

Alan A.M. Weisbrod: Summary, as Published in *CheckMark*

Alan A.M. Weisbrod, of Thornhill, was found guilty of one charge under Rule 204.4, and one charge under Rule 204.3 and 204.4, of preparing and releasing Notice to Reader financial statements when he knew or should have known that there was an influence, interest or relationship which would be seen by a reasonable observer to impair his professional judgment or objectivity, without adequately disclosing the interest or relationship in his written report; and one charge under Rule 216 of accepting directly or indirectly from a person who was not a public accountant a commission or other compensation for the referral to a client of the products or services of others. While engaged in the practice of public accounting, Mr. Weisbrod directly or indirectly held interests in various companies in the automotive leasing business, through which he received the benefit of commissions paid for the referral of clients of his practice who were looking for vehicle leases. Mr. Weisbrod's various corporate interests were such as would be considered by a reasonable observer to be interests impairing his objectivity, and in various Notice to Reader reports these interests were not properly disclosed. Mr. Weisbrod was fined \$5,000 and ordered to pay costs of \$10,000.

CHARGE(S) LAID re Alan A.M. Weisbrod

CHARGES AS AMENDED BY DISCIPLINE COMMITTEE DECISION MADE JUNE 5, 2002

The Professional Conduct Committee hereby makes the following charges against Alan A.M. Weisbrod, CA, a member of the Institute:

1. THAT, the said Alan A.M. Weisbrod, in or about the period February 1, 1992 through December 31, 1993, while engaged in the practice of public accounting, accepted directly or indirectly from a person who was not a public accountant, a commission or other compensation in ~~the approximate amount of~~ **an amount up to** \$2,180.00 for a referral to a client of products or services of Lease-Well Inc., contrary to Rule 216 of the rules of professional conduct.
2. THAT, the said Alan A.M. Weisbrod, on or about November 18, 1993, January 14, 1994 and October 21, 1994, while engaged in the practice of public accounting, prepared Notice to Reader financial statements for 917597 Ontario Limited, operating as Westmount Leasing and attached Notice to Reader reports and released the financial statements when he knew or should have known that there was an influence, interest or relationship which would be seen by a reasonable observer to impair his professional judgment or objectivity, to wit, his spouse held an interest through a numbered company and his partner was a shareholder, and he did not disclose the interest or relationship in his written report, contrary to Rule 204.4 of the rules of professional conduct.
3. THAT, the said Alan A.M. Weisbrod, on or about May 24, 2000 and March 28, 2001, while engaged in the practice of public accounting, prepared Notice to Reader financial statements for Able II Lease Inc., and attached Notice to Reader reports and released the financial statements when he knew or should have known that there was an influence, interest or relationship which would be seen by a reasonable observer to impair his professional judgment or objectivity, to wit, he and his partner held an interest in the company through a corporate entity, and he did not adequately disclose the interest or relationship in his written report, contrary to ~~Rule~~ **Rules** 204.3 **and 204.4** of the rules of professional conduct, **respectively**.

Dated at Toronto, this 15h day of January, 2002.

RICHARD JOHNSTON, FCA, DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Alan A.M. Weisbrod

DECISION IN THE MATTER OF: Charges against **ALAN A.M. WEISBROD, CA**, a member of the Institute, under **Rules 204.3, 204.4 and 216** of the Rules of Professional Conduct, as amended.

DECISION MADE JUNE 5, 2002

THAT, having seen, heard and considered the evidence on charges Nos. 1, 2 and 3; and having, pursuant to Bylaw 564(2), directed an amendment to charge No. 1 by varying the words "other compensation in the approximate amount of \$2,180.00" in the fourth line to read "other compensation in an amount up to \$2,180.00"; and having, pursuant to Bylaw 564(2), directed an amendment to charge No. 3 by varying the words "contrary to Rule 204.3 of the rules of professional conduct" in the last two lines to read "contrary to Rules 204.4 and 204.3 of the rules of professional conduct, respectively"; the Discipline Committee finds Alan A.M. Weisbrod guilty of charges Nos. 1, 2 and 3, as amended.

This hearing is adjourned to July 30, 2002 at 10:00 a.m. in the Council Chamber of the Institute, at which time the Discipline Committee shall hear evidence and submissions from the parties on the issue of sanction.

