

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

DISCIPLINE COMMITTEE

IN THE MATTER OF: A proposed Settlement Agreement between the Professional Conduct Committee of the Chartered Professional Accountants of Ontario and **GEORGE EDWARD ARLEN, CPA, CA.**

TO: Mr. George E. Arlen


AND TO: The Professional Conduct Committee

DECISION MADE MARCH 5, 2019

DECISION

After considering the submissions of the parties and the proposed Settlement Agreement itself, the Panel hereby approves the Settlement Agreement, dated December 11, 2018.

DATED at Toronto, this 5th day of March, 2019.



Stephen Dineley, FCPA, FCA
Discipline Committee – Deputy Chair



CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

THE CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017.

IN THE MATTER OF: ALLEGATIONS OF PROFESSIONAL
MISCONDUCT AGAINST GEORGE E.
ARLEN, CPA, CA, A MEMBER OF CPA
ONTARIO BEFORE THE DISCIPLINE
COMMITTEE

SETTLEMENT AGREEMENT

***Made pursuant to Section 34 (3) (c) of the Chartered
Professional Accountants of Ontario Act, 2017 and to CPAO
Regulations 6-2, s. 19 and 15-1, s. 26.4***

Introduction

1. The Professional Conduct Committee has approved draft Allegations against George E. Arlen, CPA, CA ("Arlen") (**Doc 1**).
2. The draft Allegations pertain to Arlen's failure to administer the estate of the late "AA" (the "Estate") in a timely manner as well as his failure to use due care in the performance of his professional services while engaged as the Estate Trustee of the Estate.
3. The documents referred to in this agreement are found in the Document Brief ("**Doc**").
4. The Professional Conduct Committee ("PCC") and Arlen agree with the facts and conclusions set out in this settlement agreement for the purpose of this proceeding

only, and further agree that this agreement of facts and conclusions is without prejudice to Arlen in any other proceedings of any kind, including, but without limiting the generality of the foregoing, any civil or other proceedings which may be brought by any other person, corporation, regulatory body or agency.

Background of the Member

5. Arlen obtained his Chartered Accountant designation in 1974 and holds a valid Public Accounting License.
6. Between 1980 and 1990, Arlen was a partner with Deloitte, Haskins & Sells and between 1990 and 1994, he was a partner with Deloitte & Touche. Since 1994, Arlen has been practicing as a sole practitioner.
7. Arlen performs Notice to Reader engagements, prepares income tax returns and provides advice to his clients. He does not perform any audit or review engagements.
8. Arlen has two employees, a CPA, CGA and an assistant, and he reviews all of their work.

Background of the Complaint

9. Arlen came to the attention of the PCC as a result of a complaint made by SA, who was the beneficiary of the Estate.
10. Arlen began providing accounting services to AA in or about 1969, when he was an accounting student, and continued to provide services to AA until AA's retirement in or about 2000. In or about 2001, Arlen was appointed to act as a Power of Attorney for finance and health matters for AA.

11. AA passed away on January 22, 2007 and Arlen was appointed as one of two Estate Trustees of the Estate under the Last Will and Testament dated December 14, 2001 (**Docs 2 and 3**). Upon the death of SA's brother (which occurred prior to AA's death), SA became the sole beneficiary of the Estate.
12. SA alleged that Arlen failed to discharge his duties as an Estate Trustee, had not filed all of the necessary income tax returns and did not request the clearance certificate from Canada Revenue Agency ("CRA"). Notwithstanding that AA had passed away approximately 10 years prior, the Estate assets had not been fully distributed and the Estate had not been wound up (the "Complaint").
13. In 2017, SA initiated an application in court to require a Passing of Accounts in order to obtain a full accounting for the Estate (the "Application") (**Doc 4**). The Passing of Accounts was completed by the lawyer for the Estate and was signed by Arlen on June 13, 2017 (**Doc 5**). The Reconciled Transaction Summary as at June 6, 2017 showed remaining assets of \$456,203.35 to be distributed (**Doc 6**).
14. Mr. Paul Gibel, FCPA, FCA was appointed to investigate the Complaint and asked to review Arlen's professional standards as well as whether Arlen fulfilled his duties and responsibilities as the Estate Trustee.

