

Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 16 October 2019

Case Number: D-1207

Member: Ian Geoffrey Swan FCA of South Australia

Hearing Date: 26 September 2019

Tribunal: David Fairlie (Chair and lay member of Tribunal)
Linda Hadfield FCA
Kathryn Brown CA

Representation: Kate Dixon for the Professional Conduct Committee (PCC)
The Member was not required to appear

Case description: Member bankrupt.

1. BACKGROUND

The Member and the PCC reached an agreement as to sanctions (**Agreement**) as follows:

The Member ... and the Professional Conduct Committee of Chartered Accountants ANZ consent to the Disciplinary Tribunal of Chartered Accountants ANZ dispensing with the procedures in By-Law 40(10) of the By-Laws of Chartered Accountants ANZ in relation to complaint D-1207 made against the Member and proceeding directly to the imposition of sanctions on the following terms:

1. The Professional Conduct Committee will appear at the scheduled hearing of the matter at 10:00 am on 26 September 2019. The Member will not be required to attend the hearing.
2. The Professional Conduct Committee will present to the Disciplinary Tribunal a signed copy of this Agreement including the annexed Agreed Statement of Facts.
3. The Member admits to the allegations contained in the Notice of Disciplinary Action dated 14 August 2019.
4. The Disciplinary Tribunal may determine the matter without further submissions or evidence being required from either the Professional Conduct Committee or the Member and impose the following sanctions:
 - (a) The Member's membership will be suspended for the duration of his bankruptcy;
 - (b) The Member will pay a contribution to Chartered Accountants ANZ of \$500 towards the costs and expenses of the disciplinary action;
 - (c) The Disciplinary Tribunal will publish its decision on the Chartered Accountants ANZ website and in the journal of Chartered Accountants ANZ, mentioning the Member's name and locality;
 - (d) The Disciplinary Tribunal will notify its decision to any bodies with whom the Member holds a professional registration or membership including the Australian Securities and Investments Commission and Tax Practitioners Board.
5. If the Disciplinary Tribunal is not prepared to dispense with the procedures in By-Law 40(10) on the terms above then the Member and the Professional Conduct Committee jointly seek and will consent to the hearing of the complaint being adjourned for a period of not less than 14 days.

Signed

[The Member]

30 August 2019

Signed

Chair of the Professional Conduct Committee

19 September 2019

Statement of Agreed Facts

Date	Agreed Facts
1985.03.14	[The Member] becomes a member of Chartered Accountants ANZ
2019.04.11	The Australian Financial Security Authority notes the Member became bankrupt
2019.08.21	The Member has not paid for his membership fees for the 2019/2020 financial year
2019.08.22	[The Member] is eligible for a quality review

2. DISPENSING WITH PROCEDURES IN BY-LAW 40(10)

With the written consent of the PCC and the Member, the Tribunal determined to dispense with the procedures in By-Law 40(10), pursuant to By-Law 40(10.13).

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

The Member admitted the allegation. The Tribunal was satisfied that the agreed facts in the Agreement and the PCC's casefile, which included a Certificate of Appointment of Trustee and extract from the National Personal Insolvency Index which noted that the Member became bankrupt on 11 April 2019, established the allegation.

4. **DECISION ABOUT SANCTIONS**

- The Tribunal determined that the appropriate sanction in these circumstances was to suspend the Member from membership of Chartered Accountants ANZ for the duration of his bankruptcy and to remove the Member's name from the Registers on which it appears.
- The Tribunal was satisfied that the Agreement which contained a suspension of the Member's membership was appropriate and no other sanction was appropriate because the Member:
 - had self-reported the Disclosure Event within a month of the event
 - was cooperative with the PCC in relation to the matter thereafterbut nevertheless the Tribunal was of the view that the Member should not be entitled to hold himself out as a member of Chartered Accountants ANZ during his bankruptcy.

5. **DECISION ABOUT COSTS SANCTION**

The Tribunal determined that the Member should pay \$500 towards the costs and expenses of the disciplinary action as agreed by the PCC and the Member in the Agreement. No GST is payable.