DATED AT TORONTO THIS 7TH DAY OF JUNE, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE

BRYAN W. STEPHENSON, BA, LLB
SECRETARY – DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re Alan A.M. Weisbrod

ORDER IN THE MATTER OF: Charges against **ALAN A.M. WEISBROD, CA**, a member of the Institute, under **Rules 204.3, 204.4 and 216** of the Rules of Professional Conduct, as amended.

ORDER MADE JULY 30, 2002

IT IS ORDERED in respect of charges Nos. 1, 2 and 3, as amended, of which Alan A.M. Weisbrod was found guilty on June 5, 2002:

1. THAT Mr. Weisbrod be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Weisbrod be and he is hereby fined the sum of \$5,000, 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. Weisbrod be and he is hereby charged costs fixed at \$10,000, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Weisbrod'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 the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
5. THAT in the event Mr. Weisbrod fails to comply with paragraphs 2 and 3 of this Order, or either of them, 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 this 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 *The Globe and Mail*.

DATED AT TORONTO THIS 2ND DAY OF AUGUST, 2002

BY ORDER OF THE DISCIPLINE COMMITTEE

BRYAN W. STEPHENSON, BA, LLB
SECRETARY – DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re Alan A.M. Weisbrod

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **ALAN A.M. WEISBROD, CA**, a member of the Institute, under **Rules 204.3, 204.4 and 216** of the Rules of Professional Conduct, as amended.

REASONS FOR DECISION MADE JUNE 5, 2002 AND ORDER MADE JULY 30, 2002

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on June 4 and 5, 2002 to hear evidence concerning charges brought by the professional conduct committee against Mr. Alan A.M. Weisbrod.

2. The professional conduct committee was represented by Mr. Paul Farley, who was accompanied by the investigator appointed by the professional conduct committee, Mr. Robert Chambers, FCA. Mr. Weisbrod, who was present, was represented by his counsel, Mr. Vernon Balaban.

3. The panel concluded after hearing submissions on June 5, 2002 that Mr. Weisbrod was guilty of the charges as amended. The decision was made known to both parties. Mr. Farley advised that the professional conduct committee did not propose to call evidence with respect to sanction. Mr. Balaban said that he would be calling evidence with respect to sanction but required an adjournment to do so. The hearing was adjourned to July 30, 2002, to provide an opportunity for the member to call evidence with respect to sanction following which submissions as to sanction would be heard from both parties. The written decision was sent to the parties on June 7, 2002.

4. On July 30, 2002, Mr. Weisbrod attended with different counsel, Mr. Robert Staley. Mr. Staley filed letters of character reference which were marked as Exhibits 13, 14 and 15, and called Mr. Weisbrod to give evidence. Mr. Weisbrod apologized for the way the case had been presented and for the acrimony at the hearing in June, and said that it was now clear to him that his professional conduct had not been appropriate. He stated, by way of partial explanation, that his knowing that Mr. Joe Wade had been behind the complaint had clouded his judgment, and that he had been troubled, even confused, as to why others, particularly his partner Mr. Philip Smith, had not been charged.

5. After hearing the evidence called on behalf of the member and hearing the submissions of both parties, the panel deliberated. At the conclusion of our deliberations, the hearing was reconvened and the terms of the order were made known. The written order was issued on August 2, 2002.

6. These reasons, issued in writing pursuant to Bylaw 574, contain the charges laid by the professional conduct committee, and the decision and the order of the panel.

THE CHARGES

7. The charges laid by the professional conduct committee against Mr. Weisbrod dated January 15, 2002 read:

1. THAT, the said Alan A.M. Weisbrod, in or about the period February 1, 1992 through December 31, 1993, while engaged in the practice of public accounting, accepted directly or indirectly from a person who was not a public accountant, a commission or other compensation in the approximate amount of \$2,180.00 for a referral to a client of products or services of Lease-Well Inc., contrary to Rule 216 of the rules of professional conduct.
2. THAT, the said Alan A.M. Weisbrod, on or about November 18, 1993, January 14, 1994 and October 21, 1994, while engaged in the practice of public accounting, prepared Notice to Reader financial statements for 917597 Ontario Limited, operating as Westmount Leasing and attached Notice to Reader reports and released the financial statements when he knew or should have known that there was an influence, interest or relationship which would be seen by a reasonable observer to impair his professional judgment or objectivity, to wit, his spouse held an interest through a numbered company and his partner was a shareholder, and he did not disclose the interest or relationship in his written report, contrary to Rule 204.4 of the rules of professional conduct.
3. THAT, the said Alan A.M. Weisbrod, on or about May 24, 2000 and March 28, 2001, while engaged in the practice of public accounting, prepared Notice to Reader financial statements for Able II Lease Inc., and attached Notice to Reader reports and released the financial statements when he knew or should have known that there was an influence, interest or relationship which would be seen by a reasonable observer to impair his professional judgment or objectivity, to wit, he and his partner held an interest in the company through a corporate entity, and he did not adequately disclose the interest or relationship in his written report, contrary to Rule 204.3 of the rules of professional conduct.

