

# Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 12 June 2018

<b>Case Number:</b>	D-1183
<b>Member:</b>	Hemanshu Juneja CA of South Australia
<b>Hearing Date:</b>	22 May 2018
<b>Tribunal:</b>	David Fairlie (Chair) Ross Haslam FCA Stewart Leslie FCA
<b>Tribunal Legal Adviser:</b>	Lauren Stewart
<b>Representation:</b>	Paul Forbes for the Professional Conduct Committee (PCC) Stephen Heath for the Member
<b>Case description:</b>	<ol style="list-style-type: none"><li>1. Member subject of adverse findings by the Tax Practitioners Board affirmed by the Administrative Appeals Tribunal.</li><li>2. Member has committed acts, omissions or defaults which bring discredit on himself, Chartered Accountants ANZ and the profession of accountancy.</li></ol>

## 1. DECISIONS

### 1.1 DECISION ABOUT THE PCC'S ALLEGATIONS WHICH ARE SET OUT IN FULL IN SCHEDULE 1

At a hearing of the Disciplinary Tribunal attended by the Member by way of videoconference:

- the Member admitted allegations 1(a), 1(b) and 2 and the Tribunal was satisfied they were established
- the Tribunal found the PCC had established allegation 1(c).

### 1.2 DECISION ABOUT SANCTIONS

The Tribunal considered that the appropriate sanctions in these circumstances were that the Member:

- receive a severe reprimand
- attend at his own expense and successfully complete the first available Chartered Accountants ANZ Public Practice Program module 2.

### 1.3 DECISION ABOUT COSTS SANCTION

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$10,000 towards the costs and expenses of the proceedings (paragraph 10.12(l) of By-Law 40). No GST is payable.

### 1.4 DECISION ABOUT PUBLICATION

This decision will not take effect while the Member remains entitled to appeal.

In accordance with paragraphs 12.3 and 12.4 of By-Law 40, 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".

### 1.5 NOTIFICATION TO OTHER BODIES

The Member holds registrations and/or memberships with the following bodies, which will be notified of this decision:

- Institute of Public Accountants
- Migration Agents Registration Authority.

## 2. 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 (paragraph 11.1 of By-Law 40).

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 allegations
- Decision about sanctions
- Decision about costs sanction.

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 (paragraph 11.2 of By-Law 40).

### 3. BACKGROUND

From January 2011, the Member was the sole director of Cudmores Integrated Business Solutions Pty Ltd (**Cudmores**). Cudmores was a registered tax agent and was the trustee of the Cudmores Integrated Business Solutions Trust (**Cudmores Trust**). Since around July 2013 the Member was also the sole director of Three Wickets Pty Ltd (**Three Wickets**).

On 12 November 2014 the Tax Practitioners Board (**TPB**) terminated the Member's tax agent registration on the basis that he no longer met the requirement to be a fit and proper person.

The Member and Three Wickets applied for a review of the TPB's decision but on 7 October 2016 the decision was affirmed by the Administrative Appeals Tribunal (**AAT**) in *Three Wickets Pty Ltd and Tax Practitioners Board [2016] AATA 786 (AAT Decision)*.

On 10 August 2017 the Federal Court of Australia dismissed the Member's appeal of the AAT decision in *Juneja v Tax Practitioners Board [2017] FCA 908*.

### 4. REASONS FOR DECISION

#### 4.1 ALLEGATIONS 1(a), 1(b) and 1(c)

- The Member admitted allegations 1(a) and (b) and, after reviewing the AAT Decision, the Tribunal found that these allegations were established.
- The Member did not admit allegation 1(c) and accordingly the Tribunal heard submissions from the PCC and the Member regarding the factual allegations in that paragraph.
- Allegation 1(c) related to specific findings that were said to have been made by the AAT. Accordingly, the PCC provided particulars which identified the relevant paragraph references in the AAT Decision supporting each of the sub-paragraphs in allegation 1(c). Namely, the PCC submitted that:
  - in relation to allegation 1(c)(i), paragraph 3 of the AAT Decision stated, in summary, that Cudmores (as trustee of the Cudmores Trust) failed to lodge three income tax returns by their respective due dates
  - in relation to allegation 1(c)(ii), paragraph 4 of the AAT Decision stated, in summary, that Cudmores (as trustee of the Cudmores Trust) failed to lodge ten business activity statements by their respective due dates
  - in relation to allegations 1(c)(i) and (ii) the further relevant reference was paragraph 24 of the AAT Decision which stated that, as at 6 April 2015, Cudmores (as trustee of the Cudmores Trust) had also failed to lodge two further income tax returns and three business activity statements by their respective due dates

- in relation to allegation 1(c)(iii), paragraph 56 of the AAT Decision stated that:
 

*“It was ultimately the Applicant’s responsibility to ensure that Cudmores (as trustee of the Trust) paid its tax liabilities as and when they fell due. It may well have been appropriate for him to delegate certain logistical tasks, but he is the person who remained ultimately responsible to ensure that his company complied with its legal obligations....”*
- in relation to allegation 1(c)(iv), paragraphs 18, 19 and 51 of the AAT Decision stated that:
 

