

Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 20 December 2016

- Case Number:** D-1148
- Member:** Jennifer May Burchard, CA of Queensland
- Hearing Date:** 16 December 2016
- Tribunal:** David Fairlie (Chair)
Stewart Leslie, FCA
John Gibson, 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. Member breached Regulations.
 2. Member failed to respond to correspondence from Chartered Accountants ANZ in relation to the Liability Capping Questionnaire and failed to hold professional indemnity insurance.

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 that allegations 1(a), 1(b) and 2 were established.

1.2 DECISION ABOUT SANCTIONS

The Tribunal considered that the appropriate sanctions in these circumstances were that:

- the Certificate of Public Practice held by the Member be cancelled
- the Member be reprimanded.

1.3 DECISION ABOUT COSTS SANCTION

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$2,500 for the costs and expenses of the hearing (paragraph 10.12(l) of By-Law 40). No GST is payable.

The PCC sought recovery of the full costs of the proceedings in the amount of \$7,121.

The Tribunal considered that payment of the amount of \$2,500 was appropriate in view of the Member's financial circumstances.

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 Member is registered with the Tax Practitioners Board, which will be notified of this decision.

2. RIGHT OF APPEAL

In accordance with paragraph 11.1 of By-Law 40 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.

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.

In accordance with paragraph 11.2 of By-Law 40 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.

The Tribunal determines that these appeal periods be extended to 28 days to allow for the Christmas and New Year period.

3. REASONS FOR DECISION

3.1 ALLEGATION 1(a)

- The Tribunal considered the material submitted by the PCC which indicated that the Member had, since October 2015, failed to respond to requests to submit a completed Liability Capping Questionnaire.
- Having considered the material, the Tribunal determined that the allegation was established.

3.2 ALLEGATION 1(b)

- The Tribunal considered the material submitted by the PCC which indicated that the Member had failed to hold a contract of professional indemnity insurance, as required by Regulation CR2A.
- The Member conceded the appropriate insurance was not in place.
- Having considered the material and the Member's concession, the Tribunal determined that the allegation was established.

3.3 ALLEGATION 2

- The Tribunal considered the material submitted by the PCC which indicated that the Member had failed to respond to correspondence from Chartered Accountants ANZ sent to her between 8 October 2015 and 23 June 2016 concerning the completion of her Liability Capping Questionnaire and her professional indemnity insurance arrangements.
- Having considered the material, the Tribunal determined that the allegation was established.

4. REASONS FOR SANCTIONS

- The PCC submitted that:
 - operating without professional indemnity insurance was a serious offence and that the Member's membership of Chartered Accountants ANZ should be suspended
 - failure to respond to correspondence from Chartered Accountants ANZ was a less serious matter but that a reprimand should be considered
 - all of the costs incurred by Chartered Accountants ANZ in relation to the hearing should be payable by the Member because of her failure to respond to the correspondence of Chartered Accountants ANZ and the PCC.
- The Tribunal determined that the Member's Certificate of Public Practice be cancelled and that she be reprimanded for the following reasons:
 - the PCC's submission that operating without professional indemnity insurance is a serious matter, exposing the public to possible loss if a claim is made against an uninsured member

- this matter could have been avoided had the Member responded in a timely fashion to the requests for a completed Liability Capping Questionnaire and for details of her professional indemnity insurance arrangements.
- The Tribunal also noted the Member's advice to Chartered Accountants ANZ that she had ceased practice with the exception of filing one tax return for a client. This was a factor in deciding not to suspend her membership as submitted by the PCC.



**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 whilst holding a certificate of public practice the Member failed to:
 - a) complete and return CA ANZ's annual questionnaire about her Professional Indemnity Insurance arrangements for 2015 (**Liability Capping Questionnaire**) and thereby failed to provide to CA ANZ:
 - i. such information and documents about or in evidence of her and/or her practice's professional indemnity insurance as requested;
 - ii. notification of any circumstance notified to her insurer;
 - iii. such information and documents about claims made against her and/or her practice as requested,as required by Regulation CR2A - Professional Indemnity Insurance, paragraph 2A.6(c) (previously paragraph PI.4(c)); and
 - b) have, or ensure that her practice has, a contract of Professional Indemnity Insurance which:
 - i. is valid and binding; and
 - ii. meets at least the minimum requirements set out in Regulation CR2A - Professional Indemnity Insurance;in breach of Regulation CR2, Regulations Relating to Certificate of Public Practice, paragraph 2.19 (previously paragraph 713).
2. By-law 40(2.1)(i), in that the Member has failed to comply with a reasonable and lawful direction of an officer or organ of CA ANZ acting within the powers conferred by the By-Laws. In particular, the Member failed to respond to correspondence sent to her by CA ANZ on 8 and 22 October 2015, 5, 17 and 19 November 2015, 16 December 2015, 2 February 2016, 7 April 2016 and 23 June 2016 concerning the completion of her Liability Capping Questionnaire and her Professional Indemnity Insurance arrangements.

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.

...

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:

...

- (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;