

## Decisions from hearings

*This section lists a summary of all recent disciplinary decisions made by the Professional Conduct Committee and the Disciplinary Committee (with the exception of not proven cases except in instances where the Accused has requested such publication) where such committee have instructed that certain details pertaining to the disciplinary hearings be published in accordance with SAICA By-Law 21.*

**Name of Accused:** Redacted

**Membership number:** Redacted

**Case Number:** 087/14

**Designation:** CA(SA)

**Hearings Date:** 25 Feb 2015 (Disciplinary Committee)

**Details of Complaint:** The Accused was found guilty by IRBA three charges relating to dishonesty. The charges were as follows:

1. The Accused was charged with improper conduct within the meaning of rule 2.3 of the Rules Regarding Improper Conduct in that he had been found guilty in another forum of an offence involving dishonesty; and/or is guilty of improper conduct within the meaning of rule 2.6 of the Rules Regarding Improper Conduct in that he contravened or failed to comply with the provisions of paragraph 100.5(e)(professional behaviour) and/or paragraph 110.1(integrity) of the Code as well as; and/or is guilty of improper conduct within the meaning of rule 2.17 of the Rules Regarding Improper Conduct in that he behaved in a manner which tended to bring the auditing profession into disrepute. These charges arose from the fact that the Accused acted in a dishonest manner, alternatively he was grossly negligent by submitting a claim to the AGSA for his accommodation expenses relative to his relocation, of which he knew or could reasonably have known that he was not entitled to claim.
2. The Accused is guilty of improper conduct within the meaning of rule 2.4 of the Rules regarding Improper Conduct in that he was dishonest in the performance of any work or duties devolving upon him in relation to any work of a type commonly performed by a registered auditor. Alternatively, the Accused is guilty of improper conduct within the meaning of rule 2.7 of the Rules regarding Improper Conduct in that he failed to perform any professional services or duties with such a degree of professional competence, due care and skill as in the opinion of the Board may reasonably be expected, or failed to perform the professional services at all.
3. The Accused is guilty of improper conduct within the meaning of rule 2.4 of the Rules regarding Improper Conduct in that he was dishonest in the performance of any work or duties devolving upon him in relation to any work of a type commonly performed by a registered auditor; and/or the Accused is guilty of improper conduct

within the meaning of rule 2.6 of the Rules Regarding Improper Conduct in that he contravened or failed to comply with paragraph 100.5(e) (professional behaviour) and/or 110.1 (integrity) of the Code; and/or the Accused is guilty of improper conduct within the meaning of rule 2.17 of the Rules Regarding Improper Conduct in that he behaved in a manner which tended to bring the auditing profession into disrepute. During August 2011, the Accused dishonestly advised a senior manager that he had obtained permission to amend an audit report for a provincial entity dated 28 July 2011 by removing the material findings relating to compliance with internal control requirements including the failure to appoint an audit committee.

IRBA found extenuating circumstances.

In terms of By-law 20.2, notwithstanding the provisions of By-law 20.1, where the conduct of the accused has been investigated or dealt with by the IRBA or any committee of the IRBA, whether as a result of a reference in terms of By-law 19.2 or otherwise, and the IRBA or any committee of the IRBA has found the accused guilty of one or more of the charges of misconduct and has imposed a sentence on him or her in respect thereof, and the matter has been referred to the Disciplinary Committee in terms of By-law 19.4.2.3.

In terms of By-Law 20.2.1 the Disciplinary Committee shall be obliged to accept that finding and sentence for all purposes of these By-laws and to take no further steps against the accused in relation to the conduct complained of.

By-Law 20.2.2 stipulates that the accused will be deemed to have been found guilty by the Disciplinary Committee of an offence as contemplated in By-law 34.1 and a note to that effect, which shall also refer to the punishment imposed by the IRBA, shall be entered on the record of the accused as to the finding of the IRBA and the sentence imposed in respect thereof.

By-Law 20.2.3 states that the note of the finding of the IRBA and the sentence imposed in respect thereof shall for all purposes of these By-laws be regarded as a record of a previous conviction by the Disciplinary Committee of an offence under these By-laws and of the sentence imposed in respect thereof; provided that notwithstanding anything contained in these By-laws, where the sentence imposed on the accused by the IRBA is suspension from practice, or the removal of his or her name from the register of accountants and auditors, or qualified, temporary or permanent disqualification from registration as an accountant and auditor, whether or not part or the whole thereof has been suspended, the Disciplinary Committee shall be obliged to accept the finding of the IRBA or any committee of the IRBA, but shall impose its own punishment on the accused and for this purpose shall afford the accused an opportunity of making representations on the issue orally or in writing to the Disciplinary Committee.

