

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO**  
**THE CHARTERED ACCOUNTANTS ACT, 1956**

**APPEAL COMMITTEE**

**IN THE MATTER OF:** An appeal by the Professional Conduct Committee, of the Decision and Order of the Discipline Committee made on January 22, 2009, pursuant to the bylaws of the Institute, as amended.

**TO:** The Professional Conduct Committee  
The Institute of Chartered Accountants of Ontario  
69 Bloor Street East  
Toronto, ON M4W 1B3

**AND TO:** Mr. Adler Jean-Baptiste, CA

**REASONS**  
**(Decision Made January 28, 2010)**

1. This appeal was heard by a panel of the Appeal Committee of the Institute of Chartered Accountants of Ontario on January 28, 2010. Alexandra Hersak appeared on behalf of the Professional Conduct Committee. Mr. Jean-Baptiste attended without counsel. He confirmed he understood that he had the right to be represented by counsel, and that he was waiving that right.
2. The following charges were laid against Mr. Jean-Baptiste by the Professional Conduct Committee on May 26, 2008:
  1. THAT the said Adler Jean-Baptiste, in or about the period November 1, 2007 through November 30, 2007, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he supported his attempt to obtain mortgage financing from "XM Corporation" by delivering to "XM Corporation" an income verification letter purported to be written by his employer, which contained false information including false letterhead, misrepresentation of income information, misrepresentation of employment tenure and falsification of another person's signature, contrary to Rule 201.1 of the Rules of Professional Conduct.
  2. THAT the said Adler Jean-Baptiste, in or about the period November 1, 2007 through November 30, 2007, signed or associated himself with an income verification letter to "XM Corporation" dated November 1, 2007 which he knew to be false contrary to Rule 205 of the Rules of Professional Conduct in that:

- a. It purported to be signed by Elaine Crookston when it was not;
- b. It falsely overstated his income and employment tenure; and
- c. The letterhead was not that of the LLP as it appeared but was manufactured by him.

3. The Decision and Order appealed from, dated November 27, 2007, reads as follows:

#### **DECISION**

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Mr. Adler Jean-Baptiste guilty of charge Nos. 1 and 2.

#### **ORDER**

IT IS ORDERED in respect of the charges:

1. THAT Mr. Jean-Baptiste be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Jean-Baptiste be and he is hereby fined the sum of \$7,000 to be remitted to the Institute as follows:
  - (a) \$3,500 within twelve (12) months from the date this Decision and Order becomes final under the bylaws; and
  - (b) a further \$3,500 within twenty-four (24) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Jean-Baptiste be suspended from the rights and privileges of membership in the Institute for a period of three (3) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Jean-Baptiste surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws to be held during the suspension and thereafter returned to Mr. Jean-Baptiste. In the event Mr. Jean Baptiste fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificate remains undelivered to the secretary.
5. THAT notice of this Decision and Order, disclosing Mr. Jean-Baptiste's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
  - (a) to all members of the Institute; and
  - (b) to all provincial institutes/Ordre,
 and shall be made available to the public.
6. THAT in the event Mr. Jean-Baptiste fails to comply with the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three month period, he shall

thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Jean-Baptiste's practice, employment and/or residence. All costs associated with the publication shall be borne by the member and shall be in addition to any other costs ordered by the committee.

**AND IT IS FURTHER ORDERED:**

7. THAT Mr. Jean-Baptiste be and he is hereby charged costs fixed at \$5,000 to be remitted to the Institute within twenty-four (24) months from the date this Decision and Order becomes final under the bylaws.

4. On this appeal, the Professional Conduct Committee seeks to have paragraph 3 of the Order of the Discipline Committee suspending Mr. Jean-Baptiste from membership in the Institute for a period of three months vacated and an order suspending Mr. Jean-Baptiste for a period of twelve months made.

***Submissions***

5. The Professional Conduct Committee provided a factum and brief of authorities to the panel, and both parties made oral arguments.

6. In essence, the submission on behalf of the Professional Conduct Committee was that, based on similar cases, the Discipline Committee erred in ordering a three-month, rather than a twelve-month suspension and that the committee's reasons do not support this order.

7. Ms. Hersak noted that the Discipline Committee had seen and heard the evidence, and that the facts were not in dispute. Mr. Jean-Baptiste fabricated a letter which misrepresented his tenure and salary, and contained a false signature. He provided it to a mortgage company. No funds were advanced and Mr. Jean-Baptiste withdrew the mortgage application. Ms. Hersak submitted that this was a matter of moral turpitude since Mr. Jean-Baptiste knew the statements were false.

