all they come into contact with during their professional work, including clients, other Registrants, staff, third parties and the general public.

(vi) Rule 150.5 An area where Professional Behaviour is particularly important and expected is (c) resolving disputes with clients.

(vii) Section 5 B – Professional liability of accountants and auditors

- The Registrant shall ensure he retains a copy of the engagement letter which has been signed by the client

## **F. FINDINGS**

22. (a) Mr. Staple did not act diligently in accordance with the requisite technical and professional standards when performing professional activities for SMS Productions Ltd and Simber Productions Ltd. This was evidenced from the absence of the requisite engagement letters for the period under review and there was no evidence of reconciliation of the client's payments when made. Items 3,5,6,7 and 8 of the Statutory Declaration of Susan Simes dated December 23, 2020 refer.

(b) Mr. Staple did not behave in a professional manner – in this particular matter his work was not of the highest standards of professionalism, nor the highest level of performance nor did it meet the public interest requirement. Items 10 and 11 of the Statutory Declaration signed by Susan Simes and dated December 23, 2020 refer. In addition, there was clearly a lack of adequate supervision in overseeing the provision of the required services.

(c) Mr. Staple did not account to his client for her assets – cheques given to his employees and which should have been lodged to the TAJ for the benefit of his client were lodged to the account of another taxpayer altogether. Rule 150.1 refers. Mr. Staple provided Miss Simes with a table that outlined how the cheques had in fact been paid and a review of same showed that some payments were credited to the account of a taxpayer other than Miss Simes's companies. The default therefore was the lack of appropriate action by Mr. Staple in trying to remedy this glaring error with the Tax Authorities, save for the preparation of initial letters from the client to the Tax Authorities. A reasonable person would have required more from Mr. Staple in this regard, with a view to reconciling the client's accounts with the Tax Authorities, in particular in circumstances where an inaccurate TRN was recorded on the cheques of the client, which was not recorded by the client herself. In addition, there was no evidence that the original tax receipts or copies thereof were sent by Mr. Staple to the client in respect of cheques paid to the Collector of Taxes.

(d) Mr. Staple did not comply with Rules 150.1 and 150.3. The discrepancy between cheques delivered by the client and the eventual payments made by Mr. Staple to the Tax Authorities with the wrong TRNs recorded thereon, should have provoked Mr. Staple to have acted more resolutely to rectify the error with the Tax Authorities.

(e) Mr. Staple did not resolve the dispute with SMS Productions and Simber Productions regarding the settlement of the Tax liabilities as required by Rule 150.5. This is so despite the firm's admission of its liability as evidenced in the emails over the period June 24 and July 18, 2018 from Alicia Dyer, (an employee of DGS, Mr. Staple's company) to Mr. Staple. Item 10 of the Statutory Declaration dated December 23, 2020 refers. Exhibit SP 8 – Demand Notice dated

August 9, 2018 shows that Simber Productions owed the TAJ \$1,111,713 for the period 2015 to 2018.

The Board finds that Miss Simes, on behalf of her companies was a witness of truth in so far as the matters set out in paragraph 22 are concerned. These facts were also, in the main, evidenced by documents. Therefore, the Board having come to these findings and after reviewing the Regulations, unanimously found Mr. Staple guilty of the charge that in the performance of his professional duties, he is guilty of such actions, default and conduct discreditable to the profession.

#### **G. MITIGATING CIRCUMSTANCES**

23. The Board agreed that in accordance with the provisions of Regulation 33 (1), before considering and determining which of the disciplinary powers conferred on it by the Act will be exercised, Mr. Staple should be invited to address the Board on any mitigating circumstances. Members agreed that Mr. Staple should be invited to attend a meeting of the Board for this purpose on February 25, 2021. However, the meeting was postponed for two weeks at the request of Mr Staple's Attorney, Mr Bennett who indicated that he was not well and would prefer to be in attendance when Mr Staple was presenting the mitigating circumstances. The meeting was postponed for a second time, at the request of Mr Bennett, for a further seven days. A new date of March 18, 2021 was then set by the Board for the meeting.

24. Mr. Staple and his attorney, Mr. Marlon Bennett, attended the Virtual meeting held on Thursday March 18, 2021. Mr. Staple made a number of accusations against members of the Investigations Committee and accused the Board of corruption among other things. Mr. Bennett attempted to present mitigating circumstances on behalf of Mr. Staple but was stopped from doing so by Mr. Staple on his behalf. Mr. Staple was adamant that he had no remorse, as he had done nothing wrong.

#### **H. DECISION**

25. The Board has determined that, having regard to the provisions of Section 13 of the Public Accountancy Act

(a) the registration of Mr. Staple is to be suspended for twelve (12) months effective from March 31, 2021.

(b) Mr. Staple is to pay to the Board the sum of Two million five hundred thousand dollars (\$2.5 million) in respect of the costs and expenses of and incidental to the enquiry.

(c) Mr. Staple is to be notified in writing of his right of appeal of the decision of the Board as conferred by section 14 of the Public Accountancy Act.

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**March 30, 2021**

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