*“[18] In the Deregistration Application, the Applicant relevantly declared that:  
“...  
(e) the company has no outstanding liabilities; and  
(f) the company is not a party to any legal proceedings.””*

*“[19] However, at the time the Deregistration Application was lodged with ASIC, the Applicant knew, or ought to have known, that:  
(a) Cudmores (as trustee for the Trust) had a very large amount of outstanding taxation liabilities (ie \$574,035.26);  
(b) Cudmores was a party to the application for review of the decision to reject its renewal of registration as a tax agent.”*

*“[51] The Applicant made a declaration about Cudmores to ASIC in the Deregistration Application that he has since admitted was ‘wrong’. He declared that Cudmores was not a party to any legal proceedings at a time when Cudmores was the applicant in its application for review.”*
- in relation to allegation 1(c)(v), paragraphs 51 (see above) and 20 of the AAT decision stated that:
 

*“[20] Despite these facts, the Applicant did not inform ASIC, in the Deregistration Application or otherwise, that Cudmores had significant outstanding taxation liabilities or that it was a party to the application for review of the decision to reject its renewal of registration as a tax agent.”*
- in relation to allegations 1(c)(vi) and (vii), paragraph 25 of the AAT decision stated that:
 

*“[25] The Applicant did not inform this Tribunal or the Board that Cudmores was deregistered on 6 April 2015 (at his request) and purported to take a number of steps on behalf of Cudmores in relation to its application for review between the time Cudmores ceased to exist on 6 April 2015 and the time he purported to make and file on 16 November 2015 a statement on behalf of Cudmores.”.*
- The Member submitted that:
  - in relation to allegations 1(c)(i), (ii) and (iii), the Australian Taxation Office (**ATO**) had not pursued him or Cudmores for the outstanding tax liabilities. The Member referred to his written submissions to the ATO dated 23 December 2016 (**Written Submissions**) and provided further background context in relation to these allegations
  - in relation to allegations 1(c)(iv), (v) and (vi) he told his then lawyers that he had signed the deregistration form before the AAT hearing but they did not raise the deregistration at the Tribunal
  - in relation to allegation 1(c)(vii) he had always considered his company Three Wickets as the main applicant before the Tribunal, not Cudmores, and so he did not believe he was making a false declaration in relation to Cudmores.
- The Tribunal determined that:
  - the AAT Decision contained adverse findings against the Member, regardless of whether the Member accepted the findings
  - the adverse findings constituted a breach of By-Law 40(2.1)(e)

- the AAT Decision was not overturned on appeal to the Federal Court.

The Tribunal was therefore satisfied that allegations 1(c)(i)-(vii) had been established.

## 4.2 ALLEGATION 2

The Member admitted that his conduct had brought discredit upon the Member, Chartered Accountants ANZ and the profession of accountancy. The Tribunal was satisfied, having considered the relevant media articles published after the Federal Court decision, that the allegation had been established.

## 5. REASONS FOR SANCTIONS

- After acknowledging this was the first reported occurrence of any disciplinary action against the Member, the PCC submitted that the Member should receive either a severe reprimand or a period of suspension of between six and 12 months because:
  - the guidelines in Regulation CR8 *Disciplinary Proceedings* state:

*“The ... Disciplinary Tribunal ... must balance the interests of the Member against the public interest, the reputation of CA ANZ, and the need to support the integrity of the profession of accounting and those of CA ANZ in determining what are appropriate and sufficient sanctions”*
  - the Member’s conduct, particularly making the false declarations in his application to deregister Cudmores, was an act of dishonesty in that he knew or should have known that the company was a party in the AAT proceedings and that it had tax liabilities
  - Chartered Accountants ANZ should not tolerate such conduct
  - the Member had displayed no meaningful contrition and had failed to take responsibility for his acts.
- The Member drew the Tribunal’s attention to his Written Submissions in which he had noted that:
  - he did not understand that by taking on the directorship of Cudmores that he became responsible for its activities including its tax liabilities as the trustee of the Cudmores Trust
  - the lawyers who represented the Member in the AAT proceedings did not adequately present these matters to the AAT.
- After a short adjournment, the Member and his legal adviser addressed the Tribunal. It was submitted on behalf of the Member that he was not contrite in relation to being answerable for the conduct of his former employer (who was also the former director of the Cudmores), nor did he feel a large amount of contrition in relation to questions he should have asked and things that he was not made aware of prior to accepting the directorship. However in mitigation of his actions the Member:
  - acknowledged that he had done the wrong thing in relation to making statutory declarations which were not accurate
  - submitted that he had not considered the AAT as a court of law but believed it was simply a review of the TPB’s decision
  - submitted that he not be suspended from membership but that he would accept a severe reprimand on the basis that the findings in the AAT Decision are matters of fact. The Member also said that he would agree to a form of appropriate undertaking in relation to practice matters. The Tribunal understood this to mean that the Member would agree to undertake a relevant professional development course if the Tribunal were to determine that to be an appropriate sanction.

