



NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS ACT 1996

IN THE MATTER of the New Zealand Institute of Chartered Accountants Act 1996 and the Rules made thereunder

AND

IN THE MATTER of **Alistair Rickard King**, Non-Member Principal, of Wanaka

DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS 23 October 2012

Hearing: 23 October 2012

Tribunal: Mr RJO Hoare FCA (Chairman)
Mr GR Leech FCA
Mr DP Scott CA (retired)
Ms A Hauk-Willis (Lay member)

Legal Assessor: Mr Bruce Corkill QC

Counsel: Mr Terence Sissons for the prosecution
Mr Andrew Hitchcock for Mr King

At a hearing of the Disciplinary Tribunal held in public at which Mr King was in attendance by videoconference and represented by counsel he admitted the particulars and pleaded guilty to the charges.

The charges and particulars as laid were as follows:

Charges

THAT in terms of the New Zealand Institute of Chartered Accountants Act 1996 and the Rules made thereunder, and in particular Rule 21.30 Mr King is guilty of:

1. Breaching the Institute's Rules and/or Code of Ethics, in particular:
 - a. Rule 11 – *Compliance with Technical and Professional Standards* of the Code of Ethics, in that you did not comply with Paragraphs 17 and/or 18 of SES-1 *Performance of Insolvency Engagements*; and/or
 - b. Paragraphs 67 to 70 inclusive of the Code of Ethics

Particulars

IN THAT

In Mr King's role as a Receiver of William Hill Winery Limited ("WHWL") and in relation to a complaint he:

- 1) Accepted an appointment as receiver of WHWL when he knew or ought to have known that there was a potential for a conflict to arise between the interests of the secured creditor, the Southland Building Society ("SBS") in whose interests he was required to act, and the interests of his existing client Mr Y, in circumstances where safeguards were not and/or could not be employed to manage the risk of adversely affecting either client.
- 2) During the course of the insolvency engagement he failed to withdraw immediately from the engagement when he knew or ought to have known that the interests of SBS and Mr Y were in direct conflict, in particular on or about 22 June 2009, when he wrote to Mr Y advising him that he no longer had the right to deal with the wine and barrels in WHWL's possession because he had a security interest in that property that ranked behind a security interest held by SBS.

DECISION

Mr King is a relatively new but enthusiastic practitioner who failed to identify and/or manage a conflict of interest when accepting an appointment as receiver. There is, however, no evidence of lack of fitness to practise or lack of integrity on Mr King's part.

PENALTY

Pursuant to Rule 21.31 (k) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders you be **Alistair Rickard King** be censured.

COSTS

The Professional Conduct Committee seeks full costs of \$26,488.

The Tribunal's general approach is that the starting point is 100% of costs, noting that the Institute already bears the cost of abandoned investigations and costs up to the Professional Conduct Committee's decision to hold a Final Determination.

There are no mitigating factors such as excessive or unnecessary expenses incurred or demonstrated evidence of hardship (inability to pay).

Pursuant to Rule 21.33 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that **Alistair Rickard King** pay to the Institute the sum of \$26,488 in respect of the costs and expenses of the hearing before the Disciplinary Tribunal and the investigation by the Professional Conduct Committee. No GST is payable.

SUPPRESSION

Pursuant to Rule 21.52 (b) of the Rules of the New Zealand Institute of Chartered Accountants the Tribunal orders that the identity of the client be suppressed.

PUBLICATION

In accordance with Rule 21.35 of the Rules of the New Zealand Institute of Chartered Accountants the decision of the Disciplinary Tribunal shall be published on the Institute's website and in the *Chartered Accountants' Journal* with mention of Mr King's name and locality.

Noting that publicity is in itself a substantial penalty for a practitioner the Tribunal does not make an order for additional publicity.

RIGHT OF APPEAL

Pursuant to Rule 21.41 of the Rules of the New Zealand Institute of Chartered Accountants which were in force at the time of the original notice of complaint, Mr King may, not later than 14 days after the notification to him of this Tribunal's exercise of its powers, appeal in writing to the Appeals Council of the Institute against the decision.

No decision other than the direction as to publicity and the suppression of the client's name shall take effect while Mr King remains entitled to appeal, or while any such appeal by him awaits determination by the Appeals Council.

A handwritten signature in black ink, appearing to read 'R J O Hoare', with a stylized flourish extending to the right.

R J O Hoare
Chairman
Disciplinary Tribunal