REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2023-083887

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVIEWED: YES/NO

06/03/25
DATE

[redacted]
SIGNATURE

In the matter between:-

MARYKE OOSTHUIZEN	Applicant
And	
ASSOCIATION OF CERTIFIED EXAMINERS SOUTH AFRICA	First Respondent
LOUIS STEENKAMP N.O	Second Respondent
LOUIS AUCAMP N.O	Third Respondent
THE CHAIRPERSON OF THE BOARD OF DIRECTORS: ASSOCIATION OF CERTIFIED FRAUD EXAMINERS SOUTH AFRICA	Fourth Respondent
THE PRESIDENT: ASSOCIATION OF CERTIFIED FRAUD EXAMINERS SOUTH AFRICA	Fifth Respondent
THE HOD: ASSOCIATION OF CERTIFIED FRAUD EXAMINERS SOUTH AFRICA	Sixth Respondent

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JUDGMENT

Raubenheimer AJ:

Summary: Judicial review. Administrative action. Decision by professional body to terminate membership. Professional body registered in terms of Higher Qualifications Framework Act. Contravention of Code of Professional Ethics, Code of Conduct. Decision

Order

[1] In this matter I make the following order:

1. The application is dismissed with costs on scale C

[2] The reasons for the order follow below.

Introduction

[3] The application is for the reviewing and setting aside of the disciplinary procedure in terms of which she was found guilty of professional misconduct and her membership of the first respondent terminated.

[4] As an alternative to the relief claimed in par 1 the applicant wants the recommendations by the second and third respondents that she be found guilty of charge 2 be reviewed and set aside.

[5] As a further alternative that the decisions by the fourth, fifth and sixth respondents be reviewed and set aside.

[6] Lastly referring the evidence presented to the disciplinary panel to a differently constituted panel for reconsideration.

The parties

[7] The applicant, an internal auditor, is an associate member of the first respondent and has been such since 2014. She is also an associate member of the Institute of Internal Auditors (IIA) and a member of the

Institute of Commercial Forensic Practitioners (ICFP). She is furthermore a director of Outsourced Risk and Compliance Assessments (Pty) Ltd. (ORCA) from 3 August 2018 to the end of December 2022.

[8] The first respondent is the Association of Certified Fraud Examiners South Africa (ACFE SA). It is incorporated as a non-profit company in terms of the Companies Act, Act 71 of 2008. It is a member of the Association of Certified Fraud Examiners International (ACFE International). It is governed by the Board of Directors, led by the Chairperson of the Board who is the fourth respondent.

[9] The second and third respondents were the members of the disciplinary panel.

[10] The President of the ACFE SA is the fifth respondent and the ACFE SA Head of Department (HOD) is the sixth respondent.

The Factual Matrix

[11] Two charges for a contravention of the Code of Conduct of the first respondent were proffered against the applicant.

[12] The charges were based on a complaint lodged by a member of the first respondent and former fellow director of ORCA by way of an affidavit dated 19 January 2020.The applicant responded to the complaint, similarly by way of an affidavit.

[13] The first respondent informed the applicant on 25 October 2021 of the disciplinary hearing initially scheduled for 17 November 2021 It commenced

on 24 November 2021 before a disciplinary panel comprising the second and third respondents and concluded on 23 May 2022.

[14] The panel published its recommendation on 1 June 2022 recommending that the applicant be found guilty of the second charge and acquitted of the first charge.

[15] The applicant lodged an appeal to the Board of the ACFE in regard to the recommendations of the disciplinary panel on 25 July 2022 and the first respondent lodged its opposition to the appeal on 4 August 2022.

[16] The Board upheld the panel's recommendation on 5 July 2022 and recommended that the applicant's affiliation with the first respondent be revoked.

[17] The applicant then lodged a further appeal to the president of the ACFE which appeal was dismissed and the decision of the Board upheld on 27 October 2022.