8. Ms. Hersak stated that a three-month suspension does not fit the range of similar cases involving dishonesty and that a message must be sent to other members and to the public. Ms. Hersak pointed out that Mr. Jean-Baptiste is not practising as a public accountant and that none of Mr. Jean-Baptiste's current activities require a CA designation. The Discipline Committee's conclusion that a longer suspension would impede Mr. Jean-Baptiste's ability to earn an income is incorrect. Ms. Hersak cited cases in a Brief of Authorities where suspensions ranged from six months to two years for similar cases.

9. It is the position of Mr. Jean-Baptiste that he has suffered already for over a year because of this case, serving a self-imposed suspension since January 2009. He has returned his certificate of membership. Mr. Jean-Baptiste has not engaged in public accounting, but he prepares compilation reports for financial statements and tax returns. He said his main business enterprise involved importing coffee from Brazil. He expressed remorse for his actions which he characterized as a mistake, but submitted that the circumstances in the cases cited by the Professional Conduct Committee were not the same as his situation.

10. Mr. Jean-Baptiste stated that when he needed additional funds for an existing mortgage, he submitted a fabricated employment letter and falsified the signature of a person whom he claimed said he could use her name. Mr. Jean-Baptiste said the publicity of this matter on Google had prevented him from practising as a chartered accountant and he would have to sell his house due to his inability to work as a CA. Mr. Jean-Baptiste stated that he has taken a number of courses and he wishes to continue as a chartered accountant in the future.

11. Ms. Hersak stated that the role of the Appeal Committee is not to retry the case but to assess the appropriateness of the sanction imposed by the Discipline Committee with respect to the term of the suspension. She noted that the investigation of the Professional Conduct Committee is confidential until a hearing date is set, at which time the charges and the hearing date are published on the Institute's website. Ms. Hersak clarified that a suspension ordered by the Discipline Committee does not take effect until the decision and order becomes final and a member cannot serve a "self-imposed suspension". Until such time as the decision and order becomes final, Mr. Jean-Baptiste has been entitled to call himself a CA and was never advised by the Registrar that he was under suspension.

### ***Analysis***

12. As has been stated in numerous previous appeals, it is not the role of the Appeal Committee to retry the case or to substitute its judgment for that of the Discipline Committee. Rather, the Appeal Committee is to consider the record and determine, based on that record, whether the findings of fact made by the Discipline Committee are supported by the evidence, and whether the decision is supported by the facts and the law.

13. The relevant facts in this matter were that Mr. Jean-Baptiste, in an attempt to obtain mortgage financing, provided an income verification letter purported to be from his employer which contained false information including false letterhead, misrepresentation of income information, misrepresentation of employment tenure and falsification of another person's signature.

14. The Appeal Committee had a clear understanding of the facts of this case and fully understood that the Professional Conduct Committee was appealing one aspect of the Discipline Order made on November 27, 2007. The specific sanction under appeal was the length of suspension.

15. The panel agreed with the submissions of the Professional Conduct Committee that the principle of "general deterrence" must be considered when determining the length of the suspension.

16. The panel also considered the submission of Mr. Jean-Baptiste, that he had already "suffered for one year" as a result of his "self-imposed" suspension. The panel clearly understands the rules relating to when a suspension begins, however it was obvious, based on the fact that the member returned his certificate, that he did not understand when his suspension would begin.

17. Ms. Hersak, in her submission, provided the panel with a number of precedent cases involving "moral turpitude" where the length of suspension ranged from six months to two years.

18. After considering all the submissions of the parties and a review of the precedent cases, the panel concluded that the Discipline Committee erred when it ordered a three-month

suspension. A three-month suspension is "outside the normal range" for cases involving "moral turpitude". The committee concluded that there were no extenuating circumstances that would support an order for a suspension of three months.

19. The Appeal Committee did accept the submission of Mr. Jean-Baptiste as it related to his "self imposed" suspension and as a result made an order to suspend for six months, which is at the lower end of the precedent cases.

***Decision***

20. Having considered the record and the submissions of the parties, this panel of the Appeal Committee varies the Order of the Discipline Committee and orders that Mr. Jean-Baptiste be suspended from the rights and privileges of membership in the Institute for a period of six months.

