

DISCIPLINARY COMMITTEE RULING IN THE MATTER OF MR. MUNROE SWIRSKY

Meeting held on 20 November 2018 at the SAICA offices, 17 Fricker Road, Illovo

In the disciplinary proceedings against Mr. Munroe Swirsky the Institute proffered charges against Mr. Swirsky in relation to offences contemplated by By-Law 34.12, 34.16, 34.17 and 34.10, premised on a complaint that it had received from Mr. Erez Daleyot on the 4th of April 2016. Pursuant to the receipt of that complaint, attempts were made to contact Mr. Swirsky in order to obtain his response. Those attempts included attempting to contact Mr. Swirsky on the contact details, both email and telephonic, that were contained on the Institute's records. When those attempts failed, the Institute then proceeded to appoint a tracing agent to trace Mr. Swirsky at what was then described as his last contact details. Those included both his physical address, his home telephone number, cell number and at least four email addresses. A few days later, the tracing agent responded that they were unable to contact Mr. Swirsky and that none of the contact numbers and addresses that were provided were positive. As a result of that communication, the Institute took a decision to write to Mr. Swirsky one more time on the 24th of May 2018 at the email address (email address redacted), informing him of a disciplinary committee hearing that was scheduled to be heard on the 22nd of June 2018. Having still received no response, the Institute elected then to communicate to its membership to ascertain the whereabouts of Mr. Swirsky. In doing so it advised its membership that Mr. Swirsky was the subject matter of a Disciplinary Committee hearing and that he should contact the Institute. As a result of that communication, Mr. Swirsky was made aware by fellow colleagues of the disciplinary hearing that was scheduled to take place on the 22nd of June 2018. He immediately made contact with the Institute, professed ignorance as to the complaint against him and provided new contact details which were essentially a new email and new mobile number and he undertook to fully cooperate with the Institute as he wished for his name to be cleared. The disciplinary hearing that was scheduled to take place on the 22nd of June 2018 was subsequently postponed in order to afford Mr. Swirsky an opportunity to respond to the charges that had been proffered against him. Subsequent thereto Mr. Swirsky furnished a detailed and comprehensive response on the 8th of August 2018 in which not only did Mr. Swirsky deny any of the charges that had been laid against him but in doing so he also set out his explanation for why the complaint by Mr. Daleyot constituted, in his words, harassment and intimidation. It was obvious from the response by Mr. Swirsky that much of what was said by Mr. Daleyot in his complaint was contested and that there was considerable history and acrimony between Mr. Daleyot and Mr. Swirsky. Mr. Swirsky's response was furnished to Mr. Daleyot and on the 2nd of November 2018, Mr Daleyot's Attorneys, Fairbridges Werthem and Becker, informed the Institute that Mr. Daleyot did not intend to respond to Mr. Swirsky's communication at this point in time and that their client's failure to respond more fully should not be construed as an acquiescence and all of his clients' rights were reserved. That of course placed the Institute in an invidious position because the complainant appeared now to have abandoned the complaint and no longer wished to cooperate with the Institute. The disciplinary hearing against Mr. Swirsky was set down for the 20th of November and at the commencement of the proceedings, the



Institute's Pro-forma complainant Ms. Ampofo-Anti advised the committee of the Institute's position, namely that in light of Mr. Daleyot's attitude and lack of cooperation the Institute had no evidence to support any of the charges that were levelled against Mr. Swirsky. Those charges related, in summary, to the failure on the part of Mr. Swirsky to comply with demands that were purportedly made by Mr. Daleyot to return files, a failure to hand over information and, more importantly, an allegation that confidential information concerning Mr. Daleyot and his companies had been publicised by Mr. Swirsky. It would appear from Mr. Swirsky's response to Mr. Daleyot's complaint that to the extent that any disclosures had been made, those were made in terms of the Protected Disclosures Act 36 of 2000 which would inevitably have legitimised and made lawful the professed publication of any information that was in Mr. Swirsky's possession. It also appeared from Mr. Swirsky's response that files were handed over to curators in Belgium. These were curators who had been appointed in respect of the companies that were placed under liquidation and which were the subject matter of the various criminal investigations in Belgium and in other jurisdictions.

In light of the fact that the Institute proffered no evidence to support the charges, Mr. Swirsky adopted the view, correctly in the committee view, that there was no evidence that necessitated him testifying. In light of the above, the committee makes the following order:

1. The charges that have been proffered against Mr. Swirsky which are contained at pages A001 to A005 of the bundle are dismissed;
2. The fact that such charges have been dismissed together with the committee's ruling in respect thereof is to be published in Accountancy SA and that is to include the name of Mr. Swirsky so as to make clear to the Institute's membership that the charges against Mr. Swirsky have been dismissed; and
3. In light of the fact that the Institute electronically communicated with its members to ascertain the whereabouts of Mr. Swirsky prior to the commencement of these disciplinary proceedings, the Institute is, with the same prominence, to electronically communicate to all of its members, informing them that the charges against Mr. Swirsky have been dismissed.