

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 of **SAHEEM NABI** of Auckland, Chartered Accountant

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND
INSTITUTE OF CHARTERED ACCOUNTANTS**

21 July 2021

Hearing: 30 June 2021

Location: The offices of Chartered Accountants Australia and New Zealand, 12-16 Nicholls Lane, Parnell, Auckland

Tribunal: Matthew Casey QC (Chair and lay member)
John Naylor FCA
Kerry Price CA

Counsel: Richard Moon for the prosecution
Ellie Wilson for the Member

Tribunal Secretariat: Janene Hick
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A hearing of the Disciplinary Tribunal into the charges against the Member was held in public on 30 June 2021 at Auckland. The Member was in attendance and represented by counsel. The Member pleaded guilty to the charges and admitted the particulars.

The charges and particulars were as follows:

CHARGES

THAT in terms of the New Zealand Institute of Chartered Accountants Act 1996 and the Rules made thereunder, and in particular Rules 13.50,¹ the Member is guilty of:

1. Conduct unbecoming an accountant; and/or
2. Negligence or incompetence in a professional capacity and that this is of such a degree and/or so frequent as to reflect on the Member's fitness to practise as an accountant and/or tends to bring the profession into disrepute; and/or
3. Supplying information to NZICA which is false and/or misleading; and/or
4. Breaching the Rules and/or NZICA's Code of Ethics.

PARTICULARS

IN THAT in his role as a Chartered Accountant in public practice and in relation to a complaint, the Member:

Particular 1

In breach of the Fundamental Principles of Integrity and/or Professional Competence and Due Care and/or Professional Behaviour and/or paragraphs 100.5(a) and/or 100.5(c) and/or 100.5(e) and/or 110.1 and/or 100.2 and/or 130.1 and/or 130.4 and/or 150.1 of the Code of Ethics (2017)² he submitted to NZICA:

- (a) A mandatory notification on 20 June 2017 in which he advised he had not offered any accounting services to the New Zealand public in the period 1 July 2016 to 30 June 2017, when this was not correct as he had been offering accounting services through Ace Accountants Company Limited (**Ace**) since December 2016; and/or
- (b) A mandatory notification on 4 February 2019 in which he advised he had not offered any accounting services to the New Zealand public in the period 1 July 2017 to 30 June 2018, when this was not correct as he had been practicing through Ace Accountants Company Limited since December 2016; and/or
- (c) A membership renewal questionnaire on 29 June 2019 in which he:

¹ Formerly Rule 13.39 of NZICA's Rules effective 15 December 2014 to 29 May 2019.

² And, as applicable, the equivalent provisions of NZICA's Rules (2019).

- (i) answered he had not offered any accounting services to the New Zealand Public in the period 1 July 2018 to 30 June 2019, when this was not correct as he had been practicing through Ace since December 2016; and/or
 - (ii) answered he had not signed any audit report, review report, or assurance engagement in the period 1 July 2018 to 30 June 2019, when this was not correct as he had completed the audits of XYZ New Zealand Incorporated on or around 27 February 2019, and MNO Incorporated on or around 25 March 2019.
- (d) A Practice Information Questionnaire (**PIQ**) on 12 November 2019 in which he outlined that he had not earned any fees from audit and assurance engagements and that the firm did not offer audit or assurance engagements when this was incorrect as his firm had earned fees of \$3,000.00 in two years and had completed at least 3 assurance engagements.³

Particular 2

Failed to comply with NZICA's public practice rules in that, without holding a Certificate of Public Practice (**CPP**) and/or first obtaining the consent of NZICA / NZICA Regulatory Board, the Member:

- (a) For the period 31 March 2018 to 31 March 2019, earned \$180,000.00 from offering accounting services to the public and exceeded the prescribed level of fees set by NZICA's Regulatory Board; and/or
- (b) For the period 31 March 2019 to February 2020, earned \$221,000.00 from offering accounting services to the public and exceeded the prescribed level of fees set by NZICA's Regulatory Board; and/or
- (c) Controlled or obtained a financial benefit from an entity offering accounting services to the public and/or practiced under a trade or association name since December 2016; and/or
- (d) During the period 15 July 2019 to 20 January 2021 used the Chartered Accountants designation / trademark without being entitled to do so,⁴ in breach of Rule 10.2 and/or 10.3 and/or 11.1 and/or Rule 2.9 of Appendix IV of NZICA's Rules (2019),⁵ and/or Regulations 9.6(c)(ii) and/or 9.6(e) of CR9 (2019).⁶