[18] The applicant then referred the matter to the Board of Regents of ACFE International on who confirmed on 16 February 2023 that it had no jurisdiction as the applicant was never a member of the ACFE but only an affiliate member of the South African Chapter of the ACFE.

[19] The matter was then referred back to the Head of the Department of the South African Chapter of the First Respondent who confirmed and upheld the decision of the president on 23 February 2023.

[20] The review application was launched on 23 August 2023.

The Charges

[21] The applicant was charged with the following contraventions of the ACFE Code of Professional Ethics:

21.1 *Gross misconduct, as a Director for Outsourced Risk and Compliance Assessment (Pty) Ltd ("ORCA"), you committed tax and accounting fraud in the execution of your duties. You were directly and/or indirectly involved in misrepresenting the revenue for ORCA in relation to the months of October and November 2020. You have reduced the revenue in the aforesaid period in the amount of R1 217 852.14 (one million two hundred and seventeen thousand eight hundred and fifty-two rand and fourteen cents), by misrepresenting and falsifying the account records, when a credit note was issued for R1 217 852.14 (one million two hundred and seventeen thousand eight hundred and fifty-two rand and fourteen cents) on or about 11 December 2020 in relation to a client, namely Lepelle Northern Water. Notwithstanding the aforesaid credit note that had been issued, Lepelle Northern Water paid ORCA in full on 31 December 2020 in the amount of R1 217 852/14 (one million two hundred and seventeen thousand eight hundred and fifty-two rand and fourteen cents). A new invoice was generated for the same amount on 8 January 2021. By doing so, you have contravened tax legislation, more specifically the Value-Added Tax Act 89 of 1991.*

21.2 *Gross misconduct as a Director for ORCA, you knowingly misrepresented information in various proposals and tenders (as set out hereunder), in that you presented that Ms Justina Govender was a Non-Executive Director and Shareholder for ORCA, notwithstanding the fact that she resigned as a Non-Executive Director on 11 November 2020. The fraudulent misrepresentation referred to hereinabove, occurred in respect of the following organisations :*

- *EDTP SETA*
- *NEDLAC*
- *PSIRA*

- *COUNCIL FOR GEOSCIENCE*

[22] The charges originated from a complaint by a fellow member of the ACFE who was also a director in ORCA. After the complaint was received by the First Respondent it was forwarded to the applicant who responded thereto. The complaint and response were presented to the disciplinary committee who decided to proffer charges against the applicant. The disciplinary committee then constituted the disciplinary panel and scheduled the hearing.

The Professional Status and Governance of The First Respondent

[23] Apart from being a member of the International Association of Certified Fraud Examiners, the largest global anti-fraud and white collar crime organisation it is also a registered professional body with the South African Qualifications Authority (SAQA) in terms of the National Qualifications Framework (NQF) Act, Act 67 of 2008.

[24] Its registration deals with the governing of fraud examination professionals in South Africa and for that function it is subject to the provisions of the NQF Act.

[25] In respect of the SAQA requirements, the ACFE is required to be legally constituted and registered with the Companies and Intellectual Property Commission as a non-profit company. Its membership must be defined in its Memorandum of Incorporation (MOI) which must also contain the scope of practice and provide for good corporate governance.[1]

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[1] Sect 13(1)(i) National Qualifications Framework Act 67 of 2008, Par 32 (a) & (b) Policy and Criteria

[26] A recognised professional body has to have a number of policies in place. For purposes of this judgment the relevant policies are the Code of Professional Conduct and the Disciplinary policy.[2]

The Objects of ACFE SA

[27] The objects of the ACFE SA is found in article 2 of the MOI and provides as follows:

