

NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS ACT 1996

IN THE MATTER of the New Zealand Institute of Chartered Accountants Act 1996 and the Rules made thereunder

AND

IN THE MATTER **LINDA PANG (LING-JANIN PANG CHANG),**
Chartered Accountant, of Auckland

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND
INSTITUTE OF CHARTERED ACCOUNTANTS
21 December 2017**

Hearing: 19 December 2017

Location: The offices of Chartered Accountants Australia and New Zealand, Level 1, Carlaw Park Complex, 12-16 Nicholls Lane, Parnell, New Zealand

Tribunal: Mr MJ Whale FCA (Chairman)
Mr DP Scott FCA
Mr R Simpson CA
Ms A Kinzett (Lay member)

Legal Assessor: Mr Matthew Casey QC

Counsel: Mr Richard Moon for the prosecution
Mr James Craig and Mr Sam Comber for the Member

Secretariat: Janene Hick
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At a hearing of the Disciplinary Tribunal held in public at which the Member was not in attendance but was represented by counsel the Member admitted all the amended particulars and pleaded guilty to all the charges.

The charges and amended particulars are as follows:

CHARGES

THAT in terms of the New Zealand Institute of Chartered Accountants Act 1996 and the Rules made thereunder, and in particular Rule 13.39 the Member is guilty of:

1. Conduct unbecoming an accountant; and/or
2. Negligence or incompetence in a professional capacity, and that this has been of such a degree or so frequent as to reflect on the Member's fitness to practice as an accountant or tends to bring the profession into disrepute; and/or
3. Breaching NZICA's Rules and/or Code of Ethics.

AMENDED PARTICULARS

IN THAT

In the Member's role as a member and/or Chartered Accountant and/or in relation to a complaint from the Complainant, the Member:

- (1) Failed to comply with NZICA's public practice rules, in that:
 - (a) Prior to 1 April 2014, the Member offered accounting services to the public as a provisional member, in breach of Rule 18.2¹ of the NZICA Rules; and/or
 - (b) During the period from 1 April 2014 to 7 February 2017, the Member offered accounting services to the public as a Chartered Accountant when the Member did not have a Certificate of Public Practice Certificate of Public Practice, in breach of Rule 18.2² and/or Rule 10.2³ of the NZICA Rules; and/or
 - (c) Prior to 10 October 2016, the Member directly or indirectly controlled the Accounting and Tax Professionals Limited ("ATPL"), a company that offered accounting services to the public, either personally or through the Member's spouse, in breach of paragraph 2.4(d)(i) of Appendix IX⁴ and/or paragraph 2.4(d)(i) of Appendix V⁵ of the NZICA Rules; and/or
- (2) Failed to perform the Member's professional work for the Complainant and/or wife ("the Member's clients") with due care and/or diligence and/or competence, in that the Member and/or the staff under the Member's supervision:
 - (a) Failed to provide correct and/or timely advice to the Member's clients about their provisional tax obligations; and/or

¹ Being the Rule in force prior to 15 December 2014

² Being the Rule in force prior to 15 December 2014

³ Being the Rule in force from 15 December 2014

⁴ Being the Rule in force prior to 15 December 2014

⁵ Being the Rule in force from 15 December 2014

(b) Failed to ensure that the Member's clients' company ABC Limited was correctly registered as a Look-Through Company with Inland Revenue; and/or

(c) Failed to advise the Member's clients that use of money interest and/or late payment penalties were incurred as a result of the failure to pay provisional tax on time,

in breach of the Fundamental Principle of Quality Performance and/or Rules 9 and/or 10 of the Code of Ethics (2003)⁶ and/or the Fundamental Principle of Professional Competence and Due Care and/or paragraphs 130.1 and/or 130.4 of the Code of Ethics (2014)⁷; or

(3) To the extent, that the Member's staff caused and/or contributed to the failings particularised at (2) above, the Member failed to adequately supervise her staff to ensure that they provided accurate and/or timely advice to the Member's clients regarding their taxation obligations, in breach of the Fundamental Principle of Quality Performance and/or paragraph 4 of Appendix 1 of the Code of Ethics (2003) and/or the Fundamental Principles of Professional Competence and/or Due Care and/or paragraphs NZ100.5.4 and/or 130.5 of the Code of Ethics (2014); and/or

(4) Failed to respond and/or respond in a professional manner to the Member's clients' requests to discuss their concerns about the professional services performed by the Member and/or the Member's staff, in breach of the Fundamental Principle of Professional Behaviour and/or paragraph 150.1 of the Code of Ethics (2014).

