

Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 21 December 2016

Case Number: D-1146

Member: Michael Laurence Johnson CA of Victoria

Hearing Date: 21 December 2016

Tribunal: David Fairlie (Chair)
Ross Gavin FCA
Bronwyn Morris FCA

Legal Adviser: Zoe Taylor

Counsel: Jessica Vartuli for the Professional Conduct Committee (PCC)
The Member attended the hearing via teleconference

Case description:

1. Member failed to have adequate Professional Indemnity Insurance.
2. Member failed to respond to correspondence.

1. DECISIONS

1.1 DECISION ABOUT THE PCC'S ALLEGATIONS WHICH ARE SET OUT IN FULL IN SCHEDULE 1

At a hearing of the Disciplinary Tribunal attended by the Member via teleconference, the Member admitted the allegations and the Tribunal found them to be established.

1.2 DECISION ABOUT SANCTIONS

The Tribunal considered that the appropriate sanction in these circumstances was that the Member be reprimanded.

1.3 DECISION ABOUT COSTS SANCTION

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$5,000 for the costs and expenses of the proceedings (paragraph 10.12(l) of By-Law 40). No GST is payable.

The PCC sought full costs of \$8,060.

The Tribunal considered that payment of the amount of \$5,000 was appropriate in view of the Member's financial and personal circumstances.

1.4 DECISION ABOUT PUBLICATION

This decision will not take effect while the Member remains entitled to appeal.

The Tribunal will publish its decision, mentioning the Member's name and locality, on the website and in the journal of Chartered Accountants ANZ (paragraphs 12.3 and 12.4 of By-Law 40).

1.5 NOTIFICATION TO OTHER BODIES

The Member advised that he holds no registrations or memberships and, as a consequence, no bodies will be notified of this decision.

2. RIGHT OF APPEAL

The Member may, within 21 days after the notification of the written decision with reasons to the Member of this Tribunal's decision, appeal in writing to the Appeals Tribunal of Chartered Accountants ANZ against the decision (paragraph 11.1 of By-Law 40).

While the Member remains entitled to appeal, or while any such appeal by the Member awaits determination by the Appeals Tribunal, the following decisions shall not take effect:

- Decision about the PCC's allegations
- Decision about sanctions
- Decision about costs sanction.

The PCC may, within 21 days after notification of the written decision with reasons to the PCC of this Tribunal's decision, appeal in writing to the Appeals Tribunal of Chartered Accountants ANZ against the decision (paragraph 11.2 of By-Law 40).

3. REASONS FOR DECISION

3.1 ALLEGATION 1

- The Tribunal considered the material submitted by the PCC which indicated that the Member had failed to hold a contract of professional indemnity insurance for the 2015 year which at least met the minimum requirement of \$2 million as set out in Regulation CR2A.
- The Member's Liability Capping Questionnaire, submitted on 30 November 2015, stated that the Member had cover less than \$2 million.
- Having considered the material and the admission by the Member, the Tribunal determined that the allegation was established.

3.2 ALLEGATION 2

- The Tribunal considered the material submitted by the PCC which indicated that the Member had failed to respond to correspondence from Chartered Accountants ANZ sent to him between 13 January 2016 and 11 August 2016 concerning the information provided in his Liability Capping Questionnaire and his professional indemnity insurance arrangements.
- Having considered the material and the admission by the Member, the Tribunal determined that the allegation was established.

4. REASONS FOR SANCTIONS

- The PCC submitted that the Member should be severely reprimanded and that the costs of the proceedings be paid by the Member because:
 - although not practising at the relevant time, holding a Certificate of Public Practice without sufficient professional indemnity insurance is a serious offence
 - the Member was made aware of the requirements for public indemnity insurance and subsequently failed to meet those requirements while holding a Certificate of Public Practice
 - failure to respond to numerous communications from Chartered Accountants ANZ is a serious matter
 - the costs of the proceedings could have been avoided had the Member responded to Chartered Accountants ANZ in a timely manner.
- The Member apologised for his failure to respond until the day of the hearing and submitted that:
 - his insurance had been adequate for the prior year and he had not realised that the minimum amount of cover had changed when completing the Liability Capping Questionnaire in November 2015
 - he is no longer practising and has not done so since September 2014
 - his personal and family circumstances over the past four years have been extremely difficult and impacted the time available to him to respond to correspondence from Chartered Accountants ANZ
 - his financial circumstances would adversely affect his ability to pay the costs sought by the PCC.
- The Tribunal determined that the Member be reprimanded and that the Member be required to pay costs of \$5,000 for the following reasons:

- holding a Certificate of Public Practice without adequate professional indemnity insurance is a serious matter and exposes the public to possible loss if a claim is made against an inadequately insured member
- these proceedings could have been avoided had the Member responded to the requests for details of his professional indemnity insurance arrangements
- the Tribunal took into account the Member's financial and personal circumstances in determining the amount of costs payable by the Member.



Chair
Disciplinary Tribunal

SCHEDULE 1 - THE PCC'S ALLEGATIONS

It is alleged that while a member of Chartered Accountants Australia and New Zealand (Chartered Accountants ANZ) the Member is liable to disciplinary action in accordance with:

1. By-Law 40(2.1)(h), in that whilst holding a Certificate of Public Practice the Member did not have, or ensure that his practice has, a contract of professional indemnity insurance which is valid and binding and meets at least the minimum requirements set out in Regulation CR2A - Professional Indemnity Insurance, in breach of paragraph 2.19 of Regulation CR2 - Certificates of Public Practice (previously paragraph 713 of Regulation CR2).
2. By-Law 40(2.1)(i), in that the Member failed to comply with a reasonable and lawful direction by an officer of Chartered Accountants ANZ acting within the powers conferred by the By-Laws of Chartered Accountants ANZ, by failing to respond to the correspondence sent to him or enquiries made by Professional Conduct and Complaints on 13 January 2016, 8 February 2016, 8 March 2016, 14 April 2016, 21 April 2016, 10 May 2016, 3 June 2016, 21 June 2016, 20 July 2016, 21 July 2016, 27 July 2016 and 11 August 2016.

SCHEDULE 2 - RELEVANT BY-LAWS

40. Except as provided by By-Law 41, the By-Laws in this Section 5, including the following paragraphs of this By-Law 40, do not apply to Members who are also members of NZICA in respect of disciplinary matters over which NZICA has jurisdiction and which relate to the practice of the profession of accountancy by NZICA's members in New Zealand. Nothing in this By-Law 40 excludes from the operation of this Section 5, conduct of a Member:

- (a) who was, but is no longer, a member of NZICA; or
- (b) who has subsequently also become a member of NZICA.

Except as provided by By-Law 41, no Member shall be sanctioned under both this Section 5 and NZICA Rule 13 in respect of the same conduct.

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2 Disciplinary action

2.1 A Member is liable to disciplinary sanctions under these By-Laws if (whether before or after the date of adoption of this By-Law) that Member:

...

- (h) has committed any breach of the Supplemental Charter, these By-Laws or the Regulations, any pronouncements issued by the Accounting Professional and Ethical Standards Board, Australian Accounting Standards Board and Auditing and Assurance Standards Board (or their successor entities) including the Code of Ethics, or any applicable pronouncements, instruments, technical or professional standards or guidance issued by any similar body whether in Australia or in a foreign jurisdiction;
- (i) has failed to comply with any reasonable and lawful direction of any officer or organ of CA ANZ acting within the powers conferred by CA ANZ's Supplemental Charter, these By-Laws or the Regulations and which relates to a matter concerning the good order and management of CA ANZ;

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