> *To promote and protect the interests of the Chapter and its Members, to encourage co-operation and to deal with all such matters as may affect their common interests in respect of fraud examination. This object shall be carried out by, inter alia:*
>
> *2.1. promoting a high standard of quality, design and workmanship in the fraud examination profession, and providing for the certification of fraud examiners;*
>
> *2.2. providing training and education in respect of fraud examination and investigation;*
>
> *2.3. collecting and disseminating information likely to be of use to the Chapter's Members;*
>
> *2.4 providing opportunities for Members to adhere to the Continuous Professional Education· (CPE) requirements set by the Association while ensuring that training can adhere to national and international qualification recognition requirements where so required;*
>
> *2.5. holding Members accountable to the ACFE Code of Ethics and Professional Standards and taking appropriate disciplinary action when required;*
>
> *2.6. promoting the fraud examination profession, by advertisement, publicity campaigns, exhibitions, or otherwise;*
>
> *2.7. promoting, supporting or opposing, as may be deemed expedient, legislative or other measures affecting the interests of the Chapter or its*

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for Recognising a Professional Body and Registering a Professional Designation for the Purposes of the National Qualifications Frameworks Act.

[2] Par 32 (k) Policy and Criteria (n 1 above)

Members;

2.8. conferring ·with the Government, Provincial Administration or local authorities and their departments and all other interested bodies of concern, or likely to be of concern to the Association;

2.9. providing legal assistance to Members where deemed necessary;

2.10. being a local chapter for the Southern African region of the Association and abiding by the Association' code of ethics; and

2.11. affiliating to any association or organisation as may be decided upon by the Chapter from time to time;

2.12. establishing, maintaining or assisting in the establishment or maintenance of any fund or committee formed, or which may be formed, for the protection of the interests of the Chapter or its Members, or for the protection and benefit of employees, or for the benefit and protection of the joint interests of employers and employees in the fraud examination profession; and

2.13. doing all other lawful things as may be in the interests of the Chapter and its Members.

[28] The ACFE Code of Conduct comprises two documents namely the Code of Professional Ethics and the Code of Professional Standards.

[29] The Code of Professional Ethics comprises the following eight principles:

I. An ACFE Member shall, at all times, demonstrate a commitment to professionalism and diligence in the performance of their duties.

II. An ACFE Member shall not engage in any illegal or unethical conduct, or any activity which would constitute a conflict of interest that has not been properly disclosed to the appropriate parties.

III. An ACFE Member shall, at all times, exhibit the highest level of. integrity in the performance of all professional assignments and will accept only assignments for which there is reasonable expectation that the assignment will be completed with professional competence.

IV. An ACFE Member will comply with lawful orders of the courts and will testify *to matters truthfully and without bias or prejudice.*

V. An ACFE Member, in conducting examinations, will obtain evidence or other documentation to establish a reasonable basis for any opinion rendered. No opinion shall be expressed regarding the guilt or innocence of any person or party.

VI. An ACFE Member shall not reveal any confidential information obtained during a professional engagement without proper authorization.

VII An ACFE Member will reveal all material matters discovered during the course of an examination which, if omitted, could cause a distortion of the facts.

VIII. An ACFE Member shall continually strive to increase the competence and effectiveness of professional services performed under his or her direction.

[30] The preamble of the Code of Professional Standards states as follows:

> *"The Association of Certified Fraud Examiners is an association of professionals committed to performing at the highest level of ethical conduct. Members of the Association pledge themselves to act with integrity and to perform their work in a professional manner.*
>
> *Members have a professional responsibility to their clients, the public interest and each other, a responsibility that requires subordinating self-interest to the interests of those served. These Standards express basic principles of ethical behaviour to guide Members in the fulfilling of their duties and obligations. By following these Standards, all Certified Fraud Examiners shall be expected, and all Associate Members shall strive, to demonstrate their commitment to excellence in service and professional conduct."*

[31] The Disciplinary Procedure of the ACFE SA states its purpose in the introduction as follows:

1.1 ""The ACFE SA Disciplinary Procedure will be used as a guideline to assess complaints and possible disciplinary action to be taken against ACFE SA members -

who are in contravention of the Association of Certified Fraud Examiners ("the ACFE") Code of Ethics and .Professional Standards, Bylaws of the ACFE, or any applicable legislation.

1.2 All members of the ACFE SA must at all times· display professional, and socially acceptable behaviour in the execution of their duties.

