

Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 21 December 2017

Case Number:	D-1178
Member:	John Patrick Dash CA of Queensland
Hearing Date:	14 December 2017
Tribunal:	David Fairlie (Chair) Bruce Glanville FCA Simon Wallace-Smith FCA
Tribunal Legal Adviser:	Lauren Stewart
Representation:	Michael Bradley for the Professional Conduct Committee (PCC) The Member neither appeared nor was represented at the hearing
Case description:	<ol style="list-style-type: none">1. Member breached Regulations CR 2.5 - <i>Certificates of Public Practice</i> and CR 3.3 - <i>Public Practice Regulations</i>.2. Member committed breaches of sections 130 (<i>Professional Competence and Due Care</i>) and 110 (<i>Integrity</i>) of APES 110, <i>Code of Ethics for Professional Accountants</i>.3. Member breached By-Law 40(2.1)(i) by failing to comply with reasonable and lawful directions of an officer of Chartered Accountants ANZ.

1. DECISIONS

1.1 DECISION ABOUT THE PCC'S ALLEGATIONS WHICH ARE SET OUT IN FULL IN SCHEDULE 1

At a hearing of the Disciplinary Tribunal not attended by the Member, the Tribunal:

- was satisfied that the Member was on notice of the hearing to be held on 14 December 2017 and further, was on notice that a decision could be made at the hearing
- found the PCC established allegations 1, 2, 3 and 4 as set out in Schedule 1.

1.2 DECISION ABOUT SANCTIONS

The Tribunal considered that the appropriate sanction in these circumstances was that the Member's membership be suspended for a period of twelve months.

1.3 DECISION ABOUT COSTS SANCTION

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$12,000 for the costs and expenses of the proceedings (paragraph 10.12(l) of By-Law 40). No GST is payable.

1.4 DECISION ABOUT PUBLICATION

This decision will not take effect while the Member remains entitled to appeal.

In accordance with paragraphs 12.3 and 12.4 of By-Law 40, the Tribunal directed that:

- its decision with reasons, mentioning the Member's name and locality, be published on the website of Chartered Accountants ANZ (the **Published Decision**)
- a notice mentioning the Member's name and locality with a web address for the Published Decision be published in the Chartered Accountants ANZ digital and print magazine "Acuity".

1.5 NOTIFICATION TO OTHER BODIES

The Tax Practitioners Board will be notified of this decision.

2. RIGHT OF APPEAL

The Member may, within 21 days after the notification of the written decision with reasons to the Member of this Tribunal's decision, appeal in writing to the Appeals Tribunal of Chartered Accountants ANZ against the decision (paragraph 11.1 of By-Law 40).

While the Member remains entitled to appeal, or while any such appeal by the Member awaits determination by the Appeals Tribunal, the following decisions shall not take effect:

- Decision about the PCC's allegations
- Decision about sanctions
- Decision about costs sanction.

The PCC may, within 21 days after notification of the written decision with reasons to the PCC of this Tribunal's decision, appeal in writing to the Appeals Tribunal of Chartered Accountants ANZ against the decision (paragraph 11.2 of By-Law 40).

3. REASONS FOR DECISION

3.1 ALLEGATION 1

- The PCC submitted that the Member breached By-Law 40(2.1)(h) by provided accounting services to the public while not holding a Certificate of Public Practice. The PCC outlined that:
 - on 24 May 2016 the Professional Conduct Tribunal (constituted under the previous By-Laws of Chartered Accountants ANZ) determined that the Member's Certificate of Public Practice (**CPP**) be cancelled and that the Member was notified of this decision on 3 June 2016 (**24 May 2016 Decision**)
 - the Member did not appeal the 24 May 2016 Decision
 - after the 24 May 2016 Decision, without first reapplying for his CPP, the Member continued to provide accounting services to a member of the public, the initial complainant to the PCC (the Complainant), in relation to preparation of financial statements and income tax returns for the years ended 30 June 2015 and 2016 of an associated entity, and that as a consequence the Member had breached Regulation CR 2.5.
- The Member made no specific submissions in relation to this allegation.
- When determining whether there had been a breach of Regulation CR 2.5, the Tribunal considered whether there was sufficient evidence that after the 24 May 2016 Decision, the Member had acted for the Complainant personally, in his capacity as a Principal of the firm with which he was associated, or whether the Member was merely acting as an employee of the firm. The Tribunal concluded that there was sufficient evidence to raise a strong inference that the Member was acting as a Principal. The Member did not provide any evidence to rebut the allegation although he was on notice of the PCC's allegation that he had provided accounting services to the public without a CPP.
- Accordingly the Tribunal found the allegation established.