- The Tribunal determined that the Member should receive a severe reprimand as the underlying allegations, set out in full in Schedule 1, are serious and likely to undermine public confidence in the profession. The Tribunal also determined that the Member successfully complete at his own expense the next available Chartered Accountants ANZ Public Practice Program module 2. The Member confirmed his willingness to attend the course.
- The Tribunal also considered whether it was appropriate to suspend the Member for a period of time however, having taken into account all of the Member's submissions including two compelling letters from referees, determined that a severe reprimand coupled with training and development, was the more appropriate sanction.

## 6. REASONS FOR COSTS SANCTION

- The PCC submitted that the Member should pay the full costs of the proceedings in the sum of \$17,340.
- The Tribunal considered Regulation CR8.12 which states:

*When the ... Disciplinary Tribunal ... determines whether or not to require a Member to pay Costs under Section 5 of the By-Laws, and the amount of such Costs a Member is required to pay, without limiting the matters it may take into account, it must take into account the following:*

*(a) whether and to what extent the complaint against the Member is found to have merit and whether or not there is ultimately a finding in favour of the Member;*

*(b) the substance or seriousness of the complaint;*

*(c) the conduct of the Member in relation to the investigation and disciplinary process, including whether the Member was open, honest and timely in the Member's dealings with the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal in relation to the complaint and whether the Member complied with the provisions of Section 5 of the By-Laws and any applicable Regulations during the conduct of the disciplinary process;*

*(d) the extent to which the final sanctions determined differ from those that the Professional Conduct Committee or Disciplinary Tribunal gave the Member the opportunity to agree by consent;*

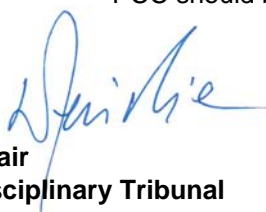
*(e) whether to do so is reasonable in the circumstances;*

*(f) the amount of the Costs incurred by CA ANZ in the conduct of the investigation and proceedings;*

*(g) whether and to what extent the Member has previously been required to pay Costs to CA ANZ in respect of the complaint, its investigation, hearing and determination; and*

*(h) whether the amount is reasonable in the circumstances."* [emphasis added]

- The Tribunal noted that the Member accepted that a severe reprimand was an appropriate sanction and as a consequence put to the PCC that it had not given the Member the opportunity to agree to any sanction by consent which may have reduced the costs claimed which is a relevant factor in Regulation CR8.12(d). The PCC submitted that Regulation CR8.12(d) only applied where it had in fact given a member the opportunity and the sanction offer had been rejected. The PCC also submitted that it was appropriate that this matter come before the Tribunal as a matter of public interest.
- The Tribunal accepted that the Member did not appear to show appropriate contrition during the Case Conference conducted before the PCC nor did he admit any of the allegations until his notification to the Tribunal Secretary on 11 May 2018. Nevertheless, considering the conduct of the Member in relation to the Tribunal hearing and the potential for hardship on the Member who was in the process of trying to re-establish himself following the AAT Decision, the Tribunal determined that the costs claimed by the PCC should be reduced to the amount of \$10,000.

  
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:

1. By-Law 40(2.1)(e), in that the Member has been the subject of adverse findings in relation to his professional or business conduct or competence by the Tax Practitioners Board (**Board**) and the Administrative Appeals Tribunal (**Tribunal**) in that:
  - (a) On 12 November 2014 the Board decided to terminate the Member's tax agent registration on the basis that he had ceased to meet the registration requirement that he is a fit and proper person;
  - (b) On 7 October 2016 the Board's decision was affirmed by the Tribunal;
  - (c) The Tribunal also found that the Member:
    - (i) Failed to ensure that Cudmores Integrated Business Solutions Pty Ltd (**Cudmores**) lodged income tax returns by their due dates;
    - (ii) Failed to ensure that Cudmores lodged business activity statements by their due dates;
    - (iii) Failed to ensure payment of Cudmores' tax liabilities on time;
    - (iv) Made a false declaration in the application to deregister Cudmores lodged on or around 2 February 2015;
    - (v) Failed to inform the Australian Securities and Investments Commission (**ASIC**) in the application to deregister Cudmores or otherwise that it had significant outstanding liabilities or that it was a party to the application for review of the decision to reject its renewal of registration as a tax agent;
    - (vi) Failed to inform the Board and the Tribunal that Cudmores was deregistered on 6 April 2015;
    - (vii) Purported to take action on behalf of Cudmores after it had been deregistered on 6 April 2015.
2. By-Law 40(2.1)(k), in that by the conduct referred to in paragraph 1 above the Member has committed an act, omission or default which, brings, or may bring, discredit upon the Member, CA ANZ or the profession of accountancy.

## 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:

...

- (e) has been the subject of an adverse or unfavourable finding in relation to that Member's professional or business conduct, competence or integrity by any court of law, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry in any jurisdiction in Australia or elsewhere;

...

- (k) has committed any act, omission or default which, in the opinion of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal brings, or may bring, discredit upon that Member, CA ANZ or the profession of accountancy; or

...