

Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 21 September 2018

Case Number:	D-1188
Member:	Jia Ge CA of NSW
Hearing Date:	18 September 2018
Tribunal:	David Fairlie (Chair) Richard Rassi FCA Stewart Leslie FCA
Representation:	Michael Bradley for the Professional Conduct Committee (PCC) The Member neither appeared nor was represented at the hearing
Case description:	<ol style="list-style-type: none">1. Member subject of an adverse or unfavourable finding in relation to his professional or business conduct, competence or integrity by the Mortgage and Finance Association of Australia.2. Member bankrupt.

1. CONTACT WITH MEMBER

The Member did not attend the hearing of the Disciplinary Tribunal. The Member was served with the Notice of Disciplinary Action on 15 August 2018 by email sent to the last email address from which the Member had corresponded.

On 15 August 2018 the Member responded from that same email address to the Tribunal Secretary confirming receipt of the served documents. In his email the Member also advised *“As per my previous email [sent to the PCC on 13 August 2018], I will not follow the order and will not attend the meeting”*.

On 14 September 2018 the Tribunal Secretary sent an email to the Member at the same address informing him that the hearing had been moved from 17 to 18 September 2018. No response from the Member was received to that email however a Microsoft Outlook relay receipt was received.

The Tribunal was satisfied that the Member had notice of the hearing and that the Tribunal would be considering whether to impose a sanction on the Member on that day, and accordingly determined the hearing should proceed in the absence of the Member.

2. DECISIONS

2.1 DECISION ABOUT THE PCC’S ALLEGATIONS WHICH ARE SET OUT IN FULL IN SCHEDULE 1

At a hearing of the Disciplinary Tribunal not attended by the Member, the Tribunal found that the PCC had established allegations 1 and 2.

2.2 DECISION ABOUT SANCTIONS

The Tribunal considered that the appropriate sanction in these circumstances was that the Member’s membership be terminated and that the Member’s name be removed from the Registers on which it appears and that NZICA be advised of that termination and removal.

2.3 DECISION ABOUT COSTS SANCTION

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$4,125 for the full costs and expenses of the proceedings (paragraph 10.12(l) of By-Law 40). No GST is payable.

2.4 DECISION ABOUT PUBLICATION

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

In accordance with paragraphs 12.3 and 12.4 of By-Law 40, the Tribunal directed that:

- its decision with reasons, mentioning the Member’s name and locality, be published on the website of Chartered Accountants ANZ (the **Published Decision**)
- a notice mentioning the Member’s name and locality with a web address for the Published Decision be published in the Chartered Accountants ANZ digital and print magazine “Acuity”.

2.5 NOTIFICATION TO OTHER BODIES

The Member holds registrations and/or membership with the Australian Securities and Investments Commission which will be notified of this decision.

3. 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).

4. BACKGROUND

The Tribunal was provided with:

- an extract from the National Personal Insolvency Index dated 18 June 2018 which showed that the Member was made bankrupt on 19 September 2017 and, as of the date of the extract, was undischarged (**NPSI extract**)
- a decision of the Mortgage & Finance Association of Australia (**MFAA**) which stated:

"The MFAA Tribunal has expelled Mr Jia Ge of NSW from MFAA membership following a determination by the Tribunal that the Member had been guilty of 'misconduct' in breach of the MFAA Disciplinary Rules in that he had fabricated payslips in support of four loan applications submitted to a lender.

The expulsion is effective from 8 September 2017."

(MFAA Decision).

5. REASONS FOR DECISION

5.1 ALLEGATION 1

- The PCC submitted that the fact of bankruptcy was a proforma breach of By-Law 40(2.1)(j).
- The Tribunal noted that the Member, in his email to the PCC sent 25 July 2018, wrote:

"As per our last communication, I will not provide any feedback for CA's 2 requests."
- The Tribunal considered the NPSI extract and determined that the allegation was established because the Member had suffered an *Insolvency Event* in breach of By-Law 40(2.1)(j).

5.2 ALLEGATION 2

- The PCC submitted that:
 - the MFAA Decision revealed that the Member had been expelled by the MFAA for falsifying payslips in support of four loan applications
 - the MFAA's finding adversely reflected on the Member's conduct, integrity and competence and was self-evidently a breach of By-Law 40(2.1)(e).
- The Tribunal noted that the Member, in his email to the PCC sent 25 July 2018, wrote:

"As per our last communication, I will not provide any feedback for CA's 2 requests."
- The Tribunal considered the MFAA Decision and determined that the allegation was established because the Member has been the subject of an adverse finding in relation to his professional or business conduct, competence or integrity by a professional body, in breach of By-Law 40(2.1)(e).