DECISION

Unsworn briefs of evidence from Ms R.E. Stickney, the complainant and Mr J.S. Gray for the Professional Conduct Committee, and a statement from the Member, were admitted by consent. The Member had no issue with any of the evidence in those briefs.

The Tribunal is satisfied on the evidence before it that the particulars, all of which the Member has admitted, have been made out. It follows that the Member is guilty of Charge 3, which the Member has admitted.

As to Charge 1, the test for conduct unbecoming an accountant is whether the conduct was an acceptable discharge of a Member's professional obligations according to the standards applied by competent, ethical and responsible practitioners. The threshold is inevitably one of degree.

In the Tribunal's view the Member's conduct under Particular 1 fell well below acceptable standards and constituted conduct unbecoming an accountant. The Member represented to her (then prospective) client that she was a Chartered Accountant when at the time the Member was only a provisional member of the Institute. The Member offered accounting services to the public using a number of staff at a time when the Member was not entitled to do so, and through a non-approved entity under the Member's effective control, for a sustained period. The Member initially displayed a lack of insight as to how she had broken the Institute's Rules, and the importance of those Rules in ensuring quality services are provided by competent and adequately qualified Members.

Being a Chartered Accountant carries a responsibility to provide an exemplary service to their clients. They expect a Chartered Accountant to be well informed and competent in the field due to the additional study/supervision before being allowed to provide a service as a Chartered Accountant. The public are entitled to have confidence in the designation of Chartered Accountant due to the above and that Members adhere to the expectation of the Institute in ongoing upskilling and its governing rules.

⁶ Being the Code of Ethics in force prior to 1 January 2014

⁷ Being the Code of Ethics in force from 1 January 2014

As to Charge 2, the Tribunal is satisfied that the conduct admitted in relation to Particulars 2 to 4 constitutes negligence or incompetence in a professional capacity, of such a degree as to reflect on the Member's fitness to practice as an accountant and to tend to bring the profession into disrepute.

The test as to whether the Member's negligence or incompetence (in a professional capacity) is of such a degree as to bring the profession into disrepute is whether reasonable members of the public, informed of all relevant circumstances, would view the conduct as tending to bring the profession into disrepute. The issue is to be approached objectively taking into account the context in which the relevant conduct occurred (*W v Auckland Standards Committee* 3 [2012] NZAR 1071 (CA)). In the Tribunal's view, that test is clearly satisfied.

When clients entrust their tax affairs to a Member, they are entitled to expect that those affairs will be dealt with competently and in a timely manner. The uncontested conclusion of Mr Gray, the investigator for the PCC with which the Tribunal agrees, was that the advice given to the Member's client in relation to his income tax was incomplete to such a degree that he was not adequately informed of his tax obligations (and, in fact, misunderstood them). The advice was below the standard expected of a Chartered Accountant in the circumstances. Failure on numerous occasions to advise the Member's client on a timely basis as to when tax payments were required is conduct falling well below the standards expected of a Chartered Accountant. Also, failing to ensure an intended Look Through Company was properly established and the relevant elections made in time – relatively simple and routine tasks – is the type of failing which brings the profession into disrepute. While some of the failings and conduct may have been those of the Member's staff, as the Member has accepted in Particular 3 she as a Member is responsible for ensuring that her staff comply with the Institute's Code of Ethics.

These matters also reflect on the Member's fitness to practice.

The Tribunal finds Charge 2, which the Member has accepted, proved.

PENALTY

The parties were aligned in what they consider to be the appropriate penalty. That penalty is censure and an order that the Member's practice be reviewed within three months of the date of the decision.

