

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 **Nafisa Ahmed**, Provisional Chartered Accountant, of **Auckland**

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND
INSTITUTE OF CHARTERED ACCOUNTANTS
30 June 2020**

Hearing: 24 June 2020

Location: Via Zoom videoconference

Tribunal: Mr MJ Whale FCA (Chairman)
Mr N De Frere CA
Dr RS Janes (Lay member)

Legal Assessor: Mr Matthew Casey QC

Counsel: Mr Richard Moon for the prosecution

Tribunal Secretariat: Janene Hick
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At a hearing of the Disciplinary Tribunal held by Zoom videoconference the Member did not attend and entered no plea. The hearing proceeded on a formal proof basis.

The Charge and Particular were as follows:

CHARGE

THAT in terms of the New Zealand Institute of Chartered Accountants Act 1996 and the Rules made thereunder, and in particular Rule 13.50 the Member:

1. Has been convicted of an offence punishable by imprisonment or a fine, and the conviction reflects on their fitness to practice accountancy and/or tends to bring the profession into disrepute.

PARTICULAR

IN THAT

On 10 May 2019 in the District Court at Auckland the Member was convicted of the following offences for conduct which occurred during her membership of NZICA:

1. Eight charges pursuant to s 351(1) of the Immigration Act 2009 of exploitation of unlawful employees and temporary workers between 7 May 2015 and 19 August 2016;

DECISION

The Member, who is a provisional member, did not provide the Tribunal with any submissions, but advised the Tribunal that she did not wish to pursue certified [sic] accounting as her career path.

Under the Rules of the New Zealand Institute of Chartered Accountants, a provisional member has the same ethical obligations as a full member and the disciplinary provisions apply to a provisional member in the same way as they do to a full member.

The Tribunal finds that the Particular has been made out on the evidence before it, which included a certified copy of the permanent District Court record and the sentencing notes of the District Court Judge.

The Tribunal is also satisfied that the Charge is proved.

The Member was convicted of offences each of which have a maximum penalty of seven years' imprisonment and/or a fine of \$100,000, and was sentenced to two years and six months' imprisonment.

In the Tribunal's view, the nature of the Member's offending both reflects on her fitness to practise accountancy and tends to bring the profession into disrepute. She exploited vulnerable employees over a period of more than one year by not paying them the minimum wage or holiday pay entitlements and not paying them for all the hours worked. The Court described the Member's conduct as "quite shameless" and "deliberate and systematic". It appears that the Member underpaid the workers by at least \$150,000. The Court found that there was personal gain at the expense of the employees. The Tribunal notes that in the Court's view, the employees suffered grievously as a result of the Member's activities. The Tribunal also notes the Judge's comments that the Member did not take any responsibility for her offending and the judgment further notes that she has shown no remorse.

The Professional Conduct Committee (“PCC”) submitted, and the Tribunal agrees, that the concept of fitness to practise accountancy goes further than technical competence. In the Tribunal’s view it includes matters such as professionalism and integrity. As the Tribunal held in *DCJ Payne* (27 September 2016), the expression *fitness to practise accountancy* also relates back to the requirements of eligibility for membership of the Institute, which include proof of good character and reputation. The Member’s convictions undermine that requirement and hence her fitness to practise.

Members of the Institute are also required to comply with the law. The Member failed to comply with the Minimum Wage Act 1993 and the Holidays Act 2003 whilst operating a business. She was referred to in the media as an accountant. These factors and the seriousness and nature of the offending are clearly matters which would tend to bring the profession into disrepute.

PENALTY

The PCC sought removal of the Member’s name from the Register.

The PCC referred to the factors identified by the Court in *Roberts v Professional Conduct Committee of the Medical Council of New Zealand* [2012] NZHC 3354 as being relevant where Tribunals are determining penalty. They are, which penalty:

- Most appropriately protects the public and deters others;
- Facilitates the Tribunal’s important role in setting and maintaining professional standards;
- Reflects the seriousness of the misconduct;
- Allows for the rehabilitation of the practitioner, where appropriate;
- Promotes consistency with penalties in similar cases;
- Punishes the practitioner (although subsequently the Courts have taken the view that punishment is more a by-product of the other factors); and
- Is the least restrictive penalty appropriate in the circumstances;
- Looked at overall, is the penalty which is fair, reasonable and proportionate in the circumstances.

The PCC considered the key factors here are the protection of the public, the maintenance of professional standards and the seriousness of the misconduct. The Tribunal agrees.

As the PCC and the Tribunal’s legal assessor noted, it is not this Tribunal’s role to re-sentence or further punish the Member. The Tribunal has proceeded on this basis.

The PCC referred the Tribunal to a number of its previous decisions, including *DCJ Payne* and *LP Ford* (2 February 2011).

In *Ford*, the Member was convicted of 15 charges of using a forged document and had narrowly escaped imprisonment in the interests of enhancing the victim’s reparation prospects. In *Payne*, the Member was convicted in relation to charges of cultivating cannabis and possession of cannabis for the purpose of sale, and sentenced to more than three years’ imprisonment (the Court of Appeal noting that there had been prolonged offending motivated entirely by monetary gain). In both cases the Member’s name was removed from the Register.

Here there was also an element of monetary gain, and prolonged offending. As it did in *Payne*, the Tribunal finds that the Member’s conduct fell unacceptably short of the judgment, character and integrity expected of members of the profession and is so serious as to warrant the removal of the Member’s name. A disturbing aspect of this case, which the Tribunal has also taken into account when assessing penalty, is the Member’s lack of insight into the seriousness of her offending, and her lack of remorse.

Pursuant to Rule 13.51(a) of the Rules of the New Zealand Institute of Chartered Accountants, the Disciplinary Tribunal orders that the Member's membership be terminated and that her name be removed from the Register of Members.

COSTS

The Professional Conduct Committee seeks full costs of \$6,545.

The Tribunal's general approach, as set out in its Practice Note on Costs, 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 Case Conference.

Although it appears that the business in respect of which the offending occurred has subsequently failed, there was no evidence before the Tribunal of the Member's current financial position. In the circumstances known to the Tribunal, it considers that the costs sought by the PCC are fair and reasonable.

Pursuant to Rule 13.53 of the Rules of the New Zealand Institute of Chartered Accountants, the Disciplinary Tribunal orders that the Member pay to the Institute the sum of \$6,545 in respect of the costs and expenses of the hearing before the Disciplinary Tribunal and the investigation and prosecution by the Professional Conduct Committee. No GST is payable.

PUBLICATION

The PCC sought publication of the Tribunal's decision on the CAANZ website and in *Acuity*, with mention of the Member's name and locality. This is the standard method of publication and the Tribunal accepts it is appropriate in these circumstances.

In accordance with Rule 13.55 of the Rules of the New Zealand Institute of Chartered Accountants, the decision of the Disciplinary Tribunal shall be published on Chartered Accountants Australia and New Zealand's website and in the official publication *Acuity*, with mention of the Member's name and locality.

RIGHT OF APPEAL

Pursuant to Rule 13.63 of the Rules of the New Zealand Institute of Chartered Accountants, the parties may, not later than 21 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 shall take effect while the parties remain entitled to appeal, or while any such appeal by the parties awaits determination by the Appeals Council.



MJ Whale FCA
Chairman
Disciplinary Tribunal