

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 of **Sarah Lea McIntyre**, Chartered Accountant, of **Rangiora**

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND
INSTITUTE OF CHARTERED ACCOUNTANTS
24 February 2015**

Hearing: 24 February 2015

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

Tribunal: Mr MJ Whale FCA (Chairman)
Prof DJD Macdonald FCA
Mr JD Naylor FCA
Ms A Kinzett (Lay member)

Legal Assessor: Mr David Laurenson QC

Counsel: Mr Richard Moon for the prosecution

At a hearing of the Disciplinary Tribunal held in public at which the Member was in attendance by videoconference and not represented by counsel the Member admitted the particulars and pleaded guilty to the charges.

The charges and particulars as laid 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 misconduct in a professional capacity [particular (a)]; and/or
- (2) Has breached the Code of Ethics (being the Code in force at the relevant time) [particulars (1) and/or (2)]; and/or
- (3) Has been adjudicated bankrupt within three years of the matter being referred to the Disciplinary Tribunal [particular (c)].

PARTICULARS:

IN THAT

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

- (a) Filed GST returns for the X Partnership and/or Vanilla Chartered Accountants Limited ("VCA") which she knew or ought to have known contained false information, in that expenses were overstated enabling the entities to obtain GST refunds which they were not entitled to, in breach of the Fundamental Principles of Integrity and/or Professional Behaviour and/or Rule 2 and/or paragraph 27(a) of the Code of Ethics (2003); and/or
- (b) Managed the affairs of her Chartered Accounting practice VCA in such a way that it was insolvent and unable to pay its debts as they fell due, in breach of the Fundamental Principle of Professional Behaviour (paragraph 100.5(e)) of the Code of Ethics (2014); and/or
- (c) Was adjudicated bankrupt on or about 9 July 2014 in the High Court at Auckland.

DECISION

Dishonesty in filing GST returns which the Member knew to be wrong is unacceptable conduct, exacerbated in this case because the conduct was over a significant period of time. Both that behavior and the fact that the Member's practice became insolvent brings discredit to the profession.

In the Tribunal's view knowingly filing incorrect GST returns for personal gain is at the serious end of offending and constitutes misconduct in a professional capacity.

The Tribunal finds that all charges have been made out.

PENALTY

The Professional Conduct Committee sought removal of the Member's name from the Institute's register of members and notification of the removal to Chartered Accountants Australia and New Zealand. The Member acknowledged that was an appropriate penalty.

The Tribunal has had regard to the fact that the Member has fully cooperated with the Institute throughout this process and she admitted her actions at an early stage.

However, the Tribunal considers the circumstances of the Member's offending, her practice trading while insolvent and her bankruptcy together constitute circumstances where removal of the Member's name from the Institute's register of members is an appropriate proportionate response to protect the public and maintain professional standards.

Pursuant to Rule 13.40(a) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the name of Sarah Lea McIntyre be removed from the Institute's register of members and that Chartered Accountants Australia and New Zealand be advised promptly of that removal.

COSTS

The Professional Conduct Committee advised that costs totalled \$9,887.

The Tribunal's general approach is that the starting point is 100% of costs, noting that the Institute already bears the cost of abandoned investigations and costs up to the Professional Conduct Committee's decision to hold a Final Determination.

The Tribunal has had regard to the Professional Conduct Committee's and the Member's submissions regarding costs. In light of the Member's personal circumstances and full cooperation with the Institute during this process the Tribunal considers that a costs order of \$4,500 is fair and reasonable in this case.

Pursuant to Rule 13.42 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that Sarah Lea McIntyre pay to the Institute the sum of \$4,500 in respect of the costs and expenses of the hearing before the Disciplinary Tribunal, the investigation by the Professional Conduct Committee and the cost of publicity. No GST is payable.

PUBLICATION AND SUPPRESSION

The Professional Conduct Committee sought publication of the decision with the Member's married and maiden names on the Institute's website, in the official publication *Acuity* and in the Auckland and Rangiora newspapers. Having regard to the Member's personal circumstances the Tribunal considers that limiting publication to the website, the official publication and the Rangiora newspaper would be sufficient for transparency and protecting the public interest.

In accordance with Rule 13.44 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, in the official publication *Acuity* and the local Rangiora newspaper with mention of the Member's married name and locality.

Pursuant to Rule 13.62(b) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the Member's maiden name and the name of the complainant and the client be suppressed.

RIGHT OF APPEAL

Pursuant to Rule 13.51 of the Rules of the New Zealand Institute of Chartered Accountants, 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 'MJ Whale', with a small dot at the end.

MJ Whale FCA
Chairman
Disciplinary Tribunal