**Committee Decision:**

Guilty

**Sanction:** The Disciplinary Committee found the Accused guilty and ordered that his membership be terminated with immediate effect. The termination was suspended for a period of 5 (five) years on condition that the accused not be found guilty of any other contravention. The Accused must attend a soft skills course.

**Publication:** The details of this matter be published without specific reference to the identity of the Accused or the firm.

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**Name of Accused:** Theunis Jacobus Van Heerden Lochner

**Membership number:** 00186553

**Designation:** CA(SA)

**Case Number:** 088/14

**Hearings Date:** 25 Feb 2015 (Disciplinary Committee)

**Details of Complaint:** The Accused was charged as follows:

1. The Accused is guilty of improper conduct within the meaning of:
  - a. rule 2.1.1 of the old disciplinary rules in that he failed to comply with sections 42 and 44(6) of the Auditing Act;
  - b. rule 2.1.2 of the old disciplinary rules in that he failed to comply with sections 218(2), 268G and 300 of the Old Companies Act with which it was his duty to comply; and
  - c. rule 2.1.5 of the old disciplinary rules in that he failed to perform any work or duties commonly performed by a practitioner with such degree of care and skill as in the opinion of the Board may be reasonably expected, or failed to perform the work or duties at all; and
  - d. rule 2.1.20 of the old disciplinary rules in that he contravened or failed to observe paragraphs 4.1 (integrity), and/or 4.2 (objectivity), and/or 4.3 (independence), and/or 4.4 (professional competence and due care) and/or 6 (conflicts of interest) and/or 7 (independence) and/or (professional competence) of the Code; and
  - e. rule 2.1.21 of the old disciplinary rules in that he conducted himself in a manner which was improper or discreditable or unprofessional or dishonourable or unworthy on the part of the practitioner or which tended to bring the profession of accounting into disrepute. These charges were preferred against the Accused because the Accused had advised Mr Paul Ridgen to set up a public company, Industrial Index Trading Company Limited (Indi), and to conduct his business affairs (which were modelled on, or were substantially similar to, his business conducted through Ridgen himself, the

Sole Proprietorship and/or PRC prior to such company being set-up) through such company. Indi was established almost exclusively because Ridgen could not trade in his own name and for purposes of allowing Ridgen to continue to accept funds for investment from the public.

The Accused was found guilty by IRBA of four charges of Improper Conduct relating to work done for a client that resulted in the client being able to circumvent the Banking Act. As an RA(SA) he did not report irregularities, and then caused the company to go into liquidation.

In terms of By-law 20.2, notwithstanding the provisions of By-law 20.1, where the conduct of the accused has been investigated or dealt with by the IRBA or any committee of the IRBA, whether as a result of a reference in terms of By-law 19.2 or otherwise, and the IRBA or any committee of the IRBA has found the accused guilty of one or more of the charges of misconduct and has imposed a sentence on him or her in respect thereof, and the matter has been referred to the Disciplinary Committee in terms of By-law 19.4.2.3.

In terms of By-Law 20.2.1 the Disciplinary Committee shall be obliged to accept that finding and sentence for all purposes of these By-laws and to take no further steps against the accused in relation to the conduct complained of.

By-Law 20.2.2 stipulates that the accused will be deemed to have been found guilty by the Disciplinary Committee of an offence as contemplated in By-law 34.1 and a note to that effect, which shall also refer to the punishment imposed by the IRBA, shall be entered on the record of the accused as to the finding of the IRBA and the sentence imposed in respect thereof.

By-Law 20.2.3 states that the note of the finding of the IRBA and the sentence imposed in respect thereof shall for all purposes of these By-laws be regarded as a record of a previous conviction by the Disciplinary Committee of an offence under these By-laws and of the sentence imposed in respect thereof; provided that notwithstanding anything contained in these By-laws, where the sentence imposed on the accused by the IRBA is suspension from practice, or the removal of his or her name from the register of accountants and auditors, or qualified, temporary or permanent disqualification from registration as an accountant and auditor, whether or not part or the whole thereof has been suspended, the Disciplinary Committee shall be obliged to accept the finding of the IRBA or any committee of the IRBA, but shall impose its own punishment on the accused and for this purpose shall afford the accused an opportunity of making representations on the issue orally or in writing to the Disciplinary Committee.

