



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 **James Bartholomew Hennessy**, Chartered Accountant, of Invercargill

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND
INSTITUTE OF CHARTERED ACCOUNTANTS
17 December 2012**

Hearing: 17 December 2012

Tribunal: Mr RJO Hoare FCA (Chairman)
Mr DP Scott CA (retired)
Mr MJ Whale FCA
Ms B Gibson (Lay member)

Legal Assessor: Mr Bruce Corkill QC

Counsel: Mr Terence Sissons for the prosecution
Mr Andrew Hitchcock for Mr Hennessy

At a hearing of the Disciplinary Tribunal held in public at which the Member was in attendance by videoconference and represented by counsel, the Member pleaded guilty to the amended charge and admitted the amended particular.

The amended charge and particular 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(f) the Member has breached the Institute's Code of Ethics.

Particular

IN THAT in undertaking a receivership engagement for the X Partnership the Member failed to ensure that at all times he was seen to be independent and/or free from conflicts of interest by virtue of his prior relationship and/or dealings with Mr Y and/or a company associated with Mr Y, in breach of the Fundamental Principle of Objectivity and Independence and/or Rule 11 of the Code of Ethics and/or paragraph 11 of SES-1.

DECISION

The Member accepted an appointment as receiver of a farming partnership when he acted for the incumbent sharemilker on that farm.

Although the Member advised the sharemilker he would no longer act for him, numerous decisions made in the course of the receivership impacted both his former sharemilker client and the outcome of the receivership - for example, leases entered into with the sharemilker and sales of stock to a third party financier immediately leased back to the sharemilker. The sharemilker was also a potential purchaser of the farm and, during the receivership, companies of which the Member was a director entered into grazing and stock leasing arrangements with the sharemilker.

However all key decisions relating to the receivership were taken after the Member received independent professional advice, and the secured creditor who appointed him was kept informed and consulted about the decisions. The Tribunal was advised that the Professional Conduct Committee's expert reviewer accepted that those decisions were appropriate and had not resulted in any loss to the complainant or any other party.

The amended charge does not relate to any lack of independent performance during the receivership engagement but to failing to ensure that the Member was seen to be independent. The Code of Ethics is very explicit as to the need for independence both real and perceived.

The Member and the Professional Conduct Committee have agreed that he be censured, that he contribute \$19,376 towards the Institute's costs and that the decision be published in the *Chartered Accountants' Journal* and on the website with name and location. The Tribunal sees no reason to depart from that agreement.

PENALTY

Pursuant to Rule 21.31 (k) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that **James Bartholomew Hennessy** be censured.

COSTS

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. However in this case the Member and the Professional Conduct Committee have agreed on a lesser figure.

There are no other 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 **James Bartholomew Hennessy** pay to the Institute the sum of \$19,376 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 21.52 (b) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the identity of third parties (including the complainant) be suppressed.

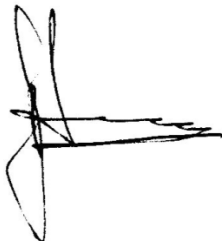
PUBLICATION

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 and in the *Chartered Accountants' Journal* 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 and the name suppression orders shall take effect while the Member remains entitled to appeal, or while any such appeal by the Member awaits determination by the Appeals Council.



R J O Hoare
Chairman
Disciplinary Tribunal