

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 **Samuel Yangpin Lin**, Provisional Chartered Accountant, of **Christchurch**

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND
INSTITUTE OF CHARTERED ACCOUNTANTS
25 February 2020**

Hearing: 19 February 2019

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

Tribunal: Mr DJH Barker FCA (Chairman)
Mrs A Atkinson FCA
Dr RS Janes (Lay member)

Legal Assessor: Mr Matthew Casey QC

Counsel: Mr Richard Moon for the prosecution
Mr Jonathan Scragg and Ms Daniella Roche for the Member

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At a hearing of the Disciplinary Tribunal held in public at which the Member was in attendance and represented by counsel, the Member pleaded guilty to the charges and admitted the particulars. The parties presented an agreed summary of facts.

The Charges and Particular 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 13.50 the Member is guilty of:

- 1) Misconduct in a professional capacity; or
- 2) Conduct unbecoming an accountant; and/or
- 3) Supplying false or misleading information to NZICA and/or CA ANZ.
- 4) Breaching NZICA's Rules and/or Code of Ethics; and/or

PARTICULARS

IN THAT

Being a Provisional Chartered Accountant in business, and in relation to a complaint, the Member:

1. Altered and/or falsified his mentor's final report dated 16 December 2018 (**the Report**) for the purposes of applying to become a Chartered Accountant by:
 - a. amending the Report to show that the Member had obtained competencies in areas of management accounting and ethics and communication, when the Member's mentor had refused to sign those competencies off and/or the amendments were made without his knowledge and/or approval; and/or
 - b. inserting the Member's mentor's initials and/or signature on the Report without his knowledge and/or approval.

in breach of the Fundamental Principles of Integrity (including sections 110.1 and/or 110.2(a)), and/or Professional Behaviour (section 150.1) of the Code of Ethics (2017)¹ (**the Code**);

2. Using the Report to obtain a reference for the purposes of applying for full membership as a Chartered Accountant in breach of the Fundamental Principles of Integrity (sections 110.1 and/or 110.2(a)) and/or Professional Behaviour (sections 150.1 and/or 150.2) of the Code; and/or
3. Providing false and/or misleading information to CA ANZ and/or NZICA by submitting an application for full membership as a Chartered Accountant containing the Report and reference described above, in breach of the Fundamental Principles of Integrity (sections 110.1 and/or 110.2(a)) and/or Professional Behaviour (sections 150.1 and/or 150.2) of the Code; and/or

¹ NZICA's Code of Ethics effective from 15 July 2017 to 15 July 2019.

4. Preparing a letter in support of a visa application to the Japanese Embassy using his manager's electronic signature without their authority and/or permission to do so in breach of the Fundamental Principles of Integrity (sections 110.1 and/or 110.2(a)) and/or Professional Behaviour (sections 150.1 and/or 150.2) of the Code.

PRELIMINARY MATTER

The Professional Conduct Committee (PCC) raised an issue around the admissibility of 2 paragraphs in an Affidavit of the Member. The 2 paragraphs refer to the working relationship between the Member and his former employer. The PCC contended that as the employer has not had the opportunity to comment on the issues raised in the 2 paragraphs, that the paragraphs may be prejudicial and that the appropriate course is to exclude them.

Counsel for the Member noted that the 2 paragraphs simply give context to the situation in which the Member found himself and is submitted as evidence in mitigation and should not be excluded.

The Legal Assessor to the tribunal advised that it would be possible to admit the evidence but that it could be suppressed.

The Tribunal considered that the issues raised in the 2 paragraphs were consistent with evidence submitted in the appendices to the agreed summary of evidence and was therefore admissible.

DECISION

The Tribunal was provided with an agreed Summary of Facts.

The Member was a Provisional Member aiming for admission as a Chartered Accountant. He was required to meet his practical experience requirements which culminated in a final report being submitted by his mentor. The Tribunal was presented with a copy of a mentor report which had been falsified by the Member. He had increased one of the levels of competency from 2 to 3 and inserted the mentor's initials. He had also inserted a level 2 in a competency not previously attested by the mentor. The Tribunal also viewed evidence that the Member used the falsified final report to obtain a reference and then submitted the falsified report to the Institute in support of his application for full CA membership.

The Tribunal also viewed evidence that the Member had created a copy of his manager's signature and had inserted that into an application for a visa to visit to Japan.

In the Tribunal's view, the agreed summary of facts established the Particulars on which the Charges are based. It follows therefore that Charges 3 and 4, to which the Member has pleaded guilty, have been proved.

The Member's conduct was without doubt unprofessional and involved dishonesty and was deliberately misleading. In the Tribunal's view, the conduct constitutes misconduct in a professional capacity and the Tribunal therefore finds that Charge 1, to which the Member has also pleaded guilty, has been proved.

PENALTY

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:

1. Most appropriately protects the public and deters others;

2. Facilitates the Tribunal's important role in setting and maintaining professional standards;
3. Reflects the seriousness of the misconduct;
4. Punishes the practitioner (although subsequently Courts have taken the view that punishment is more a by-product of the other factors);
5. Allows for the rehabilitation of the practitioner;
6. Promotes consistency with penalties in similar cases;
7. Is the least restrictive penalty appropriate in the circumstances; and
8. Looked at overall, is the penalty which is fair, reasonable and proportionate in the circumstances

The PCC also referred to the Appeals Council's decision in *Lee* (19 July 2013) where at [50] the Council stated that as a general rule, a finding of misconduct will normally result in the Member being struck off or at least suspended.