DATED AT TORONTO THIS 19<sup>TH</sup> DAY OF JULY, 2010.  
BY ORDER OF THE APPEAL COMMITTEE



L.P. BOOKMAN, CA – DEPUTY CHAIR  
APPEAL COMMITTEE

**MEMBERS OF THE PANEL:**

J.C. BLACKWELL, CA  
R.D. DAWE, CA  
W.R. SCHMIDT, CA  
B. RAMSAY (PUBLIC REPRESENTATIVE)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO  
*THE CHARTERED ACCOUNTANTS ACT, 1956*

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Charges against **ADLER JEAN-BAPTISTE, CA**, a member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

**TO:** Mr. Adler Jean-Baptiste, CA  
3077 Weston Road, Suite 2002  
North York, ON M9M 3A1

**AND TO:** The Professional Conduct Committee, ICAO

**REASONS**  
**(Decision and Order Made January 22, 2009)**

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on January 22, 2009, to hear charges of professional misconduct laid by the Professional Conduct Committee against Adler Jean-Baptiste, CA, a member of the Institute.

2. Alexandra Hersak appeared as counsel for the Professional Conduct Committee. Mr. Jean-Baptiste attended without counsel. He confirmed he understood that he had the right to be represented by counsel, and that he was waiving that right.

3. The decision of the panel was made known at the conclusion of the hearing on January 22, 2009, and the written Decision and Order sent to the parties on January 27, 2009. These reasons, given pursuant to Bylaw 574, include the charges, the decision, the order, and the reasons of the panel for its decision and order.

**The charges**

4. The following charges were laid against Mr. Jean-Baptiste by the Professional Conduct Committee on August 15, 2008:

1. THAT the said Adler Jean-Baptiste, in or about the period November 1, 2007 through November 30, 2007, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he supported his attempt to obtain mortgage financing from "XM Corporation" by delivering to "XM Corporation" an income verification letter purported to be written by his employer, which contained false information including false letterhead, misrepresentation of income information, misrepresentation of employment tenure and falsification of another person's signature, contrary to Rule 201.1 of the Rules of Professional Conduct.

2. THAT the said Adler Jean-Baptiste, in or about the period November 1, 2007 through November 30, 2007, signed or associated himself with an income verification letter to "XM Corporation" dated November 1, 2007 which he knew to be false contrary to Rule 205 of the Rules of Professional Conduct in that:
  - a. It purported to be signed by Elaine Crookston when it was not;
  - b. It falsely overstated his income and employment tenure; and
  - c. The letterhead was not that of the LLP as it appeared but was manufactured by him.

### **The plea**

5. Mr. Jean-Baptiste entered a plea of not guilty to both charges.

### **The proceedings**

6. The evidence for the Professional Conduct Committee was given by Robert Gold, CA, the managing partner of Bennett Gold LLP, where Mr. Jean-Baptiste had been employed; Elaine Crookston, the Comptroller of Bennett Gold LLP; and Scott Porter, CA, the investigator appointed by the Professional Conduct Committee. Mr. Jean-Baptiste cross-examined each of the three witnesses.
7. Mr. Jean-Baptiste testified on his own behalf and was cross-examined by Ms. Hersak.
8. At the conclusion of the evidence, both Ms. Hersak and Mr. Jean-Baptiste made submissions to the panel with respect to the question of whether the charges had been proven and whether Mr. Jean-Baptiste was guilty of professional misconduct.

### **The relevant facts**

9. The relevant facts in this case were not disputed by Mr. Jean-Baptiste. On or about November 1, 2007, Mr. Jean-Baptiste prepared a letter (Exhibit 2), addressed to himself, purportedly signed by Elaine Crookston, on letterhead of Bennett Gold LLP which he fabricated using a business card. The text of this letter reads as follows:

Dear Adler

This letter confirms employment with Bennet [sic] and Gold LLP since December 24, 2004 working first as a general consultant on a per diem basis, with an hourly wage of 42.00 dollars per hour.

On January 1, 2006 the per diem hourly arrangement was changed into a regular salaried status paying the same hourly wage which yields about 85,000 dollars a year excluding bonus and commissions.

Should you need additional information, please contact me at the office.

Regards,  
"Signed"  
Elaine Crookston Human Resources Manager

10. In fact, Mr. Jean-Baptiste had been employed by Bennett Gold LLP from July 1, 2007 until on or about October 7, 2007. Throughout this period of time his annual salary was \$72,500.