Particular 3

Failed to establish and/or maintain an appropriate system of quality control compliant with PS-1 and/or PES 3 (Amended), in breach of the Fundamental Principle of Professional Competence and Due Care and/or paragraph NZ R113.1 of the Code of Ethics (2019), and/or

Particular 4

Failed to ensure that the audit and/or compilation engagements the Member performed were completed with professional competence and/or due care and/or in accordance with the relevant technical and professional standards, in that:

³ Audit report of MNO Incorporated for the years ended 30 June 2017 and 30 June 2018; and Audit of XYZ New Zealand Incorporated for the year ended 31 July 2018.

⁴ Ace renamed to Ace Chartered Accountants Company Limited.

⁵ And, as applicable, the equivalent provisions of NZICA's Rules (2017).

⁶ And, as applicable, the equivalent provisions of CR9 (2018).

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- (a) In acting as auditor of MNO Incorporated (**MNO**) for the year ended 30 June 2018, he failed to:
- (i) In determining whether the preconditions for an audit of the entity were present, correctly determine whether the financial reporting framework to be applied in the preparation of the financial statements was acceptable as required by ISA (NZ) 210;
 - (ii) Failed to obtain a letter of engagement as required by ISA (NZ) 210; and/or
 - (iii) Evaluate whether the financial statements of MNO had been prepared in accordance with the applicable reporting framework, as required by ISA (NZ) 700; and/or
 - (iv) Undertake appropriate audit procedures and/or obtain sufficient audit evidence to draw reasonable conclusions on which he based his audit opinion, as required by ISA (NZ) 500, in respect of:
 - A. ISA (NZ) 240 risks due to fraud; and/or
 - B. ISA (NZ) 315 risk assessment of material misstatement; and/or
 - C. ISA (NZ) 330 responses to assessed risks; and/or
 - D. ISA (NZ) 550 related parties; and/or
 - E. ISA (NZ) 560 subsequent events; and/or
 - F. ISA (NZ) 570 going concern; and/or
 - G. ISA (NZ) 580 written representations; and/or
 - (v) Prepare audit documentation providing a sufficient and appropriate record of the basis for his audit report and/or evidence that the audit was planned and performed in accordance with the ISA (NZ) standards and any other applicable and regulatory requirements, as required by ISA (NZ) 230; and/or
 - (vi) Express his audit opinion in the correct terms and/or in accordance with the applicable reporting framework as required by ISA (NZ) 700 (Revised) and/or ISA (NZ) 705 (Revised).
- (b) In acting as auditor for XYZ New Zealand Incorporated (**XYZ**) for the year ended 31 July 2018, he failed to:
- (i) Determine whether the preconditions for an audit of the entity were present, failed to determine whether the financial reporting framework to be applied in the preparation of the financial statements was acceptable, as required by ISA (NZ) 210; and/or
 - (ii) Failed to obtain a letter of engagement as required by ISA (NZ) 210; and/or
 - (iii) Evaluate whether the financial statements of XYZ had been prepared in accordance with the applicable reporting framework, as required by ISA (NZ) 700; and/or
 - (iv) Undertake and/or document appropriate audit procedures and/or obtain sufficient audit evidence to draw reasonable conclusions on which he based his audit opinion, as required by ISA (NZ) 500, in respect of:
 - A. ISA (NZ) 240 risks due to fraud; and/or
 - B. ISA (NZ) 315 risk assessment of material misstatement; and/or
 - C. ISA (NZ) 330 responses to assessed risks; and/or

