



Disciplinary Orders and Regulatory Decisions

SETTLEMENT ORDER

DATE PUBLISHED: 31 MARCH 2020

SETTLEMENT ORDER

Martin John MacDonald [FCA] (“Mr MacDonald”)

Mr MacDonald is liable to disciplinary action pursuant to Disciplinary Bye-Law **4.1a** in relation to the following four Complaints on the basis that, contrary to the Code of Ethics and, in particular, to his duty to comply with the fundamental principles of integrity and / or objectivity and / or confidentiality:

Complaint 4

1. On 8 October 2008, Mr MacDonald dictated the contents of and / or signed a letter and / or directed, or was responsible for, the sending of a letter bearing his reference, to S which stated that H’s developments were *“substantially built on the funds received before construction”* and as such the H group of companies were *“able to trade effectively without resorting to debt”* and consequently were *“in a very secure position”* which he knew to be false or misleading because he omitted to state that H’s business model required loan financing which had not yet been arranged in order to be viable.

Complaint 7(a)

2. Between June 2009 and June 2010, Mr MacDonald recklessly allowed his professional judgment to be compromised by the development of a close personal relationship with O, the Chief Executive of I, which resulted in his failure to act in the best interests of H in that he failed to challenge the justification for the increasing financial demands made by H by I in late 2009 and 2010 -to ensure that the payments being made by H were linked to the value of work being carried out by I at B resort.

Complaint 8(e)

3. Between May 2009 and June 2010, Mr MacDonald recklessly disclosed to N, a financial adviser to I, his intention to submit a Suspicious Activity Report on the activities of H to the Serious Organised Crime Agency and disclosed to him and / or shared with him a draft of his intended report.

Complaint 9

4. On 7 June 2010, after termination of his retainer by H and when he remained under a duty not to damage his former client's interests, Mr MacDonald recklessly took steps which damaged, or had the potential to damage, H's interests by attending a meeting between representatives of H and I at a hotel in K in circumstances where he had received briefings from I beforehand and / or attended as part of I's team.

Mr MacDonald is also liable to disciplinary action pursuant to Disciplinary Bye-Law **4.1a** in relation to the following Complaint on the basis that he acted contrary to paragraph 290 of the Code of Ethics:

Complaint 11

5. On 30 January 2009, Mr MacDonald signed an audit report to members of HS (a company in the H group) on financial statements for the year ended 31 March 2008 which purported to be from an independent auditor when he was not independent of his assurance client HS.

Mr MacDonald is also liable to disciplinary action pursuant to Disciplinary Bye-Law **4.1b** in relation to the following Complaints on the basis that, contrary to the Code of Ethics and, in particular, to his duty to comply with the fundamental principles of objectivity and / or confidentiality and / or professional competence and due care:

Complaint 1 (b) (c) and (d)

6. Mr MacDonald failed to act diligently when providing professional services to H in that he:
 - (a) Failed to advise H or A that H should enter into a formal written contract with I for the construction of B resort;
 - (b) Failed to advise H or A that, without a formal written contract with I for the construction of B resort, H would be unable or unlikely to secure finance from lending institutions; and
 - (c) Failed to advise H to put in place a contractually binding valuation process that identified the works to be carried out at the B resort which ensured that the sums of money paid by H to I in respect of the B resort were related to the works actually carried out by I at that site, in order that H was receiving value for money.

Complaint 6 (a) and (c)

7. In relation to his introduction of I to his firm W, Mr MacDonald failed to:
 - (a) evaluate adequately, or at all, the significance of the threat to compliance with the fundamental principles of objectivity and confidentiality which would be created by W acting for I at the same time as H, in circumstances where Mr MacDonald knew, or should have known, that there was a significant chance that H and I's interests would be in conflict in relation to their involvement in the B resort; and
 - (b) consider the threat to compliance with the fundamental principles of confidentiality and objectivity created by N being appointed as W's engagement manager for I when Mr MacDonald knew that N had been advising H, and where it was intended that N would continue to advise H as well as I after September 2009.

Complaint 8 (a) (b) and (c)

8. Between May 2009 and June 2010, Mr MacDonald disclosed the following documents and information to senior executives of I and / or to N in breach of the duty of confidentiality he owed to H:
- (a) A draft resolution for H he received from H's in-house solicitor;
 - (b) A cost appraisal report on B resort prepared by D for a firm of valuers retained by H; and
 - (c) His knowledge that R, which had been engaged to produce a valuation of works at B resort, were likely to produce a poor valuation from I's point of view.

As a result of his acceptance of liability to disciplinary action for the Complaints set out above, Mr MacDonald has agreed to be **excluded** as a member of ICAEW and to pay **£70,000** as a contribution to the costs of ICAEW's investigation and disciplinary proceedings.

The relevant Disciplinary Bye-Laws are as follows:

4.1 A member or provisional member shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member or provisional member at the time of the occurrence giving rise to that liability

b) if he has performed his professional work or the duties of his employment, or conducted his practice, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on himself, the Institute or the profession of accountancy.

5.1 A member-firm or contracted firm (both hereinafter referred to as 'respondent firm) shall be liable to disciplinary action under these bye-laws in any of the following cases

b) if it has performed its professional work, or conducted its practice, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on itself, ICAEW or the profession of accountancy.

In accordance with DBL 18B.6, I approve the proposed settlement agreement. I have received and have considered the proposed settlement agreement and the draft settlement order, together with written representations and documentation received from the parties and the Respondent firm's disciplinary record. I have had regard to the provisions of Regulation 13 of the Disciplinary Committee (Settlement Order) Regulations and in particular to -

- the seriousness of the complaints compared with the nature and extent of the Respondent's admissions;
- the degree to which the Respondent has displayed insight into the conduct giving rise to the formal complaints;
- the strength of the documentary evidence in relation to the formal complaints and the potential benefits in a tribunal hearing additional oral evidence;
- the public interest in achieving an earlier conclusion to the case than would be the case had it proceeded to a tribunal hearing.

Rosalind Wright QC
Settlement Agreement Chair