



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 **Mark Joseph Benjamin**, Chartered Accountant, of Auckland

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS
7 August 2012**

Hearing: 7 August 2012

Tribunal: Mr RJO Hoare FCA (Chairman)
Mr DP Scott CA
Mr MJ Whale FCA
Dr R Janes (Lay member)

Legal Assessor: Mr Bruce Corkill QC

Counsel: Mr Terence Sissons 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, the Member entered no plea.

The charge and particular as laid were as follows:

Charge

THAT in terms of the New Zealand Institute of Chartered Accountants Act 1996 and the Rules made thereunder, and in particular Rule 21.30 the Member has been convicted of offences punishable by imprisonment or a fine and the conviction tends to bring the profession into disrepute.

Particular

IN THAT on or about 24 November 2010 at the District Court in Auckland the Member was convicted of seven counts of accessing a computer system without claim of right and for a dishonest purpose (section 249(1)(a) of the Crimes Act 1961).

DECISION

The Member advised the Tribunal in writing that he did not intend to defend the charge or enter a plea on the basis the Tribunal had no jurisdiction.

We accept the advice of Mr Corkill QC, legal assessor to the Tribunal, who traversed the various arguments the Member put forward and concluded that the Tribunal has jurisdiction.

The Tribunal proceeded on the basis the Member pleaded not guilty to the charge and denied the particular.

The Tribunal finds the particular proved as a question of fact. It is not our role to revisit decisions of the District Court, Court of Appeal and Supreme Court.

The Member was entrusted by his employer with the management of its payroll system. The Member betrayed that trust by manipulating that system to his personal advantage. Such action tends to bring the profession into disrepute. Accordingly the Tribunal finds the Member guilty as charged.

Manipulation of an employer's computer system for personal advantage is a serious breach of trust and is incompatible with membership of the Institute.

PENALTY

Pursuant to Rule 21.31 (a) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the name of **Mark Joseph Benjamin** be removed from the Institute's register of members.

COSTS

The Professional Conduct Committee seeks full costs of \$6,656.

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 received no evidence of mitigating factors such as excessive or unnecessary expenses incurred or demonstrated evidence of hardship (inability to pay).

Pursuant to Rule 21.33 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that **Mark Joseph Benjamin** pay to the Institute the sum of \$6,656 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.

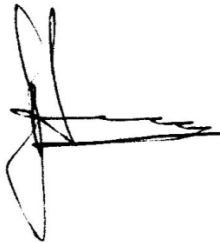
PUBLICATION

In accordance with Rule 21.35 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, in the *Chartered Accountants' Journal* and the *New Zealand Herald* with mention of the Member's name and locality.

RIGHT OF APPEAL

Pursuant to Rule 21.41 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 Member may, not later than 14 days after the notification to the Member 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 shall take effect while the Member remains entitled to appeal, or while any such appeal by the Member awaits determination by the Appeals Council.

A handwritten signature in black ink, appearing to read 'R J O Hoare', with a stylized flourish extending to the right.

R J O Hoare
Chairman
Disciplinary Tribunal