**Committee Decision:**

Guilty

**Sanction Imposed:**

The Disciplinary Committee imposed the following sanction:

1. Membership terminated with immediate effect; and

2. the Accused could re-apply for membership after a period of 5 (five) years.

**Publication:** The details of the case to be published including the name of the Accused but excluding the details of his firm.

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Name of Accused: Redacted

Membership number: Redacted

Case Number: 089/14

Designation: CA(SA)

Hearings Date: 25 Feb 2015 (Disciplinary Committee)

Details of Complaint: The Accused was found guilty by IRBA on six charges involving dishonesty. The Accused plead guilty to all charges.

In terms of By-law 20.2: Notwithstanding the provisions of By-law 20.1, where the conduct of the accused has been investigated or dealt with by the IRBA or any committee of the IRBA, whether as a result of a reference in terms of By-law 19.2 or otherwise, and the IRBA or any committee of the IRBA has found the accused guilty of one or more of the charges of misconduct and has imposed a sentence on him or her in respect thereof, and the matter has been referred to the Disciplinary Committee in terms of By-law 19.4.2.3:

20.2.1 the Disciplinary Committee shall be obliged to accept that finding and sentence for all purposes of these By-laws and to take no further steps against the accused in relation to the conduct complained of;

20.2.2 the accused will be deemed to have been found guilty by the Disciplinary Committee of an offence as contemplated in By-law 34.1 and a note to that effect, which shall also refer to the punishment imposed by the IRBA, shall be entered on the record of the accused as to the finding of the IRBA and the sentence imposed in respect thereof;

20.2.3 the note of the finding of the IRBA and the sentence imposed in respect thereof shall for all purposes of these By-laws be regarded as a record of a previous conviction by the Disciplinary Committee of an offence under these By-laws and of the sentence imposed in respect thereof; provided that notwithstanding anything contained

in these By-laws, where the sentence imposed on the accused by the IRBA is suspension from practice, or the removal of his or her name from the register of accountants and auditors, or qualified, temporary or permanent disqualification from registration as an accountant and auditor, whether or not part or the whole thereof has been suspended, the Disciplinary Committee shall be obliged to accept the finding of the IRBA or any committee of the IRBA, but shall impose its own punishment on the accused and for this purpose shall afford the accused an opportunity of making representations on the issue orally or in writing to the Disciplinary Committee.

Committee Decision:

Guilty

Sanction:

The Disciplinary Committee imposed the following sanction:

1. Membership terminated with immediate effect.
2. Such termination be suspended for 5 years on condition that he not be found guilty of any other contravention.

Publication:

The details be published without the details of the Accused or the firm.

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**Name of Accused:**

Matthys Stephanus Lourens

**Membership number:**

**00283411**

**Designation:**

CA(SA)

Case Number:

085/14

**Hearings Dates:**

25 Feb 2015 (Disciplinary Committee)

**Details of Complaint:**

The Accused was found guilty by IRBA on charges of Improper Conduct.

The Charges were as follows:

1. The Accused was dishonest and the manner in which the Accused had dealt with a VAT refund relating to a purchase of a property bought by a consortium of investors;
2. The Accused dishonestly and fraudulently made a secret profit at the expense of a client who was also referred to the Accused for purposes of managing a family trust. The Accused provided administration and accounting and auditing services to his client's family trusts and provided investment advice relating to those trusts;
3. The Accused devised a scheme to claim input VAT in respect of the sale of properties that were in fact not sold;
4. The Accused breached the provisions of section 275 of the Companies Act 61 of 1973 which a person from being appointed as auditor of a company if he is, inter alia, also a director or employee of the company. In this regard, the Accused was the auditor and director of 50 companies;
5. The Accused infringed rules 2.1.20 and 2.1.21 of the disciplinary rules in that he sent various threatening and potentially defamatory emails to an attorney in circumstances where the attorney had acted on instructions from his client regarding various amounts of money that were deposited into the attorney's client's trust account.
6. The Accused infringed rules 2.1.5, 2.1.20 and 2.1.21 of the disciplinary rules in that the Accused conducted a valuation of the shares of a company, which valuation was inaccurate and did not reflect the true value of the shares in the company.

