

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **ADRIANUS EDWARD KANTERS, CA**, a member of the Institute, under **Rules 201.1 and 203.2** of the Rules of Professional Conduct, as amended.

TO: Mr. Adrianus E. Kanters
330 Russell Woods Drive
MAIDSTONE, ON N8N 4L3

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made July 15, 2009)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on July 15, 2009, to hear charges of professional misconduct brought by the Professional Conduct Committee against Adrianus Edward Kanters, a member of the Institute.
2. Paul Farley appeared on behalf of the Professional Conduct Committee.
3. Mr. Kanters appeared on his own behalf and confirmed for the record that he understood he was entitled to be represented by counsel, and that he was waiving that right.
4. The decision of the panel was made known at the conclusion of the hearing on July 15, 2009, and the written Decision and Order sent to the parties on July 20, 2009. These reasons, given pursuant to Bylaw 574, contain the charges, the decision, the order, and the reasons of the panel for its decision and order.

CHARGES

5. Prior to the taking of Mr. Kanters' plea, the Professional Conduct Committee withdrew particular 2(a) and charge No. 3, and moved to amend the charges before the Discipline Committee to conform to the evidence to be heard. Mr. Kanters did not object to the amendments, and the panel ordered they be made. The following charges, as amended at the hearing, were laid against Mr. Kanters by the Professional Conduct Committee on February 26, 2009:

1. THAT, the said Adrianus E. Kanters, in or about the period October 1, 2008 through January 20, 2009, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct an investigation on behalf of the Professional Conduct Committee, contrary to Rule 203.2 of the Rules of Professional Conduct.

2. THAT, the said Adrianus E. KanTERS, in or about the period March 1, 2006 through October 31, 2006, while employed as the Chief Financial Officer of A.I. Limited, failed to maintain the good reputation of the profession and its ability to serve the public interest in that, he obtained benefits from his company to which he was not entitled in the amount of approximately ~~\$1900~~ \$1000, contrary to rule 201.1 of the Rules of Professional Conduct; in that:
 - a) ~~he caused his employer to purchase a computer for his personal use for a price of approximately \$940;~~
 - b) he charged expenses of approximately \$108 on his expense report which pertained to a personal trip to Hawaii;
 - c) he charged expenses of approximately \$547 on his expense report with respect to a personal trip to Montreal;
 - d) he charged expenses on his expense report of approximately \$330 with respect to a personal trip to Kitchener.
3. ~~THAT, the said Adrianus E. KanTERS, in or about the period October 28, 2006 through December 15, 2006, while employed as the Chief Financial Officer of A.I. Limited, failed to maintain the good reputation of the profession and its ability to serve the public interest in that, he authorized the company to pay expenses which he knew, or should have known, were not proper business expenses, in the approximate amount of \$4,800.00, contrary to rule 201.1 of the Rules of Professional Conduct.~~

PLEA

6. Mr. KanTERS entered a plea of guilty to the charges, as amended, and acknowledged that he understood that, on the basis of the plea of guilty and on that basis alone, he could be found guilty of the charges.

EVIDENCE

7. The evidence for the Professional Conduct Committee was provided by the testimony of Karen Ho James, CA-IFA, the investigator appointed by the Professional Conduct Committee in this matter. Mr. KanTERS did not cross-examine Ms. Ho James, nor did he call any evidence or make submissions as to finding.

8. As the result of a complaint received from the forensic accountants for A.I. Limited that Mr. KanTERS, the CFO of that company, had charged inappropriate expenses to the company, Ms. Ho James commenced an investigation. Her investigation determined that the expenses as set out in charge No. 2 (as amended) had been improperly charged to the company, as they were personal expenses of Mr. KanTERS.

9. Her investigation raised concerns about whether there were possible further improprieties, and Ms. Ho James met with Mr. KanTERS on September 30, 2008, to discuss the investigation and further information she required. Mr. KanTERS cut that meeting short, as he had another obligation to attend. Ms. Ho James followed up the meeting with both a telephone call and an e-mail on October 1, 2006 (Exhibit 3, Tab 3), to Mr. KanTERS, setting out the specific documents and information she required.

10. Mr. Kanters responded by e-mail on October 6, 2006, by stating he would not provide any further information as the investigation had “extended beyond the bounds of reasonableness.” (Exhibit 3, Tab 4).

11. Ms. Ho James followed up with a letter dated October 8, 2006 (Exhibit 3, Tab 5), to Mr. Kanters, again seeking information and documents. Mr. Kanters responded by e-mail on October 14, 2006 (Exhibit 3, Tab 6), as follows:

My position has not changed, I will not be providing any further information. As I had mentioned in our earlier discussions I am seriously considering discontinuing my membership in the CICA. The harassment has reached an unbearable level and the designation really has little value to me at this time.

