

Professional Conduct Committee - 21 June 2021

Adverse finding, 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 21 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)(e);
- 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 \$2,785 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

Chartered Accountants ANZ (CA ANZ) received a copy of the decision of the Administrative Appeals Tribunal (AAT) in relation to the Member's application for a review of the decision of the Tax Practitioners Board (TPB) to terminate his tax agent registration, with the Member unable to apply for re-registration within 5 years.

In short, the AAT found that:

1. Relevant documents completed by the Member were knowingly misleading in material particulars in that they did not include references to relevant tax debts;
2. The Member had outstanding tax obligations, including Director Penalty Notices, and entities controlled by him had defaulted in lodgement and payment obligations including superannuation guarantee charge defaults and PAYG remission defaults;
3. It was not satisfied that the financial difficulties encountered by the Member provided a persuasive or reasonable explanation for the significant and sustained taxation compliance defaults by the Member.

The AAT consequently found that the Member was not currently of good fame, integrity and character and was not a “fit and proper person” so as to be eligible for registration under the *Tax Agent Services Act* (TASA).

However, the AAT did reduce the period in which the Member was unable to apply for re-registration to 2 years which has now passed. The reasons for this included that the Member had largely remedied or regularised his taxation affairs. There was also no complaint or criticism about his past competence in dealing with client’s affairs which was a significant consideration and the assertion that his circumstances had changed, and the likelihood of future contravention had been removed by that change and the proceedings before the AAT.

Reasons

The Member admitted that the decision of the AAT is an adverse finding against him in accordance with By-Law 40(2.1)(e). However, he submitted that the matter had been adequately dealt with by the AAT in reducing the period in which he is unable to apply for re-registration to 2 years, which has now passed. The Member argued that By-Law 40(2.1)(e) should no longer apply as the Member was now able to apply for re-registration, although he had not done so yet due to personal reasons. The PCC does not accept this argument given the natural meaning of the terms of By-Law 40(2.1)(e).

In relation to the fundamental principle of integrity, the Member submitted that the declarations he made were straightforward, although the AAT and the Board found them to be inadequate. He said these declarations were made honestly and truthfully and there was no intention to mislead or deceive and the declarations were made in the same way as he understood they had to be made over many years. He continued to assert that the expression “personal tax affairs” means exactly what it says and he has believed for many years that it does not include entities associated to the Member and, while the AAT did not accept this argument, he believed he was vindicated by the TPB’s explanatory paper which dealt with this issue subsequent to the relevant declarations.

In addition, the Member said that he had made various declarations relating to director penalty notices which became personal debts and as he did disclose those director penalty notices there was no intention to hide from them. In this regard, he submitted that there was never any attempt to avoid his obligations and there has never been a substantial issue with the ATO in relation to his affairs or the entities associated to the Member other than overdue lodgements and payments.

In relation to his personal tax debts, the Member said that the amounts he disclosed were incorrect. The Member conceded that he did not check the amount of his personal tax debts and should have.

The PCC notes the Member’s explanation for his conduct. However, the PCC notes the decision of the AAT and the concessions made by the Member. The PCC also notes the finding by the AAT that the Member’s non-disclosure of his individual tax debts was knowingly misleading rather than being made in a mistaken but honest misunderstanding. For the purposes of its decision, the AAT accepted the Member’s argument regarding the meaning of the expression “personal tax affairs.” On this basis, the PCC decided that the Member is liable to disciplinary sanctions under By-Law 40(2.1)(h) as he has breached the fundamental principle of integrity as set out in sections 100.5 (a), 110.1 and 110.2 of APES 110.

The Member submitted that he had not brought discredit on himself and, by extension CA ANZ and the profession of accountancy in accordance with By-Law 40(2.1)(k) nor had he breached the fundamental principle of professional behaviour as set out in sections 100.5 (e) and 150.1 of APES 110. He said there was no evidence of discredit and he had reached this conclusion after extensive discussions with his clients who were aware that his issues with the TPB and the AAT involved personal tax matters and did not involve any tax avoidance and the relevant events took place almost 5 years ago. He believed that a reasonable and informed third party would hold this view as well.

The PCC does not accept the Member's argument in relation to this issue and finds the Member is liable to disciplinary sanctions under By-Law 40(2.1)(k) and By-Law 40(2.1)(h) as he has breached sections 100.5 (e) and 150.1 of APES 110 on the basis that these are matters that may bring discredit upon the member, CA ANZ or the profession of accountancy.

For the reasons set out above, the PCC decided that this matter was sufficiently serious to warrant referral to the Disciplinary Tribunal, but that a Consent Agreement should be proposed to the Member on the terms set out above.

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

21 June 2021