

Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 3 July 2019

Case Number: D-1201

Member: Amanda Young CA of New South Wales

Hearing Date: 26 June 2019

Tribunal: David Fairlie (Chair and lay member of Tribunal)
Bronwyn Morris AM FCA
Richard Rassi FCA

Tribunal Legal Adviser: Jamesina McLeod

Representation: Paul Forbes for the Professional Conduct Committee (PCC)
The Member did not appear but consented to the application

Case description: Interim suspension

1. DECISIONS

1.1 DECISION ABOUT THE PCC'S APPLICATION WHICH IS SET OUT IN FULL IN SCHEDULE 1

At a hearing of the Disciplinary Tribunal not attended by the Member, the Tribunal determined that the Member be suspended from membership of Chartered Accountants ANZ on an interim basis until the earlier of:

1. six months after the full and final resolution of the later of:
 - (a) all civil and criminal proceedings against the Member; and
 - (b) all regulatory investigations into the Member's conduct; or
2. further investigation and determination of the complaints arising from the matters referred to in paragraphs 1 – 5 of the PCC's application.

Pursuant to By-Law 40(9.2), for the period of suspension on an interim basis:

- A. the Member's name shall be removed from the Registers on which it appears; and
- B. the Member:
 - (i) loses the rights and privileges of membership;
 - (ii) must surrender to Chartered Accountants ANZ, the Member's certificate of membership, certificate(s) of public practice and any other documents specified in By-Law 40(13.4); and
 - (iii) save as provided in By-Law 40(4.3)(e), remains subject to the disciplinary processes and sanctions under the By-Laws as if still a Member.

1.2 DECISION ABOUT COSTS SANCTION

Costs are to be reserved until the final determination of the complaint against the Member. The Tribunal notes the PCC's estimate of costs to date is \$7,871.

1.3 DECISION ABOUT PUBLICATION

This decision will not take effect while the Member remains entitled to appeal.

In accordance with By-Laws 40(12.3) and 40(12.4), 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".

1.4 NOTIFICATION TO OTHER BODIES

The Member is a suspended member of / holds suspended statutory registrations administered by the following bodies, which will be notified of this decision:

- Australian Restructuring Insolvency and Turnaround Association
- Australian Securities and Investments Commission (**ASIC**).

2. RIGHT OF APPEAL

The Member may, within 14 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 (By-Laws 40(9.4) and 40(11.1)).

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 14 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 (By-Laws 40(9.4) and 40(11.2)).

3. BACKGROUND EVIDENCE

- Judgment of Black J dated 14 December 2018 *In the matter of FGM Print Pty Ltd and other Companies [2018]* NSWSC 1983 which dealt with an application to appoint replacement liquidators to take over from the Member, following concerns being raised with respect to certain transactions made by the Member.
- ASIC media release 18-388MR dated 19 December 2018 which noted that ASIC had suspended the Member's liquidator registration and commenced an investigation into the Member's former administrations.
- Judgment of Black J dated 20 December 2018 *In the matter of Amanda Young [2018]* NSWSC 2012, which dealt with an application made by ASIC seeking orders restraining the Member from leaving, or attempting to leave, Australia.
- Published articles:
 - Insolvency News Online articles titled:
 - Jirsch Partner Suspended Amid Fraud Investigation
 - Jirsch Partner Sacked Over \$240k Misappropriation
 - Jirsch Partner Relinquishes Job After Sister Sacked
 - Fraudster Stripped Of Registration as Trustee
 - Suspended Liquidator Takes Jirsch To Fair Work
 - Accountants Daily article dated 20 December 2018 which stated "...investigations from Jirsch Sutherland had found that \$238,502.23 had been inappropriately taken from four liquidation accounts and directed to accounts operated or controlled personally by [the Member]"
 - My Business article dated 20 December 2018 subtitled "*The alleged misappropriation of almost \$240,000 from liquidation accounts under her charge has led ASIC to indefinitely suspend the registration of a Sydney liquidator, who was also sacked by her employer*".

