



Professional Conduct Committee - 13 August 2020

Conflict of interest, Objectivity

At a meeting of the Professional Conduct Committee (PCC) of Chartered Accountants Australia and New Zealand held in private on 13 August 2020 in Sydney Australia, the PCC decided that the Member's conduct did not comply with the fundamental principle of objectivity (sections 100.5, 100.8, 100.12, 120.1, 120.2 and 220 of APES 110) as set out in APES 110, *Code of Ethics*, and that the Disciplinary Tribunal would therefore be likely to find that the Member breached by-Law 40(2.1)(h).

The PCC considered that this matter is sufficiently serious to warrant referral to the Disciplinary Tribunal. However, the PCC decided to propose an agreement be made with the Member which shall be entered on the Member's record, on terms that:

- he receive a severe reprimand;
- he pay to CA ANZ the sum of \$1,490 towards the cost of investigating and dealing with the matters the subject of the complaint and the case conference; and
- the Member be required to undertake at his own expense and successfully complete the ethics module of the Public Practice Program within 6 months of the date of the Case Conference.

The PCC considers that it is in the public interest to publish its imposition of this sanction, given the serious nature of the conflicts of interest in relation to this matter. However, the PCC does not consider that there are any special circumstances for publishing the Member's name or location.

Background

The Member is the managing director of an accounting firm. The firm was engaged by a corporate group in the 1980's. In 2005, the Complainants held a 28.25% share in the corporate group and managed one of its retail stores. The Complainants state that they engaged the firm in 2006 to complete their personal and company tax affairs. The Member did not personally provide any accounting services to the corporate group or its directors.

The Member's fellow director was the engagement partner for the corporate group and its directors (including the Complainants) personally.

In 2017, the corporate group was in the final stages of being wound up and the directors became engaged in a commercial dispute.

In 2018, the firm ceased acting for the Complainants because of their threats to commence legal action against the firm.

Reasons

In the PCC's view, the Member, as managing director of the firm, failed to avoid conflicts of interest and put in place appropriate safeguards, in circumstances where the firm continued to act for the corporate group and its directors personally, despite becoming aware in April 2018 that the Complainants and other directors of the corporate group were engaged in a dispute.

While the Member was not directly involved in the engagements and ultimately concluded that the firm could no longer act for the Complainants in April 2018, he saw no conflict in continuing to act for the

corporate group and the other directors, which demonstrates the Member's lack of insight of the issues arising from the clear conflicts of interest.

In the PCC's view, the Member acted promptly upon being notified of the potential conflicts by his fellow director. However, the PCC considered that the Member should have recommended to his fellow director in April 2018, that the firm cease all work for the corporate group during the period of the dispute between the directors, and until such time as that dispute was resolved.

However, the PCC does not consider that it was necessary for the firm to cease carrying out the work for each of the directors in respect of their private trust and personal tax obligations.

In summary, the Member's decision to continue to act for the corporate group and its directors personally, despite becoming aware in April 2018 that the Complainants and other directors of the corporate group were engaged in a dispute, could only be seen as clear disregard for the interests of the Complainants. This is a clear breach of the fundamental principle of objectivity, as contained in sections 100.5, 100.8, 100.12, 120.1, 120.2 and 220 of APES 110 and By-Law 40(2.1)(h).

The PCC considers that the standards around the management of conflict of interest are at the core of an accounting practice, including the requirement to implement adequate safeguards to deal with conflicts. However, the PCC accepted that the firm has implemented changes to its quality control procedures, including:

1. forming a risk committee;
2. by carrying out an independent review of all the firm's procedures conducted annually;
3. updating its conflict of interest documentation to be completed by all directors and implementation of a thorough risk matrix; and
4. employing a full-time risk manager and assistant.

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

9 November 2020