

# Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 21 December 2016

**Case Number:** D-1143

**Member:** Anthony Philip Wilson CA of Victoria

**Hearing Date:** 21 December 2016

**Tribunal:** David Fairlie (Chair)  
Ross Gavin FCA  
Bronwyn Morris FCA

**Legal Adviser:** Zoe Taylor

**Counsel:** Jessica Vartuli for the Professional Conduct Committee (PCC)  
The Member neither appeared nor was represented at the hearing

**Case description:**

1. Adverse findings against the Member by a professional or statutory body.
2. Failure to advise change of residential/employment address.

## **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 found the PCC did establish allegation 1
- the Tribunal found the PCC did not establish allegation 2.

### **1.2 DECISION ABOUT SANCTIONS**

The Tribunal considered that the appropriate sanction in these circumstances was that the Member be suspended from membership of Chartered Accountants ANZ and his name be removed from the Registers on which it appears for such period as the termination of the Member's registration as a registered tax agent with the Tax Practitioners Board remains in effect.

### **1.3 DECISION ABOUT COSTS SANCTION**

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$10,460 for the full 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.

The Tribunal will publish its decision, mentioning the Member's name and locality, on the website and in the journal of Chartered Accountants ANZ (paragraphs 12.3 and 12.4 of By-Law 40).

### **1.5 NOTIFICATION TO OTHER BODIES**

The Tribunal was not informed of any registrations and/or memberships with any other professional or statutory bodies that are held by the Member.

## **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. CONTACT WITH MEMBER**

The Member did not attend the hearing of the Disciplinary Tribunal. Chartered Accountants ANZ sent the Notice of Disciplinary Action and gave notice of the hearing date of these proceedings to the Member at the last residential address and email address nominated by him. Chartered Accountants ANZ produced evidence of the considerable efforts that it had undertaken to ascertain his whereabouts, including leaving messages on his mobile telephone and contacting his prior employers, all of which had proved unsuccessful. The Tribunal was satisfied that the hearing could proceed in his absence.

### **4. REASONS FOR DECISION**

#### **4.1 ALLEGATION 1**

The Commonwealth of Australia Government Gazette (Government Notices) dated 2 December 2015 recorded that the Member was terminated from registration as a registered tax agent with the Tax Practitioners Board, with effect from 15 October 2015, because of his *“failure to comply with code of professional conduct”*. It follows that the allegation was established.

#### **4.2 ALLEGATION 2**

- The PCC submitted that because the Member had failed to respond to any communication from Chartered Accountants ANZ, including a letter dated 17 February 2016 sent by registered post to his last known address which was marked as return to sender on 22 March 2016, the Tribunal should find that he failed to notify Chartered Accountants ANZ of a change to his principal residence/employment address.
- The Tribunal was not satisfied that this evidence was sufficient to establish the allegation because:
  - the return to sender notification was marked “unclaimed” and not “left address”
  - a further letter marked as being sent by registered post was not returned to Chartered Accountants ANZ marked return to sender
  - there was no evidence that the Member had moved or changed his address.

### **5. REASONS FOR SANCTIONS**

- The PCC submitted that the Member should be suspended from membership and that the costs of the proceedings be paid by the Member because:
  - the Member was terminated from registration as a registered tax agent with the Tax Practitioners Board, with effect from 15 October 2015, because of his *“failure to comply with code of professional conduct”*
  - this was a serious matter and reflected adversely on Chartered Accountants ANZ because it related to his professional and business conduct and competence
  - he had failed to provide any explanation for the termination of his registration with the Tax Practitioners Board
  - costs of the proceedings could have been avoided had the Member responded to Chartered Accountants ANZ.
- The PCC did not seek cancellation of his membership because the reasons for the decision by the Tax Practitioners Board to terminate his registration were not known.
- The Tribunal accepted the submissions made by the PCC and determined that the Member be suspended from membership of Chartered Accountants ANZ for such period as the termination of the Member’s registration as a registered tax agent with the Tax

Practitioners Board remains in effect. Additionally the Tribunal noted that the adverse findings made against the Member are a matter of public record as they are published in the Commonwealth of Australia Government Gazette.

- In relation to costs, the Tribunal accepted the PCC's submission that the proceedings could have been avoided had the Member responded to Chartered Accountants ANZ.

  
**Chair**  
**Disciplinary Tribunal**

## SCHEDULE 1 - THE PCC'S ALLEGATIONS

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

1. By-Law 40(2.1)(e), in that on 15 October 2015 the Tax Practitioners Board (TPB) made the following adverse findings:
  - a) in relation to the Member's professional or business conduct or competence, namely his "*failure to comply with code of professional conduct,*" as recorded in the Commonwealth of Australia Gazette (Government Notices) dated 2 December 2015; and
  - b) terminated the Member's registration as a registered tax agent with the TPB (effective from 15 October 2015).
2. By-Law 40(2.1)(i), in that the Member failed to inform Chartered Accountants ANZ's Chief Executive Officer of a change in his principal residence/employment within a reasonable timeframe, pursuant to By-Law 30 and By-Law 144.

## SCHEDULE 2 - RELEVANT BY-LAWS

30. On application for admission to Membership, every applicant (being a natural person) shall, in writing under his or her hand inform the Chief Executive Officer of his or her place or principal place of business (whether as a principal or an employee) and the nature of such business and of his or her principal place of residence and shall thereafter, as soon as reasonably practicable, advise the Chief Executive Officer of any change in these particulars.

On application for admission to Membership, every applicant (being a Practice Entity) shall, in writing inform the Chief Executive Officer of its place or principal place of business and the nature of such business and shall thereafter, as soon as reasonably practicable, advise the Chief Executive Officer of any change in these particulars.

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.

...

### 2 Disciplinary action

- 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:

...

- (e) has been the subject of an adverse or unfavourable finding in relation to that Member's professional or business conduct, competence or integrity by any court of law, professional body, royal commission, statutory authority, regulatory authority, statutory body, commission or inquiry in any jurisdiction in Australia or elsewhere;

...

- (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;

...

144. Every Member of CA ANZ shall forthwith notify the Chief Executive Officer of any change required to be made in his or her Registered Address for the purpose of the preceding By-Law.