

Professional Conduct Committee – 30 May 2022

Adverse finding, Professional Membership, Professional Behaviour, Discredit, False or Misleading Information – Member B

At a meeting of the Professional Conduct Committee (PCC) of Chartered Accountants Australia and New Zealand held in private on 30 May 2022 by videoconference in respect of Member B, the PCC decided that in relation to the issues referred to below 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)(g)
- By-Law 40(2.1)(h)
- By-Law 40(2.1)(k)
- By-Law 40(2.1)(m)

The PCC considered that these issues were 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 reprimand;
2. the Member and his Practice Entity be required to submit to a quality review pursuant to the CA ANZ Regulations, at the Member's cost, with the results of such review to be made available to the PCC;
3. the Member pay to CA ANZ the sum of \$1,675 by way of contribution towards the costs of investigating and dealing with the matters the subject of the complaint and the Case Conference; and
4. 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", without disclosing the Member's name and locality, with a link to the published decision.

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

CA ANZ received information that the Member was the subject of an adverse or unfavourable finding by the Tax Practitioner's Board (TPB) which resulted in his tax agent registration being terminated for failure to comply with the Code of Professional Conduct (Code). He failed to disclose this in his membership renewals for CA ANZ. In addition, the Member's sub contractor was recently found by the TPB to have engaged in conduct which involved multiple breaches of the Code including that he failed to act with honesty and integrity when he used the services of the Member's company to invoice and receive client funds directly, resulting in four clients' refunds being misappropriated.

Reasons

The Member indicated that he let his company's tax agent registration lapse, but he kept his personal registration. However, the TPB received a complaint about the Member and because he was behind in his personal and corporate tax lodgements due to ill-health, his personal registration was terminated by the TPB. The Member said that he failed to deal with the complaint to the TPB appropriately due to personal circumstances.

At this time the Member's subcontractor, who was a registered tax agent, suggested that he subcontract his tax agency services to the Member's company so that the Member could then continue acting for clients. The Member agreed to this. The arrangement was that the Member's company would invoice the client for both the Member's and the subcontractor's work and the subcontractor would invoice the Member for his services. It appears that refunds were transferred from the Member's trust account to the subcontractor at the subcontractor's request and without the Member's knowledge.

One day the subcontractor left the Member's office and never came back.

The Member accepted that he was responsible for the subcontractor and should have been more involved and known what was going on. He was not aware there was any misappropriation.

The Member did not appreciate at the time he completed his CA ANZ renewals that he should have disclosed the termination of his tax agent registration. He has notified other bodies and this was simply an omission on his part.

The PCC decided that the termination of the Member's tax agent registration by the TPB is an adverse or unfavourable finding in accordance with By-Law 40(2.1)(e) and this constitutes a condition or restriction on any professional membership, registration or licence in the Member's name in accordance with By-Law 40 (2.1)(g).

The PCC also decided that the Member had failed to comply with the fundamental principle of professional behaviour as set out in APES 110 and thereby By-Law 40(2.1)(h) insofar as he failed to:

- properly supervise his staff and/or subcontractors;
- keep personal and corporate tax lodgements up to date;
- deal with the TPB in a timely manner; and
- inform CA ANZ of the termination of his tax agent registration.

In these circumstances, the PCC decided that the Member had committed an act omission or default which brings discredit upon that Member, CA ANZ or the profession of accountancy in accordance with By-Law 40(2.1)(k). The PCC also decided that the Member had breached By-Law 40(2.1)(m) in submitting the CA ANZ renewals which did not disclose the termination of the Member's tax agent registration.

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

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