The Allegations

Allegation 1 – Failure to Administer the Estate in a Timely Manner

15. The summary of Capital Receipts filed with the Application shows the sale of AA's residence on November 18, 2008 and the next entry is over 7 years later, on April 21, 2016, reflecting the proceeds of sale of a property which was owned by three estates, including AA's Estate (the "Property") (**Doc 7**).

16. There is a similar time gap shown on the summary of Capital Disbursements filed with the Application whereby the storage of legal records was paid on May 28, 2009 and the next entry is almost 7 years later, on March 3, 2016 and is in respect of legal fees in connection with the disposition of the Property (**Doc 8**).
17. When SA initiated the Application to Pass Accounts, it had been over 11 years since AA's death and, although Arlen had filed a T1 Adjustment Request with CRA, the assets of the Estate were not distributed, the income tax filings were not completed and the clearance certificate had not been requested.
18. Arlen states that the delays in winding up the Estate resulted from the following: the lawyer for the Estate moved the Estate's bank account so he no longer had access to it or to other information he required; there was a discrepancy in the list of securities owned by AA prepared by the Estate's lawyer and that which Arlen obtained from AA's safety deposit box; the original asset listing did not include the Property, therefore Arlen decided to wait to report the Property until it was sold (which occurred in 2016); SA had issues with CRA for a period of approximately 4 years during which time he did not want funds allocated or distributed to him; and Arlen was involved in two car accidents in 2015 and 2016.
19. Notwithstanding the above, Arlen acknowledges and agrees that, as the Estate Trustee, it was ultimately his responsibility and duty - and not that of the Estate's lawyer - to distribute the assets of the Estate in a timely manner, either by selling them and distributing the cash or by distributing the assets.
20. With respect to the Property, Arlen acknowledges and agrees that he ought to have transferred AA's interest in the Property to SA, rather than wait numerous years for the Property to be sold in order to determine its value, as this would have allowed the Estate Trustees to wind up the Estate in a timely manner.

Allegation 2 – Failure to Perform Professional Services with Due Care

Particular a) - He submitted an incomplete terminal tax return for AA

21. On April 28, 2008, which was almost 16 months after AA's death, Arlen filed an incomplete terminal Income Tax and Benefit Return with CRA in respect of AA (the "T1") (Doc 9). The T1 was assessed as filed on June 19, 2008 (Doc 10).
22. Arlen acknowledges and agrees that he filed the T1 knowing that certain items were missing. For example, the T1 reported approximately \$5,000 of income when Arlen stated that he was expecting it to be approximately over a quarter of a million dollars, and there were no taxable capital gains reported even though Arlen was aware that AA owned a number of securities and the Property. Arlen states that the relevant records were in the Estate lawyer's possession.
23. The adjusted cost base and the value of the securities at the date of death, which should have been reported on the T1 in order to calculate the taxable capital gains, were either available, or ought to have been obtained by Arlen, when Arlen prepared the T1. Arlen should have also dealt with the Property on the T1 as described in para. 37 below.
24. As set out further below, Arlen dealt with the missing items by improperly reporting them in subsequent adjustments through the T1 rather than in an estate trust income tax return in the year of occurrence ("Estate Return").

Particular b) - He improperly reported subsequent adjustments through the T1 rather than in the Estate Returns in the year of occurrence

25. Arlen states that he filed a T1 Adjustment Request dated in 2012; however, it was not accepted by CRA at that time. Arlen states that in the 2012 submission, he had included the value of the securities, but admits that he still failed to include the Property and the taxable gain on Telus Corporation shares owned by AA.