11. On a social occasion in late October or early November 2007, Mr. Jean-Baptiste mentioned to Ms. Crookston that he had applied for an increase in his mortgage and that he had extended the time of his employment with the firm in his application to the mortgage company. Ms. Crookston did not see the letter at that time and did not give Mr. Jean-Baptiste authority to send it on her behalf or agree to exaggerate the length of his employment.

12. Mr. Jean-Baptiste sent the letter to a mortgage company, with which he had a mortgage, in an effort to have the mortgage increased by \$10,000.

13. Ms. Crookston received a telephone call on November 12, 2007, from the mortgage company. The purpose of the call was to confirm the information set out in the letter. Ms. Crookston asked that a copy of the letter be faxed to her. She saw it for the first time that day and was shocked to see that the letter purported to be from her, that it was on firm letterhead not used after October 22, 2007, and that the information set out in the letter was inaccurate. She consulted with Mr. Gold who spoke with a representative of the mortgage company.

#### **Submissions on the charges**

14. Ms. Hersak submitted that the evidence clearly established that Mr. Jean-Baptiste was guilty of both charges and that his conduct constituted professional misconduct.

15. Mr. Jean-Baptiste submitted his judgment was impaired when he fabricated and sent the letter to the mortgage company, and that in any event this exercise of poor judgment on his part did not result in the advance of further funds. He submitted that, as no damages had been suffered as a result of his mistake, he should not be found guilty of the charges.

#### **DECISION**

16. After considering the evidence and submissions, and deliberating, the panel made the following decision:

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Mr. Adler Jean-Baptiste guilty of charge Nos. 1 and 2.

#### **SANCTION**

17. Ms. Hersak outlined the terms of the order sought by the Professional Conduct Committee namely: a written reprimand; a fine of \$10,000; costs of \$7,500; a suspension for 12 months; and the usual publicity.

18. Ms. Hersak submitted that the three principles which apply when imposing a sanction, rehabilitation, specific deterrence and general deterrence were all applicable in this case. She said that the Professional Conduct Committee was satisfied that Mr. Jean-Baptiste, who had withdrawn his application for financing and had expressed genuine remorse, could be rehabilitated.



19. Ms. Hersak submitted that the terms of the order requested were necessary to specifically deter Mr. Jean-Baptiste from similar misconduct in the future and stringent enough to deter other members from similar misconduct.

20. Ms. Hersak submitted that the aggravating factors in this case included: the fact that the misconduct was so blatant; the falsification of the letter was intended for personal gain; and that the member attempted to involve a former colleague in his scheme to secure the mortgage advance. She also submitted that the mitigating factors included: the fact that his scheme did not involve clients; that he had shown remorse; that he had cooperated fully with the Professional Conduct Committee in its investigation; and that he had no previous history of misconduct.

21. Mr. Hersak filed a Costs Outline (Exhibit 3) which disclosed that the costs of the investigation, prosecution and hearing exceeded \$15,000 and a Brief of Authorities (Exhibit 4) which included *Bott* (1987), *Boake* (1991), *Hoecht* (1997), *Lupinski* (1991), *Margel* (1995), and *Gera* (2005).

22. Mr. Jean-Baptiste contrasted his behavior and his circumstances with the facts and circumstances of the members in the cases referred to by counsel for the Professional Conduct Committee.

23. Mr. Jean-Baptiste submitted that: he did not practise public accounting; he was not in the same financial position as the members in the cases referred to by Ms. Hersak; his misconduct had no negative consequence in that the mortgage company did not advance the funds; and no third party had been injured. He submitted he should therefore receive a less severe sanction than that sought by the Professional Conduct Committee.

24. In response to questions from the panel, Mr. Jean-Baptiste said that he prepares compilation reports for financial statements and tax returns, but does not carry on the practice of public accounting. He said his main business enterprise involved importing coffee from Brazil.

#### **The order**

25. After considering the evidence and submissions, and deliberating, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Jean-Baptiste be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Jean-Baptiste be and he is hereby fined the sum of \$7,000 to be remitted to the Institute as follows:
  - (a) \$3,500 within twelve (12) months from the date this Decision and Order becomes final under the bylaws; and
  - (b) a further \$3,500 within twenty-four (24) months from the date this Decision and Order becomes final under the bylaws.

