

## Professional Conduct Committee – 11 October 2019

### Adverse Finding – Mr David Keith Baumgartner CA

At a meeting of the Professional Conduct Committee of Chartered Accountants Australia and New Zealand (Chartered Accountants ANZ) held in private on 11 October 2019 in Melbourne Australia in respect of Mr David Keith Baumgartner FCA of Victoria, the Committee decided that the Member breached By-Law 40(2.1)(e), in that the New South Wales Supreme Court made a number of adverse findings against him in *Ryan Wealth Holdings Pty Ltd v Baumgartner* [2018] NSWSC 1502. As a result, the PCC considers that this matter is sufficiently serious to warrant referral to the Disciplinary Tribunal.

The PCC noted the decision of the Supreme Court that:

- *“The defendants ... admitted that the material available to the first defendant did not support an expression of an unqualified opinion that the Super fund’s financial report for each financial year presented fairly in all material respects ...; and ... had insufficient material to be able to form and express an unqualified opinion as to the compliance with the SIS Act and SIS Regulations”* (paragraph 980(3) and (4));
- *“Had the defendants performed their role competently, the deficiencies in the accounts and operations of the super fund would have been exposed.”* (paragraph 984)
- *“The defendants’ failure to undertake this task was, to accept further submission of the plaintiff, the immediate, patent cause of the loss”* (paragraph 984).

In addition, the PCC took account of the Member’s:

1. admissions made in the Court proceedings that:
  - a. as at each of 30 June 2007, 2008 and 2009, a number of the assets in the Fund were in substance worthless or of substantially compromised value;
  - b. the financial statements for the Fund for each of those financial years should have been prepared on the basis that the value of the assets were impaired or of no value;
  - c. the Fund’s financial statements for each of those financial years were each materially inaccurate and the Fund’s special purpose financial reports for each of those financial years did not present fairly the financial position of the Fund;
  - d. the material available to the Member at the time of the preparation of the audit reports did not support the expression of an unqualified opinion; and
  - e. the Member therefore failed to exercise reasonable care in the preparation of the audit reports; and
2. acceptance that he *“ought to have realised that on the material provided to me there was some doubt as to whether the carrying value of the Fund’s assets appropriately reflected amounts*

*recoverable for them and I should have qualified my audit reports by recording that the method of valuation adopted in the statements may not be an appropriate one”.*

However, the PCC decided to propose that a consent agreement be made with the Member. Accordingly, with the written consent of the Member, the Committee made the following determinations:

- he receive a reprimand;
- he pay to Chartered Accountants ANZ the sum of \$2,400 by way of contribution towards the costs of investigating and dealing with the matters the subject of the complaint and the case conference;
- the PCC will publish:
  - details of these sanctions on the website of Chartered Accountants ANZ; and
  - a notice in the digital and print magazine “Acuity”, disclosing the Member’s name and location, with a link to the published decision.

In considering the appropriate sanction, the PCC noted that the Member:

1. had promptly self-reported this matter to Chartered Accountants ANZ, in accordance with his obligations to do so;
2. has undertaken considerable training; and
3. has introduced a number of improvements in the operation of his practice.

The PCC considers that it is in the public interest for this sanction to be published and that there are special circumstances for disclosing the Member’s name.

**Professional Conduct Committee  
Chartered Accountants Australia and New Zealand**

17 January 2020