1.3 Every member of the ACFE SA must at all times adhere to the ACFE Code of Ethics, Professional Standards and Bylaws of the ACFE, and the applicable legislation in the execution of their duties.

1.4 ....

1.5 If a member is also registered with any other regulatory or Professional Body it remains the member's duty to comply with the ACFE's Code of Ethics, and Professional Standards as well as the other body's requirements.

1.6 ....

1.7 If any member of the ACFE. SA fails to adhere to the aforementioned, reasonable steps must be taken by the ACFE SA to protect the profession and ensure adherence to the standards required by the ACFE.

1.8 Where it is alleged that a member of the ACFE SA has contravened/not adhered to applicable legislation, the Code of Ethics of the·ACFE and/or the ACFE Professional Standards, it is the policy of the ACFE SA to evaluate and deal with such allegation/s in terms of this Policy and Procedure."

[32] If the ACFE SA becomes aware of alleged misconduct from a member's side or the member has contravened/not adhered to the applicable legislation the Code of Ethics of the ACFE and/or ACFE Professional Standards, the ACFE SA will have the right.to take the disciplinary action further, even. in cases where they have not received a formal complaint The ACFE SA reserves the right to request all relevant documentation and/or·evidence related to the alleged misconduct from the respective parties. The parties (members) from

whom the documentation and/or evidence requested will be obligated to give their cooperation in such regard.

[33] *"1.10 The disciplinary action must be substantively as well as procedurally fair (defined below). The outcome of a disciplinary hearing will be considered substantively fair if it is proportional to the offence committed, mitigating and aggravating circumstances were considered and was based on the evidence at the hearing.*

1.11 The Board of Directors of the ACFE SA ("the Board") appoints the General Counsel, together with the Disciplinary Committee consisting of the Board and non-board members. The General Counsel will be the Chairperson of the Disciplinary Committee, and the Disciplinary Committee will comprise of at least 3 members. The General Counsel and/or the Disciplinary Committee will have the right within their discretion to appoint. a legally qualified person to assist them in the performance of their functions.

1.12 The ACFE SA will have the right within their discretion to utilise the services of a legally qualified person to assist the Legal Officer of the ACFE SA and General Counsel with all complaints received in order to review and determine if the complaint and evidence received are within the scope and jurisdiction of the ACFE SA. If the complaint does not fall within the scope and jurisdiction of the ACFE SA the complainant will be advised in writing. In the event that the complaint does fall within the scope and jurisdiction of 1he ACFE SA, the complaint will be dealt with in accordance with this Disciplinary Procedure.

1.13 After the complaint and evidence have been reviewed, and if it has been determined that it is in the scope and jurisdiction of the ACFE SA, the complaint will be sent to The Disciplinary Committee together with recommendations.

1.14 The Disciplinary Committee will be responsible for the receiving, interpreting and assessing and assessing of evidence and complaints against members and *will be responsible for taking the final decision on whether to proceed with a matter or not.*

1.15 The purpose of this document is to define the processes to be used in the discharge of the ACFE SA's .responsibilities in respect of complaints received and the required disciplinary action taken if any."

[34] The procedure is initiated by a complainant who files a complaint contained in an affidavit. The complaint must disclose conduct that violates the Code of Ethics and Professional Standards, ACFE Bylaws or any applicable legislation.

[35] On receipt of the complaint, the legal counsel and the disciplinary committee conduct an investigation to determine whether to either dismiss the complaint or refer it to a formal hearing.

[36] The member against whom the complaint is lodged is afforded 30 days from being informed to file a response. The procedure is not clear when such notice is to be given. As the committee has to consider whether the complaint merits a hearing it would not be able to do so without the version of the member.

[37] The ACFE legal counsel and the ACFE disciplinary committee has the power to ask for additional information from the complainant as well as the member. It can furthermore do its own investigation to obtain information that would be of assistance in their assessment.