3.2 ALLEGATION 2(a)

- By-Law 40(4.4) states:

"A Member must respond in writing to the Professional Conduct Committee within 14 days of notification, unless the Professional Conduct Committee allows a longer period. The Member's written response must address all matters raised in the notification to the satisfaction of the Professional Conduct Committee."
- The PCC submitted that:
 - the Member was notified by the PCC of the complaint against him on 6 June 2017
 - on 19 June 2017 the Member sought an extension of time within which to respond, which was granted to 10 July 2017
 - the Member did not respond by 10 July 2017 and since that time has not responded to, or addressed, the matters raised in the notification to the satisfaction of the PCC.
- The Member made no specific submissions in relation to this allegation.
- The Tribunal accepted the PCC's submissions and concluded that a breach of By-Law 40(4.4) constituted a breach of the more general By-Law 40(2.1)(i) in that the Member failed to comply with a reasonable and lawful direction of an organ of CA ANZ.
- Accordingly the Tribunal found the allegation established.

3.3 ALLEGATION 2(b)

- The PCC referred the Tribunal to its correspondence sent to the Member between 13 July and 24 October 2017 which referred to the allegations and sought his response, and to voicemails left for the Member on 24 and 25 October 2017. The PCC submitted that none of the letters or voicemails had been responded to by the Member and in consequence, this conduct constituted a breach of By-Law 40(2.1)(i).
- The Member made no specific submissions in relation to this allegation.
- The Tribunal accepted the PCC's submission and determined that the Member's conduct constituted a failure to comply with a reasonable and lawful direction of an officer or organ of CA ANZ in breach of By-Law 40(2.1)(i) and accordingly determined that the allegation was established.

3.4 ALLEGATION 3(a)

- Section 130 of APES 110, *Code of Ethics for Professional Accountants (APES 110)* states:

“Professional Competence and Due Care

130.1 The principle of professional competence and due care imposes the following obligations on all Members:

(a) To maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent Professional Service; and

(b) To act diligently in accordance with applicable technical and professional standards when providing Professional Services.

130.2 Competent Professional Service requires the exercise of sound judgment in applying professional knowledge and skill in the performance of such service. Professional competence may be divided into two separate phases:

(a) Attainment of professional competence; and

(b) Maintenance of professional competence.

130.3 The maintenance of professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enables a Member to develop and maintain the capabilities to perform competently within the professional environment.

130.4 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.

130.5 A Member shall take reasonable steps to ensure that those working under the Member's authority in a professional capacity have appropriate training and supervision.

130.6 Where appropriate, a Member shall make clients, employers or other users of the Member's Professional Services aware of the limitations inherent in the services.”

- The PCC submitted that by failing to prepare the income tax returns for the 2015 and 2016 financial years for the entity associated with the Complainant (despite saying that he would) the Member had not acted diligently in accordance with:
 - applicable technical and professional standards in contravention specifically of section 130.1(b)
 - the requirements of an assignment, carefully, thoroughly and on a timely basis in contravention specifically of section 130.4

and that these contraventions of APES 110 section 130 amounted to a breach of By-Law 40(2.1)(a).

- The Member made no specific submissions in relation to this allegation.
- The Tribunal accepted the PCC's submissions that, on the evidence, the Member had simply failed to prepare the relevant 2015 and 2016 income tax returns and determined that the Member's conduct constituted a failure to comply with section 130 of APES 110 and that this constituted a breach of By-Law 40(2.1)(a) and accordingly determined that the allegation was established.

3.5 ALLEGATION 3(b)

- Section 110 of APES 110 states:

"Integrity

110.1 The principle of integrity imposes an obligation on all Members to be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness.

