

Determination of the Appeals Tribunal of Chartered Accountants Australia and New Zealand 6 December 2018

Case Number:	A-179
Member:	Robert Leslie James Miller CA of New South Wales
Hearing Dates:	3 September 2018 (adjournment application) 22 November 2018
Tribunal:	Jan West AM FCA (Chair) John Gibson FCA Anna Hebron, lay member of the Tribunal
Tribunal Legal Adviser:	Zoe Taylor
Representation:	Michael Bradley for the Professional Conduct Committee (PCC) Michael Garvin for the Member
Case description:	<ol style="list-style-type: none">1. Member found by the Supreme Court of NSW to have acted dishonestly.2. Member subject of adverse findings by the Supreme Court of NSW.3. Member failed to observe a proper standard of professional care, skill and competence in the course of carrying out his professional duties.4. Member has committed acts, omissions or defaults which bring discredit on himself, Chartered Accountants ANZ and the profession of accountancy.
Appeal:	Member appeal of determination and sanctions

1. DECISIONS

1.1 DECISION ABOUT THE APPEAL

At a hearing of the Appeals Tribunal (the **Tribunal**), the Tribunal determined to:

- affirm the determination of the Disciplinary Tribunal that allegations 1, 2, 3 and 4 have been established
- affirm the sanction imposed by the Disciplinary Tribunal that the Member's membership be terminated, his name be removed from the Registers on which it appears and that NZICA be advised of that termination and removal
- affirm the cost sanction imposed by the Disciplinary Tribunal that the Member be required to pay the sum of \$10,101 for the full costs and expenses of the proceedings up to and including the Disciplinary Tribunal hearing.

1.2 DECISION ABOUT COSTS SANCTION

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$18,219 for the full costs and expenses of the appeal (which included an adjournment application determined on 3 September 2018) (paragraph 10.12(l) of By-Law 40). No GST is payable.

1.3 DECISION ABOUT PUBLICATION

In accordance with paragraphs 12.3 and 12.4 of By-Law 40, the Tribunal directed that, there being no exceptional circumstances:

- 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".

1.4 NOTIFICATION TO OTHER BODIES

The Member advised that he holds no registrations or memberships and, as a consequence, no bodies will be notified of this decision.

2. BACKGROUND

The background to this matter is summarised in the decision of the Disciplinary Tribunal. We have repeated that summary below.

*"On 7 April 2017 Justice Rein handed down a judgment in proceedings 2015/317554 and 2014/317448 in the Supreme Court of New South Wales in Lewis Securities Limited (in Liq) v Carter & Anor [2017] NSWSC 412 (the **Proceedings**).*

The Proceedings were brought by the liquidator of Lewis Securities Limited (LSL) against Ms Carter, the wife of Mr Lewis the controlling director of LSL, in proceedings 2015/317554, to recover the amount of \$1,359,103 received by her from LSL, and in proceedings 2014/317448, against Ms Carter and the Member, who was also a director of LSL, to recover the amount of \$1,000,000 paid by LSL ultimately for the benefit of

Ms Carter and Mr Lewis. The Member was alleged to have knowingly participated in this second transaction which involved a dishonest and fraudulent design, in breach of his fiduciary duties to LSL as a director. The Proceedings were heard together.”

3. REASONS FOR DECISIONS ON APPEAL

3.1 ALLEGATION 1 - Member was found to have acted dishonestly by a court of law, as set out in *Lewis Securities Ltd (in Liq.) v Marilyn Carter & Anor [2017] NSW 412*

- The Tribunal determined that this allegation was established as a matter of fact. The findings that the Member acted dishonestly are recorded in the judgment of Rein J in *Lewis Securities Ltd (in Liq.) v Marilyn Carter & Anor [2017] NSW 412* (the **Judgment**), which relevantly states:

[74] For the foregoing reasons, whilst I accept that [the Member] did make some important and damaging admissions, insofar as [the Member] gives evidence of his belief as to the effect of the transaction and any limitations on his role in it, I am unable to accept his evidence as truthful.

