

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 A Member

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND
INSTITUTE OF CHARTERED ACCOUNTANTS
15 December 2015**

Hearing: 15 December 2015

Location: The offices of Chartered Accountants Australia and New Zealand, Level 7, Chartered Accountants House, 50-64 Customhouse Quay, Wellington, New Zealand

Tribunal: Prof DJD Macdonald FCA (Acting Chairman)
Mr JD Naylor FCA
Mr DP Scott FCA (retired)
Ms B Gibson (Lay member)

Legal Assessor: Mr Paul Radich QC

Counsel: Mr Richard Moon for the prosecution
Mrs Philippa Fee and Mr Matthew Atkinson for the Member



At a hearing of the Disciplinary Tribunal held in public¹ at which the Member was in attendance and represented by counsel, the Member admitted amended particulars (a), (b) and (c) and pleaded guilty to amended charges (1) and (2).

The amended charges and amended 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 13.39 the Member:

- (1) Is guilty of negligence or incompetence in a professional capacity, of such a degree it tends to bring the profession into disrepute; and/or
- (2) Has breached the Institute's Code of Ethics.

PARTICULARS

IN THAT

In the Member's role as a Chartered Accountant in public practice and in relation to a complaint, the Member:

- (a) authorised A Limited, acting as corporate trustee of the S Trust and/or as nominee for X and/or Y, to enter into a mortgage agreement with the W for the purchase of a property at N Road, on the basis of an Agreement for Sale and Purchase of Real Estate without undertaking appropriate due diligence, including a review of the Agreement for Sale and Purchase, in breach of the Fundamental Principle of Professional Competence and Due Care and/or paragraph 130.4 of the Code of Ethics 2014; and/or
- (b) advised W in an email dated 5 June 2014, that the Member had instructed Y to sign an Agreement for Sale and Purchase of Real Estate dated 20 December 2013 (the "ASP") on behalf of A Limited, when that statement was not accurate, in breach of the Fundamental Principle of Professional Behaviour and/or paragraph 150.1 of the Code of Ethics 2014, and/or the Fundamental Principle of Professional Competence and Due Care and/or paragraph 130.4 of the Code of Ethics 2014; and/or
- (c) being aware that the validity of the ASP was in question, the Member failed to provide a substantive response to the questions put to the Member by W in emails sent to the Member between 6 June 2014 and 30 June 2014, in breach of the Fundamental Principles of Professional Competence and Due Care and/or Professional Behaviour and/or paragraph 130.4 and/or 150.1 of the Code of Ethics 2014.

¹ However, the Tribunal made an order during the hearing pursuant to Rule 13.62 of the Rules of the New Zealand Institute of Chartered Accountants that a part of the hearing, during which submissions were made on the issue of name suppression, was to be held in private.

DECISION

As set out in the Agreed Summary of Facts presented to the Tribunal on 15 December 2015, the charges relate to the Member's role as a Director of a corporate trustee company which obtained a loan to enable the purchase of a property on behalf of a family trust and parties associated with that trust.

The Agreed Summary of Facts summarises the particulars that the Member admitted as follows:

- Particular (a) – failing to undertake appropriate due diligence as a corporate trustee in relation to the Sale and Purchase Agreement for the property transaction;
- Particular (b) – making statements to the lender regarding the Sale and Purchase Agreement that were not accurate;
- Particular (c) – failing to provide a substantive response to questions put to the Member by the lender.

The Member pleaded guilty to charges (1) and (2). Accordingly, in terms of Rule 13.39 of the Rules of the New Zealand Institute of Chartered Accountants, the Tribunal finds the charges against the Member to be made out.

PENALTY

The Professional Conduct Committee (PCC) described the Member's behavior as serious but not grave and sought an order that the Member be censured.

After careful consideration of the principles set out by Mr Radich QC in his advice to the Tribunal, the Tribunal agrees with the PCC that censure is appropriate.

Pursuant to Rule 13.40(k) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the Member be censured.

COSTS

Given that the hearing process has been drawn out and expensive – not always because of the Member's actions or the PCC's actions – the PCC sought costs of 50% and this was agreed to by the Member.

After careful consideration the Tribunal agrees that this is an appropriate amount.

Pursuant to Rule 13.42 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the Member pays to the Institute the sum of \$37,500 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.

PUBLICATION AND SUPPRESSION

The PCC sought publication of the Member's name and location on the Institute's website and in the official publication *Acuity*.

The Member introduced two affidavits as to the Member's state of health and sought suppression of the Member's name and location because of the potential impact publication could have on the Member's personal wellbeing.

The starting point is that the public interest in open justice and transparency creates a presumption in favour of full publication. It will only be in exceptional circumstances where the public interest will be outweighed by the private interests of the member or their family or others associated with them.

The Tribunal has carefully considered the Member's submission and is persuaded that the publication of the Member's name and location would be detrimental to the Member's wellbeing.

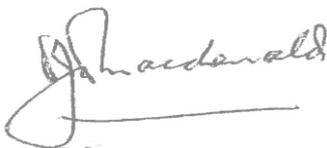
Accordingly, **in accordance with Rule 13.44(a) of the Rules of the New Zealand Institute of Chartered Accountants the decision of the Disciplinary Tribunal shall be published on the Institute's website and in the official publication *Acuity* without mention of the Member's name and locality.**

Pursuant to Rule 13.62(b) of the Rules of the New Zealand Institute of Chartered Accountants, the Disciplinary Tribunal orders the permanent suppression of the identity of the complainant and all other parties named in the particulars and Agreed Summary of Facts, the Member's name and location, and details relating to the Member's health.

RIGHT OF APPEAL

Pursuant to Rule 13.51 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 parties may, not later than 14 days after the notification to the parties 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 orders shall take effect while the parties remain entitled to appeal, or while any such appeal by the parties awaits determination by the Appeals Council.

A handwritten signature in black ink, appearing to read 'DJD Macdonald', with a long horizontal flourish extending to the right.

DJD Macdonald FCA
Acting Chairman
Disciplinary Tribunal