110.2 A Member shall not knowingly be associated with reports, returns, communications or other information where the Member believes that the information:

(a) Contains a materially false or misleading statement;

(b) Contains statements or information furnished recklessly; or

(c) Omits or obscures information required to be included where such omission or obscurity would be misleading.

When a Member becomes aware that the Member has been associated with such information, the Member shall take steps to be disassociated from that information.

110.3 A Member will be deemed not to be in breach of paragraph 110.2 if the Member provides a modified report in respect of a matter contained in paragraph 110.2."

- The PCC submitted that the Member was not straightforward and honest with the Complainant in relation to:
 - lodging tax returns for the entity associated with the Complainant in that he gave false statements regarding the current status of the preparation of those tax returns
 - notifying the Complainant that he had paid certain late lodgement penalties to the Australian Taxation Office when he had not in fact done so

and that this constituted a failure to comply with APES 110 section 110 which amounted to a breach of By-Law 40(2.1)(a).

- The Member made no specific submissions in relation to this allegation.
- The Tribunal accepted the PCC's submission and determined that the Member's conduct constituted a failure to comply with section 110 of APES 110 and that this constituted a breach of By-Law 40(2.1)(a) and accordingly determined that the allegation was established.

3.6 ALLEGATION 4

- Regulation CR 3.3 states:

"Members in public practice are responsible and accountable for their professional conduct and work. This principle applies notwithstanding the manner in which a

Member in public practice chooses to organise the professional work undertaken or the entity by or through which the work is carried out.”

- The PCC submitted that:
 - the Member’s conduct in failing to lodge the tax returns for the entity associated with the Complainant for 2015 and 2016 financial years, relied on in relation to allegation 3(a), also constituted a failure to comply with Regulation CR 3.3 in that the Member failed to accept responsibility for the completion of the financial statements and to lodge the income tax returns for the entity associated with the Complainant
 - the general principle requires that members in public practice are responsible and accountable for their professional conduct and work. As the Member failed to organise the professional work within his firm in such a manner as to ensure that the Complainant’s tax returns were completed and lodged as agreed the Member failed to comply with Regulation CR 3.3 and that failure amounted to a breach of By-Law 40(2.1)(h)
 - the Member had not accepted responsibility for the failures outlined above, just merely provided reasons in mitigation for the behaviour.
- The Member made no specific submissions in relation to this allegation.
- The Tribunal accepted the PCC’s submissions and determined that the Member’s conduct constituted a failure to comply with Regulation CR 3.3 and that this constituted a breach of By-Law 40(2.1)(h) and accordingly determined that the allegation was established.

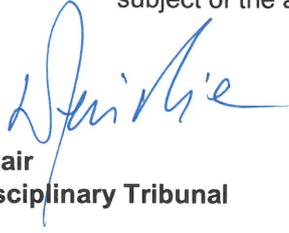
4. SUBMISSIONS BY MEMBER IN MITIGATION

The Member made written submissions to the PCC on 12 December 2017 setting out a number of mitigating circumstances in relation to his conduct over the period to which the allegations relate. The Tribunal took these into account when considering the relevant sanction to impose.

5. REASONS FOR SANCTIONS

- The PCC submitted that, given the seriousness of the matters the subject of the allegations (which were serial and ongoing) along with the fact that the Member had not complied with the 24 May 2016 Decision, it was not appropriate to allow the Member to continue holding himself out as a member of Chartered Accountants ANZ for a period of time. Accordingly, the PCC submitted that the Member should be suspended for twelve months.
- The Member made no specific submissions in relation to sanctions however the Member’s 12 December 2017 submissions were taken into account.
- The Tribunal:
 - noted that the Member had been notified on 6 November 2017 that the PCC intended to seek a suspension of his membership
 - considered whether a suspension for a longer period may have been warranted.
- The Tribunal ultimately determined that the appropriate sanction was to suspend the Member’s membership for a period of twelve months.

- The Tribunal has no power to impose conditions on readmission to membership but is of the view that prior to readmission, Chartered Accountants ANZ should consider, amongst other factors, whether the Member has addressed the underlying conduct that was the subject of the allegations.