[121] It follows that, in my view, [the Member] has knowingly assisted Lewis in Lewis' fraudulent breach of the duty he owed to LSL and Holdings, and [the Member] has, himself, thereby breached a fiduciary duty...

- The Member submitted that he did not act dishonestly or fraudulently. However, By-Law 40(2.1)(c) specifically relates to whether or not a court of law has found that a member acted dishonestly. Accordingly, the Member's submission is irrelevant. The Tribunal affirmed the reasoning of the Disciplinary Tribunal that the findings in the Judgment constituted a breach of the By-Law, even if the Member did not agree with the findings.

3.2 ALLEGATION 2 - Member was the subject of adverse findings by a court of law in relation to his professional and business conduct and his integrity, as set out in *Lewis Securities Ltd (in Liq.) v Marilyn Carter & Anor [2017] NSW 412*

- The Member's submission that he did not act dishonestly did not answer this allegation which raised the factual question of whether or not an adverse finding had been made against him. The Tribunal determined that this allegation was established as a matter of fact.
- The findings made by Rein J at [74] and [121] (see above) were adverse because they contained findings of dishonesty and breaches of fiduciary duty. In addition, at [151] Rein J made the following adverse finding:

[The Member] is a chartered accountant. I regard his involvement in the Bass transaction as conduct of a seriously inappropriate kind.

- These findings clearly related to the Member's professional and business conduct and to his integrity.

3.3 ALLEGATION 3 - Member failed to observe a proper standard of professional care, skill and competence in the course of carrying out his professional duties in circumstances where the Member knowingly assisted Lewis in a dishonest and fraudulent transaction, and knowingly assisted Lewis in a breach of the duty he owed to LSL and Holdings and therefore breached the fiduciary duty the Member owed to LSL

- Rein J found that the Member had knowingly assisted in a fraudulent design. The Member's conduct which assisted in the fraudulent design is set out at [116] (1) to (6) of the Judgment. The Tribunal could and did rely on Rein J's findings, noting that:
 - they were made with the benefit of a fully contested hearing at which the Member was cross-examined
 - at that hearing, the Member was represented by counsel

- the Member did not appeal the findings made in the Judgment.
- The Tribunal was not persuaded by the Member's submission that he did not act dishonestly or fraudulently and for the reasons stated above would not go behind the decision of Rein J.
- The Member submitted to the Disciplinary Tribunal that at all times he was acting as a director of LSL and not in his capacity as a Chartered Accountant, the implication being that the professional standards of Chartered Accountants ANZ were not applicable to his conduct in this role. The Tribunal did not accept this submission because throughout that time the Member was a Chartered Accountant and obligated to comply with the professional standards of Chartered Accountants ANZ.
- In the Tribunal's view Rein J's findings established that the Member failed to observe a proper standard of professional care, skill and competence in the course of carrying out his professional duties. A member acting in accordance with the proper standard of professional care, skill and competence would not be found by a Judge of the Supreme Court to have knowingly assisted in a fraudulent design and have engaged in "seriously inappropriate" conduct.

3.4 ALLEGATION 4 - The acts, omissions and defaults as set out in allegations 1 to 3 bring, or may bring, discredit on the Member, Chartered Accountants ANZ and/or the profession of accountancy

