

**INSTITUTE OF CHARTERED ACCOUNTANTS OF NEW ZEALAND
NOTICE OF DECISION OF THE DISCIPLINARY TRIBUNAL**

(Member guilty of misconduct in a professional capacity, conduct unbecoming an accountant, breaching the Institute's Rules and/or Code of Ethics, failing to respond to the Institute and failing to comply with an order made by the Professional Conduct Committee)

At a hearing of the Disciplinary Tribunal of the Institute of Chartered Accountants of New Zealand held in public on 23 March 2009, at which the member was not in attendance and not represented by counsel, **RICHARD TOWNSEND SOMERVILLE** a suspended Chartered Accountant of **Auckland** entered no plea and was found guilty of charges (1), (2), (3), (4) and (5) and particulars (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k) were found proven.

The charges and particulars were as follows:

Charges

THAT in terms of the Institute of Chartered Accountants of New Zealand Act 1996 and the Rules made thereunder, and in particular Rule 21.30 the member is guilty of:

- (1) Misconduct in a professional capacity;
- (2) Conduct unbecoming an accountant; and/or
- (3) Breaching the Institute's Rules and/or Code of Ethics, in particular:
 - a. Rules 21.2(b), and/or 21.4(b) and/or 21.(3)(d); and/or
 - b. Professional Standard No. 2 (2003) *Client Monies and Members' Trust Accounts* ("PS-2") paragraphs 7 and/or 10 and/or 12 and/or 13 and/or 14 and/or 16 and/or 24 and/or 26 and/or 30 and/or 34 and/or 38 and/or 40 and/or 48 and/or 49 and/or 50; and/or
 - c. The Fundamental Principle(s) of Integrity, and/or Professional Behaviour, and/or Objectivity and Independence and/or Rule 2 (*False or Misleading Statements*) and/or Rule 10 (*Timeliness*) in the Code of Ethics; and/or
- (4) Failing to respond promptly to communications from the Institute; and/or
- (5) Failing to comply with an order made by the Professional Conduct Committee that he attend his final determination hearing.

Particulars

IN THAT

- (a) He deals or has dealt with client monies through a bank account titled "Somerville Trustee Company Limited" that was not established in accordance with the requirements of Professional Standard No. 2 "*Client Monies and Members' Trust Accounts*" ("PS-2"), in breach of paragraphs 12 and/or 13 and/or 24 and/or 26 and/or 30 and/or 48 and/or 49 and/or 50 of PS-2; and/or
- (b) He banked client refunds into this bank account (in particular, but not limited to Inland Revenue Department refunds for Mr A (\$10,026.02) and/or Mr B (\$4,620.71)) and failed to pass these refunds on to clients in a timely manner, in breach of paragraph 38 of PS-2; and/or
- (c) He allowed the bank account to be overdrawn on one or more occasions (in particular, but not limited to on 9 June 2006 (\$24,602.73) and/or 12 June 2006 (\$4,602.73) and/or 14 June 2006 (\$2,403.35) and/or 19 June 2006 (\$5,168.08) and/or from 15 August 2006 (\$4,042.80) until 18 September 2006 and/or 26 September 2006 (\$265.99) and/or from 11 October 2006 (\$4,608.63) until 6 November 2006 and/or from 23 November 2007 (\$248.29) until 11 December 2007 and/or from 13 December 2006 (\$5,782.55) until 17 December 2006 and/or from 15 February 2008 (\$7,052.95) until 6 June 2008), in breach of paragraph 40 of PS-2; and/or
- (d) As a result of being overdrawn, as referred to in particular (c) above, after depositing the client monies into this account (in particular but not limited to the Inland Revenue Department refund for Mr A (\$10,026.02)), he has failed to hold the monies exclusively for his client, in breach of paragraph 7 of PS-2; and/or

