

Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 20 December 2016

Case Number: D-1142

Member: Darryl Graham Murray, CA of Western Australia

Hearing Date: 16 December 2016

Tribunal: David Fairlie (Chair)
Stewart Leslie, FCA
John Gibson, 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 from Chartered Accountants ANZ in relation to a complaint.

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 attended by the Member via teleconference, the Member admitted the allegation.

1.2 DECISION ABOUT SANCTIONS

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

1.3 DECISION ABOUT COSTS SANCTION

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$8,421 for the full costs and expenses of the hearing (paragraph 10.12(l) of By-Law 40). No GST is payable.

The Tribunal considered this to be appropriate in the circumstances.

1.4 DECISION ABOUT CONFIDENTIALITY

This decision takes effect immediately.

The Tribunal determined that the identity of the Complainant 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 personal registrations or memberships and, as a consequence, no bodies will be notified of this decision.

2. RIGHT OF APPEAL

In accordance with paragraph 11.1 of By-Law 40 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.

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 allegation
- Decision about sanctions
- Decision about costs sanction.

In accordance with paragraph 11.2 of By-Law 40 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.

The Tribunal determines that these appeal periods be extended to 28 days to allow for the Christmas and New Year period.

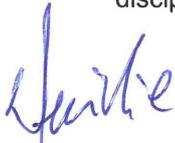
3. REASONS FOR DECISION

- 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 20 August 2015 and 8 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's membership be suspended and his name removed from the Register because:
 - the allegations are serious
 - until the day of the hearing, the Member had not engaged with Chartered Accountants ANZ to deal with a complaint from a client
 - until the day of the hearing, the Member failed to give any explanation as to why he did not respond to Chartered Accountants ANZ
 - the PCC was not able to investigate the complaint which related to the allegation of failure to lodge tax returns between 2006 and 2014
 - if the Tribunal were not of a mind to suspend the Member, that he be severely reprimanded and directed to respond to the complaint within a limited time period, failing which he should be suspended.
- The Member expressed his remorse and submitted that he would prefer a severe reprimand to a suspension, asking that the Tribunal take into consideration:
 - his 25-30 years as an accountant
 - a distressing incident with which he was still dealing
 - difficult personal circumstances over the past two and a half years
 - that he had recently taken steps to deal with the client complaint.
- The Tribunal determined that it was appropriate the Member receive a severe reprimand given:
 - the length of time since the complaint was first raised with the Member and its serious nature
 - the Member's failure to engage with Chartered Accountants ANZ's investigation of the complaint.
- The Tribunal noted the Member's undertaking during the hearing to respond in detail to Chartered Accountants ANZ's correspondence in the near future and that he had

arranged a meeting with the complainant to discuss his tax returns. The Tribunal was prepared to accept this undertaking on its face but informed the Member that his failure to comply as soon as possible with a detailed response would likely result in further disciplinary action against him and additional sanctions.

A handwritten signature in blue ink, appearing to read "Justice".

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 him by Professional Conduct and Complaints on 20 August 2015, 23 November 2015, 27 January 2016, 31 March 2016, 2 August 2016 and 8 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;