

**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 a Chartered Accountant

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**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND  
INSTITUTE OF CHARTERED ACCOUNTANTS  
22 October 2014**

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**Hearing:** 22 October 2014

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

**Tribunal:** Mr MJ Whale FCA (Acting Chairman)  
Prof DJD Macdonald FCA  
Mr DP Scott FCA (retired)  
Ms A Hauk-Willis (Lay member)

**Legal Assessor:** Mr Paul Radich QC

**Counsel:** Mr Richard Moon for the prosecution  
Mr Alexander Ho for the Member



At a hearing of the Disciplinary Tribunal held in public at which the Member was in attendance by videoconference and represented by counsel the Member admitted the amended particulars and pleaded guilty to the charge.

The charge and amended particulars are 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 21.30 (f) the Member has breached the Institute's Code of Ethics.

## **PARTICULARS**

### **IN THAT**

In the Member's role as a Chartered Accountant in public practice and in relation to a complaint, the Member:

- (1) Performed assurance engagements for Z Limited and/or X Inc and/or Y Limited when he was not independent, as he and/or his firm also prepared the entities' financial statements, in breach of Rule 4 *Independence* of the 2003 Code of Ethics ("Code of Ethics") and/or 29 and/or 55 of the Code of Ethics Independence in Assurance Engagements; and/or
- (2) As the audit engagement partner, failed to ensure that assurance engagements were completed with due care and diligence and/or in accordance with relevant auditing and assurance standards, in breach of the Fundamental Principle of Quality Performance and/or Rule 9 *Due Care and Diligence* and/or Rule 11 *Compliance with Technical and Professional Standards* of the Code of Ethics, in that he:
  - a. failed to form a conclusion on compliance with independence requirements, in breach of paragraph 11 of ISA (NZ) 220 *Quality Control for an Audit of Financial Statements* M Limited and/or X Inc and/or Y Limited; and/or
  - b. failed to design and/or perform audit procedures that were appropriate for the purposes of obtaining sufficient appropriate audit evidence to draw reasonable conclusions on which to base his audit opinions, in breach of paragraph 6 of ISA (NZ) 500 *Audit Evidence*, in that:

*In relation to M Limited:*

- i. there was no evidence that the client was asked to confirm that representations made on 9 March 2012 remained valid at the date of signing the audit report on 29 May 2012, and/or
- ii. there was no evidence of how audit risks noted in the preliminary analytical review were dealt with; and/or
- iii. [withdrawn]

- iv. there was no evidence of how audit samples were selected and/or results evaluated; and/or

In relation to Z Limited:

- v. the financial statements contained a material error in that they incorrectly included a dividend of \$961,537 as paid within the year ended 31 March 2011, when the dividend was approved on 5 July 2011, however there was no evidence that the auditors had considered the error for adjustment or inclusion in the audit report; and/or

In relation to Y Limited:

- vi. from the financial statements, Y Limited appeared to be insolvent, however, there was no evidence that the appropriateness of the going concern basis had been considered and/or whether the disclosures in the financial statements were adequate; and/or
- vii. there was no evidence that the Risk Assessment and/or Audit Report and/or Audit Control sections of Audit Assistant were completed; and/or

In relation to W Limited:

- viii. from the financial statements, W Limited appeared to be insolvent, however, there was no evidence that the appropriateness of the going concern basis had been considered and/or whether the disclosures in the financial statements were adequate; and/or
- c. failed to satisfy yourself that sufficient appropriate audit evidence had been obtained, in breach of paragraph 17 of ISA (NZ) 220 (M Limited and/or Z Limited and/or X Inc and/or Y Limited and/or W Limited); and/or
- d. failed to document his reviews of audit work performed and the date and extent of his reviews, in breach of paragraph 9(c) of ISA (NZ) 230 *Audit Documentation*, and/or the date and extent of his reviews in breach of paragraph 8(a) ([withdrawn]) and/or (Z Limited and/or X Inc and/or Y Limited and/or W Limited); and/or
- e. failed to include in his auditor's reports a statement that he had also prepared financial statements for the entities, in breach of paragraph (NZ) 33.1 of ISA (NZ) 700 *Forming an Opinion and Reporting on Financial Statements* (M Limited and/or Z Limited and/or X Inc and/or Y Limited) and/or
- f. he did not have an electronic and/or hard copy audit file to support his audit of Z Limited and accordingly there was no documentation of compliance with any applicable standards; and/or

- (3) Signed audit opinions for B Limited and/or A Limited; and/or C Limited; and/or D Limited, in contravention of a direction issued on 14 December 2012 by the Practice Review Board of the Institute pursuant to Rule 20.6(d) that he not undertake audit engagements without the supervision of a mentor and completion of specified training, in breach of the Fundamental Principle of Professional Behaviour of the Code of Ethics; and/or