[38] Should the decision be to proceed with a formal hearing in which case the member shall be informed of the hearing. The notice of the hearing shall

include details of the complaint, copies of the relevant evidence and supporting documentation.

[39] The hearing is chaired by an AFCE SA member with the appropriate skills and experience who may appoint assessors who will assist the chairperson and execute their duties as a disciplinary panel.

[40] The formal hearing follows the same procedure as a trial in a court of law i.e. leading of evidence if necessary and legal representation.

[41] After conclusion of the hearing the chairperson/panel assesses the evidence and makes recommendations to the Board, which in turn, decides after consideration of the recommendations.

[42] The member is then informed of the decision of the Board and if not satisfied with the decision has the right to appeal to the ACFE president.

[43] The president considers the appeal and takes a decision to uphold or dismiss the appeal.

[44] Where either the decision of the Board or the president involves a sanction to revoke the member's membership of ACFE SA such decision must be ratified by the ACFE international board of review.

[45] The disciplinary action must be substantively and procedurally fair as stipulated in paragraph 1.7 of the procedure. The outcome of a disciplinary hearing will be considered substantively fair if it is proportional to the offence committed, mitigating and aggravating circumstances work considered, and it was based on the evidence presented at the hearing.

[46] Disciplinary action against an ACFE SA member comprises the following phases:

46.1 Initiation of Complaint;

46.2 Pre-hearing;

46.3 Formal hearing;

46.4 Finding of the disciplinary hearing;

46.5 Appeal

46.6 General counsel evaluation and Board of Review Deliberation;

The Grounds for Review

[47] The basis for the review is that the decisions she seeks to review were procedurally and substantively unfair, irrational and unlawful.

[48] The procedural unfairness, so the applicant contends is founded on two legs namely:

48.1 She was not, contrary to the provisions of the ACFE Disciplinary code, provided with an opportunity to respond to charge two;

48.2 The disciplinary panel presiding over the disciplinary hearing lacked jurisdiction to conduct the hearing.

[49] The hearing was therefore in contravention of sections 3 and 6(2)(c) of the Promotion of Administrative Justice Act, Act 3 of 2000.(PAJA)

[50] The recommendations of the panel consequently fell short of the requirements of sect 6(2)(a)(i), 6(2)(b) and 6(2)(f)(i) of PAJA

[51] The second ground for review is that the disciplinary process was substantively unlawful and unfair.

Discussion

[52] I intend dealing with the procedural complaint first and then with the substantive complaint.

[53] The procedural complaint hinges on the contention that the applicant was not before the charges were proffered against her informed of the allegations against her, neither was she afforded an opportunity to respond to the allegations.

[54] In assessing this basis, the overriding principle is fairness3 which has to be determined within the context of the circumstances of the particular case4 and form an appropriate perspective of flexibility and astuteness. It does not amount to a mechanical exercise.[5]

[55] The essential question is whether the applicant had adequate knowledge of the factual basis of the particular charges. The charge sheet is not to be evaluated in isolation and is not to be regarded as the sole source of knowledge pertaining to the charges contained in it.6

[56] Not only should the rights of both parties be considered but also any applicable statutory provisions regulating the proceedings.[7]

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[3] Zondi v MEC for Traditional and Local Government Affairs and Others 2005 (3) SA 587 (CC) par 114, National Director of Public Prosecutions v King 2010 (7) BCLR 656 (SCA) par 5

[4] Joseph and Others v City of Johannesburg and Others 2010 (4) SA 55 (CC) par 56

[5] Du Plessis v Independent Regulatory Board of Auditors [2017] 3 All SA 137 (WCC) par 106

[6] Coetzee v Financial Planning Institute of South Africa and Others 2015 (3) SA 28 (SCA)

[7] Du Plessis v Independent Regulatory Board of Auditors (n 5 above)

[57] Against the backdrop of these principles the contention of the applicant in respect of her complaint that she did not have an opportunity to make submissions in respect of the allegations.