12. As a result of Mr. Kanters refusing to provide information, Ms. Ho James was unable to determine whether a large number of other expenses claimed from 2005 to 2007 were legitimate, although she believed they were suspicious.

DECISION

13. After deliberating, the panel found the evidence to be clear, cogent and compelling, and that the Professional Conduct Committee had established on a balance of probabilities that the conduct was of such a nature and degree as to constitute professional misconduct, and made the following decision:

THAT, charge No. 3 and particular 2(a) having been withdrawn by the Professional Conduct Committee, charge No. 2 having been amended at the hearing, having heard the plea of guilty to charge Nos. 1 and 2 and having seen, heard and considered the evidence, the Discipline Committee finds Mr. Adrianus Kanters guilty of charge Nos. 1 and 2.

SANCTION

14. The sanction presented by the parties for consideration by the panel was, in all respects except as noted below, a joint submission. The joint submission was for a: written reprimand; expulsion; and full publicity. The parties also agreed that there should be a fine, but disagreed as to the quantum, with the Professional Conduct Committee seeking \$10,000, and Mr. Kanters a quantum significantly lower. They also agreed that Mr. Kanters should pay a portion of the costs of the investigation and hearing fixed at \$7,000.

15. Mr. Farley, on behalf of the Professional Conduct Committee, noted that Mr. Kanters’ misconduct fell into two separate and discrete areas – failing to comply, and misappropriation – and that both were extremely serious. Mr. Kanters’ refusal to cooperate in effect stymied the investigation and precluded determining the extent of the benefits he obtained to which he was not entitled. Mr. Farley characterized the inappropriate reimbursement of expenses as misappropriation from Mr. Kanters’ employer, by a person in a position of trust and control, and urged the panel to impose a significant fine for each charge.

16. Mr. Kanters submitted that he became frustrated with the investigation, as he believed it was delving into personal matters. He stated he received mixed messages about whether he could resign, and thought he was able to do so. He brought a number of health issues to the attention of the panel, and provided evidence of those concerns. He submitted that, due to his

health and the potential loss of his employment, his finances were precarious, and asked the panel to consider the totality of the financial impact on him.

17. Mr. Kanters also asked the panel to consider not publicizing the matter beyond the membership, as publicity would have a further negative impact on his health.

ORDER

18. After deliberating, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Kanters be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Kanters be and he is hereby fined the sum of \$10,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. That Mr. Kanters be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Kanters' 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.
5. THAT notice of the expulsion, disclosing Mr. Kanters' name, be given by publication on the Institute's website and in *The Windsor Star*. All costs associated with the publication shall be borne by Mr. Kanters and shall be in addition to any other costs ordered by this committee.
6. THAT Mr. Kanters 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.

AND IT IS FURTHER ORDERED:

7. THAT Mr. Kanters be and he is hereby charged costs fixed at \$5,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.

REASONS FOR SANCTION

19. Mr. Kanters stole from his employer. The full extent of that theft may never be determined, due at least in part to Mr. Kanters' refusal to cooperate with his governing body. He has demonstrated both a lack of integrity and a lack of willingness to be governed. The profession cannot afford to have him remain within the profession and taint it and its reputation. Expulsion is the necessary consequence of Mr. Kanters' actions.

20. The panel considered Mr. Kanters' request that notice of this matter be given only to other members of the profession, and notes that full publicity was initially part of the joint submission. However, ensuring the public is aware of not only the misconduct of a member but also the actions of the regulator to condemn that conduct is an integral aspect of self-regulation. The public cannot be assured of the regulator's vigilance if it does not see the evidence of that vigilance. Mr. Kanters' health is not an extraordinary circumstance sufficient to overbear the duty of this panel to conduct itself transparently and in the public view.

21. The panel is mindful of the financial burden of its order on the member. Mr. Kanters has brought this burden on himself by his actions. The fine must be sufficient that it both deters others and serves notice to the public of the gravity of the offences. Nothing less than a fine of \$10,000 is appropriate, particularly as the two offences, while they aggravate each other, speak to separate and equally critical duties of every member. Taking into account totality, the panel reduced the amount of the costs, despite the joint submission, on the basis that the fine speaks to the issue of general deterrence, and such deterrence is a necessity in this matter.

DATED AT TORONTO THIS 8TH DAY OF SEPTEMBER, 2009
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

S.F. DINELEY, FCA
A. HANSON, CA
H.G. TARADAY, CA
S.B. WALKER (PUBLIC REPRESENTATIVE)