- (4) Failed to operated his firms' trust account with due care and diligence in that he failed to have an adequate system of internal control for the trust account to prevent unauthorised payments being made by his wife to other accounts including those belonging to himself and/or his family, namely:
- a. a payment of \$2,500 to L Limited on or about 6 July 2011; and/or
  - b. a payment of \$1,000 to account \*\*-\*\*\*\*\*-\*\* on or about 18 July 2011; and/or
  - c. a payment of \$2,500 to N Limited on or about 19 October 2011; and/or
  - d. a payment of \$2,000 to L Limited on or about 19 October 2011; and/or
  - e. a payment of \$2,000 to credit card \*\*\*\*-\*\*\*\*-\*\*\*\*-\*\*\*\* on or about 5 December 2011; and/or
  - f. a payment of \$2,300 to account \*\*-\*\*\*\*\*-\*\* on or about 7 December 2011; and/or
  - g. a payment of \$3,000 to account \*\*-\*\*\*\*\*-\*\* on or about 1 February 2012; and/or
  - h. a payment of \$300 to account \*\*-\*\*\*\*\*-\*\* on or about 15 February 2012; and/or
  - i. a payment of \$1,000 to account \*\*-\*\*\*\*\*-\*\* on or about 7 March 2012,
- in breach of Rule 9 *Due Care and Diligence* of the Code of Ethics; and/or
- (5) Failed to operate his firm's trust account in accordance with Professional Standard 2 *Client Monies* ("PS-2") in breach of Rule 11 *Compliance with Technical and Professional Standards* of the Code of Ethics, in that:
- a. client monies were withdrawn from his firm's trust account for client payments without the prior authority of the client, in breach of paragraph 48 of PS-2, namely:
    - i. a payment of GST of \$298,682.98 for P Limited on or about 21 October 2011; and/or
    - ii. a payment of \$10,000 for O Limited on or about 22 September 2011; and/or
  - b. [withdrawn]
  - c. [withdrawn]
  - d. his firm's trust account was overdrawn by \$1,016.32 at 21 October 2011 and/or by \$230.77 at 15 February 2012, in breach of paragraph 54 of PS-2.

## DECISION

The Tribunal finds the charge made out and all the amended particulars established.

The first three particulars relate to an audit practice which was established in 2008. The Tribunal considers that the failings identified in the audit related particulars are serious.

It will generally not be possible for a sole practitioner undertaking compilation assignments to also conduct an audit of that work irrespective of the practice structure that may be in place to separate responsibility.

Members should be aware of the considerable obligations imposed by the Code of Ethics and auditing standards in relation to independence, supervision and review, and documentation. In the Member's case it is clear that his audit practices and procedures fell well short of the required standards.

In relation to particular 3 (signing audit opinions in contravention of the directions of the Practice Review Board) the Tribunal notes there may have been some miscommunication between the Member and the Institute. However, it accepts the submission of the Professional Conduct Committee ("the PCC") that the onus was on the Member to be clearly acting within the scope of that direction.

Particulars 4 and 5 relate to the operation of the Member's Trust Account. It is essential that adequate controls are in place in relation to the management of Trust Accounts. The Tribunal accepts that the unauthorised transactions resulted from clerical errors which the Member rectified as soon as he identified them; and the payment of client monies without written authority were genuine transactions of which the Member's clients were aware or authorised orally, and subsequently confirmed in writing. There is no suggestion of dishonesty and client monies were not at risk.

## **PENALTY**

The PCC submitted that the appropriate penalty in this case was censure which the Member accepted.

The Tribunal was advised that during Practice Reviews in 2008 and 2011 no issue was raised about the way in which the Member had separated the accounting and audit sections of his practice. Following the Practice Review in 2012 when the Member first became aware of the Institute's concerns, he took prompt action to sell his audit practice. The Member stated that he have no intention of undertaking audit work in the future.

The Tribunal has had regard to the Member's long and unblemished career and service to the public, his remorsefulness, the fact that he has changed the controls around the management of his Trust Account and that he passed a subsequent Practice Review which included the Trust Account. The Tribunal agrees that in these circumstances censure is the appropriate penalty.

Pursuant to Rule 21.31 (k) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the Member be censured.

## **COSTS**

The Professional Conduct Committee seeks full costs of \$28,694 and the Member has accepted that is appropriate.

The Tribunal's general approach 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 Final Determination.

There are no mitigating factors such as excessive or unnecessary expenses incurred or demonstrated evidence of hardship (inability to pay).

Pursuant to Rule 21.33 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 \$28,694 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**

The PCC sought publication of the decision on the Institute's website and in the Institute's official publication *Acuity* without name and location. The Member submitted that this was appropriate.

The Tribunal's starting point is that name and location should be published unless there are very good reasons why this should not occur. The Tribunal has had regard to the factors referred to above under decision and penalty. In this case, by a fine margin, the Tribunal considers that the public interest can be served and the objective of maintenance of professional standards can be sufficiently met by making the orders below.

In accordance with Rule 21.35 of the Rules of the New Zealand Institute of Chartered Accountants the decision of the Disciplinary Tribunal shall be published on the Institute's website and in the Institute's official publication *Acuity* without mention of the Member's name and locality.

The Tribunal lifts the interim suppression order made at the commencement of the hearing.

Pursuant to Rule 21.52 (b) of the Rules of the New Zealand Institute of Chartered Accountants the Tribunal orders suppression of the names of the clients and all other details that may identify them and the recipients of payments referred to in particular 4.

## **RIGHT OF APPEAL**

Pursuant to Rule 21.41 of the Rules of the New Zealand Institute of Chartered Accountants which were in force at the time of the original notice of complaint, the parties may, not later than 14 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 and 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.

MJ Whale FCA  
**Acting Chairman**  
**Disciplinary Tribunal**