

## Professional Conduct Committee - 10 June 2021

### Integrity, Professional Behaviour, Discredit - Member A

At a meeting of the Professional Conduct Committee (PCC) of Chartered Accountants Australia and New Zealand held in private on 10 June 2021 by videoconference in respect of Member A, 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); and
- By-Law 40(2.1)(k).

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 severe reprimand;
2. the Member pay to CA ANZ the sum of \$1,340 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, but that there are no special circumstances which warrant disclosing the name of the Member.

#### Background

The Complainant is a director of various companies.

The Member was initially employed as Chief Financial Officer (CFO) of these companies. At a later time the Member ceased employment and continued to act as an outsourced CFO pursuant to a number of consultancy agreements.

In 2020 the Member's consultancy agreements were terminated. Later that day, the Member used his bank administrator powers to grant himself custom permissions in relation to the bank accounts of the companies and as a result he was able to authorise payments from these bank accounts without the need for a second authoriser as required by company policy. The Member then made a number of unauthorised payments from the bank accounts to his own accounts.

Upon discovery, the Complainant took action to freeze the relevant bank accounts. The Member subsequently assisted the bank to recover most of the unauthorised payments.

#### Reasons

The Member admitted to the unauthorised transfers but provided some context as to the circumstances at the time.

The Member said the transfers comprised three amounts. The first was a large amount that he had lent one of the companies and in relation to which there was a facility agreement in place. This amount comprised the Member's retirement savings. The second was an amount comprising termination fees in relation to the Member's consulting agreements. The third was a small amount that was owing to the Member from the prior week.

The Member said he had a meeting with the Complainant at which his consulting agreements were terminated. Prior to that day, the Complainant had wanted to reduce the Member's overall consulting fees by 60%. The Member put forward a counter proposal but they could not agree, so the consulting agreements were terminated and termination fees became owing to the Member. The Member gave evidence of a conversation at this time which led him to believe that he would not be paid his termination fees.

The Member said that prior to the meeting, he had family issues which meant that he was not in a good frame of mind at the meeting, and afterwards. Given the matters discussed at the meeting, the Member felt that he had already been told that he was not going to be paid his termination fees and became very concerned as to whether he would be paid all of his retirement savings back. With this level of stress, the Member's instinct was to find a way to get the money back. In these circumstances, he said he made the transfers.

The Member said he had a meeting with the Complainant the next day. The Member said that he then took some advice which was to the effect that, while the money was owing, it was not due and payable that day so he did the wrong thing, and the Member thereby returned the money the next day in order to rectify the situation.

In short, the Member said that he made the transfers at a time when he was under great stress, he had made a poor decision but rectified it the next day.

The Member did not believe that he had brought discredit upon himself or CA ANZ or the profession of accountancy. He made a mistake at a time of extreme stress, which he rectified.

The Member admitted he made unauthorised transfers and that his actions were wrong. The PCC finds that in making these unauthorised transfers the Member exploited his authority/power in his role as an accountant.

In these circumstances, the PCC finds that the Member has breached the fundamental principle of integrity as set out in section R111.1 of APES 110 and the fundamental principle of professional behaviour as set out in section R115.1 of APES 110 and as a consequence is liable to disciplinary action in accordance with By-Law 40(2.1)(h). The PCC also finds that the Member's actions have brought discredit upon himself, CA ANZ and the profession of accountancy and he is thereby liable to disciplinary action in accordance with By-Law 40(2.1)(k).

The PCC finds that the matter is sufficiently serious to warrant referral to the Disciplinary Tribunal. However, given the circumstances of the complaint and the Member's explanation for his conduct, a Consent Agreement should be proposed to the Member.

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

10 June 2021