26. On or about February 12, 2016, Arlen filed an updated T1 Adjustment Request (the "2016 Adjustment Request") (**Doc 11**). The 2016 Adjustment Request was not initially accepted by CRA because it did not have the signature of the second executor, then because the will and proof of death certificate had not been filed with CRA and then because the year was not included on the form (**Doc 12**). As a result, the 2016 Adjustment Request was not accepted by CRA.
27. Arlen added the Property on the 2016 Adjustment Request but improperly used \$900,000 for the value of the Property, which he obtained from a real estate agent, to calculate a capital gain of \$168,906.52 (**Doc. 11**). Arlen states that since he did not know the cost of the property, he did this by amortizing this value by an assumed interest rate of 3% annually back to the date of death and to the Valuation Date ("V-Day"), being December 31, 1971. As there were no capital gains prior to V-Day, the *Income Tax Act* only requires reporting the capital gain from that date forward. The Property was purchased prior to V-Day.
28. Arlen subsequently prepared yet another updated T1 Adjustment Request, which had not been submitted to CRA as of May 2018, when Mr. Gibel interviewed him (**Doc 13**) (the "Recent Adjustment Request"). In the Recent Adjustment Request, Arlen increased the capital gain in respect of the Property to \$234,490.67. He calculated the capital gain as described in paragraph 27 above, but because the Property had been sold, he based his calculation on the selling price (**Doc 13, pg. 30**). In addition, a line was added to the Recent Adjustment Request to deal with the taxable capital gains from Telus Corporation shares, as these shares were finally sold in 2016.
29. The Summary of Receipts and Disbursements working paper shows cash receipts from January 22, 2007 to November 18, 2008, including interest of \$35,838.55 (**Doc 13, pg. 35**). On both the 2016 Adjustment Request and on the Recent Adjustment Request, this amount is reported as the change in interest and other income (**Doc 11 and Doc 13, pg. 28**). These amounts are all subsequent to the date of death and

should have been reported on Estate Returns or on a rights and things return¹, if they were receivable at the date of death. If reported on a rights and things return, this would have reduced the Estate's income tax liability.

30. The 2016 Adjustment Request and the Recent Adjustment Request also claim two amounts for carrying charges, namely \$44,969.73 for legal and accounting fees and \$20,266.66 for storage of legal files (**Doc 11 and Doc 13, pgs. 28 and 38**). These were all paid subsequent to the date of death and relate to an invoice from Arlen, legal and trustee duties performed by the lawyer's firm related to the Estate and the storage of AA's legal files (which files the Law Society of Upper Canada required to be stored for a period of seven years). These amounts should not have been included as deductions on the terminal tax return; they should have been claimed as deductions in Estate Returns in the year they were incurred.

31. Arlen estimates that there is still \$65,000 of taxes owing and that there will be interest and possibly penalties that the Estate will be liable to pay as well.

32. Arlen acknowledges and agrees that any subsequent adjustments should have been reported in an Estate Return in the year of occurrence, rather than through the T1.

Particular c) - He made errors in the inclusion rate for capital gains reported on T1 Adjustment Requests which he prepared

33. There are three items on the Recent Adjustment Request in respect of taxable capital gains (**Doc 13, pg. 28**). Based on the supporting schedules Arlen prepared for the securities and the Property, he has included the full amount of the capital gain and not the taxable portion, which should be 50% of the capital gain (**Doc 13, pgs. 29 and 30**).

34. Arlen acknowledges that there are errors in the inclusion rate for capital gains in the income tax filings.

¹ A second income tax return may be filed at the date of death under section 70(2) of the *Income Tax Act*. This allows the taxpayer to report any rights and things such as accrued interest or dividends on a separate return which would reduce the income tax liability.

Particular d) - He failed to obtain real estate appraisals for the Property as at the date of death and as at V-Day, resulting in him improperly calculating the capital gain when the Property was sold in 2016

35. As set out above, Arlen states that the value and ownership of the Property had not been established as at the date of death, therefore he decided to wait until it was sold in order to report the disposition. Arlen states that the sale of the Property took a significant amount of time due to disagreements amongst the two other estates which co-owned the Property.
36. A working paper prepared by Arlen in support of the Recent Adjustment Request shows his calculation of the capital gain on the Property (**Doc 13, pg. 30**). The working paper shows that Arlen took the 2017 selling price of the Property (notwithstanding that the Property sold in or about April 2016), being \$1,500,000, and assumed a 3% depreciation each year to arrive at the value at the date of death and at V-Day. Arlen then took one third of this calculation which represents AA's share of the Property.
37. Arlen acknowledges and agrees that he ought to have determined these amounts by obtaining real estate appraisals as at the date of death and at V-Day. The difference between the V-Day value and the value at the date of death should have been reported on the T1, and the difference between the value at the date of death and the actual selling price should have been reported in a 2016 Estate Return, as the proceeds were deposited in the Estate's bank account on April 21, 2016 (**Doc 7**).
38. Arlen further acknowledges and agrees that he ought to have simply transferred AA's interest in the Property to SA, which would have allowed the Estate Trustees to wind up the Estate long prior to the Property itself being sold.