- The PCC submitted that:
 - the Tribunal needed to find discredit in relation to only one or more of the Member himself, Chartered Accountants ANZ or the profession generally
 - at [151] of the Judgment, Rein J stated that he regarded the Member's involvement as "*conduct of a seriously inappropriate kind*"
 - the Member's involvement was knowing. He admitted that he (and others) had engaged in a round robin transaction. The Member knew that he created entities and made purported appointments and notifications to the Australian Securities and Investments Commission which were fictitious
 - the Member's conduct was disgraceful and it follows that it would only bring discredit upon himself and Chartered Accountants ANZ
 - the Tribunal should always assess the question of discredit by reference to the perspectives both of the Member's professional peers and the general public. The PCC submitted that the view from either of those perspectives was discredit.
- The Member made no specific submissions in relation to this allegation except to repeat his denial that he had acted dishonestly. In making this denial, the Member said:
 - Lewis had told him that he wanted to replace a loan with an investment in order to clean up the balance sheet and asked the Member if he had a couple of clients who would be prepared to set up a company to put through preference shares
 - he was unaware that Lewis had a loan from the company or that Lewis re-routed the transaction through the books of LSL Holdings and made payment to himself
 - he did not believe that he had breached any fiduciary duty or that there were any fraudulent results designed in the way the transaction was put together
 - he felt like a "pawn" and thought he had been "set up" by Lewis, but that he should have "gone and checked" what Lewis had told him to do.
- The Tribunal accepted the PCC's submission that it need only find that discredit has been brought to the Member, Chartered Accountants ANZ or the profession of accountancy. However, the Tribunal determined that the findings of dishonesty, the reporting of an

adverse finding, and the failure to observe a proper standard of professional skill, care and competence in the course of carrying out his professional duties, had brought discredit on each of the Member, Chartered Accountants ANZ and the profession of accountancy.

- In particular, Rein J's finding at [151], in which he identified the Member as a Chartered Accountant and referred to his involvement in the matter as "*conduct of a seriously inappropriate kind*", carries a distinct risk that discredit will be brought upon Chartered Accountants ANZ in addition to the profession of accountancy and the Member personally. The fact that the Judgment is a public document only emphasised the fact that the Member's conduct had brought, or may bring, discredit in breach of By-Law 40(2.1)(k). Similarly, Rein J's intention to refer the matter to the Member's professional body and the Australian Securities and Investments Commission for further consideration suggests that there is likely to be further public consideration of the Member's conduct and therefore further discredit.

3.5 SANCTIONS

- The Member submitted that the sanctions imposed by the Disciplinary Tribunal were harsh. In support of this submission the Member said only that he repeated what he had said in relation to breach which was, in summary, that he did not believe he had acted dishonestly or fraudulently and there was no fraudulent design in the transaction.
- The PCC submitted that it was appropriate for the Member's membership to be terminated because:
 - the findings by the Supreme Court were serious
 - the Member had not at any point expressed remorse for his conduct throughout the course of the Court proceedings or the Disciplinary Tribunal hearing or the Appeals Tribunal hearing
 - the Member had continued to maintain he was faultless in this matter and sought to justify his conduct
 - it was clear that the Member did not accept the gravity of his wrongdoing.
- The Tribunal considered Regulation 8.11, *Guidelines for the imposition of sanctions* and, on the basis of:
 - the seriousness of the conduct which involved findings by a Court of dishonesty and assistance in fraudulent and dishonest transactions
 - the need to maintain public confidence in the profession
 - the need to maintain proper standards of professional conduct
 - deterrence in relation to members generally
 - the aggravating factors that the Member showed no remorse and failed to acknowledge any wrongdoing despite the findings of the Court,determined that termination of membership was the appropriate sanction.

4. REASONS FOR DECISION ON COSTS SANCTION

- The PCC submitted that the Member should pay the full costs of the proceedings. The Member did not make any submissions in response.
- The Tribunal affirmed the Disciplinary Tribunal costs sanction of \$10,101 and the findings of the Disciplinary Tribunal were affirmed in full.

- The Tribunal determined that the Member should pay the full costs and expenses of the proceedings as the appeal had been initiated by the Member and the findings of the Disciplinary Tribunal were affirmed in full. In making this decision the Tribunal had regard to Regulation 8.12, *Costs awards*.

A handwritten signature in blue ink that reads "Janet West". The signature is written in a cursive, flowing style.