- (e) He has banked client monies (in particular, but not limited to IRD refunds for Mr C (\$3,066.11) and/or Mr and Mrs D (\$1,121.36)) directly into Walker Somerville Limited's practice operating account and/or another bank account, in breach of paragraph 14 of PS-2; and/or
- (f) He allowed private and/or practice monies to be paid into and out of the bank account and failed to keep a definite and separate ledger account, in breach of paragraph 16 of PS-2; and/or
- (g) He instructed a staff member to pass a journal materially reducing Company X's exposure to income tax, in breach of the Fundamental Principle(s) of Integrity and/or Professional Behaviour and/or Objectivity and Independence and/or Rule 2 of the Code of Ethics; and/or
- (h) He failed within a reasonable and proper time to respond to correspondence dated 7 July 2008 and/or 25 August 2008 and/or 14 October 2008 from the Professional Conduct Committee, despite being required to do so, in breach of Rule 21.2(b) and/or Rule 10 and/or the Fundamental Principle of Professional Behaviour of the Code of Ethics; and/or
- (i) He failed within a reasonable and proper time to provide information and/or documentation required by the independent investigator appointed by the Professional Conduct Committee, despite being required to do so, in breach of Rule 21.4(b) and/or Rule 10 and/or the Fundamental Principle of Professional Behaviour in the Code of Ethics; and/or
- (j) He conducted the affairs of Walker Somerville Limited in a manner inconsistent with the good reputation of the profession, such that the Inland Revenue Department has applied to liquidate Walker Somerville Limited, in breach of the Fundamental Principle of Professional Behaviour.
- (k) He failed to attend his final determination hearing before the Professional Conduct Committee on 16 December 2008 despite the Professional Conduct Committee requiring him to do so pursuant to Rule 21.3(d).

Reasons

Mr Somerville has been found guilty of the charges (1) to (5) and particulars (a) to (k) have been found proven. Notwithstanding the breaches of PS-2 the fundamentals of client monies are self evident, separation from one's own funds and accounting for activity on a timely basis.

He has failed to cooperate with the Professional Conduct Committee and its investigation in spite of multiple opportunities to do so over many months. He has been counselled by two members of the profession and the investigator offered the advice of the Assistant Director of Professional Support.

In evidence it also transpired that the Inland Revenue has twice sought to liquidate his practice company for unpaid taxes including PAYE and GST. Members providing tax advice to the public should not allow their personal tax affairs to become so perilous. Despite all of this he has failed to appear or offer any response to either the Professional Conduct Committee or to this Tribunal.

ORDERS OF THE TRIBUNAL

- (a) Pursuant to Rule 21.31 (a) of the Rules of the Institute of Chartered Accountants of New Zealand, the Disciplinary Tribunal ordered that the name of **RICHARD TOWNSEND SOMERVILLE** be removed from the Institute's register of members.
- (b) Pursuant to Rule 21.33 of the Rules of the Institute of Chartered Accountants of New Zealand, the Disciplinary Tribunal ordered that **RICHARD TOWNSEND SOMERVILLE** pay to the Institute the sum of \$19,621.00 (inclusive of GST) 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.
- (c) Pursuant to Rule 21.52 (b) (iii) of the Rules of the Institute of Chartered Accountants of New Zealand, the Disciplinary Tribunal ordered the name suppression of the clients of the practice.

In accordance with Rule 21.35 of the Rules of the Institute of Chartered Accountants of New Zealand, the decision of the Disciplinary Tribunal will be published in the Chartered Accountants Journal, in the New Zealand Herald and on the Institute's website and in a notice circulated to clients and former clients of his practice with mention of the member's name and locality.

RIGHT OF APPEAL

Pursuant to Rule 21.41 of the Rules of the Institute of Chartered Accountants of New Zealand which were in force at the time of the original notice of complaint, the member may, not later than 14 days after the notification of this Tribunal to the member of the 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.

R J O Hoare
Chairman
Disciplinary Tribunal

25 March 2009