Acknowledgement

39. It is agreed that Arlen, while acting as Estate Trustee of the Estate, failed to conduct himself in a manner which would maintain the good reputation of the profession and its ability to serve the public interest in that he did not administer the estate of "AA" in a timely manner.

40. It is agreed that Arlen, while acting as Estate Trustee of the Estate, failed to perform his professional services with due care by:

- a) submitting an incomplete T1 for AA;
- b) improperly reporting subsequent adjustments through the T1 rather than in the estate trust income tax returns in the year of occurrence;
- c) making errors in the inclusion rate for capital gains reported on T1 Adjustment Requests which he prepared; and
- d) by failing to obtain real estate appraisals for the Property as at the date of death and at V-Day, resulting in Arlen improperly calculating the capital gain when the Property was sold in 2016.

Terms of Settlement

41. Arlen and the PCC agree to the following Terms of Settlement:

- a) Arlen will be reprimanded in writing by the Chair of the Discipline Committee;
- b) Arlen will pay a fine in the amount of \$7,500 within 18 months of this agreement receiving approval of the Discipline Committee;
- c) Arlen's practice will be restricted from performing estate-related services, including acting as an Estate Trustee;
- d) Notice of the terms of this Settlement is to be published in accordance with the provisions of CPA Ontario Regulation 6-2, section 45, including notice to be given to all members of CPA Ontario, the Public Accountants Council and to all provincial bodies;

- e) Notice of the restriction shall also be given in accordance with CPA Ontario Regulation 6-2, section 48 in the newspaper in the geographic area where Arlen practices, being Guelph, Ontario (i.e. in the *Guelph Mercury Tribune* newspaper). All costs associated with the publication shall be borne by Arlen and shall be in addition to any other costs ordered by the Discipline Committee;
- f) Arlen will pay costs in the amount of \$7,500 within 18 months of this agreement receiving approval of the Discipline Committee; and
- g) A failure by Arlen to comply with any of the terms of settlement will result in his suspension from membership in CPA Ontario which suspension will continue until he complies PROVIDED THAT if his suspension under this section continues for 3 months his membership in CPA Ontario will be revoked with full publicity in accordance with Regulation 6-2, section 48.

42. Should the Discipline Committee accept this Settlement Agreement, Arlen agrees to waive his right to a full hearing, judicial review or appeal of the matter subject to the Settlement Agreement. Upon the member fulfilling the requirements of this Settlement Agreement, the draft allegations approved by the Professional Conduct Committee and dated August 2018, shall be forever stayed.

43. If for any reason this Settlement Agreement is not approved by the Discipline Committee, then:

- a) This Settlement Agreement and its terms, including all Settlement negotiations between the Professional Conduct Committee and Arlen leading up to its presentation to the Discipline Committee, shall be without prejudice to the Professional Conduct Committee and Arlen; and
- b) The Professional Conduct Committee and Arlen shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations, or negotiating a new Settlement

Agreement, unaffected by this Settlement Agreement or the Settlement negotiations.

Disclosure of Settlement Agreement

44. This Settlement Agreement and its terms will be treated as confidential by the Professional Conduct Committee and Arlen, until approved by the Discipline Committee, and forever if for any reason whatsoever this Settlement Agreement is not approved by the Discipline Committee, except with the written consent of the Professional Conduct Committee and Arlen, or, as may be required by law.

45. Any obligations of confidentiality shall terminate upon approval of the Settlement Agreement by the Discipline Committee.

All of which is agreed to for the purpose of this proceeding alone, this 11 day of December, 2018.



TAMARA B. CENTER
On behalf of:
THE PROFESSIONAL CONDUCT COMMITTEE



GEORGE E. ARLEN, CPA, CA,
on his own behalf