**Chair
Appeals Tribunal**



Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 29 March 2018

Case Number:	D-1181
Member:	Robert Leslie James Miller CA of New South Wales
Hearing Date:	14 March 2018
Tribunal:	David Fairlie (Chair) David Gibbs FCA Richard Rassi FCA
Representation:	Michael Bradley for the Professional Conduct Committee (PCC) The Member represented himself
Case description:	<ol style="list-style-type: none">1. Member found by the Supreme Court of NSW to have acted dishonestly.2. Member subject of adverse findings by the Supreme Court of NSW.3. Member failed to observe a proper standard of professional care, skill and competence in the course of carrying out his professional duties.4. Member has committed acts, omissions or defaults which bring discredit on himself, Chartered Accountants ANZ and the profession of accountancy.

33 Erskine Street, Sydney NSW 2000
GPO Box 9985, Sydney NSW 2001, Australia
T +61 2 9290 1344

charteredaccountantsanz.com

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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 attended by the Member by way of teleconference the Member did not admit allegations 1, 2, 3 and 4 (as set out in Schedule 1). The Tribunal found that the PCC established allegations 1, 2, 3 and 4.

1.2 DECISION ABOUT SANCTION

The Tribunal considered that the appropriate sanction in these circumstances was that the Member's membership be terminated, that his name be removed from the Registers on which it appears and that NZICA be advised of that termination and removal.

1.3 DECISION ABOUT COSTS SANCTION

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$10,101 being 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.

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 Member holds registration and/or membership with the Australian Securities and Investments Commission (**ASIC**), which 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. BACKGROUND

On 7 April 2017 Justice Rein handed down a judgment in proceedings 2015/317554 and 2014/317448 in the Supreme Court of New South Wales in *Lewis Securities Limited (in Liq) v Carter & Anor* [2017] NSWSC 412 (the **Proceedings**).

The Proceedings were brought by the liquidator of Lewis Securities Limited (**LSL**) against Ms Carter, the wife of Mr Lewis the controlling director of LSL, in proceedings 2015/317554, to recover the amount of \$1,359,103, received by her from LSL, and in proceedings 2014/317448, against Ms Carter and the Member, who was also a director of LSL, to recover the amount of \$1,000,000 paid by LSL ultimately for the benefit of Ms Carter and Mr Lewis. The Member was alleged to have knowingly participated in this second transaction which involved a dishonest and fraudulent design, in breach of his fiduciary duties to LSL as a director. The Proceedings were heard together.

4. REASONS FOR DECISION

4.1 ALLEGATION 1

- The PCC submitted that in the judgment in the Proceedings:
 - there were findings that the Member had acted dishonestly and that he had knowingly assisted Mr Lewis in his dishonest and fraudulent design [at judgment paragraphs 103(11) and 120-121]
 - 103 There are various aspects of the Bass transaction which I need to reiterate and detail:
 - ...
 - (11) The Bass letter was a complete fiction. There were no preference shares in Bass Holdings, there was no "investment position", there was no prospect of payment of 20% of profits because there was no possible source of profits. Miller says he did not write it and described it as a forgery. I find it was either written by Lewis or Miller. If it was written by Miller, Lewis clearly knew of the contents of the letter because it was addressed to him and held by LSL, and he well knew, I infer, that there was no real investment because the companies were, according to his plan, just a 'front'...
 - 120 I have earlier set out my conclusions in respect of [119(a)] and [119(b)]. I am satisfied, and comfortably so, whilst having regard to the serious nature of the allegation, that Miller assisted Lewis in Lewis' dishonest and fraudulent design. If Miller thought that it was LSL to whom the debt was owed, as he asserts, and that the debt was owed by Holdings, then the scheme in which he thought he was participating was one which replaced a debt by Holdings to LSL with a bogus investment...
 - 121 It follows that, in my view, Miller has knowingly assisted Lewis in Lewis' fraudulent breach of the duty he owed to LSL and Holdings, and Miller has, himself, thereby breached a fiduciary duty owed to LSL...
 - this constituted a prima facie breach of By-Law 40(2.1)(c).
- The Member submitted that:
 - he had refuted in the Proceedings and continued to refute these findings and said that he had acted honestly and with integrity at all times
 - an appeal in the Proceedings was heard on 12 March 2018.

