

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

**Case Number:** D-1147

**Member:** Robert Voncina (provisional member) of New South Wales

**Hearing Date:** 20 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 represented himself

**Case description:** Member failed to respond to correspondence

## **1. DECISIONS**

### **1.1 DECISION ABOUT THE PCC'S ALLEGATION WHICH IS SET OUT IN FULL IN SCHEDULE 1**

At a hearing of the Disciplinary Tribunal the Member admitted the allegation and the Tribunal was satisfied that it was established.

### **1.2 DECISION ABOUT SANCTIONS**

The Tribunal considered that the appropriate sanction in these circumstances was that the Member receive a reprimand.

### **1.3 DECISION ABOUT COSTS SANCTION**

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$4,000 towards the costs and expenses of the hearing (paragraph 10.12(l) of By-Law 40). No GST is payable.

The PCC sought recovery of the full costs of the proceedings in the amount of \$8,060.

The Tribunal considered that payment of the amount of \$4,000 was appropriate in view of the Member's financial circumstances.

### **1.4 DECISION ABOUT CONFIDENTIALITY**

This decision takes effect immediately.

The Tribunal determined that the identity of the Member's client be kept confidential (paragraph 13.12(d) of By-Law 40).

### **1.5 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).

### **1.6 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

- The Member admitted the allegation.
- 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 14 April 2016 and 10 August 2016 concerning a complaint from a client filed with Chartered Accountants ANZ.
- Having considered the material and the Member's admission, the Tribunal agreed that the allegation was established.

### 4. REASONS FOR SANCTIONS

- The PCC submitted that the Member be reprimanded because:
  - until a week before the hearing, the Member failed to give any explanation as to why he did not respond to numerous communications from Chartered Accountants ANZ
  - the PCC was not able to investigate the complaint which related to the allegation of failure to lodge a 2015 tax return.
- The Member said that he was truly sorry for not responding and requested that the Tribunal take into account his financial position and his personal circumstances.
- The Member's employer Ms Rosemarie Chad gave evidence that:
  - the Member was a dedicated and hard working employee
  - there were technology failings in her office and as a consequence:
    - the Member was not aware that the email attaching the draft return prepared by him had not been delivered to her
    - facsimiles had not been received from a client about his complaint
  - had she been aware of the communications from Chartered Accountants ANZ, she would have assisted the Member to respond.
- The Tribunal determined that it was appropriate the Member receive a reprimand given the Member's failure to engage with Chartered Accountants ANZ's investigation of the complaint.

  
Chair  
Disciplinary Tribunal

## **SCHEDULE 1 - THE PCC'S ALLEGATION**

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 By-Law 40(2.1)(i), in that he 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 the Member or enquiries made by Professional Conduct and Complaints on 14 April 2016, 17 May 2016, 21 June 2016, 16 July 2016, 3 August 2016 and 10 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.

...

### **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:

...

- (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

...