4. REASONS FOR DECISION ON INTERIM SUSPENSION

Submissions from the PCC

The PCC submitted that this was not a case where it would be appropriate to wait to see what occurs with the ASIC investigation, as it could be years before ASIC actually finally prosecutes and convicts, if appropriate, the Member. It is important that Chartered Accountants ANZ preserve its reputation in the interim by being seen to act promptly and it was appropriate to interim suspend the Member for the following reasons:

- each of the criteria established by By-Law 40(9.1) in regard to the urgency of the matter, interests of the public, the reputation of Chartered Accountants ANZ and the integrity of the profession of accountancy was present, as demonstrated in the ASIC media release and various media reports
- the allegations were serious given the suspension of the Member's registration as a liquidator and ASIC's investigation into her former administrations
- the Member consented to being suspended on an interim basis.

Submissions from the Member

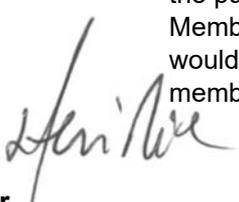
The Member submitted in writing prior to the hearing that she is cooperating with ASIC's investigation and that:

- the monies withdrawn by her from the liquidation accounts the subject of ASIC's investigation were owed to her
- the media reports were "defamatory and heresy" [sic]
- she had requested that her registration as a liquidator be cancelled and this was implemented by ASIC with her consent
- ASIC's investigation was at a preliminary stage and she could not provide any substantial information until the investigation is complete.

Tribunal's decision

- The Tribunal considered the factors that it must take into account in determining an application for an interim suspension. Those factors are set out at By-Law 40(9.1) which states:

"...if the Disciplinary Tribunal is satisfied that it is necessary or desirable to do so, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accounting, the Disciplinary Tribunal may suspend the Member from Membership of CA ANZ on an interim basis pending further investigation and determination of the complaint".
- The Tribunal accepted the Member was entitled to a presumption of innocence and it was not the Tribunal's role to consider, or to turn its mind to, whether the Member had committed the alleged offences.
- The Tribunal was satisfied, having regard to each of the factors of By-Law 40(9.1), that it was both necessary and desirable to suspend the Member on an interim basis (on the basis set out in paragraph 1.1 above) because:
 - the allegations, if proven, would constitute a fundamental and gross breach of trust by the Member, involving large sums of money
 - it is necessary to take prompt action to protect the reputation of Chartered Accountants ANZ and more broadly, the accountancy profession
 - when concluded, the ASIC investigation may result in further adverse media coverage, and continue to put at risk the reputation of Chartered Accountants ANZ and the broader profession of accounting
 - the public are entitled to expect, given the nature of the allegations, that the Member would be suspended on an interim basis. Confidence in the profession would be eroded if the Member was allowed to continue to hold herself out as a member of Chartered Accountants ANZ.


Chair
Disciplinary Tribunal

SCHEDULE 1 - THE PCC'S APPLICATION

The Professional Conduct Committee seeks a determination that the Member's membership of Chartered Accountants Australia and New Zealand (Chartered Accountants ANZ) be suspended on an interim basis.

It is alleged that, while a member of Chartered Accountants ANZ:

1. the Member was appointed as an external administrator of 22 companies while a partner of Jirsch Sutherland (the Firm);
2. the Member inappropriately took \$238,502.23 from four liquidation accounts and directed this amount to accounts controlled personally by her;
3. following investigation by the Firm, the Member's position at the Firm was immediately suspended and the Firm reported the misconduct to the Australian Securities and Investments Commission (ASIC);
4. on 18 December 2018, ASIC suspended the Member's registration as a liquidator and separately commenced an investigation into her former administrations; and
5. the matters referred to in 1 through 4 above have been the subject of publicity.

The Professional Conduct Committee is seeking the interim suspension on the basis that it is necessary or desirable having regard to the criteria in By-Law 40(9.1), being the urgency of the matter, interests of the public, reputation of Chartered Accountants ANZ or the integrity of the profession of accounting, which are likely to be satisfied by reason of the Member's alleged conduct.