- The Tribunal:
 - determined that the findings by Justice Rein in his judgment constituted a breach of the By-Law, even if the Member did not agree with the findings
 - noted that the Member had conceded in answer to questions from Tribunal members during the hearing that the appeal did not involve any submission seeking to overturn the Judge's findings of dishonesty against him.

4.2 ALLEGATION 2

- The PCC submitted that the judgment in the Proceedings:
 - contained adverse findings against the Member in relation to his professional and business conduct [at judgment paragraphs 74, 103(11) and 120-121]

74 For the foregoing reasons, whilst I accept that Miller did make some important and damaging admissions, insofar as Miller gives evidence of his belief as to the effect of the transaction and any limitations on his role in it, I am unable to accept his evidence as truthful.
 - this constituted a prima facie breach of By-Law 40(2.1)(e).
- The Member submitted that:
 - he was acting as a director of LSL and not in his professional capacity as a Chartered Accountant
 - he refuted the findings in relation to his professional and business conduct and his integrity
 - an appeal of the matter was heard on 12 March 2018.
- The Tribunal determined that:
 - the findings related to the Member's professional and business conduct and integrity
 - the By-Law applied to the Member's conduct whether or not the Member was acting as a Chartered Accountant at the relevant time
 - the findings by Justice Rein in his judgment constituted a breach of the By-Law, even if the Member did not agree with the finding
 - and noted that the Member conceded that the appeal did not involve any submission seeking to overturn the Judge's findings against him.

4.3 ALLEGATION 3

- The PCC submitted that the Member knowingly assisted in a dishonest and fraudulent transaction and that he had made admissions in the Proceedings which supported that conclusion [at judgment paragraphs 71 -73].
- The Member conceded that he did bring about the incorporation of two companies (Allegation 3.A.a), opened a bank account for one of the companies (Allegation 3.A.c) and arranged for cheques to be drawn (Allegations 3.A.d(ii), (iii) and (iv)) for the sole or primary purpose of undertaking the relevant transaction. However the Member disputed that:
 - he knew that parties had not been properly appointed as directors of these companies
 - he prepared a letter dated 1 June 2002 from Mr Bass to Mr Lewis
 - he knowingly was associated with a fictitious investment

- the preference shares involved in the transaction had not been created or issued.
- The Member further submitted that at all times he was acting as a director of LSL and not in his capacity as a Chartered Accountant.
- The Tribunal determined that:
 - the Member's role as a director of LSL could not be separated from his carrying out his professional duties
 - the Member should have applied greater diligence to the detail and nature of the transactions and the recoverability of the assets that were recorded as a consequence of the transactions
 - even if the Member's submissions in relation to Allegation 3A were to be accepted, his admissions in the Proceedings set out by Justice Rein at judgment paragraphs 71-73, establish that he knew or should have known that he was knowingly assisting Mr Lewis in his dishonest and fraudulent design and that this amounted to a failure by him to observe a proper standard of professional care, skill and competence and that this constituted a breach of By-Law 40(2.1)(a).

4.4 ALLEGATION 4

- The PCC submitted that the finding of dishonesty and the other adverse findings in the Proceedings clearly brought discredit on the Member, Chartered Accountants ANZ and the profession of accountancy.
- The Member made no specific submissions in relation to this allegation except to repeat his denial that he had acted dishonestly.
- The Tribunal determined that findings of dishonesty and the other adverse findings against him in the judgment in the Proceedings were self evidently matters which brought discredit to the Member and to Chartered Accountants ANZ and to the profession of accountancy.

5. REASONS FOR SANCTIONS

- The PCC submitted that:
 - the findings were indicative of serious misconduct by the Member
 - the Member's conduct was objectively disgraceful
 - the Member failed at any point to express remorse for his conduct
 - the Tribunal should take into account the question of deterrence in relation to members generally, maintaining proper standards and the maintenance of public confidence in the profession
 - a suspension for an extended period or termination from membership was appropriate in the circumstances.
- The Member:
 - restated his submission that the transactions were not implemented in the manner that they were as explained to him by Mr Lewis
 - said that he had been "conned" by Mr Lewis
 - said that he was disappointed that the Tribunal found the allegations were established and he had nothing further to say on the sanctions that may be imposed.