**Chair
Disciplinary Tribunal**

SCHEDULE 1 - THE PCC'S ALLEGATIONS

It is alleged that while a member of Chartered Accountants Australia and New Zealand (**CA ANZ**) the Member is liable to disciplinary action in accordance with:

1. By-Law 40(2.1)(h) in that the Member breached regulation CR 2.5 – Certificates of Public Practice, in circumstances where he provided accounting services to the public without a Certificate of Public Practice since 24 May 2016.
2. By-Law 40(2.1)(i) in that the Member failed to comply with a reasonable and lawful direction by an officer of CA ANZ acting within the powers conferred by the By-Laws of CA ANZ, in circumstances where the Member:
 - a) failed to respond to notification of a complaint made against him within the time, in the form and to the standard specified in By-Law 40(4.4); and
 - b) failed to respond to the following correspondence sent to him by CA ANZ in relation to a complaint made against him:
 - (i) letter dated 13 July 2017;
 - (ii) letter dated 28 July 2017;
 - (iii) letter dated 11 August 2017;
 - (iv) letter dated 24 October 2017;
 - (v) a voicemail left on telephone number (07) 4050 1717 on 24 October 2017; and
 - (vi) a voicemail left on telephone number (07) 4050 1717 on 25 October 2017.
3. By-law 40(2.1)(a), in that the Member breached the fundamental principle of:
 - a) professional competence and due care set out at Section 130 of APES 110 *Code of Ethics for Professional Accountants*, in circumstances where he failed to prepare financial statements and income tax returns for a superannuation fund for the years 2015 and 2016; and
 - b) integrity set out at Section 110 of APES 110 *Code of Ethics for Professional Accountants*, in circumstances where he was not straightforward and honest with the trustee of the superannuation fund about:
 - (i) his progress towards completion of the financial statements and income tax returns for the fund for the years 2015 and 2016;
 - (ii) lodgement of income tax returns for the fund for the years 2015 and 2016; and/or
 - (iii) penalties imposed by the Australian Taxation Office for failures to lodge income tax returns for the fund for the years 2015 and 2016.
4. By-law 40(2.1)(h), in that the Member breached the General Principle of CR3.3 – Public Practice Regulations in circumstances where the Member failed to:
 - a) accept responsibility for a failure to complete financial statements and income tax returns for the superannuation fund as agreed; and/or
 - b) organise the professional work within his firm in such a manner as to ensure that financial statements and income tax returns were completed and lodged for the superannuation fund as agreed.

SCHEDULE 2 - RELEVANT BY-LAWS

40. Except as provided by By-Law 41, the By-Laws in this Section 5, including the following paragraphs of this By-Law 40, do not apply to Members who are also members of NZICA in respect of disciplinary matters over which NZICA has jurisdiction and which relate to the practice of the profession of accountancy by NZICA's members in New Zealand. Nothing in this By-Law 40 excludes from the operation of this Section 5, conduct of a Member:

- (a) who was, but is no longer, a member of NZICA; or
- (b) who has subsequently also become a member of NZICA.

Except as provided by By-Law 41, no Member shall be sanctioned under both this Section 5 and NZICA Rule 13 in respect of the same conduct.

...

40(2) Disciplinary action

40(2.1) A Member is liable to disciplinary sanctions under these By-Laws if (whether before or after the date of adoption of this By-Law) that Member:

- (a) has failed to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out that Member's professional duties and obligations;

...

- (h) has committed any breach of the Supplemental Charter, these By-Laws or the Regulations, any pronouncements issued by the Accounting Professional and Ethical Standards Board, Australian Accounting Standards Board and Auditing and Assurance Standards Board (or their successor entities) including the Code of Ethics, or any applicable pronouncements, instruments, technical or professional standards or guidance issued by any similar body whether in Australia or in a foreign jurisdiction;
- (i) has failed to comply with any reasonable and lawful direction of any officer or organ of CA ANZ acting within the powers conferred by CA ANZ's Supplemental Charter, these By-Laws or the Regulations and which relates to a matter concerning the good order and management of CA ANZ;

...