The Tribunal formed the view, having regard to Regulation CR8 - *Disciplinary Procedures*, that the quantum of costs was reasonable in circumstances where a Member had suffered an insolvency event, self-reported the Disclosure Event, and entered into a proposed Agreement with the PCC in advance of the Tribunal determining the matter.

6. **DECISION ABOUT PUBLICATION**

In accordance with By-Laws 40(12.3) and 40(12.4), the Tribunal directed that:

- its decision with reasons, mentioning the Member's name and locality, be published on the website of Chartered Accountants ANZ (the **Published Decision**)
- a notice mentioning the Member's name and locality with a web address for the Published Decision be published in the Chartered Accountants ANZ digital and print magazine "Acuity".

7. **NOTIFICATION TO OTHER BODIES**

In accordance with By-Law 40(10.16), the Tribunal determined to notify its decision to:

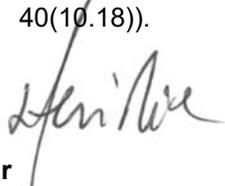
- Australian Securities and Investments Commission
- Tax Practitioners Board.

8. 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 (By-Law 40(11.1)).

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 (By-Law 40(11.2)).

The date of effect of this decision is the day immediately after the expiry of the period during which an appeal may be notified, if no appeal has been notified within that period (By-Law 40(10.18)).



**Chair
Disciplinary Tribunal**

SCHEDULE 1 - THE PCC'S ALLEGATIONS

It is alleged that while a member of Chartered Accountants Australia and New Zealand (**CA ANZ**) the Member is liable to disciplinary action in accordance with By-Law 40(2.1)(j) in that on 11 April 2019 he became bankrupt.

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.

...

40(2) Disciplinary action

40(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:

...

- (j) suffers an Insolvency Event;

...

40(10) Disciplinary Tribunal

40(10.12) If the Disciplinary Tribunal determines that the complaint contained in the Notice of Disciplinary Action or any part thereof is established it may, subject to By-Law 40(9.3)(c), and having given the Member a reasonable opportunity of being heard on the question of sanctions, impose any one or more of the sanctions in the table below identified as applicable to that class of Member:-

...

- (b) suspend the Member from membership of CA ANZ for a period not exceeding 5 years and remove the Member's name from the Registers on which it appears

...

- (k) require the Member to pay to CA ANZ all or any portion of the Costs incurred by or on behalf of CA ANZ (including by or on behalf of the Professional Conduct Committee) in investigating and dealing with the original complaint and the matters the subject of the Notice of Disciplinary Action as the Disciplinary Tribunal determines

40(10.13) Subject to By-Law 40(9.3)(c) the Disciplinary Tribunal may, with the written consent of the relevant Member and the Professional Conduct Committee, dispense with any or all of the procedures in this By-Law 40(10) and impose any of the sanctions permitted in By-Law 40(10.12) or accept a written undertaking under By-Law 40(13.8).

...

40(10.16) The Disciplinary Tribunal may notify interested parties including other professional bodies, regulatory authorities, the Member's current and/or former employers, partners, clients of the Member or the Member's Practice Entity who are or may be affected by the Member's conduct to which the disciplinary action relates, of so much of a decision (including a decision to suspend on an interim basis), the reasons for it and/or the sanctions imposed, as it thinks fit. The Disciplinary Tribunal will not do so until the day following the last date on which an appeal may be notified in accordance with By-Law 40(11.1). If an appeal is notified in

accordance with By-Laws 40(11.1) or 40(11.2), the Disciplinary Tribunal will not make such a notification until that appeal is heard or otherwise determined.

...

40(10.18) A determination of the Disciplinary Tribunal shall take effect from the day immediately after the expiry of the period during which an appeal may be notified, if no appeal has been notified within that period.

...

40(12.3) Where the Disciplinary Tribunal or Appeals Tribunal determines that a complaint is established, imposes a sanction adverse to the Member (including one with the consent of a Member or a written undertaking under By-Law 40(13.8)) or decides to suspend a Member on an interim basis, it must direct that a notice be published by CA ANZ of its decision and the sanctions imposed (if any). Any such publication must disclose the name and location of the relevant Member unless the Disciplinary Tribunal or Appeals Tribunal (as applicable) considers that there are exceptional circumstances for not doing so.

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