

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 **Gregory James Freeman**, Chartered Accountant, of **Wellington**

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND
INSTITUTE OF CHARTERED ACCOUNTANTS
31 May 2018**

Hearing: 22 May 2018

Location: The offices of Chartered Accountants Australia and New Zealand, Level 7, Chartered Accountants House, 50-64 Customhouse Quay, Wellington, New Zealand

Tribunal: Mr MJ Whale FCA (Chairman)
Mr DJH Barker FCA
Mr JN Murray FCA
Mr JD Naylor FCA
Ms A Kinzett (Lay member)

Legal Assessor: Mr Paul Radich QC

Counsel: Mr Richard Moon for the prosecution



At a hearing of the Disciplinary Tribunal held in public at which the Member was not in attendance and not represented by counsel, by correspondence the Member pleaded guilty to the charges.

The charges and particulars as laid 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 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 is of such a degree and/or so frequent so as to bring the profession into disrepute; and/or
- 3) supplying information to the Institute that is false or misleading; and/or
- 4) failing to respond promptly to communications from the Institute; and/or
- 5) breaching the Rules and/or Institute's Code of Ethics,

PARTICULARS

IN THAT

In the Member's role as a Chartered Accountant and in relation to a complaint, the Member:

- 1) Failed to ensure that assurance engagements performed by him or his practice (Gregory Freeman Communicating Accountants) in relation to ABC Trust and XYZ Association Incorporated for year ended 31 March 2016 and/or MNO Trust for the year ended 31 December 2015, were completed in accordance with relevant technical and professional standards, in that the Member failed to:
 - (a) demonstrate compliance with all applicable auditing standards, as required by paragraph 18 of ISA (NZ) 200 in that the Member failed to adequately consider the following:
 - the acceptance and continuance of the engagements as required by paragraph 12 of ISA (NZ) 220; and/or
 - the planning of the engagements to address the risks of misstatement as required by ISA (NZ) 300 and/or 315 and/or 330 and/or 240; and/or
 - (b) establish and/or apply appropriate quality control policies and procedures as required by PES 3 (Amended); and/or
 - (c) appropriately document the audits as required by ISA (NZ) 230; and/or
 - (d) obtain and/or document sufficient appropriate audit evidence prior to issuing his audit opinion as required by paragraph 4 of ISA (NZ) 500; and/or

- (e) specify in his audit opinion the applicable financial reporting framework and/or assess whether the financial statements complied with the applicable financial framework as required by ISA (NZ) 700,

in breach of the Fundamental Principles of Professional Competence and Due Care and/or paragraphs 130.1(b) of the Code of Ethics 2014

- 2) Submitted a Practice Review Information Questionnaire (“PIQ”) on or about 28 September 2016 that the Member knew, or ought to have known, was false and/or misleading in that the Member declared no assurance engagements were performed by him or his practice in the three years prior, when he had carried out the audits of XYZ Association Incorporated and MNO Trust referred to particular 1 above; and/or
- 3) Failed to inform the practice reviewer, at the time of the review visit, that the Member had completed the audit of ABC Trust after signing the PIQ; and/or
- 4) Failed to engage with NZICA’s Quality Assurance team in a timely and/or professional manner in relation to;
 - (a) information requested by the Quality Assurance team to demonstrate the shortfalls have been remedied; and/or
 - (b) correspondence from the Quality Assurance team.

in breach of the Fundamental Principle of Professional Competence and Due Care and/or paragraphs 130.1 and/or 130.4 and/or the Fundamental Principle of Professional Behaviour and/or paragraph 150.1 of the Code of Ethics (2014).

- 5) Failed to attend his final determination hearing on 13 February 2018 before the Professional Conduct Committee when the Member was required to do so, in breach of Rule 13.3(d).

DECISION

The Tribunal finds all of the Particulars established on the evidence before it.

It follows that Charges 3, 4 and 5, to which the Member has pleaded guilty, are proved.

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 the subject of Particulars 1 to 3 fell well below acceptable standards and constituted conduct unbecoming an accountant.

In relation to Particular 1, the Tribunal refers to the evidence of Mr Worth, the practice reviewer, summarised on page 4 of this decision.

In relation to Particular 2, the Member must have been aware from explicit references in the Institute’s letter to him of 15 September 2016 arranging for a practice review that the focus of the review would be on any audit and assurance engagements in which the Member was involved.

The Practice Information Questionnaire (“PIQ”) which the Member was asked to complete before the review clearly identifies audit and assurance (including review engagements) as a category of professional services and, if a member provides those services, requires the member to provide detailed information about them.

The way in which the Member completed the PIQ led the Institute to reasonably conclude that he did not provide that type of service. Yet in May of that year, the Member had signed audit reports (in incorrect form) for two entities, one of which had a turnover (including substantial Ministry of Education funding) exceeding \$750,000 and assets with a book value of more than \$800,000. At the time the Member completed the PIQ he was also in the process of, or about to begin, the audit of a third entity. The way in which the Member completed the PIQ was at best reckless but in the Tribunal’s view, in light of previous communications he had had with the Institute including as recently as July 2014, likely deliberate.

