

Disciplinary Tribunal

Member Name: Nicholas Birdseye - MIPA AFA

Division: SA

Date of Determination: 9 November 2023

IPA Disciplinary Tribunal

The IPA Disciplinary Tribunal of 23 March 2023 determined that the following case presented against the Member was proven:

- Breached clause 98(2)(a) of the IPA Constitution as the Member breached the IPA By-Laws clauses 2.1.1 and 2.1.2 and in particular, APES 110 Code of Ethics for Professional Accountants and APES 220 Taxation Services;
- Breached clause 98(2)(a) and 98(2)(h) of the IPA Constitution as the Member breached the IPA By-Laws in particular clauses 7.1.6 and 7.1.7. The Member failed to comply with a reasonable request made by the Investigations Officer to provide assistance and information in a timely manner;
- Breached clause 98(2)(a) of the IPA Constitution as the Member breached the IPA By-Laws clause 9.1.9. The Member holds a Professional Practice Certificate however did not complete the Professional Practice Program within 6 months of obtaining the certificate;
- Breached clause 98(2)(b) of the IPA Constitution as the Member failed to observe a proper standard of professional care, skill or competence. The above constitutes a failure to observe a proper standard of professional care, skill or competence; and
- Breached clause 98(2)(f) of the IPA Constitution as the Member engaged in conduct which is not in the best interests of the IPA. The above constitutes conduct that is not in the best interests of the IPA.

The Tribunal further resolved that the following penalties are imposed:

- Forfeiture of Membership.
- Costs of \$5,000 plus GST.

IPA Appeals Tribunal

The IPA Appeals Tribunal considered the appeal and made a determination on 9 November 2023 to uphold the decision of the IPA Disciplinary Tribunal as stated above for different reasons and on the basis of different findings that the member had breached clauses 98(2)(a), 98(2)(b), 98(2)(f) and 98(2)(h) of the IPA Constitution, IPA By-Laws clauses 2.1.1, 2.1.2, 7.1.6, 7.1.7, 9.1.9, and APES 110 Code of Ethics for Professional Accountants and APES 220 Taxation Services.

The Member has:

- Breached clause 98(2)(a) of the IPA Constitution by breaching clause 98(2)(b), 98(2)(f) and 98(2)(h) of the Constitution and clauses 2.1.1, 2.1.2, 7.1.6, 7.1.7, and 9.1.9 of the IPA By-laws, and APES standard APES 110. Therefore, a case for contravention of clause 98(2)(a) was made out.

- The Member's actions constituted a serious failure to uphold a proper standard of professional care, skill, and competence; due to the Member's personal and related entity Taxation Law non-compliance, the Member has failed to meet the standard in that several of his related entities had multiple outstanding tax lodgments and tax debts. Therefore, a case for contravention of clause 98(2)(b) was made out.
- The Member's actions constituted conduct which was not in the best interests of the IPA in that the related Tax Practitioners Board action and subsequent Administrative Appeals Tribunal Review, and the findings from such matters are publicly available. Therefore, a case for contravention of clause 98(2)(f) of the IPA Constitution was made out.
- That the member failed to respond to reasonable requests for information from the IPA. Therefore, a case for contravention of clause 98(2)(h) of the IPA Constitution was made out.
- That the Member's actions failed to meet the standard of professional conduct as required under the IPA By-laws; with respect to his failure to assist the IPA in their investigative processes by failing to respond to requests for information; and due to the Member's personal and related entity Taxation Law non-compliance. Therefore, a case for contravention of clause 2.1.1 and 2.1.2 was made out.
- That the Member's actions failed to meet the provisions around disciplinary processes required by the By-Laws of the IPA, this is because the member failed to respond to reasonable requests of the IPA for certain information in the course of the investigation phase. Therefore, a case for contravention of clause 7.1.6 and 7.1.7 was made out.
- That the Member failed to meet the provisions requiring the completion of the IPA's Professional Practice Program within six months of obtaining a Professional Practice Certificate required by the By-Laws of the IPA. The Member failed to complete the program without a satisfactory explanation until sometime in 2021. Therefore, a case for contravention of clause 9.1.9(d) was made out.
- That the Member's personal and related entity Taxation Law non-compliance, in that several of his related entities had multiple outstanding tax lodgments and tax debts, also constitutes a breach of APES 110, by way of clauses 111 (Integrity) and 115 – (Professional behaviour); and, APES 220 by way of clause 3.3 (requirement to discharge tax obligations). Therefore, a case for contravention of APES 220 was made out.

The IPA Appeals Tribunal varied the penalties of the IPA Disciplinary Tribunal and resolved that the following penalties are imposed:

- Forfeiture of the Member's membership.
- Costs of \$8,000.00 plus GST.

Date of Notice: 20 November 2023