- D. ISA (NZ) 550 related parties; and/or
 - E. ISA (NZ) 560 subsequent events; and/or
 - F. ISA (NZ) 570 going concern; and/or
 - G. ISA (NZ) 580 written representations; and/or
- (v) Prepare audit documentation providing a sufficient and appropriate record of the basis for his audit report and/or evidence that the audit was planned and performed in accordance with the ISA (NZ) standards and any other applicable and regulatory requirements, as required by ISA (NZ) 230; and/or
- (vi) Express his audit opinion in the correct terms and/or in accordance with the applicable reporting framework as required by ISA (NZ) 700 (Revised) and/or ISA (NZ) 705 (Revised).
- (c) In undertaking the compilation engagement for W Limited for the year ended 31 March 2019, he failed to:
- (i) Provide a sufficient and appropriate record of the procedures performed for the engagement as required by paragraph 59(a) of SES 2; and/or
 - (ii) Identify the source of significant information used in the compilation of the financial information as required by paragraph 59(b) of SES 2; and/or
 - (iii) Demonstrate that the engagement was carried out in accordance with SES-2 and PS-1 all other professional standards including any applicable ethical, legal and regulatory requirements, as required by paragraph 59(c) of SES 2.
- (d) In relation to his other compilation engagements, he failed to obtain any letters of engagement recording the terms of the compilation engagements he performed, as required by paragraph 34 of SES 2, in breach of the Fundamental Principle of Professional Competence and Due Care and/or paragraphs 100.5(c) and/or 130.1 and/or 130.4 of the Code of Ethics (2017).⁷

Particular 5

Failed to maintain his professional competence to ensure he remained up to date with all current standards applicable to assurance and/or compilation engagements in breach of the Fundamental Principle of Professional Competence and Due Care and/or paragraphs 100.5(c) and/or 130.1 and/or 130.3 of the Code of Ethics (2017).⁸

BACKGROUND

1. At the commencement of the hearing the Tribunal was provided with an agreed summary of facts. Notwithstanding the Member's guilty plea, the Tribunal requires to be satisfied that the conduct complained of has been established and that it is of such a nature as to support the charges.

⁷ And, as applicable, the equivalent provisions of PES 1 (Revised).

⁸ And, as applicable, the equivalent provisions of the Code of Ethics (2014) and/or PES 1 (Revised).

2. The Member has been a Chartered Accountant since 2001 but has not held a Certificate of Public Practice (**CPP**). He worked in an in-house accounting role for a large consulting firm until 2015, and then in a series of temporary contract roles until about 2018. In 2016 he formed a company and took steps to set up an accountancy practice, initially on a small scale. In 2018 he was working for an immigration consultancy business where the opportunity arose to undertake compliance and other accounting work, initially for clients of that business. He began promoting his practice entity on Facebook and offering services to the public.
3. From a modest fee base of \$8,000 pa he was soon earning well in excess of the \$13,000 threshold above which he was required to hold a CPP.
4. The Member came to the Institute's attention through routine monitoring from which it appeared that he had completed audits for MNO in respect of the years ending 30 June 2017 and 30 June 2018. These did not comply with technical or professional standards. It was apparent that the Member did not hold a CPP. It was later discovered that the Member had also acted as auditor for XYZ for the year ended 31 July 2018.
5. The Member submitted mandatory notifications in 2017 and 2019 which falsely stated that he had not provided accounting services to the public, which he repeated in his membership renewal questionnaire in 2019. In a practice information questionnaire issued in October 2019 he made no reference to any audit engagements.
6. Since the issues were raised with him, and in response to the complaint, the Member has been taking steps to regularise his practice status, including efforts to obtain a CPP and engage a mentor. He has also agreed not to undertake audit work in the foreseeable future.