- The Tribunal determined that termination of membership was the appropriate sanction because:
 - the seriousness of the conduct which involved findings of dishonesty by a court
 - the Member failed to grasp the gravity of the matter
 - the submission that the Member was "conned" by Mr Lewis was not made by him in the Proceedings, nor in the appeal of the Proceedings and was only raised by the Member in the final stages of the Tribunal hearing.



**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)(c) in that the Member was found to have acted dishonestly by a court of law, as set out in *Lewis Securities Ltd (in Liq.) v Marilyn Carter & Anor* [2017] NSW 412.
2. By-Law 40(2.1)(e) in that the Member was the subject of adverse findings by a court of law in relation to his professional and business conduct and his integrity, as set out in *Lewis Securities Ltd (in Liq.) v Marilyn Carter & Anor* [2017] NSW 412.
3. By-Law 40(2.1)(a) in that the Member failed to observe a proper standard of professional care, skill and competence in the course of carrying out his professional duties, in circumstances where he:
 - A. knowingly assisted Mr Anthony Richard Lewis in a dishonest and fraudulent transaction (the **transaction**) in that the Member:
 - a) caused Bass Holdings Pty Ltd (Bass Holdings) and Graham Byrne Investments Pty Ltd (GB Investments) to be incorporated for the sole or primary purpose of undertaking the transaction;
 - b) recorded Mr Robert Bass as director of Bass Holdings and Mr Graham Byrne as director of GB Investments when the Member knew that they had not been so appointed and that requisite resolutions had not been passed nor recorded;
 - c) opened a bank account for Bass Holdings for the sole or primary purpose of undertaking the transaction;
 - d) assisted to create the appearance that either Lewis Securities Ltd (LSL) or Holdings LSL Ltd (Holdings) had made an investment in Bass Holdings when, to the Member's knowledge, the investment was fictitious and of no value to LSL or Holdings, by:
 - i) preparing a fraudulent letter dated 1 June 2002, purportedly from Mr Bass on behalf of Bass Holdings to Mr Lewis in his capacity as director of Holdings (the **letter**) or providing to Mr Lewis the names of Mr Bass and Bass Holdings so as to allow him to prepare the letter;
 - ii) depositing into the Bass Holdings bank account a cheque from LSL in the amount of \$1 million;
 - iii) causing a cheque in the amount of \$998,000, payable to GB Investments, to be drawn on the Bass Holdings account;
 - iv) causing a cheque to be drawn on the GB Investments account payable to Lewis/Carter by Lewis; and
 - v) falsely stating in ASIC documents that preference shares had been created and issued to LSL,
 - and, in so doing the Member
 - B. knowingly assisted Mr Anthony Richard Lewis in a breach of the duty he owed to LSL and Holdings and, therefore, breached the fiduciary duty the Member owed to LSL, as set out in *Lewis Securities Ltd (in Liq.) v Marilyn Carter & Anor* [2017] NSW 412.
4. By-Law 40(2.1)(k) in that the acts, omissions and defaults as set out in paragraphs 1 to 3 above bring, or may bring, discredit on the Member, CA ANZ and/or the profession of accountancy.

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;

...

- (c) has in any civil proceedings before any court of law, tribunal or similar body in any jurisdiction in Australia or elsewhere been found to have acted dishonestly (provided such finding has not been entirely set aside on appeal);

...

- (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;

...

- (k) has committed any act, omission or default which, in the opinion of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal brings, or may bring, discredit upon that Member, CA ANZ or the profession of accountancy; or

...

