

**THE TURNAROUND MANAGEMENT ASSOCIATION  
OF SOUTHERN AFRICA**

**IN THE DISCIPLINARY HEARING APPEAL  
HELD AT ENS, SANDTON, JOHANNESBURG ON 14 NOVEMBER 2017**

In the matter between:

**ANTOINETTE MURRAY**

**CLAIMANT**

And

**THOMAS HENDRICK SAMONS**

**DEFENDANT**

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**DETERMINATION BY THE DISCIPLINARY APPEALS COMMITTEE**

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**1. INTRODUCTION:**

The Disciplinary Appeals Review commenced at the offices of law firm ENS 150 West Street, Sandton Johannesburg at 13:00. The review was adjourned until 4<sup>th</sup> December 2017 with a further adjournment until 15<sup>th</sup> January 2018. This record of determination deals with the items recorded in the notice of appeal as received by the TMA on 1<sup>st</sup> November 2017.

**2. PRESENT:**

Keith Fairhurst – Disciplinary Appeals Committee Member;  
Gary Oertel - Disciplinary Appeals Committee Member;  
Robin Nicholson – Disciplinary Appeals Committee Member;  
Susanne Braatvedt – TMA Administrator

### 3. SUMMARY:

Point 1 and 2 of the Notice of Appeal refer to the procedural correctness followed by the Disciplinary Committee of the TMA-SA in this matter. The Appeal Committee was unanimous in its finding that the correct procedure was followed.

Point 3.1 of the Notice of Appeal refers to the securing of the assets and the decision by Thomas Samons to liquidate or not were discussed at length and the Appeal Committee came to the conclusion that not enough information was available to make a finding in this regard.

Points 3.2 and 3.3 of the Notice of Appeal refer to the publication of the Business Rescue Plan and the timeous extension of the publication of the Business Rescue Plan. The Appeal Committee was unanimous in its finding that Thomas Samons was negligent and reckless in this instance.

Point 3.6 of the Notice of Appeal refers to the disclosure of all relevant invoices. Thomas Samons has to this day not disclosed any of the invoices and the Appeal Committee was unanimous in its finding that this was unacceptable behaviour of the Business Rescue Practitioner. It is clearly stated in the TMA Code of conduct, clause 18.4 that-

*“Should disputes arise between the creditors and the BRP as to whether the remuneration or expenses are reasonable and necessary, the turnaround professional will then be obliged to fully disclose to the Association all relevant invoices, receipts, and information pertaining to the fee or expense, and the Association will then make a final determination.”*

To date, the defendant, Thomas Samons, has failed to provide any supporting documentation whatsoever in respect of invoices, receipts or information regarding the Business Rescue costs incurred in this matter. The appeals committee views this lack of action on the part of Samons as a total disregard for the Code of Conduct of the TMA. Particularly as the Disciplinary Committee specifically and in writing requested that the defendant, provide, such information (Para 4.2 email correspondence 26 July 2017). This written correspondence was followed up by emails on 31<sup>st</sup> July 2017, 1<sup>st</sup> August 2017, and 4<sup>th</sup> August 2017 and by telephone call and SMS on 15<sup>th</sup> August with two final emails on 17<sup>th</sup> August and 25<sup>th</sup> August 2017.

#### **4. PROCEEDINGS:**

The proceedings in this appeal were a review by the Appeals Committee of all information considered by the Disciplinary Committee along with the notice of appeal submitted by Thomas Samons. It should be noted that Samons provided no additional information and furthermore as stated above failed to comply with a fundamental requirement of the TMA Code of Conduct in respect of providing information pertaining to the costs of business rescue.

The section below deals with the Appeals Committee's finding in respect of each of the charges as per the charge sheet and as per the findings of the Disciplinary Committee.

#### **5. FINDINGS:**

**5.1 Charge 1.1: The defendant failed to pursue a claim against the landlord for the overcharging of services.**

The defendant is found not guilty on charge 1.1.

**5.2 Charge 1.2: The defendant refused to pay UIF and Bargaining Council contributions despite deductions having been made from staff salaries.**

The defendant is found not guilty on charge 1.2.

**5.3 Amended Charge 1.3: The failure by the defendant to properly secure the assets and equipment of the Close Corporation and his further failure to liquidate the Close Corporation.**

The defendant is found not guilty on amended charge 1.3.

**5.4 Charge 1.4: The Defendant failed to invoke provisions of Section 136 (2) (a) of the Companies Act (Act No. 71 of 2008) which would have prevented the cancellations of the lease and franchise agreements.**

The defendant is found not guilty on charge 1.4.

**5.5 Amended Charge 1.5: Failure by the defendant to timeously obtain the requisite consent for an extension for the publication of the Business Rescue Plan.**

It is the opinion of the Appeal Committee that the conduct of Thomas Samons was reckless and unprofessional, especially with regard to the publication and adherence to the deadline for of publication of the Business Rescue Plan. This is particularly in regard to the manner in which he dealt with the extension to the deadline for publication of the plan.

The defendant is therefore found guilty on amended charge 1.5.

**6. CHARGE 2:**

**6.1 Charge 2.1: The defendant failed to uphold his fiduciary duties to exercise care, skill and diligence:**

The defendant is found not guilty;

**7. CHARGE 3**

**7.1 Charge 3.1: The defendant failed to provide a reconciliation of fees and disbursements with supporting documentation when requested by the Complainant.**

The defendant is found not guilty

**7.2 Charge 3.2: In terms of Section 18.4, the defendant is obliged to fully disclose all relevant invoices, receipts and information pertaining to the fee or expense and the TMA-SA will then make a final determination.**

It is the opinion of the Appeal Committee that the conduct of Thomas Samons was grossly unprofessional regarding the disclosure of all the relevant invoices.

The defendant has failed and neglected to comply with this request and is therefore found guilty of the charge.

**8. CONCLUSION OF THE DISCIPLINARY APPEALS COMMITTEE**


8.1. The Appeal Committee agree with the maximum fine of R10, 000. The defendant is fined an amount of R10,000.00, payable to the bank account of the TMA within 14 days from date of notification hereof.

8.2. The Appeals Committee finds that the defendants total disregard, of his obligation to provide all business rescue cost and fee information in a transparent fashion to be a fundamental and inexcusable breach of the TMA Code of Conduct. Furthermore the Committee finds the conduct of Thomas Samons was reckless and unprofessional, with regard to the publication and extension of the deadline for publication of the Business Rescue Plan. Thus the Appeals Committee finds that Thomas Samons should be expelled from the membership of the TMA.

SIGNED ON THIS 15<sup>th</sup> DAY OF JANUARY 2018

**KEITH FAIRHURST**  
**DISCIPLINARY APPEALS COMMITTEE**  
**MEMBER**



  
**ROBIN NICHOLSON**  
**DISCIPLINARY APPEALS COMMITTEE**  
**MEMBER**

**GARY OERTEL**  
**DISCIPLINARY APPEALS COMMITTEE**  
**MEMBER**