The PCC referred the Tribunal to the following previous cases:

1. The Tribunal's decision in 2009 concerning *Watson* concerning false and/or misleading accounting entries. Mr Watson's name was removed from the register.
2. The Appeals Council decision in *Lee* of 2013. Mr Lee had falsified his application for registered auditor status. Mr Lee's membership was suspended for 12 months.
3. The Tribunal's decision on *Miller* in September 2017. Mr Miller provided false and/or misleading information to the liquidators of a company. Mr Miller's membership was suspended for 2 years.
4. The Tribunal's decision on *Schmidt* in November 2019. Mr Schmidt improperly accessed personal tax files in the Inland Revenue system. Mr Schmidt's membership was suspended for a period of 12 months.
5. The Tribunal's decision on *Pitt* in November 2019. Mr Pitt had inserted the signature of an audit engagement partner in an audit report without the partner's authority and then provided information to the engagement partner which was incorrect and/or misleading. Mr Pitt's membership was suspended for 6 months.

The PCC submitted that the circumstances of the Member's actions are most comparable with the *Lee* decision however the PCC consider the members actions are more serious.

The PCC submitted that the penalty which best meets the principles set out in *Roberts* is a period of suspension of two years. That would be sufficient to condemn the conduct and deter others. It would also adequately protect the public and not deflect the potential for the Member's rehabilitation.

Counsel for the Member also referred the Tribunal to a number of previous decisions including *Pitt* and *Lee*.

Counsel for the Member also noted a number of mitigating factors including:

1. The Member self-reported his wrongdoing to NZICA. He wrote to NZICA to admit to his conduct when he realised it was wrong.
2. The Member is deeply remorseful about his behaviour. He accepts it is appropriate that he face a penalty for his conduct.
3. The Member has cooperated fully in the complaint process and has accepted the charges against him.
4. The Member is a young man at the start of his professional career.

5. The conduct in issue occurred at a time when the Member was facing particularly difficult, busy and stressful circumstances at work.
6. The Member was struggling under serious stress and mental health issues at the time of his wrongdoing. The Member's Doctor has confirmed this. The Member does not seek to rely on his mental health issues to excuse his conduct, but as a way to explain his decision-making functions at the time of the offence.
7. The Member has shown insight and a genuine desire to learn from the situation.
8. The Member has not caused any financial loss to any person nor has he had any financial gain for himself.
9. The Member has not been the subject of any prior disciplinary proceedings or complaints.
10. The Member has not sought name suppression as he recognises publication forms part of the penalty for his conduct.

Counsel for the Member submitted that an appropriate penalty would be a suspension of no more than 12 months.

The Tribunal considered the factors in mitigation. It was noted that Rule 13.6 stipulates that self-reporting may be a mitigating factor. The Tribunal noted that the self-reporting in this case was not spontaneous and arose after the member had been alerted to concerns being raised by his former employer. Nevertheless, the Tribunal considers that the self-reporting was then prompt and is worthy of consideration.

The Tribunal considers that this case is most comparable to that of *Lee* and is more serious than *Pitt*. In the *Pitt* decision, the Member did not benefit personally from his actions. The Member in this case stood to benefit personally through attaining membership of a professional body as a result of his actions.

The Tribunal considers that the least restrictive penalty which, looked at overall and in particular in light of the mitigating factors referred to above, is fair, reasonable and proportionate in the circumstances, is a period of suspension of 12 months.

Pursuant to Rule 13.51(b) of the Rules of the New Zealand Institute of Chartered Accountants, the Disciplinary Tribunal orders that the Member be suspended from Membership of the Institute for a period of 12 months.

COSTS

The Tribunal was advised that total costs in line with the practice note are \$14,418.40. The PCC seeks costs in line with the practice note. The PCC accepted evidence in the Member's Affidavit regarding hardship and submitted that some discount may be warranted.

Counsel for the Member noted that the financial information provided in the Member's Affidavit confirmed that full costs would be crippling for the Member. Counsel for the Member submitted that the Tribunal's discretion to order reduced costs exists to be exercised in circumstances such as this. It would be reasonable and appropriate to order a reduced costs awarded against the Member.

The Tribunal noted that the Member is currently unemployed, faces a significant amount of existing debt, has no savings, is supporting a young family and is currently receiving only a Work and Income benefit.

The Tribunal considers that a 50% discount on the full costs is fair and reasonable in all the circumstances.

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 \$7,209 in respect of the costs and expenses of the hearing before the Disciplinary Tribunal and the investigation by the Professional Conduct Committee. No GST is payable.

PUBLICATION AND SUPPRESSION ORDERS

All parties agreed that the details of the Member's former employer be suppressed.

Pursuant to Rule 13.78 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the names of the company of which the member was a former employee, and any information or documents which might identify them, be suppressed.

The PCC sought the standard publication order. The Member accepted that such an order was appropriate in the circumstances. The Tribunal agrees.

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 the 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 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.

DJH Barker FCA
Chairman
Disciplinary Tribunal