In relation for the first 3 (three) charges the Accused's registration was cancelled and his name removed from the Register of Auditors. In relation to the remaining charges, the Accused was fined R50 000 in respect of each charge. In addition, the accused was to pay a contribution to the costs incurred by IRBA to the amount of R750 000. The fines and costs could be paid in 12 equal payments. The name of the Accused, the name of the firm responsible for the attest function, the charges against him and the findings in respect of the charges were to be published in the IRBA News and the Sunday Times. In a High Court Review, the fifth charge relating to defamatory and unprofessional conduct was set aside. IRBA set aside the R50 000 fine relating to charge 5 related to emails sent by the Accused to an attorney which IRBA considered defamatory.

In terms of By-law 20.2, notwithstanding the provisions of By-law 20.1, where the conduct of the accused has been investigated or dealt with by the IRBA or any committee of the IRBA, whether as a result of a reference in terms of By-law 19.2 or otherwise, and the IRBA or any committee of the IRBA has found the accused guilty of one or more of the charges of misconduct and has imposed a sentence on him or her in respect thereof, and the matter has been referred to the Disciplinary Committee in terms of By-law 19.4.2.3.

In terms of By-Law 20.2.1 the Disciplinary Committee shall be obliged to accept that finding and sentence for all purposes of these By-laws and to take no further steps against the accused in relation to the conduct complained of.

By-Law 20.2.2 stipulates that the accused will be deemed to have been found guilty by the Disciplinary Committee of an offence as contemplated in By-law 34.1 and a note to that effect, which shall also refer to the punishment imposed by the IRBA, shall be entered on the record of the accused as to the finding of the IRBA and the sentence imposed in respect thereof.

By-Law 20.2.3 states that the note of the finding of the IRBA and the sentence imposed in respect thereof shall for all purposes of these By-laws be regarded as a record of a previous conviction by the Disciplinary Committee of an offence under these By-laws and of the sentence imposed in respect thereof; provided that notwithstanding anything contained in these By-laws, where the sentence imposed on the accused by the IRBA is suspension from practice, or the removal of his or her name from the register of accountants and auditors, or qualified, temporary or permanent disqualification from registration as an accountant and auditor, whether or not part or the whole thereof has been suspended, the Disciplinary Committee shall be obliged to accept the finding of the IRBA or any committee of the IRBA, but shall impose its own punishment on the accused and for this purpose shall afford the accused an opportunity of making representations on the issue orally or in writing to the Disciplinary Committee.

**Committee Decision:** The Accused was found guilty of serious misconduct relating to dishonesty. The Accused failed to display qualities of honesty and integrity that a member of SAICA should possess and adhere to. The Committee found that the Accused showed no real remorse and found that in the interest of the profession and the public that the full details of the matter should be published.

**Sanction Imposed:** The Disciplinary Committee imposed the following sanction:

1. The Membership be terminated with immediate effect.
2. The Accused could only reapply for membership after a period of 10 (ten) years.

**Publication:** The full details of the matter including the Accused's name be published.

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**Name of Accused:** Michael Sean Levitt

**Membership number:** 00184669

**Designation:** CA(SA)

**Case Number:** 19/14



**Hearings Dates:** 28 May 2015 (Disciplinary Committee)

**Details of Complaint:** The Accused was charged in Cayman Islands by the grand court for Cayman Islands Holden at George Town on 6 September 2013 of the following charges:

1. Theft contrary to the Penal Code in that between the 24<sup>th</sup> of December 2009 and the 24<sup>th</sup> of January 2012, the Accused stole US\$281 392.19 from a client's bank account using the client's cheques;
2. Theft contrary to the Penal Code in that on the 3<sup>rd</sup> of August 2011 the accused stole KYD\$67 665.61 from a client's account by posting funds to his client account;
3. Theft contrary to the Penal Code in that between the 16<sup>th</sup> of December 2011 and the 9<sup>th</sup> of October 2012, the Accused stole \$289 205.22 from a client's bank account using wire transfers;
4. Obtaining money transfers by deception in that between the 16<sup>th</sup> of December 2011 and the 9<sup>th</sup> of October 2012, the Accused by deception obtained money transfers totalling stole \$289 205.22 from a client's bank account;
5. Theft contrary to the Penal Code in that between the 16<sup>th</sup> of December 2011 and the 20<sup>th</sup> of December 2012, the Accused stole \$226 640.25 from a client's bank account using wire transfers;
6. Obtaining money transfers by deception in that between the 16<sup>th</sup> of December 2011 and the 9<sup>th</sup> of October 2012, the Accused by deception obtained money transfers totalling stole \$226 640.25 from a client's bank account;
7. Possession of criminal property contrary to the Proceeds of Crime Law 2008 in that between 16 December 2009 and 20<sup>th</sup> of December 2012, the Accused was in possession of criminal property, namely US\$711 219.30 stolen from a client.