DECISION

7. The particulars fall into four categories. The first relates to the Member's communications with the Institute being false and misleading. These are detailed in Particular 1 and the Tribunal finds them to be established on the evidence. The communications were false and misleading in material respects, in clear breach of the Fundamental Principle of Integrity in the Code of Ethics. This requires members to be straightforward and honest in their professional and business dealings, and also implies truthfulness. The Member knew or ought to have known what information he was required to provide to the Institute and his responses fell well short of this.
8. As well as breaching the Code of Ethics, rule 13.50(h) makes it a disciplinary offence to supply false or misleading information to the Institute.
9. The second category of offending concerns the Member's status in relation to public practice. Under the Institute's Rules a member who offers accounting services to the public must hold a CPP, except where the fees earned do not exceed the prescribed level (currently \$13,000 pa), or with the consent of the Institute.
10. Appendix IV to the Institute's Rules regulate the use of practice entities. A member requires the Institute's consent to practice under a trade or association name, or to derive financial benefits (other than as an employee) from an entity that offers accounting services to the public. The Member was in breach of these requirements as set out in Particular 2.

11. Particular 3 is that the Member did not establish or maintain any system of quality control, in breach of the Fundamental Principle of Professional Competence and Due Care in the Code of Ethics, as well as PS-1 and PES 3. When the Member's practice was reviewed in February 2021 there was no evidence of a quality control manual or of quality control being exercised. The Member admits this and has since put in place a quality control manual.
12. The fourth category of offending relates to what has become a common feature of disciplinary matters coming before the Tribunal, that of an 'occasional auditor'. The audit work undertaken by the Member for MNO and XYZ was seriously deficient. The deficiencies are itemised in Particular 4 and were established by the evidence. They demonstrate a concerning lack of competence, particularly as one of the Member's responsibilities in his previous employment was to assist with the firm's annual audits.
13. Particular 5 also addresses a lack of competence in relation both to assurance and compliance engagements. The evidence was that prior to his recent efforts to gain a CPP, the Member's CPD hours were well below the required level, and he undertook no training relevant to public practice. The Member admits that this constitutes a breach of the Fundamental Principle of Professional Competence and Care in the Code of Ethics.
14. Based on the above, the Tribunal finds the Member guilty of Charge 3 – supplying false and misleading information to the Institute, and Charge 4 – breaching the Institute's Rules and Code of Ethics.
15. The matters in Particulars 4 and 5 also demonstrate incompetence of such a degree as to reflect on the Member's fitness to practice and which tends to bring the profession into disrepute, so the Tribunal finds the Member guilty of Charge 2.
16. The remaining issue is whether Charge 1 – conduct unbecoming an accountant – is also established.
17. The test of conduct unbecoming an accountant is whether the conduct was an acceptable discharge of the Member's professional obligations according to the standards applied by competent, ethical and responsible practitioners. There must be such a departure from acceptable professional standards as to warrant sanction for the purposes of protecting the public; and the threshold is inevitably a matter of degree.
18. The Tribunal finds that in combination, the conduct of the Member setting up in practice and providing audit and accounting services without regard to the standards and safeguards in place for the protection of the public, his lack of competence to provide those services and his lack of honesty in his responses to the Institute, fall well below an acceptable discharge of his professional obligations. According to the standards applied by competent, ethical and responsible practitioners, the Member's conduct was unbecoming an accountant and the Tribunal finds him guilty of Charge 1.

PENALTY

19. The Tribunal was advised that the PCC and the Member were reasonably aligned on the penalty that should be imposed. The PCC sought that the Member be censured and fined \$5,000 and be ordered not to undertake any assurance engagements for a period of five years. The Member agrees with this except that he proposes a fine of \$4,000, as being more in line with earlier decisions of the Tribunal.

