

**INSTITUTE OF CHARTERED ACCOUNTANTS OF NEW ZEALAND
NOTICE OF DECISION OF THE DISCIPLINARY TRIBUNAL**

(Member guilty of misconduct in a professional capacity, negligence or incompetence in a professional capacity, breaching the Institute's Rules and/or Code of Ethics and failing to respond promptly to the Institute)

At a hearing of the Disciplinary Tribunal of the Institute of Chartered Accountants of New Zealand held in public on 28 July 2008, at which the member was not in attendance and not represented by counsel, **PATRICK JOSEPH McCORMICK** a Chartered Accountant of **Auckland** was found guilty of charges (1), (3), (4) and (5) and amended particulars (a) to (f) were found proved. Charge (2) was withdrawn.

The charges and particulars were as follows:

Charges

THAT in terms of the Institute of Chartered Accountants of New Zealand Act 1996 and the Rules made thereunder, and in particular Rule 21.30 the member is guilty of:

- (1) Misconduct in a professional capacity; and/or
- (2) (withdrawn)
- (3) Negligence or incompetence in a professional capacity, and of such a degree or frequency as to reflect on his fitness to practise as an accountant or tends to bring the profession into disrepute; and/or
- (4) Breaching the Institute's Rules and/or Code of Ethics, specifically:
 - a. Rules 20.5, and/or 21.2(b), and/or 21.4(b) and/or 21.3(d); and/or
 - b. Professional Standard No. 2 *Client Monies and Members' Trust Accounts* ("PS-2") paragraphs 13 and/or 16(c) and/or 28 and/or 40 and/or 49 and/or 50; and/or
 - c. the Fundamental Principle(s) of Competence and/or Quality Performance and/or Professional Behaviour; and/or
- (5) Failing to respond promptly to communications from the Institute.

Particulars

IN THAT

In his role as a Chartered Accountant in public practice and in relation to a complaint by the Practice Review Board, the member:

- (a) Breached PS-2 in that he:
 - i. Failed to keep client monies records in such a manner as to clearly disclose the position of his trust account and the client monies therein in breach of paragraph 50; and/or
 - ii. Failed to balance client monies records and reconcile these monthly to the trust account bank statements on a timely basis in breach of paragraph 49; and/or
 - iii. Failed to demonstrate that private and/or practice monies paid into his trust account complied with paragraph 16 (c); and/or
 - iv. Failed to provide evidence of compliance with paragraph 13; and/or
 - v. Made a payment in excess of the amount of funds standing to the credit of client(s) on 9, 12, 13 and 16 July 2007 in breach of paragraph 28; and/or
 - vi. Allowed the trust account to become overdrawn on 9, 12, 13 and 16 July 2007 in breach of paragraph 40;