The time period for which the Professional Conduct Committee is seeking that the interim suspension apply is the earlier of:

- (a) six months after the full and final resolution of the later of:
 - i. all civil and criminal proceedings against the Member; and
 - ii. all regulatory investigations into the Member's conduct; or
- (b) further investigation and determination of the complaints arising from the matters referred to in paragraphs 1 – 5 above.

SCHEDULE 2 - RELEVANT BY-LAWS

19. Any Member may resign his or her Membership by sending his or her resignation in writing together with all moneys owing by him or her to CA ANZ, whether for subscription, fee or other amount, to the Chief Executive Officer:
- (a) Provided that no resignation shall take effect unless and until it has been accepted by the Board. The Board may decline to accept the resignation of a Member who is the subject of disciplinary action or professional conduct proceedings by either CA ANZ or NZICA or whose conduct, in the opinion of the Board, by virtue of matters brought to the attention of CA ANZ, may become the subject of professional conduct proceedings.

...

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(6) Interim or Final Decision

40(6.1) During an investigation, the Professional Conduct Committee may decide to:

...

- (e) refer the complaint directly to the Disciplinary Tribunal (without convening a Case Conference) where it is satisfied that:

...

- (viii) the matter is sufficiently serious that the Disciplinary Tribunal may suspend the Member on an interim basis;

...

40(9) Interim suspension of Membership

40(9.1) On application by the Professional Conduct Committee for the interim suspension of a Member, if the Disciplinary Tribunal is satisfied that it is necessary or desirable to do so, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accounting, the Disciplinary Tribunal may suspend the Member from Membership of CA ANZ on an interim basis pending further investigation and determination of the complaint.

40(9.2) For the period of a Member's suspension on an interim basis:

- (a) that Member's name shall be removed from the Registers on which it appears; and
- (b) that Member:
- (i) loses the rights and privileges of Membership;
- (ii) must surrender that Member's certificate of Membership, certificate(s) of public practice and any other documents specified in paragraph 13.4 to CA ANZ; and

- (iii) save as provided in paragraph 4.3(e), remains subject to the disciplinary processes and sanctions under these By-Laws (including this Section 5) as if still a Member.

40(9.3) The provisions of paragraph 10 apply to the procedures for a hearing on an application for interim suspension under this paragraph 9, except that:

- (a) the Notice of Disciplinary Action to be given in accordance with paragraph 10.1 must specify that the hearing is on an application by the Professional Conduct Committee for interim suspension;
- (b) the minimum 28 day time periods in paragraphs 10.1 and 10.3 are shortened to 14 days;
- (c) without prejudice to paragraph 13.8, paragraphs 10.12(a) to 10.12(k), and 10.13 (sanctions) do not apply; and
- (d) the maximum period within which the Disciplinary Tribunal is to notify its decision and give reasons in accordance with paragraph 10.15 is reduced to 7 days.

40(9.4) The provisions of paragraph 11 apply to the procedures for an appeal of a decision by the Disciplinary Tribunal in respect of the hearing of an application for interim suspension under this paragraph 9, except that:

- (a) the maximum 21 day time periods in paragraphs 11.1 and 11.2 (time for notifying appeal) are shortened to 14 days;
- (b) the minimum 21 day time period in paragraph 11.4 (notice of hearing) is reduced to 14 days; and
- (c) the maximum period within which the Appeals Tribunal is to notify its decision and give reasons in accordance with paragraph 11.13 is reduced to 7 days.

40(9.5) The provisions of paragraph 9 do not apply to Non-Member Practice Entities.

...

40(13.4) Termination and suspension

If the name of a Member is removed from any Registers on termination or suspension (including suspension on an interim basis) in accordance with this Section 5, the Member's certificate of Membership, any certificate of public practice and any other accreditation, specialisation or other certificate or award then held by the Member is cancelled with immediate effect and must be delivered up by the former Member to CA ANZ.

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