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20. The factors identified by the High Court in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 apply to the determination of penalty by professional disciplinary bodies including the Tribunal. The Court held that the penalty that should be imposed is one that:
- Most appropriately protects the public and deters others.
 - Facilitates the setting and maintaining of professional standards.
 - Reflects the seriousness of the misconduct.
 - Punishes the practitioner (although subsequent Court decisions have taken the view that punishment is more a by-product of the other factors).
 - Allows for the rehabilitation of the practitioner.
 - Promotes consistency with penalties in similar cases.
 - Is the least restrictive penalty appropriate in the circumstances.
 - Looked at overall, is fair, reasonable and proportionate in the circumstances.
21. The PCC referred to the Tribunal's recent decision in *Nair* (18 November 2020) and earlier cases cited in that decision. They involved members undertaking assurance engagements without the appropriate competence or adherence to standards, and several also involved misleading the Institute.
22. The Tribunal in *Nair* noted these similarities and applied the *Roberts* factor of consistency. It considered whether a harsher penalty might have been imposed for reasons of deterrence but decided against it as Mr Nair's conduct had mostly predated the other decisions. He was censured, fined \$4,000 and ordered not to undertake audit or assurance engagements for 7 years.
23. The earlier case of *Middleton* (15 March 2018) also involved an 'occasional auditor' out of his depth and various other failures, resulting in censure, a fine of \$5,000 and an order not to undertake audits for 2 years. It is trite to say that no two cases are the same, but the penalties fall within a reasonably consistent range.
24. A factor noted in *Nair* is that despite the prior decisions and penalties, there is a continuing pattern of practitioners accepting audit engagements when clearly they should not. The Tribunal may reconsider in a future case whether the penalties imposed are failing to achieve the purposes of deterrence and the maintenance of standards. In the present case (as with *Nair*) the offending mostly predated the more recent cases. For that reason, the Tribunal considers it appropriate to impose a penalty consistent with them.
25. Counsel for the Member points out that he has engaged fully with the disciplinary process and has taken action to ensure that he meets his professional obligations. He has also expressed genuine remorse for his failings.
26. The Tribunal accepts that the Member has been and is taking steps to regularise his practice, to improve his competence and to ensure compliance with professional standards. The Member deserves credit for this, and the penalty imposed by the Tribunal should allow for

this rehabilitation to continue. On the other hand, there are the aggravating features of a lack of honesty in the Member's dealings with the Institute and setting up in public practice without the necessary safeguards. The overall seriousness of the Member's conduct means that the penalty should be meaningful in terms of deterrence and reinforcing compliance with professional standards.

27. Taking all these factors into account, the Tribunal considers the appropriate penalty is for the Member to be censured and fined \$5,000. Notwithstanding his undertaking not to do so, the Tribunal considers it appropriate to formally order the Member not to undertake any audit or assurance work for a period of 5 years.

The Disciplinary Tribunal orders:

- Pursuant to Rule 13.51(m) of the Rules of the New Zealand Institute of Chartered Accountants orders that SAHEEM NABI be censured.
- Pursuant to Rule 13.51(c) that SAHEEM NABI pay to the Institute a fine of \$5,000.
- Pursuant to Rule 13.51(p) that SAHEEM NABI is not to undertake any audit or other assurance engagements for a period of 5 years from the date of this decision.

COSTS

28. The PCC submitted that in line with the Tribunal's Practice Note the Member should pay in full the costs incurred by the Institute in relation to the investigation and hearing of the complaint and charges, which total \$10,955.81. The Member accepted this. The Tribunal considers an award of this amount is fair and reasonable.

Pursuant to Rule 13.53 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that SAHEEM NABI pay to the Institute the sum of \$10,955.81 in respect of the costs and expenses of the hearing before the Disciplinary Tribunal, the investigation by the Professional Conduct Committee and the cost of publicity. No GST is payable.

PUBLICATION

29. The PCC seeks publication of this decision on the Institute's website and in the official CAANZ publication *Acuity*, with mention of the Member's name and location. Rule 13.55 requires the Tribunal to make such a direction unless in its view there are exceptional circumstances for not doing so. The Member accepted that there are no such circumstances.
30. It is the usual practice of the Tribunal to order suppression of the names of clients and other third parties, pursuant to rule 13.78.

In accordance with Rule 13.55 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.

Pursuant to Rule 13.78 the Tribunal orders that the names of the Member's clients and any third parties, or any matter that might identify them, be suppressed.

RIGHT OF APPEAL

31. Pursuant to Rule 13.63 the Member or the PCC may, not later than 21 days after the notification to them of this decision, appeal in writing to the Appeals Council of the Institute against the decision.
32. Pursuant to Rule 13.59 the Tribunal's decision as to penalty shall not take effect while the Member remains entitled to appeal, or while any such appeal awaits determination by the Appeals Council.



Matthew Casey QC
Chair, Disciplinary Tribunal