[58] The applicant was informed via a letter dated 4 March 2021 from the complainant's attorneys to the applicant's attorneys of the misrepresentation contained in the tender documents and that the misrepresentation was made to gain clients due to ORCA meeting the necessary BEE and gender status.

[59] On 16 April 2021 the complainant distributed a memorandum to employees of ORCA wherein the misrepresentation was dealt with in detail.

[60] The applicant was fully aware that when she submitted the tender documents the particular director had already resigned. Not only was the Applicant a co-director at the time, she also signed a Board resolution on 27 November 2020 after the resignation of the particular director which resolution evidences that the resigned director's name does not appear on the resolution.

[61] The charge sheet was provided to the applicant on 25 October 2021, approximately a month before the commencement of the hearing on 24 November 2021.

[62] The applicant requested further particulars in respect of both charges on 8 November 2021. A pre-hearing was held on 9 November 2021 during which

the subject matter of both charges was discussed.

[63] ACFE SA delivered its bundle of documents to be used at the hearing on 10 November 2021 and the Applicant delivered her bundle on 17 November 2021 and she also received the response to her request for further particulars on the same day.

[64] On 22 and 23 November 2022, the applicant's attorneys served a supplementary bundle and the ACFE SA supplemented their bundle on 24 November 2021.

[65] The applicant's contention that the second charge took her by surprise and that she was not given sufficient opportunity to respond thereto is consequently without merit and is rejected.

[66] The applicant's next complaint is that the second charge was not proven as it deals with fraudulent misrepresentation and that fraud had not been proven.

[67] The allegations contained in a charge sheet in disciplinary proceedings need not be as formal and accurate as in a criminal proceeding. The test is that sufficient facts underlying the charge are to be contained in order for the applicant to be able to answer thereto.[8]

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[8] Coetzee v Financial Planning Institute of South Africa and Others (n 6 above) par 6 & 17

[68] The charge sheet does not mention that the charge to be answered to amounts to fraudulent misrepresentation. The charge proffered against the applicant is gross misconduct committed by knowingly misrepresenting certain information.

[69] The applicant further contends that the evidence submitted does not support the verdict and is the conclusion of the disciplinary panel and its recommendations consequently irrational.

[70] As stated above it is factually correct that the director mentioned in the tender documents had resigned by the time that the tender was submitted. The applicant was a co-director at the time of the resignation and had signed a resolution of the Board of directors which resolution was not signed by the director that had resigned.

[71] It is consequently clear that the information contained in the tender submission is a misrepresentation of the true facts and that the applicant was fully aware of the true state of affairs.

[72] The legality attack is to the effect that the ACFE SA did not have jurisdiction to institute the disciplinary charges against the applicant as the applicant was not acting in the performance of her duties as a member of the ACFE SA when she made the misrepresentations.

[73] The argument proceeds that the ACFE SA does not have the authority in any of its constituting documents or policies to regulate the conduct of its

members failing outside the scope of performing their duties as forensic fraud examiners.

[74] In the assessment of this attack on the proceedings, cognizance must be taken of the degree of professional competence, due care, skill and experience which the applicant relies on in the performance of forensic auditing and accounting work as the basis for her appointment should the tender be awarded to her.9

[75] The services for which the applicant submitted the tenders include forensic investigations, fraud investigations and fraud prevention, audit, the evaluation of corruption risks and analysis of the control environment.

[76] Not only does the applicant rely on her skill and competence, she specifically states that the forensic work for which the tender is submitted will be done in accordance with the norms and standards and in accordance with the Code of Conduct and ethical principles of the ACFE SA.[10]

[77] The applicant cannot rely on her membership of an organisation for the provision of assurance of the quality of her work and then not abide by the rules, codes and ethical principles in her submission of tender documents.[11]

[78] ACFE SA is a professional body registered as such in terms of the SAQA Act

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[9] Defries v Independent Regulatory Board of Auditors and Others (46856/13) [2016] ZAGPJHC 352 (23 December 2016)

[10] Defries (n 9 above)

