

Professional Conduct Committee – 22 January 2024

Due Care and Diligence, Competence, Conflict, Objectivity, Discredit – Member A

At a meeting of the Professional Conduct Committee of Chartered Accountants Australia and New Zealand (CA ANZ) held in private on 22 January 2024 in Sydney, Australia in respect Member A, the PCC decided that the Disciplinary Tribunal would be likely to find that the Member's conduct did not comply with:

- By-Law 40(2.1)(a)
- By-Law 40(2.1)(h); and
- By-Law 40(2.1)(k).

The PCC decided that, for the reasons set out below, the matters the subject of the Case Conference are sufficiently serious to warrant referral to the Disciplinary Tribunal. However, the PCC decided to propose that a Consent Agreement be made with the Member (Consent Agreement), which shall be entered on the Member's record, on terms that:

1. the Member receive a severe reprimand;
2. the Member and the Member's Practice Entity be required to submit to a quality review pursuant to the CA ANZ Regulations, to be completed by 31 August 2024, at the Member's cost, with the results of such review to be provided to the PCC;
3. the Member must, at the Member's own expense, complete by no later than 31 August 2024 Modules 2 and 3 of the CA ANZ Start-Ups and New Businesses Advisory Practitioners Program;
4. the Member pay to CA ANZ the sum of \$2,448 towards the costs of investigating and dealing with the matters the subject of Case Conference;
5. the PCC will publish:
 - a) details of these sanctions on the website of CA ANZ;
 - b) a notice in the digital and print magazine "Acuity", with a link to the published decision, without disclosing the Member's name and locality.

The PCC considers that it is in the public interest for this sanction to be published in the terms set out in the proposed Consent Agreement, but there are no special circumstances which warrant disclosing the name and location of the Member.

Background

The Member is the sole director and Chief Financial Officer (CFO) of a company (the ACN company).

The Complainant was employed by the ACN company in 2022 when the Member terminated his employment along with more than 30 of his colleagues. The Complainant says that the Member has not paid employees since September 2022 despite consistently telling them that payments would be made to them, among other things.

The business ceased operations in October 2022. The ACN company was placed into liquidation on 23 May 2023.

The Complainant alleges that the Member:

1. breached the fundamental principle of integrity by, among other things, delivering statements to staff along with creditors which he knew to be false, providing reckless and false information to obscure the financial situation of the ACN company;
2. breached the fundamental principle of objectivity as he allowed his relationship with the Chairman of the ACN company to unduly influence his professional judgment;
3. breached the fundamental principle of professional competence and due care as he continually failed to deliver payments to staff on time, left staff without payment of their wages and entitlements, even down to the most basic duties as a CFO of issuing payslips to staff; and
4. breached the fundamental principle of professional behaviour.

Reasons

The Chairman of the ACN company (Chair) had previously been a client of the Member. The Chair had on two previous occasions attempted to set up an online business. The Member had been involved on one of those previous occasions but not the other.

In 2020 Chair asked the Member to set up a company that would operate as an administration company for the purposes of the business. The Member told the Chair that he would not become involved in the business unless he had sufficient funds. The Chair told him that he had substantial funding, together a future revenue source. The Member told the Chair not to incur any costs until that revenue source was available.

The Member did not receive any remuneration in his role as sole director of the ACN company or any other payment or interest in the business. He conducts a practice in business consulting and has other clients. Ultimately, the ACN company only paid wages and the Member spent a relatively small amount of time processing the payroll. The Member was not otherwise involved in the operation of the business.

The Chair had previously been bankrupt twice before. The Member was aware of the first bankruptcy and became aware of the second bankruptcy in 2021 before the business commenced operations.

The ACN company received money through the Chair to pay staff but the Member was not aware of the source of these funds. The business was launched in 2022 but the Member understands that the technology did not work as it was supposed to. The Member made representations to staff based on the information he was provided by the Chair. He was assured the information was accurate but had no control over the availability of funds. The revenue source did not materialise and the funds ran out and the Member had to close the business down. The ACN company was later placed into liquidation owing wages and entitlements to staff.

The PCC considered that the Member had breached the fundamental principle of professional competence and due care as set out in APES 110 – Code of Ethics (Code) and thereby By-Law 40(2.1)(h) and had failed to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out his professional duties and obligations as a director of the ACN company in accordance with By-Law 40(2.1)(a). The PCC considered that the Member needed to be aware of the source of the funds to pay staff and was too narrow in his approach to the operation of the business. He should have been more involved as a director.

The PCC also considered that the Member had breached the fundamental principle of objectivity as set out in the Code and thereby By-Law 40(2.1)(h) due to his prior association with the Chair and his awareness that he had been bankrupted twice previously. The PCC considered that the Member was too ready to accept the Chair's assurances that the money would be paid and should have conducted his own due diligence.

The PCC did not consider that the Member had breached the fundamental principle of integrity as set out in the Code in making representations to the staff as to the payment of wages. However, the PCC did consider that the Member had breached the fundamental principle of professional behaviour as set out in the Code and thereby By-Law 40(2.1)(h) and had committed an act, omission or default which brings or may bring discredit upon the Member, CA ANZ or the profession of accountancy in accordance with By-Law 40(2.1)(k) due to the failures referred to above.

The PCC decided that the matters the subject of the Case Conference are sufficiently serious to warrant referral to the Disciplinary Tribunal. The PCC seriously considered whether this matter should be referred directly to the Disciplinary Tribunal given the Member's failures which it considered to be at a very high level and in the context of the Member's practice being business consulting. However, the PCC decided to propose that a Consent Agreement be made with the Member (Consent Agreement), which shall be entered on the Member's record on the terms set out above.

Costs

The PCC decided to require the Member to pay costs in the amount of \$2,448 in relation to the investigation and consideration of this complaint.

Professional Conduct Committee Chartered Accountants Australia and New Zealand

22 January 2024