The Accused was found guilty on all charges and sentenced to an imprisonment of 7.5 years on each count to run concurrently.

In terms of By-law 30.1.2 the Board is required to terminate membership of any member found guilty or convicted for theft, fraud, forgery, or uttering a forged document, or perjury and sentenced in respect thereof to of imprisonment without the option of a fine or to a fine of an amount to be determined by the Board from time to time and published by the Board for information of the members.

**Committee Decision:** Guilty

**Sanction Imposed:** The Disciplinary Committee imposed the following sanction:

1. Membership be terminated with immediate effect.

**Publication:** The Committee instructed that the full details of the matter including the name of the accused be published.

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Name of Accused: J Nel

Membership number:

Case Number: 35/13

Designation: CA(SA)

Hearings Date: 28 May 2015 (Disciplinary Committee)

Details of Complaint: The Accused was found guilty by IRBA of three charges of improper conduct in that he breached his position of trust with intent to defraud a company in that he did not hold the full amount of funds in an account for the company separate from his personal and business accounts.

In terms of By-law 20.2: Notwithstanding the provisions of By-law 20.1, where the conduct of the accused has been investigated or dealt with by the IRBA or any committee of the IRBA, whether as a result of a reference in terms of By-law 19.2 or otherwise, and the IRBA or any committee of the IRBA has found the accused guilty of one or more of the charges of misconduct and has imposed a sentence on him or her in respect thereof, and the matter has been referred to the Disciplinary Committee in terms of By-law 19.4.2.3:

20.2.1 the Disciplinary Committee shall be obliged to accept that finding and sentence for all purposes of these By-laws and to take no further steps against the accused in relation to the conduct complained of;

20.2.2 the accused will be deemed to have been found guilty by the Disciplinary Committee of an offence as contemplated in By-law 34.1 and a note to that effect, which shall also refer to the punishment imposed by the IRBA, shall be entered on the record of the accused as to the finding of the IRBA and the sentence imposed in respect thereof; 20.2.3 the note of the finding of the IRBA and the sentence imposed in respect thereof shall for all purposes of these By-laws be regarded as a record of a previous conviction by the Disciplinary Committee of an offence under these By-laws and of the sentence imposed in respect thereof; provided that notwithstanding anything contained in these By-laws, where the sentence imposed on the accused by the IRBA is suspension from practice, or the removal of his or her name from the register of accountants and auditors, or qualified,

temporary or permanent disqualification from registration as an accountant and auditor, whether or not part or the whole thereof has been suspended, the Disciplinary Committee shall be obliged to accept the finding of the IRBA or any committee of the IRBA, but shall impose its own punishment on the accused and for this purpose shall afford the accused an opportunity of making representations on the issue orally or in writing to the Disciplinary Committee.

Committee Decision:

Guilty

Sanction:

The Disciplinary Committee imposed the following sanction:

(taking into account that his membership with SAICA had been cancelled)

1. Disqualification from applying for membership to SAICA for a period of ten (10) years with effect from 28 May 2015.
2. No sanction relating to fees or costs.

Publication:

The details of the case be published including the name of the Accused but excluding details of his erstwhile firm.

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**Name of Accused:** Redacted

**Membership number:** Redacted

**Designation:** CA(SA)

**Case Number:** **096/14**

**Hearings Dates:** 22 Sep 2015 (Disciplinary Committee)

**Details of Complaint:** The accused was charged as follows:

- An offence in terms of By-law 34.13 in that he failed to comply with the Training Regulation 10.1 which states that a training office is liable for payment to the Institute of all fees in respect of the training contract

prescribed by the Institute from time to time. The Accused failed to pay such fees over a period of 2 (two) years;

- an offence as contemplated By-law 34.18 of the By-laws in that he failed to comply within a reasonable time with an order from SAICA. The Accused failed to pay a fine issued by the Professional Conduct Committee (PCC).
- An offence as contemplated in By—law 34.19 of the By-laws in that the Accused failed to pay a fee that was payable and due to the Institute.

