

**CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
(THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO)
THE CHARTERED ACCOUNTANTS ACT, 2010**

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **MURRAY ARTHUR FINKELMAN, CPA, CA**, under **Rule 206** of the Rules of Professional Conduct, as amended.

TO: Mr. Murray A. Finkelman, CPA, CA

AND TO: The Professional Conduct Committee

REASONS

(Decision and Order made August 12, 2013)

1. This tribunal of the Discipline Committee met on August 12, 2013 to hear allegations of professional misconduct brought by the Professional Conduct Committee against Murray Arthur Finkelman.

2. Mr. Paul Farley appeared on behalf of the Professional Conduct Committee (PCC), accompanied by the investigator, Mr. Dirk Joustra. Mr. Finkelman attended without counsel. He confirmed that he knew that he had the right to attend with counsel and waived that right. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee.

3. The decision of the tribunal was made known at the conclusion of the hearing on August 12, 2013, and the written Decision and Order sent to the parties on August 14, 2013. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegations, the decision, the order, and the reasons of the tribunal for its decision and order.

Allegations

4. The following allegations were made against Mr. Finkelman by the Professional Conduct Committee on March 28, 2013:

1. THAT the said Murray A. Finkelman, in or about the period June 1, 2012 through November 30, 2012, while engaged to perform a review of the financial statements of WMH Joint Venture for the year ended June 30, 2012, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the recommendation set out in the CICA Handbook, contrary to Rule 206 of the Rules of Professional Conduct, in that:
 - a. he failed to ensure that the scope paragraph of the review engagement report included a reference to the cash flow statement;
 - b. Note 1(a) "Adoption of Accounting Standards for Private Enterprises" refers to the "statement of...retained earnings/deficit" when it should have referred to "the statement of joint venturers' deficiency";

- c. As the joint venture adopted ASPE effective July 1, 2011, he failed to ensure disclosure in Note 2 "Significant accounting policies" that the financial statements were prepared "...in accordance with Canadian accounting standards for private enterprises";
 - d. He failed to ensure that deferred financing costs referred to in Note 5 were included with mortgages payable rather than disclosed as an asset on the balance sheet;
 - e. He disclosed in Note 9 that "The joint venture is subject to interest rate risk.." when it was not because the mortgage interest rate was fixed;
 - f. He failed to carry out an adequate review of subsequent events.
2. THAT the said Murray A. Finkelman, in or about the period June 1, 2012 through November 30, 2012, while engaged to perform a review of the financial statements of TOV Apartments for the year ended June 30, 2012, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the recommendation set out in the CICA Handbook, contrary to Rule 206 of the Rules of Professional Conduct, in that:
- a. he failed to ensure that the scope paragraph of the review engagement report included a reference to the cash flow statement;
 - b. Note 1(a) "Adoption of Accounting Standards for Private Enterprises" refers to the "statement of...retained earnings/deficit" when it should have referred to "the statement of joint venturers' deficiency";
 - c. As the joint venture adopted ASPE effective July 1, 2011, he failed to ensure disclosure in Note 2 "Significant accounting policies" that the financial statements were prepared "...in accordance with Canadian accounting standards for private enterprises";
 - d. The balance sheet item "Deferred charges 316,228" inappropriately includes deferred elevator repair;
 - e. He failed to carry out an adequate review of subsequent events.

Plea

5. Mr. Finkelman entered a plea of guilty to the allegations.

The case for the PCC

6. Mr. Farley made an opening statement. He advised the panel that the case for the PCC would be presented by way of an Agreed Statement of Facts, a Document Brief and an Authorities Brief. He then filed the Allegations (Exhibit 1), the Agreed Statement of Facts (Exhibit 2), the Document Brief (Exhibit 3) and the Authorities Brief (Exhibit 4). Mr. Farley distributed a Case Brief containing similar cases under Rule 206. The Agreed Statement of Facts was signed by Mr. Finkelman on his own behalf and by Mr. Farley on behalf of the PCC.