In relation to Particular 3, the uncontested evidence of Mr Worth is that during the practice review he specifically asked the Member whether there were any assurance assignments other than the two that he had reviewed. The Member failed to mention that he had completed an audit of a third entity a month before the review. The Tribunal regards that failure as a serious matter.

As to Charge 2, the Tribunal is also satisfied that the conduct admitted in relation to Particular 1 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 of whether a Member’s conduct 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.

The evidence of Mr Worth was that:

- The Member was unable to produce an audit file that held any of the documentation required by current assurance standards for the two engagements he was aware of at the time, and the Member admitted that no files of that kind had been maintained.
- There was no evidence that the Member had considered issues such as the appropriate audit procedures to adopt, the appropriate form and content of the financial reports, the appropriate form and content of the audit report, or any other quality control matters.
- In his opinion, there was insufficient audit evidence to form the basis of the Member’s audit opinions prior to them being issued.
- The Member had only limited knowledge of the relevant auditing standards.
- When he subsequently obtained the file for the third entity, his conclusions were the same.
- He accepted that the Member had done work to verify some of the numbers in the financial statements.

In the Tribunal’s view, the Member did not have the technical competence to carry out audit engagements. The Member’s lack of care and incompetence is of such a degree as to reflect on

his fitness to practice as an accountant. The public expects chartered accountants conducting audit engagements to be aware of and to comply with the applicable auditing standards - in the Tribunal's view, failure to do so to the extent that the Member has tends to bring the Institute into disrepute. A chartered accountant signing an audit report in the wrong form (and referring to auditing standards which have in fact been withdrawn) which is attached to financial statements recorded on a public register (in this case the Charities Register), without question brings the Institute into disrepute.

PENALTY

The PCC submitted that the Member be censured and that the Tribunal impose a monetary penalty. The censure was to address the Member's negligence and his failure to comply with the Institute's information requirements and to attend his final determination. The imposition of a fine was to sanction the Member's misleading of the Institute as to whether he carried out assurance engagements.

In reaching its decision as to penalty, the Tribunal has taken into account the significant and difficult family circumstances the Member has encountered, particularly since April 2017.

However, it also notes that the Member has to date failed to provide information relating to his practice, which the Institute required him to provide in July 2017. The Member also failed to advise the Institute that he would not be attending the final determination he was required to attend. Although the Member had signaled his priority was to look after family three months earlier, that does not excuse his conduct. The Tribunal regards failure to properly engage with the Institute and its disciplinary processes as serious matters.

Having regard to all the circumstances, the Tribunal considers that a censure, the imposition of a monetary penalty of \$4,000, and an order that the Member does not conduct any audit or other review engagements for a period of 10 years is the proportionate response to the conduct the Member has admitted. That penalty appropriately protects the public and deters others, facilitates the Tribunal's role in maintaining compliance with and enforcing professional standards, reflects the seriousness of the misconduct, punishes the Member and is the least restrictive penalty in the circumstances.

Practitioners must understand that if they are considering carrying out audit engagements, irrespective of whether they are required to be registered or licensed to do so, and whether the audit is of a local association, a partly Government funded entity or a major corporate, they should not take on the role unless they are aware of and able to comply with the applicable audit standards. Documenting processes and reasons for conclusions are integral components of those standards, although depending on the size and type there will be questions of degree.

The Disciplinary Tribunal orders that pursuant to the Rules of the New Zealand Institute of Chartered Accountants:

- **Pursuant to Rule 13.40(c), Gregory James Freeman pay to the Institute a monetary penalty of \$4,000;**
- **Pursuant to Rule 13.40(k) Gregory James Freeman be censured;**

- **Pursuant to Rule 13.40(n), Gregory James Freeman is not to undertake audit or any other assurance engagements for a period of 10 years.**

COSTS

The Professional Conduct Committee seeks full costs of \$16,667. The Member was provided with an interim costs schedule of approximately \$2,000 less than this. The Member requested that costs be kept to a minimum.

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 Tribunal notes that the schedule of costs includes the sum of \$600 for publication of this decision in a local newspaper. However, in this case the Tribunal considers such publication unnecessary.

There are no relevant mitigating factors of which the Tribunal is aware such as demonstrated evidence of hardship (inability to pay). The Tribunal considers an award of \$16,000 to be fair and reasonable in all the circumstances.

Pursuant to Rule 13.42 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that Gregory James Freeman pay to the Institute the sum of \$16,000 in respect of the costs and expenses of the hearing before the Disciplinary Tribunal and the investigation by the Professional Conduct Committee. No GST is payable.

SUPPRESSION ORDERS

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 all details of his family circumstances 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', with a stylized flourish at the end.

MJ Whale FCA
Chairman
Disciplinary Tribunal