and/or

- (b) Breached the Fundamental Principles of Quality Performance and/or Rule 9 *Due Care and Diligence* and/or Rule 11 *Compliance with Technical and Professional Standards* in the Code of Ethics in relation to the audit of Company A Limited for the year ended 31 December 2006, in that he:
- i. Used a generic audit plan without tailoring it to the specific circumstances of the audit of Company A Limited which evidences a lack of documentation of overall audit strategy, in breach of paragraph 6 and/or 18 and/or 27 of AS300 – *Planning an Audit of Financial Reports*; and/or
 - ii. Failed to demonstrate that an overall audit strategy was established, specifically in that there is no documentation of the materiality level used in the audit plan, in breach of paragraph 13 of AS300 and/or paragraph 10 of AS304 – *Audit Materiality*; and/or
 - iii. Failed to document that the audit procedures, specifically in relation to the accounts receivable balance of \$134,114, had been carried out, in breach of paragraph 8 of AS204 – *Documentation*; and/or
 - iv. Failed to document that the audit procedures, specifically in relation to the accounts payable balance of \$421,738, had been carried out, in breach of paragraph 8 of AS204 – *Documentation*; and/or
 - v. Failed to document conclusions drawn from the audit work done, in breach of paragraph 8 of AS204 – *Documentation*; and/or
 - vi. Failed to include any documentary evidence of risk assessment and assessment of internal controls within the audit file in breach of paragraph 30 (a) and (b) of AS 402 – *Risk Assessments and Internal Control*; and/or
 - vii. Failed to obtain appropriate representations from management prior to signing the audit report in breach of paragraph 22 and/or 23 of AS 514 – *Management Representations*; and/or
 - viii. Failed to include any documentary evidence of timely enquiries regarding litigation and claims within the audit file in breach of paragraph 6 of AS 512 – *Enquiry Regarding Litigation and Claims*; and/or
 - ix. Breached paragraph 63 of AS 702 – *The Audit Report on an Attest Audit* in that the audit report is dated 19 April 2007 and the financial statements are signed and dated 2 May 2007; and/or
 - x. Failed to include in the audit report a statement as to the existence of any relationship (other than that of auditor) between himself and Company A Limited when on 19 April 2007 the client signed and dated a compilation engagement letter, in breach of paragraph 25 (e) of AS 702 – *The Audit Report of an Attest Audit*
- and/or
- (c) Failed to produce documentation and/or other material in his possession or power (including, but not limited to, a list of client funds held in the trust account, reconciliations, bank statements, and evidence that the trust account had been closed) as required by the Practice Review Board, in breach of Rule 20.5; and/or
- (d) Failed to provide information and/or documentation in his possession or under his control, required by the Professional Conduct Committee pursuant to Rule 21.2(b) in its letter dated 3 January 2008, in particular:
- i. Evidence of the closure of the trust account; and/or
 - ii. Details of the last reconciliation of the trust account prior to 31 May 2008; and/or
 - iii. Trust account bank statements for periods 9 August 2007 to 7 September 2007 and/or 9 October 2007 to 9 November 2007; and/or
 - iv. Trust account records for the 2007 calendar year;
- and/or
- (e) Failed to provide information and/or documentation required by the Professional Conduct Committee pursuant to Rule 21.4(b) in its letter dated 16 April 2008, in particular;

- i. Identifying where the Company A Limited financial statements were reported; and/or
 - ii. Documentary evidence of a reconciliation of the funds held in the trust account as at 31 March 2008; and/or
 - iii. Copies of trust account records and bank statements to 31 March 2008; and/or
 - iv. Evidence that the trust account has been closed as at 31 March 2008 or prior; and/or
- (f) Failed to attend his final determination hearing before the Professional Conduct Committee on 20 May 2008 despite the PCC requiring him to do so pursuant to Rule 21.3(d).

Reasons

This case involves a practitioner charged with failing to operate a trust account in accordance with PS-2, failing to properly conduct an audit, failing to provide requested information to both Practice Review and the Professional Conduct Committee and failing to attend his final determination at the Professional Conduct Committee. Further he was severely reprimanded by the Professional Conduct Committee in 2003 in relation to the same audit client.

The Tribunal is satisfied that all the particulars (a) to (f) are proved.

The member consistently failed to cooperate on a timely basis in respect of all the matters with which he was charged and the cumulative effect is that the Tribunal found the member guilty of all four charges (1), (3), (4) and (5).

ORDERS OF THE TRIBUNAL

- (a) Pursuant to Rule 21.31 (a) of the Rules of the Institute of Chartered Accountants of New Zealand, the Disciplinary Tribunal ordered that the name of **PATRICK JOSEPH McCORMICK** be removed from the Institute's register of members.
- (b) Pursuant to Rule 21.33 of the Rules of the Institute of Chartered Accountants of New Zealand, the Disciplinary Tribunal ordered that **PATRICK JOSEPH McCORMICK** pay to the Institute the sum of \$29,108.00 (inclusive of GST) in respect of the costs and expenses of the hearing before the Disciplinary Tribunal and the investigation by the Professional Conduct Committee and the cost of publicity.

In accordance with Rule 21.35 of the Rules of the Institute of Chartered Accountants of New Zealand, the decision of the Disciplinary Tribunal will be published in the Chartered Accountants Journal, on the Institute's website and in the New Zealand Herald with mention of the member's name and locality.

RIGHT OF APPEAL

Pursuant to Rule 21.41 of the Rules of the Institute of Chartered Accountants of New Zealand which were in force at the time of the original notice of complaint, the member may, not later than 14 days after the notification of this Tribunal to the member of the 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 shall take effect while the member remains entitled to appeal or while any such appeal by the member awaits determination by the Appeals Council.

R J O Hoare
Chairman
Disciplinary Tribunal

29 July 2008