SCHEDULE 1B - 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)(c) in that the Member was found to have acted dishonestly by a court of law, as set out in *Lewis Securities Ltd (in Liq.) v Marilyn Carter & Anor* [2017] NSW 412.
2. By-Law 40(2.1)(e) in that the Member was the subject of adverse findings by a court of law in relation to his professional and business conduct and his integrity, as set out in *Lewis Securities Ltd (in Liq.) v Marilyn Carter & Anor* [2017] NSW 412.
3. By-Law 40(2.1)(a) in that the Member failed to observe a proper standard of professional care, skill and competence in the course of carrying out his professional duties, in circumstances where he:
 - A. knowingly assisted Mr Anthony Richard Lewis in a dishonest and fraudulent transaction (the **transaction**) in that the Member:
 - a) caused Bass Holdings Pty Ltd (Bass Holdings) and Graham Byrne Investments Pty Ltd (GB Investments) to be incorporated for the sole or primary purpose of undertaking the transaction;
 - b) recorded Mr Robert Bass as director of Bass Holdings and Mr Graham Byrne as director of GB Investments when the Member knew that they had not been so appointed and that requisite resolutions had not been passed nor recorded;
 - c) opened a bank account for Bass Holdings for the sole or primary purpose of undertaking the transaction;
 - d) assisted to create the appearance that either Lewis Securities Ltd (LSL) or Holdings LSL Ltd (Holdings) had made an investment in Bass Holdings when, to the Member's knowledge, the investment was fictitious and of no value to LSL or Holdings, by:
 - i) preparing a fraudulent letter dated 1 June 2002, purportedly from Mr Bass on behalf of Bass Holdings to Mr Lewis in his capacity as director of Holdings (the **letter**) or providing to Mr Lewis the names of Mr Bass and Bass Holdings so as to allow him to prepare the letter;
 - ii) depositing into the Bass Holdings bank account a cheque from LSL in the amount of \$1 million;
 - iii) causing a cheque in the amount of \$998,000, payable to GB Investments, to be drawn on the Bass Holdings account;
 - iv) causing a cheque to be drawn on the GB Investments account payable to Lewis/Carter by Lewis; and
 - v) falsely stating in ASIC documents that preference shares had been created and issued to LSL,
 - and, in so doing the Member
 - B. knowingly assisted Mr Anthony Richard Lewis in a breach of the duty he owed to LSL and Holdings and, therefore, breached the fiduciary duty the Member owed to LSL,
as set out in *Lewis Securities Ltd (in Liq.) v Marilyn Carter & Anor* [2017] NSW 412.
4. By-Law 40(2.1)(k) in that the acts, omissions and defaults as set out in paragraphs 1 to 3 above bring, or may bring, discredit on the Member, CA ANZ and/or the profession of accountancy.

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;

...

- (c) has in any civil proceedings before any court of law, tribunal or similar body in any jurisdiction in Australia or elsewhere been found to have acted dishonestly (provided such finding has not been entirely set aside on appeal);

...

- (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;

...

- (k) has committed any act, omission or default which, in the opinion of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal brings, or may bring, discredit upon that Member, CA ANZ or the profession of accountancy; or

...

40(11) Appeals Tribunal

40(11.1) Any Member in respect of whom any determination has been made by the Disciplinary Tribunal or upon whom any sanction has been imposed by the Disciplinary Tribunal may, subject to paragraph 9.4, within 21 days after notice of the written reasons for such determination or sanction is given to that Member, give notice of appeal in the form prescribed by the Regulations to the Appeals Tribunal against any such determination or sanction or both. At the discretion of the Appeals Tribunal later notice may be accepted.

...

40(11.5) Every appeal shall be by way of rehearing but, unless the Appeals Tribunal directs otherwise, it shall not allow witnesses to be recalled who gave evidence before the Disciplinary Tribunal or to introduce any new evidence.

...

40(11.10) On each appeal the Appeals Tribunal may affirm, vary or set aside any determination of the Disciplinary Tribunal and may affirm, increase, reduce or set aside any sanction imposed and may impose any additional or alternative sanction or sanctions from those permitted to the Disciplinary Tribunal by paragraphs 9.1, 10.12, 10.13, 12.3, 12.4 (as applicable) and 13.8.

...