Guilty

**Committee Decision:**

**Sanction Imposed:**

The Disciplinary Committee imposed the following sanction:

1. The Accused was reprimand for not paying the fine imposed by the PCC.
2. Membership was terminated or excluded in terms of by-law 20.8.5 with a five year suspension on conditions that:
  - a. the Accused pay the R10 000 fine imposed by the PCC by no later than 31 March 2016; and
  - b. the Accused is not in arrears with any fees or subscription becoming due and owing to SAICA;
3. A fine of R50 000 is imposed but suspended for a period of 3 (three) years on condition that:
  - a. the outstanding R10 000 fine imposed by the PCC is paid no later than 31 March 2016; and
  - b. that the accused in not in arrears in respect of any subscription or fees that be become due or owing to SAICA.

**Publication:**

Publication excluding name of the Accused or the name of the firm.

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**Name of Accused:** Redacted

**Membership number:** Redacted

**Designation:** CA (SA)

**Case Number:** 002/14

**Hearings Dates:** 13 November 2015 (Disciplinary Committee)

**Details of Complaint:** During or about the period from November 2011 to December 2012 the Accused posted a number of unauthorised manual journal entries in the company's journal relating to the company. The effect of the journal entries (none of

which was substantiated) was to inflate the profits of the company by an amount of R64 715 699. The entries in the journal related to fictitious transactions leading to fictitious profits, and the Accused knew or ought to have known that they were fictitious. The entries in the journal were intended by the Accused to restore the profits of the company approximately to budgeted levels of profit.

The overstatement of profits were reversed in the journal of the company so as to restore the profitability of the company to the correct amount. However, during or about the period from November to December 2012 the Accused, through the company's operating system, deleted accrued liabilities in an amount of approximately R83 000 000, with the consequence that the ostensible profits of the company were increased by approximately R83 000 000. The deletion and write-off of the liabilities referred to above were not authorised and had the effect of overstating the profits of the company over the period in question by approximately R83 000 000. Those profits were fictitious and the Accused knew or must have known that they were fictitious.

**Committee Decision:**

By her conduct as outlined above the Accused is guilty of an offence as contemplated in By-law 34.12 in that she conducted herself in a manner which in the opinion of the Professional Conduct Committee or the Disciplinary Committee is discreditable, dishonourable, irregular or unworthy or which tends to bring the profession of accountancy into disrepute; and/or she is guilty of an offence as contemplated in By-law 34.2 in that she conducted herself with gross negligence in connection with work performed by her in her employment; and/or she is guilty of an offence as contemplated in By-law 34.10 in that she committed a breach of one or more or all of the following paragraphs of the Code, namely:

1. paragraph 100.5(a) (integrity); and/or
2. paragraph 100.5(b) (objectivity); and/or
3. paragraph 100 5(c) (professional competence and due care); and/or
4. section 110 (integrity); and/or
5. section 120 (objectivity); and/or
6. section 130 (professional competence and due care).

**Sanction Imposed:**

The Disciplinary Committee imposed the following sanction that the Accused was suspended from practice for a period of one year, suspended for one year on condition that no similar offence was committed.

**Publication:**

The committee ordered the publication of the facts of the matter excluding the name of the Accused and the name of the firm.

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**Name of Accused:** Redacted  
**Membership number:** Redacted  
**Designation:** CA(SA)  
**Case Number:** 081/14  
**Hearings Dates:** 10 December 2015 (Disciplinary Committee)

**Details of Complaint:** During or about 2008 the CC, engaged the firm to provide professional services to the CC. Those professional services included amongst other services, assisting the CC in complying with the requirements of SARS with respect, *inter alia*, to income tax and value added tax, the requirements of the Unemployment Insurance Fund and compliance with workmen's compensation legislation.

To enable the firm to comply with the terms of its engagement the client, on behalf of the CC, delivered all necessary documentation to the firm bi-monthly, which documentation was retained by the firm. That documentation included bank statements, proof of purchases, proof of payments, wage bills and documentation relating to credits and debits received by the CC. During or about 2012 the CC experienced financial difficulties and was unable to make regular payment of the firm's professional fees.

During or about February 2014 the CC terminated the mandate of the firm and undertook to make payment of all amounts outstanding in respect of fees. At the same time the CC requested the firm to hand over to its newly appointed accountants all documentation to enable the new service provider to carry out its mandate.

