

Professional Conduct Committee - 30 April 2021

Failure to provide books and records and information - Member C

At a meeting of the Professional Conduct Committee (PCC) of Chartered Accountants Australia and New Zealand held in private on 18 February 2021 by videoconference in respect of Member C, the PCC decided that the Disciplinary Tribunal would be likely to find that the Member's conduct did not comply with:

- By-Law 40(2.1)(h).

The PCC considered that this matter is sufficiently serious to warrant referral to the Disciplinary Tribunal. However, the PCC decided to propose that an agreement be made with the Member which shall be entered on the Member's record, on terms that:

1. the Member receive a reprimand;
2. the Member and his Practice Entity must have a quality review pursuant to the CA ANZ Regulations, at the Member's cost, with particular attention to terms of engagement and client acceptance procedures, with the results of such review to be made available to the PCC;
3. the Member pay to CA ANZ the sum of \$2,781 by way of contribution towards the costs of investigating and dealing with the matters the subject of the complaint and the Case Conference; and
3. the PCC will publish:
 - a) details of these sanctions on the website of CA ANZ; and
 - b) a notice in the digital and print magazine "Acuity", with a link to the published decision,
without disclosing the Member's name and locality.

The PCC considers that it is in the public interest for this sanction to be published in the terms set out in the proposed Consent Agreement but that there are no special circumstances which warrant disclosing the name of the Member.

Background

The complaint relates to the Member's alleged promotion of a property investment to his clients in 2003, including the Complainants. The Complainants alleged they invested \$50,000 through their Self-Managed Superannuation Fund (SMSF) in a unit trust structure that acquired the property. The Complainants' allege that the Member is the tax agent for that structure and that the Member's father is the sole director of the trustee company for that unit trust.

The Complainants allege that since 2012 the Member has not provided the Complainants with any information which would allow them to meet their SMSF responsibilities. They also allege that for the last three years, the Member has not returned the Complainants' phone calls or responded to emails. A letter from the Complainant's new accountant was also sent on 21 November 2019 requesting information, but received no response.

Reasons

The PCC notes the evidence provided by the Complainants of multiple attempts by them and their new accountant to get information and documents in relation to the investment, over multiple years. There

was no evidence that the Member responded to or arranged for a response to these enquiries, despite the serious implications for the Complainants as a result of the lack of information about their investment. The Member was requested to provide evidence that he had made attempts to obtain the trust deed from the trustee to provide to the unit holder. There was no evidence that this was done other than the Member's comments to the PCC during the Case Conference that he did make an enquiry with the trustee. There was no evidence to support the assertion that the Member did enough to obtain the trust deed and that he disclosed his attempts to the unit holders and any possible recourse the unit holders had to take their query further.

The PCC wishes to highlight the significant impact of a lack of response to correspondence of this nature, where the unit holder cannot finalise their taxation obligations due to the inability to gain access to vital information. Despite the Member's comments to the PCC that he passed on the query to the trustee, the PCC considers the Member did not do enough to assist the unit holders to understand the request was made with the trustee, that he did not receive a response from the trustee and finally providing the unit holders with the possible recourses available to them to obtain the trust deed from the trustee.

Accordingly, the PCC is of the view that the Member's conduct has fallen short of what is expected, and accordingly that the Disciplinary Tribunal is likely to find that the Member's conduct is in breach of By-Law 40(2.1)(h) and CA ANZ Regulation CR3.8.

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

30 April 2021