



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 **Michiel David Bezuidenhoudt**, Provisional Chartered Accountant, of Whangarei

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND
INSTITUTE OF CHARTERED ACCOUNTANTS
14 May 2013**

Hearing: 14 May 2013

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

Legal Assessor: Mr Bruce Corkill QC

Counsel: Mr Richard Moon for the prosecution

At a hearing of the Disciplinary Tribunal held in public on 14 May 2013 at which the Member was not in attendance and not represented by counsel, the Member entered no plea.

The Professional Conduct Committee sought leave to withdraw particular (2)(b).

The charges and amended 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 Rule 21.30 the Member is guilty of:

- 1) Breaching the Institute's Rules and/or Code of Ethics, in particular:
 - a) the Fundamental Principle of Integrity of the Code of Ethics and/or Rule 2: *False or Misleading Statements* [particular 1]; and/or
 - b) Rule 18.2 of the Institute's Rules [particular 2]; and/or
 - c) Rule 18.3(b) of the Institute's Rules [particular 3].

Particulars

IN THAT

As a member of the New Zealand Institute of Chartered Accountants, the Member:

- 1) Held himself out as a Chartered Accountant on his website and/or in a letter dated 30 April 2012 when he was a Provisional Chartered Accountant and he knew or ought to have known that he was not entitled to do so, in breach of the Fundamental Principle of Integrity and/or Rule 2 of the Institute's Code of Ethics; and/or
- 2) Offered accounting services to the public:
 - a) as a Provisional Chartered Accountant; and/or
 - b) (withdrawn),in breach of Rule 18.2 of the Institute's Rules; and/or
- 3) Undertook an assurance engagement for X when he was a Provisional Chartered Accountant, in breach of Rule 18.3(b) of the Institute's Rules.

DECISION

In 2003, the Member applied to be a provisional member of the Institute and sought to do so on a reciprocal basis which took account of his membership of the South African Institute of Chartered Accountants (SAICA) (his qualifying body). This membership was approved.

The Member advised the Institute on 15 February 2005 that he had completed the two pre-requisite taxation and law papers through Massey but he was reluctant to comply/convert to full membership because he was not in practice, CA membership fees were quite expensive and there was no need for CPD.

On 2 November 2009 the Member then applied for admission as a full reciprocal member. In this application he noted his NZICA and SAICA membership numbers. However the Member had let his SAICA membership lapse. His application to be a member of the CA College was accordingly declined by the Institute because he was no longer a member of his qualifying body.

This was over 4 ½ years after the Member had advised the Institute that he was reluctant to comply/convert to full membership. The Institute gave the Member the two options available to become a full CA member but he declined to accept either option.

The Member did not appear before the Tribunal, however based on his correspondence with the Institute his defence appears to be that had the Institute not declined his application for full membership he would not have been in breach of the Institute's rules.

The Tribunal acknowledges that the Member may have misunderstood the Institute's requirements for admission as a full reciprocal member. However they did provide the Member with information about other options that he could have taken to become a full member and their expectations of him as a provisional member.

On the basis of the letter and the website extract produced to the Tribunal, the Tribunal is satisfied that the Member held himself out to be a Chartered Accountant including specialising in auditing amongst other things when he was a provisional Chartered Accountant therefore particular (1) is proven. It is noted that the website has been subsequently modified.

There is a total prohibition of a provisional member offering accounting services to the public. On the evidence above particular (2) is proven.

There is a total prohibition of a provisional member conducting an assurance engagement. On the evidence above particular (3) is proven.

PENALTY

The Professional Conduct Committee is concerned how best to maintain professional standards, while protecting the public, when dealing with a member who in their view is unlikely to change their behaviour with a lesser penalty than suspension.

The Tribunal has considered the options available to it and have decided that the most appropriate penalty is to suspend **Michiel David Bezuidenhoudt** from membership of the Institute for a period of two years pursuant to Rule 21.31(b) of the Rules of the New Zealand Institute of Chartered Accountants.

COSTS

The Professional Conduct Committee seeks full costs of \$11,107.

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.

There was no evidence produced to the Tribunal of mitigating factors such as excessive or unnecessary expenses incurred or demonstrated evidence of hardship (inability to pay).

The Tribunal acknowledges that the Member has taken some remedial action.

Pursuant to Rule 21.33 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that **Michiel David Bezuidenhoudt** pay to the Institute the sum of \$8,000 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.

SUPPRESSION ORDERS

Pursuant to Rule 21.52 (b) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders the suppression of all clients' names.

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 *Northern Advocate* 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 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