The firm, represented by an employee refused to hand over the CC's documentation on the grounds that the firm was entitled to retain the documentation in terms of a lien until payment of all outstanding amounts had been received. During or about July 2014 the firm agreed to release the documentation to the CC on condition that the CC signed an acknowledgement of debt and made 2 (two) payments in terms of that acknowledgement of debt before 7 September 2014. On 5 August 2014 the client on behalf of the CC, signed an acknowledgement of debt for an amount of R16 987.50 in terms of which the CC undertook to pay R2 123.44 on the 7th day of every month, with the first payment being made on 7th August 2014. The CC also undertook to pay interest and costs related to the outstanding payment.

In terms of its obligations under the acknowledgement of debt the CC made payment of the required instalments to the firm on 5 August 2014 and 3 September 2014. Despite the undertaking referred to in above the firm has failed and/or refused to deliver the CC's documentation to the CC, thereby frustrating the CC in its ability to comply with the requirements of SARS. The Accused was responsible for the conduct of the business and affairs of the firm, but he failed to ensure that the firm complied with its undertaking referred to above.

**Committee Decision:** By his conduct as aforesaid the accused is guilty of the following offences: an offence as contemplated in By-law 41.10 in that he failed to ensure that the firm complied with an undertaking to deliver up the CC's documentation, despite the fact that the CC had complied with all conditions in relation to that undertaking; an offence as contemplated in By-law 41.8 in that he committed a breach of the following provisions of the Code:

- a. paragraph 100.4(a): integrity;
- b. paragraph 100.5(c): professional competence and due care;
- c. section 110.1: integrity;
- d. section 130.1: acting diligently in accordance with applicable technical and professional standards; and
- e. section 130.5: taking reasonable steps to ensure that those working under the accused's authority in a professional capacity have appropriate training and supervision.

**Sanction Imposed:** In light of the fact that the Accused had resigned membership, the Disciplinary Committee imposed the following sanction:

- a. R40 000 fine was imposed, suspended for a period of 5 years, on condition that should the member re-apply for membership, the fine becomes due and payable; and
- b. the details of the matter should be published without the name of the Accused or the firm.

It should be noted that the letter from the Accused contained intemperate language, and showed disrespect for the professional body to which he was a member. If not for the fact that he had resigned his membership, the Committee would have imposed a far harsher penalty.

**Publication:** The committee authorised the publication of the facts of the matter excluding the name of the accused and that of the firm

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<b>Name of Accused:</b>	Redacted
<b>Membership number:</b>	Redacted
<b>Designation:</b>	CA(SA)
<b>Case Number:</b>	029/15
<b>Hearings Dates:</b>	10 December 2015 (Disciplinary Committee)
<b>Details of Complaint:</b>	The Accused was charged as follows:

1. an offence in terms of By-law 34.13 in that he failed to comply with the Training Regulations 10.1 which states that a training office is liable for payment to the institute of all fees in respect of the training contract prescribed by the Institute from time to time. The Accused failed to pay fees over a period of two years.
2. an offence as contemplated in By-law 34.18 of the By-laws in that he failed to comply within a reasonable time with an order from SAICA. The Accused failed to pay a fine issued by the Professional Conduct Committee (PCC); and
3. an offence as contemplated in By-Law 34.19 of the By-laws in that he failed to pay a fee that was due and payable to the Institute.

**Committee Decision:**

Guilty

**Sanction Imposed:**

The Disciplinary Committee imposed the following sanction:

1. The Accused was reprimanded for his conduct.
2. Membership was cancelled with a 5 (five) year suspension on conditions that:
  - 2.1. the Accused pay the fine imposed by the PCC in the amount of R10 000 f by no later than 30 June 2016.
  - 2.2. the Accused is not in arrears with any fees or subscription becoming due and owing to SAICA.
3. A fine in the amount of R50 000 or which R25 000 is suspended for a period of 3 (three) years on condition that:
  - 3.1. The fine in the amount of R10 000 imposed by the PCC be paid by 30 June 2016;
  - 3.2. that the Accused pay the R25 000 in instalments of R5000/month commencing 1 August 2016 and ending 31 December 2016; and
  - 3.3. that the Accused is not found guilty of any similar offence.

**Publication:**

The details of the matter should be published without the name of the Accused or the firm.