[11] De Beer v South African Institute of Chartered Accountants and Another (29219/2021)[2022] ZAGPJHC 710 (20 September 2022)

which was replaced by the National Qualifications Framework Act, Act 67 of 2008. Recognition as a professional body is regulated by the Act.[12]

[79] The Act contains a policy creation imperative dealing with the criteria for the recognition of professional bodies.[13]

[80] The said policy has as its objectives inter alia the following:[14]

> *"a.................*
>
> *b. promote public understanding of, and trust in, professions through the establishment of a nationally regulated system for the recognition of professional bodies and the registration of professional designations;*
>
> *c. encourage social responsibility and accountability within the professions relating to professional services, communities and individuals;*
>
> *d. encourage the setting of professional standards by professional bodies;"*

[81] Par 10 of the Policy contains the policy for the recognition of professional bodies. In terms of the criteria for the recognition of professional bodies a professional body must be governed by a constituting document compliant with good governance principles, must have a code of conduct and a mechanism for reporting and investigating members who is alleged to have contravened the code and protect the public interest in respect of the services provided by its members and the associated risks.[15]

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[12] Sect 13(1)(i) & Sect 29.

[13] Sect 13(1)(i)(l)

[14] Par 8 Policy and Criteria for Recognising a Professional Body and Registering a Professional Designation for the Purposes of the National Qualifications Framework Act, Act 67 of 2008 (As amended, September 2020)

[15] Subpar 28 Policy (n 14 above)

[82] The ACFE exercises its discipline in accordance with the statutory prescripts required of it in terms of its recognition as a professional body.

[83] The Code of Professional Ethics requires members to *inter alia*, "not engage in any illegal or unethical conduct..."[16]

[84] The ACFE Code of Professional Standards provide *inter alia* that:

84.1 It is an organisation of professionals committed to performing at the highest level of ethical conduct.

84.2 Members pledge to act with integrity...

84.3 Members have a professional responsibility to their clients, the public and each other

[85] The ACFE Disciplinary Code defines a complaint as any form of misconduct whereby the Board is of the opinion the misconduct has a direct nexus in terms of the good name and reputation of the ACFE SA.

[86] That the applicant relied on her membership of the ACFE SA, its Code of Conduct, Profession and her experience in the particular profession regulated by the ACFE SA creates this direct nexus required for the ACFE SA to discipline the applicant.

[87] The legality attack consequently stands to fail.

[88] The applicant furthermore complains that the decisions were not rational and

[16] ACFE Code of Professional Ethics, II.

not supported by the evidence presented at the hearing.

[89] An irrational decision is one which a reasonable decision maker would not reach.[17] Included in this category would be where a decision is made ignoring facts material to the decision18· the nature of the decision, the nature and expertise of the decision maker, the range of relevant factors to the decision, the reasons provided for the decision, the nature of the competing interests and the impact of the decision.[19]

[90] The ACFE SA disciplinary panel made a recommendation after a comprehensive hearing. In its recommendation, the evidence was duly regarded and analysed. The decision makers higher up in the decision-making chain gave due regard to the recommendation of the panel as well as the representations of the applicant. This ground of review must consequently fail.

Conclusion

[91] The applicant has failed to support her case for a review of the decisions made by the respective decision makers and consequently her application must fail. I therefore make the order in paragraph 1.

[redacted]

E Raubenheimer

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

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[17] Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others 2004 (4) SA 490 (CC) par 44

[18] Dumani v Nair and Another 2013 (2) SA 274 (SCA) par 29-32

[19] Bato Star Fishing (n 16 above)

Electronically submitted

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **06 March 2025**

COUNSEL FOR THE APPLICANT:	Adv C E Thompson
INSTRUCTED BY:	Stan Fanaroff & Associates
COUNSEL FOR THE RESPONDENT:	Adv E Kromhout
INSTRUCTED BY:	Du Rant, Du Toit Pelser Attorneys
DATE OF ARGUMENT:	05 August 2024
DATE OF JUDGMENT:	06 March 2025