6. REASONS FOR SANCTIONS

- The PCC submitted that the only appropriate sanction in relation to allegation 2 was for the Member's membership to be terminated. The PCC noted that:
 - the Member had not challenged the allegations
 - it was unlikely the Member would oppose termination of membership as he had previously sought to resign from Chartered Accountants ANZ. That resignation was rejected by the Board pursuant to By-Law 19
 - the Member subsequently stated in emails sent 18 July, 25 July, 13 August and 15 August 2018 that he wanted his membership terminated.
- The Member submitted in an email to the PCC sent 18 July 2018:

"...Waiting for CA to expell me and print my name on the mag:)" (sic).
- The Tribunal accepted that termination was the appropriate sanction. In particular the Tribunal had regard to:
 - the seriousness of the conduct leading to the MFAA Decision
 - the failure of the Member to make any submissions to the Tribunal in relation to the allegations or to provide any evidence, including from referees, to explain any mitigating or extenuating circumstances
 - the Member was advised by the PCC on 13 August 2018 that:

"...The PCC considers that the appropriate sanction is for [the Member's] membership of Chartered Accountants ANZ to be terminated and will make this submission to the Disciplinary Tribunal at the appropriate time..."
 - and responded to the PCC:

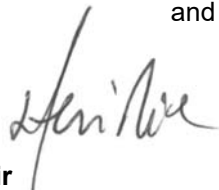
"...Please start the termination procedures straight away in order to save Institute's costs..." (sic).

7. REASONS FOR COSTS SANCTION

- The PCC submitted that the Member should bear the full costs of the proceedings because the costs were incurred as a result of the Member's own actions and had been properly incurred by the PCC in bringing the matter to the Disciplinary Tribunal.

- The Member submitted in an email dated 13 August 2018:

“...Please start the termination procedures straight away in order to save institute’s costs. I will NOT follow any order you put on me incl attending the meeting. And I ganrantee you that the institute will not able to cover a cent from me, so please save as much as you can.” (sic).
- The Tribunal determined that the Member should bear the full costs of the proceedings in the sum of \$4,125 because, having regard to the terms of Regulation 8.12:
 - the allegations were established by the PCC and the Member’s conduct was serious
 - the Member did not comply with the provisions of Section 5 of the By-Laws and Regulation CR8, Disciplinary Procedures during the conduct of the disciplinary process
 - the amount was reasonable in the circumstances, given that suspension or termination of membership can only be determined by the Disciplinary Tribunal, and the PCC had properly referred the matter in accordance with the By-Laws.



**Chair
Disciplinary Tribunal**

SCHEDULE 1 - THE PCC'S ALLEGATIONS

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

1. By-Law 40(2.1)(j), in that on 19 September 2017 the Member became bankrupt; and
2. By-law 40(2.1)(e), in that the Member has been the subject of an adverse or unfavourable finding in relation to his professional or business conduct, competence or integrity:
 - a. by a professional body, namely the Mortgage and Finance Association of Australia (**MFAA**);
 - b. as a result of the determination on 8 September 2017 by the MFAA that you had been guilty of misconduct in breach of the MFAA Disciplinary Rules as you had fabricated pay slips in support of four loan applications submitted to a lender;
 - c. and were thereby expelled from membership of the MFAA.

SCHEDULE 2 - RELEVANT BY-LAWS

Resignation

19. Any Member may resign his or her Membership by sending his or her resignation in writing together with all moneys owing by him or her to CA ANZ, whether for subscription, fee or other amount, to the Chief Executive Officer:
- (a) Provided that no resignation shall take effect unless and until it has been accepted by the Board. The Board may decline to accept the resignation of a Member who is the subject of disciplinary action or professional conduct proceedings ...
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.

...

40(2) Disciplinary action

40(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:

...

- (e) has been the subject of an adverse or unfavourable finding in relation to that Member's professional or business conduct, competence or integrity by any court of law, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry in any jurisdiction in Australia or elsewhere;

...

- (j) suffers an Insolvency Event;

...

40(3) Disclosure Events and Notification Events

40(3.1) A Disclosure Event occurs in relation to a Member when:

...

- (b) that Member suffers an Insolvency Event.

40(6) Interim or Final Decision

40(6.1) During an investigation, the Professional Conduct Committee may decide to:

...

- (e) refer the complaint directly to the Disciplinary Tribunal (without convening a Case Conference) where it is satisfied that:
- (i) a Disclosure Event has occurred;

Registered Address

- 143.** The Registered Address of a Member to be entered in the General Register and the relative Regional or Overseas Register shall be the Member's place or principal place of business for the time being or, if a Member has no place of business, his or her place of residence for the time being or such other place as the Member may advise.

Change of Address

- 144.** Every Member of CA ANZ shall forthwith notify the Chief Executive Officer of any change required to be made in his or her Registered Address for the purpose of the preceding By-Law.