3. THAT Mr. Jean-Baptiste be suspended from the rights and privileges of membership in the Institute for a period of three (3) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Jean-Baptiste surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws to be held during the suspension and thereafter returned to Mr. Jean-Baptiste. In the event Mr. Jean Baptiste fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificate remains undelivered to the secretary.
5. THAT notice of this Decision and Order, disclosing Mr. Jean-Baptiste's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
  - (a) to all members of the Institute; and
  - (b) to all provincial institutes/Ordre,and shall be made available to the public.
6. THAT in the event Mr. Jean-Baptiste fails to comply with the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three month period, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Jean-Baptiste's practice, employment and/or residence. All costs associated with the publication shall be borne by the member and shall be in addition to any other costs ordered by the committee.

**AND IT IS FURTHER ORDERED:**

7. THAT Mr. Jean-Baptiste be and he is hereby charged costs fixed at \$5,000 to be remitted to the Institute within twenty-four (24) months from the date this Decision and Order becomes final under the bylaws.

**The reasons for the order**

26. The misconduct in this case is serious and requires a significant sanction both as a specific deterrent to the member and as a general deterrent to other members. The Discipline Committee, in the public interest and the interest of the profession, must make it clear that fabricating a letter and attempting to gain money from a mortgage company is not conduct which the profession will tolerate.

27. The sanction sought by the Professional Conduct Committee, including a fine of \$10,000 and suspension for 12 months is not outside the range of an appropriate sanction for a breach of Rules 201.1 and 205. However, a panel imposing a sanction is required to consider the specific facts of the case and the member's particular circumstances. In this case, it is relevant

that Mr. Jean-Baptiste apparently recognized his inept attempt to obtain a mortgage advance was wrong and withdrew the application. It is also relevant the Professional Conduct Committee accepted that he was genuinely remorseful. However, the most significant circumstance is Mr. Jean-Baptiste's relatively modest financial means. The panel concluded that a fine of \$10,000 and a suspension for 12 months would likely result in his expulsion from membership for failure to pay the fine. The panel concluded the public would be better served if Mr. Jean-Baptiste practised within the discipline of the profession rather than outside it. Accordingly, the fine and suspension imposed are both less than sought by the Professional Conduct Committee.

### **Reprimand**

28. The panel ordered a reprimand to reinforce to Mr. Jean-Baptiste the unacceptability of his conduct.

### **Fine**

29. The panel concluded that a fine of \$7,000, given Mr. Jean-Baptiste's limited financial circumstances, was a very significant fine. Further, the panel ordered that he pay the fine in two equal parts, the first within 12 months and the second within 24 months, as the panel wanted Mr. Jean-Baptiste to experience the impact of the order, at least in part, prior to 24 months after the decision and order becomes final.

### **Suspension**

30. The panel concluded a suspension of three months would be a significant, specific deterrent to Mr. Jean-Baptiste and would be a sufficient general deterrent to other members.

### **Publication**

31. The panel concluded that there were no rare and unusual circumstances to justify or require the withholding of the usual notice disclosing Mr. Jean-Baptiste's name. Accordingly, in the interest of transparency, to show that the Institute takes the matter of governing its members seriously, and in the interest of general and specific deterrence, the usual order with respect to publication was made.

### **Failure to comply**

32. There must be consequences for failure to comply with an order of the Discipline Committee. In this case, the panel concluded that the appropriate consequence would include a suspension for failure to comply, and in the event the suspension continues for a period of three months that Mr. Jean-Baptiste shall be expelled from membership. In the event he is expelled, notice of his expulsion shall be given in a newspaper distributed in the geographic area of his practice and all costs associated with the publication shall be borne by Mr. Jean-Baptiste.

### **Costs**

33. Mr. Jean-Baptiste's misconduct is the sole reason for the investigation, prosecution and hearing. The costs set out in the Costs Outline exceed \$15,000. If Mr. Jean-Baptiste had the resources to pay the full costs, this may well have been a case when full costs would have been ordered. However, the panel concluded that he does not have the financial means to pay the full costs and ordered that he pay \$5,000 as partial indemnity to the Institute for the costs of this proceeding.

DATED AT TORONTO THIS 12<sup>th</sup> DAY OF MAY, 2009  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

#### **MEMBERS OF THE PANEL:**

R.J. ADAMKOWSKI, CA  
A. HANSON, CA  
B.M. SOLWAY (Public Representative)  
H.G. TARADAY, CA