7. In presenting the case for the PCC, Mr. Farley reviewed the Agreed Statement and made

reference to the relevant documents in the Document Brief and Authorities Brief. No other evidence was called on behalf of the PCC.

The relevant facts

8. The relevant facts are fully set out in the Agreed Statement of Facts. Mr. Finkelman has been a member since 1957 and has practised as a sole practitioner for most of his career. He has a professional arrangement with Mr. Kapoor, a chartered accountant from India who has no Ontario designation, from whom he rents office space. Mr. Kapoor, who carries on an accounting practice, prepares the file work and financial statements for seven clients and Mr. Finkelman issues review engagement reports on his own letterhead. The Review Engagement Reports and the financial statements attached to them for two of these clients are the subject of the allegations.

9. In 2010, Mr. Finkelman entered into a Settlement Agreement approved by the Discipline Committee whereby he undertook not to perform audit engagements and continued to perform review engagements under the supervision of another chartered professional accountant. Under the terms of the 2010 settlement, Mr. Finkelman's practice was reinvestigated by Mr. Joustra and the PCC found that the assurance work performed did not comply with generally accepted standards of practice.

10. For the period June 1, 2012 through November 30, 2012, Mr. Finkelman performed reviews of the financial statements of two clients which were not in accordance with generally accepted standards of practice. The deficiencies, which are succinctly set out in the particulars of the allegations, included an overstatement of assets and liabilities in a material amount, deferred financing charges were included as an asset, and the review engagement report scope paragraph did not include a reference to the cash flow statement. In some areas of the review, out of date professional engagement forms had been used. Mr. Finkelman confirmed that the reviews were performed during the period of supervised practice and noted that the supervision is still ongoing.

Submissions

11. Mr. Farley submitted that based on the facts as set out above, and as Mr. Finkelman acknowledged, both in the Agreed Statement of Facts and by his plea of guilty, he should be found guilty. Mr. Farley submitted that although some of the particulars set out in the allegations are more serious than others, taken in their entirety and coupled with the fact that Mr. Finkelman had been subject to the discipline process before, the deficiencies required a finding of professional misconduct.

12. Mr. Finkelman submitted that he had relied on the supervisor appointed to approve all review reports.

Decision

13. The tribunal found, on the uncontested evidence which was clear, cogent and convincing that the allegations had been proven. After deliberating, the tribunal announced the following decision:

THAT, having heard the plea of guilty to Allegation Nos. 1 and 2, and having seen and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee finds Murray Arthur Finkelman guilty of Allegation Nos. 1 and 2.

Reasons for Decision

14. The panel found that the particulars of each of the two allegations had been proven. Collectively the departures from the required standards were evidence of a serious failure to comply with the standards required for review engagements. While no one particular was a significant

enough departure, in and of itself, from the standards to warrant a finding of professional misconduct, the cumulative effect of the departure clearly constituted professional misconduct.

15. In fact, the tribunal finds the professional misconduct in this unusual case is egregious. The member had been given an opportunity to rehabilitate himself and failed to do so. The member's previous failure to adhere to the required standards of practice had resulted in a Settlement Agreement pursuant to which the member was precluded from doing audits and required to have his review work supervised. Upon re-inspection the PCC concluded that allegations of professional misconduct should be laid before the Discipline Committee. As the tribunal has said above, the allegations were proven and the member's conduct constituted professional misconduct.

Sanction

16. Mr. Farley and Mr. Finkelman did not call any additional evidence with respect to sanction. Both made submissions.

17. Mr. Farley submitted that since the rehabilitative terms of the 2010 Settlement Agreement did not have the desired effect on Mr. Finkelman's ability to perform his services, the PCC was taking a different approach with sanctions that would serve as a deterrent.

18. Mr. Farley, on behalf of the PCC, submitted that an appropriate sanction in this matter would be: a written reprimand; a fine in the amount of \$5,000; a restriction not to perform any assurance work; and full publicity including newspaper publication. The PCC also sought an order for the costs of the investigation and hearing on a partial indemnity basis. Mr. Farley filed a Costs Outline (Exhibit 5) which showed that the costs of the investigation and hearing were approximately \$10,500. The PCC was seeking an order for recovery of approximately 50% of the costs in the amount of \$5,000. Mr. Farley said the PCC had no objection to a time period deemed acceptable by the tribunal for Mr. Finkelman to pay the fine and costs, and suggested three months.