The PCC drew the Tribunal's attention to *Commerce Commission v New Zealand Milk Corporation Limited* [1994] 2 NZLR 730 – there a full High Court held that, where the parties have reached a consensus on penalty, the Court is likely to provide its approval if it accepts that the agreed penalty is proportionate to the evidence available, and the defendant's conduct. The approach has since been applied in disciplinary proceedings against medical practitioners and vets, and by this Tribunal.

The Tribunal was also referred to paragraphs [30]-[32] of the decision in *Commerce Commission v PGG Wrightson Limited* [2015] NZHC 3360 where it was said at [32]:

... when a court is presented by the parties with a proposed penalty, it is still essential that the court perform its own assessment of the appropriate range of penalties. If the penalty is not within the proper range, the court must intervene and impose what it assesses as the appropriate penalty.

What is the appropriate range of penalties?

The Tribunal considers that anything less than a censure would not be within the range due to the seriousness of some of the conduct involved and its finding on Charges 1 and 2.

The potential range of penalties also includes suspension from membership, and (as an alternative or additional penalty to censure) the imposition of a monetary penalty not exceeding \$20,000 and the cancellation or suspension of the Member's Certificate of Public Practice.

In the circumstances of this case the Tribunal is satisfied that the proposed penalty is within the range the Tribunal considers as one which appropriately protects the public and deters others, facilitates the Tribunal's important role in setting and maintaining professional standards, punishes the practitioner but also allows the Member's rehabilitation, reflects the seriousness of the misconduct and can be regarded as fair, reasonable and proportionate in the circumstances – the factors which the Courts have determined are relevant whenever a tribunal such as this is determining an appropriate penalty.

In reaching its decision the Tribunal has taken into account the following mitigating and other factors:

- The Member's remorse and her written apology to the complainant;
- The Member's previously unblemished record;
- The Member's payment of compensation to the complainant in an amount his new accountant has calculated was lost as a result of his company not having LTC status for two financial years;
- The Member's guilty pleas (albeit at a late stage) and the Member's acceptance of the evidence presented by the PCC;
- The Member has consulted a senior practitioner Member; and
- There is another certificate of public practice holder involved in the Member's firm.

The Tribunal also notes the Member's counsel's submission that the proposed penalty is also consistent with those in similar previous decisions of the Tribunal.

The Disciplinary Tribunal orders that:

- **Pursuant to Rule 13.40(k) of the Rules of the New Zealand Institute of Chartered Accountants, Linda Pang be censured; and**
- **Pursuant to Rule 13.40(f) of the Rules of the New Zealand Institute of Chartered Accountants, the Institute conduct a review of Linda Pang's practice, and report its findings to the Professional Conduct Committee, before 31 March 2018.**

COSTS

The Professional Conduct Committee seeks full costs of \$29,660.

The Tribunal's general approach is that the starting point is 100% of costs, noting that the Institute already bears the cost of abandoned investigations and costs up to the Professional Conduct Committee's decision to hold a Final Determination.

The Member accepted that a full costs order was appropriate in the circumstances. The Tribunal considers that such an order is fair and reasonable in the circumstances.

Pursuant to Rule 13.42 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that Linda Pang pay to the Institute the sum of \$29,660 in respect of the costs and expenses of two applications for adjournment of the hearing, the hearing before the Disciplinary Tribunal and the investigation by the Professional Conduct Committee. No GST is payable.

SUPPRESSION ORDER

Pursuant to Rule 13.62(b) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the names of the Member's clients and details of the Member's and her mother's health be suppressed.

PUBLICATION

In accordance with Rule 13.44 of the Rules of the New Zealand Institute of Chartered Accountants the decision of the Disciplinary Tribunal shall be published on the Institute's website and in the official publication *Acuity* with mention of the Member's name and locality.

RIGHT OF APPEAL

Pursuant to Rule 13.47 of the Rules of the New Zealand Institute of Chartered Accountants which were in force at the time of the original notice of complaint, the parties may, not later than 14 days after the notification to the parties of this Tribunal's 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 and the suppression orders shall take effect while the parties remain entitled to appeal, or while any such appeal by the parties awaits determination by the Appeals Council.

A handwritten signature in black ink, appearing to read 'MJ Whale', is written over a faint, light-colored grid background.

MJ Whale FCA
Chairman
Disciplinary Tribunal