

## Professional Conduct Committee – 15 July 2021

### Dishonesty, Professional Care, Adverse finding, Professional Membership, Integrity, Professional Behaviour, Discredit - Member B

At a meeting of the Professional Conduct Committee (PCC) of Chartered Accountants Australia and New Zealand held in private on 15 July 2021 by videoconference in respect of Member B, 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)(c);
- By-Law 40(2.1)(e);
- By-Law 40(2.1)(g);
- By-Law 40(2.1)(h); and
- By-Law 40(2.1)(k).

The PCC considered that this matter is sufficiently serious to warrant referral to the Disciplinary Tribunal.

However, the PCC decided to propose that an agreement be made with the Member which shall be entered on the Member's record, on terms that:

1. the Member receive a severe reprimand;
2. the Member pay to CA ANZ the sum of \$1,680 by way of contribution towards the costs of investigating and dealing with the matters the subject of the complaint and the Case Conference; and
3. the PCC will publish:
  - a) details of these sanctions on the website of CA ANZ; and
  - 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, but that there are no special circumstances which warrant disclosing the name of the Member.

#### Background

The Member's tax agent registration was terminated by the Tax Practitioners Board (TPB). The Member is unable to apply for registration for a period of two years.

The TPB found that the Member had breached the TPB Code of Professional Conduct as he had failed to act honestly with integrity and to provide tax agent services competently and that he ceased to meet the registration requirement that they are a fit and proper person.

The Member made an application for a review of the decision of the TPB in the Administrative Appeals Tribunal (AAT). The Member's application was heard in the AAT. The Member conceded in the AAT that a large number of self managed superannuation fund annual returns (SAR) had been lodged with certificates that stated the funds had been audited prior to lodgement. The Member also conceded those certificates were false and contrary to the provisions of the Code of Professional Conduct which required that he act honestly and with integrity and that he provide tax agent services competently.

In relation to assessing the degree of dishonesty, the Member contended that:

- his sole motivation for making the false declarations was to avoid penalties being incurred by his clients and adverse consequences on future lodgement dates and the regulated status of the funds;
- he did not derive any financial benefit from the course of conduct;
- audits of the funds subsequently confirmed that the funds had complied with the relevant superannuation legislation and regulations;
- he did not lodge the SAR with the false declarations to protect himself from potential claims against him by clients;
- he did not continue to lodge returns with false declarations after he was contacted by the ATO.

He then contended that he is a fit and proper person because:

- he has admitted the conduct and understands the seriousness of what he did and is extremely remorseful;
- the returns with the false declarations comprise only a very small percentage of the entire practice;
- he has made arrangements to ensure the conduct does not occur again;
- an alternative firm has been appointed to undertake the audits;
- he has voluntarily completed the self-managed superannuation funds trustee education program course by the Institute of Chartered Accountants and CPA Australia “SMSF Trustee Education Program” and the Taxation Institute “TASA 2009 and the Code of Professional Conduct” in 2019;
- there is no risk to the public interest in respect of future preparation of compliant returns.

The AAT did not accept these contentions. In particular, the AAT found that the Member had not made a clerical error but had made a deliberate choice over a long period to act dishonestly and this only stopped because he was discovered by the ATO. It was found that the Member had repeatedly and deliberately chosen to put what he perceived to be the interests of his clients above his professional duty to act honestly and, in doing so, had misled the ATO and made false declarations. The AAT found that the Member’s behaviour was not due to a lack of understanding of what was required of him which could be addressed by further education, that it was correct or preferable that his registration be terminated and, given the nature and seriousness of the Member’s conduct and his lack of insight into or contrition for this, a period of two years in which he may not apply for registration was appropriate.

### Reasons

The Member admitted that he had lodged a large number of SAR with certificates that stated the funds had been audited prior to lodgement when in fact they had not been audited, and that this was dishonest.

The Member admitted that he had made an error of judgment in taking this action, but it had not been his intention to mislead or deceive (even though that was the outcome). In this regard, the Member submitted that the funds were subsequently audited and had been cleared insofar as the tax paid was correct and the funds complied with the *Superannuation Industry (Supervision) Regulations*, save for the audit requirement.

The Member submitted that some of the funds involved were problematic but he accepted this was not an excuse for his actions in lodging the SAR prior to audit, although it was part of the background to the matter.

The Member submitted there was no benefit to him in these actions, although the PCC notes there was probably some benefit in complying with the clients' demands. He was trying to make sure that his clients paid the correct amount of tax on time, which they did, and he did not appreciate the significance of inserting the correct date on the SAR, which he now does. He said that a mistake in one year was allowed to escalate in subsequent years.

The Member explained that he accepted his actions were wrong, but there was a misunderstanding regarding his response to the TPB. He also explained that his appeal to the AAT was with regards to the severity of the sanction. However, he was ultimately unsuccessful in taking that approach and this has cost him significantly financially and he has been unable to work in his chosen profession for 12 months. He also said that his business has been destroyed and both professionally and personally it has been very difficult.

The Member admitted that he had breached By-Laws 40(2.1)(c), (e) and (g). He also admitted that he had breached the fundamental principle of integrity as set out in sections 100.5 (a), 110.1 and 110.2 of APES 110 on the basis that the date of the audit on the SAR was incorrect.

In relation to the issue of whether the Member has failed to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out his professional duties and obligations, the Member submitted that he was not incompetent. However, the Member did admit that he has failed to observe a proper standard of professional care.

In relation to the issue of discredit, the Member submitted that he had brought discredit to himself and by extension CA ANZ and the profession of accountancy.

The Member submitted that he was part of a wider crackdown by the TPB in relation to matters of this sort.

In these circumstances, the PCC finds that the Member is liable to disciplinary sanctions under By-Laws 40(2.1)(a), (c), (e), (g), (h) and (k).

For the reasons set out above, including the systemic nature of the breaches, the PCC considers that this matter is sufficiently serious to warrant referral to the Disciplinary Tribunal, but given the Member's insights into, his responsibility and accountability for his conduct, the PCC is of the view that a Consent Agreement should be proposed to the Member on the terms set out above.

#### Costs

The PCC decided to require the Member to pay costs in the amount of \$1,680 in relation to the investigation and consideration of this complaint.

### **Professional Conduct Committee Chartered Accountants Australia and New Zealand**

15 July 2021