19. Mr. Farley stated that Mr. Finkelman had taken professional development courses as part of the terms of the Settlement Agreement. While Mr. Finkelman did not complete some of the specific courses, the ones he took were close in content and in some cases longer than those required. Mr. Farley submitted that the rehabilitative route has now expired and the focus must now be on the protection of the public.

20. Mr. Farley referred to the case brief containing *Enstrom*, *Hambley*, *Menaker* and *Robins*, pointing out relevant items in each case. The precedents involved deficiencies similar to those of Mr. Finkelman and some resulted in restriction of the member's practice.

21. Mr. Finkelman submitted that he relied on the supervisor who had suggested corrections that were not incorporated in the released financial statements. Mr. Finkelman stated that he signed the financial statements without double-checking the contents. Mr. Finkelman stated that he had experienced personal health problems in the last three years.

Order

22. After deliberating, the tribunal made the following order:

IT IS ORDERED in respect of the Allegations:

1. THAT Mr. Finkelman be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Finkelman be and he is hereby fined the sum of \$5,000 to be remitted to the Institute within three (3) months from the date this Decision and Order is made.

3. THAT Mr. Finkelman restrict his practice to exclude assurance engagements.
4. THAT notice of this Decision and Order, disclosing Mr. Finkelman's name, be given after this Decision and Order is made:
 - (a) to all members of the Institute;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to all provincial institutes/Ordre;and shall be made available to the public.
5. THAT notice of the restriction on practice, disclosing Mr. Finkelman's name, be given by publication on the Institute's website and in a newspaper distributed in the geographic area of Mr. Finkelman's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Finkelman and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

6. THAT Mr. Finkelman be and he is hereby charged costs fixed at \$5,000 to be remitted to the Institute within three (3) months from the date this Decision and Order is made.

AND IT IS FURTHER ORDERED

7. THAT in the event Mr. Finkelman fails to comply with any of the requirements of this Order, he shall be suspended from the rights and privileges of membership in the Institute and his public accounting licence shall be suspended until such time as he does comply, provided that he complies within thirty (30) days from the date of his suspension, and in the event he does not comply within the thirty (30) day period, his membership in the Institute and his public accounting licence shall be revoked, and notice of his membership and licence suspension and revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Finkelman's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Finkelman and shall be in addition to any other costs ordered by the tribunal.

Reasons for Sanction

23. The member had demonstrated that despite his experience with the discipline process, he had not maintained the required standards.

24. When asked if he had any comments to make concerning the proposed sanctions, the member stated that unfortunately he had relied on his supervisor. The tribunal considered that this comment indicated that rehabilitation had not proved successful and that the need to protect the public should be the primary objective of the sanction.

25. The tribunal found it noteworthy that Mr. Finkelman did not present any evidence or submit that the public could be adequately protected with another sanction. The tribunal considered this issue but concluded that precluding Mr. Finkelman from undertaking assurance engagements was the only adequate sanction available.

26. Publicity is necessary as a general deterrent for other members. Notice to the public is important both to let the public know that Mr. Finkelman's practice is restricted and that CPA Ontario takes its role as a governing body seriously. There were no rare and unusual circumstances which suggested the usual publicity, including publication in a newspaper where the member resides or practices, was not appropriate in this case. Accordingly, the tribunal ordered the usual publication of the decision and order.

DATED AT TORONTO THIS 11th DAY OF OCTOBER, 2013
BY ORDER OF THE DISCIPLINE COMMITTEE

A handwritten signature in cursive script, reading "J.A. Cullemore", followed by a horizontal line.

J.A. CULLEMORE, FCPA, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

R.H. CARRINGTON (PUBLIC REPRESENTATIVE)
R.S. DUSCHEK, CPA, CA
S.J. HOLTOM, CPA, CA