

DAVID EDWARD THOMAS (IP112)

**NOTICE OF AN ORDER OF THE DISCIPLINARY TRIBUNAL OF
THE NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS**

David Edward Thomas ("the Member") appeared before the Disciplinary Tribunal ("the Tribunal") of the New Zealand Institute of Chartered Accountants ("NZICA") on 23 August 2023 in relation to three separate complaints concerning his conduct as a non-Member Licensed Insolvency Practitioner bound by NZICA's Code of Ethics, Rules and IES: *Insolvency Engagement Standard*¹.

The complaints arose from the Member's role as liquidator of five entities. The Member pleaded guilty to charges of conduct unbecoming an accountant, negligence, or incompetence in a professional capacity of such a degree and/or so frequent so as to bring the profession into disrepute, and breaching NZICA's Rules and Code of Ethics.

He admitted the underpinning particulars which concerned his failure to: perform liquidation work with competence, due care and diligence and in accordance with applicable standards, laws and regulations; evaluate whether an actual or perceived conflict of interest arose in respect of his appointment as liquidator of an entity; act professionally and with impartiality and independence in his dealings with receivers of an entity; and have in place required quality control processes and procedures.

His conduct in respect of the particulars breached the Fundamental Principles of Professional Competence and Due Care, Professional Behaviour, Integrity, and Objectivity of NZICA's Code of Ethics (Sections 111, 112, 113 and 115); and applicable insolvency standards (namely IES: *Insolvency Engagement Standard*). The Tribunal found the charges proven and the particulars made out.

In its decision dated 15 September 2023, the Tribunal made the following orders pursuant to the Rules of NZICA:

1. That the Member be censured under Rule 13.51(m);
2. Pursuant to Rule 13.51(i) that the Member engage, at his own expense, another Licensed Insolvency Practitioner specified by the Tribunal in an advisory and supervising role, which was to include weekly in-person meetings for the purposes of discussing and reviewing:
 - (a) New engagements / clients, including initial set up, conflict checking and engagement terms;
 - (b) Assignment plans;
 - (c) His liquidation precedents and checklists used;
 - (d) Significant correspondence sent on open files during the week;
 - (e) Compliance with statutory reporting requirements;

¹ Replaced by IS: *Insolvency Services*, effective 1 November 2021.

- (f) Major developments and/or discussions with third parties during the week;
- (g) Trust account movements during the week;
- (h) Invoices issued or fees claimed during the week;
- (i) Progress on completing open liquidation files where there has been little or no activity.

The Licensed Insolvency Practitioner was to provide NZICA's Professional Conduct Committee with a monthly written report on compliance with these requirements, identifying any issues of concern and actions taken to resolve them. This was to continue until completion of a further practice review ordered by the Tribunal.

3. That a Practice Review of the Member's practice be carried out no earlier than 6 months nor later than 9 months from the date of the Tribunal's decision, and that the costs thereof be met by the Member, pursuant to Rule 13.51(g).
4. The Member pay costs to NZICA in the sum of \$38,847 in respect of the costs and expenses of the hearing before the Disciplinary Tribunal, investigation by the Professional Conduct Committee, and cost of publication, pursuant to Rule 13.53.
5. Pursuant to Rule 13.55 that the Tribunal's decision be published on NZICA's website, in its official publication *Acuity*, and in the Bay of Plenty Times with mention of the Member's name and location. The Tribunal ordered that there be no publication of the names of person 'AB' and company 'CD' limited, being the subject of one of the particulars in its decision, pursuant to Rule 13.78.

A full copy of the Tribunal's decision can be downloaded from the decisions register on Chartered Accountants Australia and New Zealand's website:

<https://www.charteredaccountantsanz.com/about-us/complaints/decisions-register>