



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 **Imran Mohammed Kamal**, Chartered Accountant, of **Porirua**

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND
INSTITUTE OF CHARTERED ACCOUNTANTS
10 November 2011**

Hearing: 8 - 10 November 2011

Tribunal: Mr RJO Hoare FCA (Chairman)
Prof DJD Macdonald FCA
Mr MJ Whale FCA
Ms A Hauk-Willis (lay member)

Legal Assessor: Mr B Corkill QC

Counsel: Mr T Sissons for the prosecution
Mr A McIntyre and Mr B Sanders for Mr Kamal

At a hearing of the Disciplinary Tribunal held in public at which the member was in attendance and represented by counsel the member admitted particulars (1)(b) and (1)(c) and denied particulars (1)(a), (1)(d), (1)(e), (2) and (3) and pleaded not guilty to charges (1) and (2).

The amended charges and particulars 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 the member is guilty of:

- (1) (not guilty)
- (2) Breaching the Institute's Code of Ethics

Particulars

In his role as a Chartered Accountant in public practice and in relation to his dealings with Mr X and/or Ms Z, the member:

- (1) Behaved in a manner which was inconsistent with the good reputation of the profession and/or engaged in conduct which might bring discredit to the profession, in breach of the Fundamental Principle of Professional Behaviour and/or Rule 14 of the Code of Ethics, in that he:
 - (a) (not proven)
 - (b) Linked Mr X and/or Ms Z and/or their entities to his tax agency listing on or about 30 July 2010, when he did not have written authority to do so; and/or
 - (c) Failed to complete the procedures for superseding another member in public practice prior to accepting the engagement, in that he failed to ascertain from Mr X and Ms Z's existing Chartered Accountant, whether there were professional matters which he should be aware of before accepting the appointment, as required by paragraph 170 (c) of the Code of Ethics; and/or
 - (d) After issuing invoices to Mr X and Ms Z's entities dated 10 August 2010, he attempted to recover his fees in an unprofessional manner, in that he issued statutory demands dated 13 August 2010 and/or 19 August 2010 against their entities, when the invoices were not due at the time of the first demand and/or he knew the debts were in dispute; and/or
 - (e)
 - (i) (not proven)
 - (ii) (1) (not proven)
 - (ii) (2) (not proven)
 - (iii) (not proven)
- (2) (not proven)
- (3) Commenced working on Mr X and/or Ms Z's accounts and/or tax affairs, without ensuring there was clear understanding of the terms of the engagement, in breach of paragraph 34 of SES-2 Compilation of Finance Statements and/or Rule 11 of the Code of Ethics.

DECISION

This case involves a dispute about whether, when and on what basis the member was engaged to carry out work for the complainant, Mr X and his wife Ms Z, who are experienced business people. Ms Z is also a member of the Institute. The complainant claimed to have withdrawn from the engagement and declined to pay the fees charged of about \$3,000. From there on the dispute escalated and the relationships deteriorated to the point where:

- Statutory demands were issued within days of issue of the invoices
- A facilitation meeting was held
- There have been two appearances before the Disputes Tribunal
- Two complaints have been lodged with the Institute, one from each party
- There have been numerous allegations

This is a commercial dispute which could and should have been resolved long ago.

The Tribunal heard from eight witnesses over two days.

There was considerable conflict between the evidence of Mr X and Ms Z, and the member. The Tribunal did not find any of these three witnesses entirely credible. As to the particulars: -

Particular (1)(a)

(not proven)

Particulars (1)(b) and (1)(c) were admitted as to fact. The Tribunal finds that this is conduct which might bring discredit to the profession.

Particular (1)(d)

(1) *Behaved in a manner which was inconsistent with the good reputation of the profession and/or engaged in conduct which might bring discredit to the profession, in breach of the Fundamental Principle of Professional Behaviour and/or Rule 14 of the Code of Ethics, in that you:*

(d) After issuing invoices to Mr X and Ms Z's entities dated 10 August 2010, you attempted to recover your fees in an unprofessional manner, in that you issued statutory demands dated 13 August 2010 and/or 19 August 2010 against their entities, when the invoices were not due at the time of the first demand and/or you knew the debts were in dispute;

The statutory demands were premature as the invoices were not yet due. Further, Mr Kamal had knowledge of disputes by reason of the phone call to his office manager of 11 August 2010. Mr Kamal also had offered mediation on the same date, prior to issuing the statutory demands. Having regard to the decision of the Court of Appeal in Link Electrosystems the Tribunal finds this to be unprofessional behaviour.

Particular (1)(e)(i)

(not proven)

Particular (1)(e)(ii) (1)

(not proven)

Particular (1)(e)(ii)(2)

(not proven)

Particular (1)(e)(iii)

(not proven)

Particular (2)

(not proven)

Particular (3)

- (3) *Commenced working on Mr X and/or Ms Z's accounts and/or tax affairs, without ensuring there was clear understanding of the terms of the engagement, in breach of paragraph 34 of SES-2 Compilation of Finance Statements and/or Rule 11 of the Code of Ethics.*

The Tribunal finds this particular proven on the evidence.

On the basis of the findings as to the particulars, the Tribunal finds the member guilty of breaching the Code of Ethics (Fundamental Principle of Professional Behaviour, Rules 14 and 11, and paragraph 34 of SES-2) but that his actions fall just short of conduct unbecoming an accountant.

The Tribunal notes that this case highlights the need for practitioners to obtain precise and explicit agreement as to engagement terms, and to avoid allowing disputes to escalate in this fashion especially through the inappropriate use of statutory demands.

PENALTY

Pursuant to Rule 21.31 (k) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal ordered that **Imran Mohammed Kamal** be censured.

OTHER

The PCC sought orders that the member waive his invoices pursuant to Rule 21.31 (i) of the Rules of the New Zealand Institute of Chartered Accountants and pays to the complainants \$8,537.26 in respect of their costs pursuant to Rule 21.31 (m) of the Rules. The Tribunal make no orders in respect of these matters. These relate to a commercial dispute between the parties which they should resolve.

COSTS

Pursuant to Rule 21.33 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal ordered that **Imran Mohammed Kamal** pay to the Institute the sum of \$45,000 in respect of the costs and expenses of the hearing before the Disciplinary Tribunal, the investigation by the Professional Conduct Committee and the cost of publicity.

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, in the Chartered Accountants Journal and the Dominion Post with mention of the member's name and locality.

Such publication will be postponed for 14 days to give the member the opportunity to apply to have the published decision format amended to omit all mention of the particulars which were found not proven rather than the traditional format and to consider the possibility of an appeal.

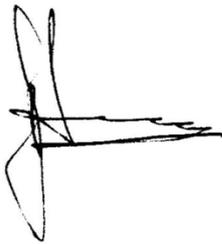
SUPPRESSION ORDERS

Pursuant to Rule 21.52 (b) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal ordered the continuation of the interim suppression orders for a further 14 days and the permanent suppression of the identity of Mr X, Ms Z and their various entities.

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, the member may, not later than 14 days after the notification of this Tribunal to the member of the 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 shall take effect while the member remains entitled to appeal, or while any such appeal by the member awaits determination by the Appeals Council.

A handwritten signature in black ink, appearing to be 'R J O Hoare', written in a cursive style.

R J O Hoare
Chairman
Disciplinary Tribunal