8. Mr. Weisbrod entered a plea of not guilty to all three charges.

THE EVIDENCE ON THE CHARGES

9. Mr. Farley made an opening statement, called Mr. Chambers to testify, and filed a document brief and two charts which set out, respectively, the shareholdings of 917597 Ontario Limited operating as Westmount Leasing, and the shareholdings of Able II Lease Inc.

10. The document brief contained documents organized under four tabs. The documents set out at Tab 1 relate to charge No. 1, and include correspondence dated April 2, 2000 from Mr. Weisbrod to Ms. Elizabeth Hare, the Institute's associate director of standards enforcement; invoices from Westmount Leasing to Lease-Well Inc.; and correspondence from Weisbrod Smith and Weisbrod Smith & Goldmacher to Joe Wade with respect to the arrangement they had concerning the referral of clients, including letters from Mr. Weisbrod to Mr. Wade dated May 25 and July 29, 1998.

11. The documents set out at Tab 2 of the document brief relate to charge No. 2, and include the financial statements of Westmount Leasing for the periods ended October 31, 1991, October 31, 1992 and October 31, 1993; correspondence dated October 29, 2000 from Mr. Weisbrod to Joanna Maund, the director of standards enforcement; correspondence dated December 7, 1999 from Weisbrod Goldmacher LLP to Mr. Ralph Levine with respect to the incorporation of 917597 Ontario Limited (Westmount); and copies of the company's Articles of Incorporation, share certificates and minutes of shareholders meeting held December 10, 1999.

12. The documents set out at Tab 3 relate to charge No. 3, and include the financial statements of Able II Lease as at September 30, 1999 and September 30, 2000; and copies of the company's Articles of Incorporation, and a resolution of the board of directors electing officers.

13. The documents at Tab 4 of the document brief include Rule of Professional Conduct 204, the objectivity standard of the profession, and its related Council interpretation, as they were at June 13, 1994, including Change No. 24.

14. Mr. Balaban cross-examined Mr. Chambers. He also called Mr. Weisbrod as a witness, and Mr. Farley cross-examined Mr. Weisbrod.

THE RELEVANT FACTS

15. While the defence was spirited, there was substantial agreement between the parties on many of the facts, including the ownership of the corporations. We set out below what we found to be the relevant facts. In so doing we reject some of the evidence offered by Mr. Weisbrod, and we do not refer to some evidence which we did not consider relevant.

Charge No. 1

16. 917597 Ontario Limited, operating as Westmount Leasing, was incorporated on November 2, 1990 by Mr. Wade and Mr. Weisbrod as equal shareholders. Mr. Wade's 50% interest in Westmount was held in trust. Mr. Weisbrod's 50% interest in Westmount was held by 654418 Ontario Limited, a company Mr. Weisbrod described as a company owned by the Weisbrod family, all the shares of which were, at the relevant time, held by Mr. Weisbrod's wife, Edie Weisbrod.

17. Mr. Wade operated an automotive leasing business under the name Lease-Well Inc. Mr. Weisbrod referred clients of his public accounting practice to Lease-Well, and Lease-Well paid a commission to Westmount for the referrals. Invoices for referrals from Westmount to Lease-Well are found in the document brief. Mr. Weisbrod's letter to Mr. Wade of May 25, 1998, found at Tab 1 of the document brief, stated that Westmount had received approximately \$2,180 plus GST from Lease-Well for references.

18. It seems that initially Lease-Well was servicing Mr. Weisbrod's clients reasonably well. By June 1996, however, Mr. Weisbrod was unhappy with the service being provided by Mr. Wade, and by July 1998 Mr. Wade and Mr. Weisbrod were clearly at odds if not at loggerheads. It was Mr. Wade's complaint that led to the investigation and ultimately the charge against Mr. Weisbrod.

Charge No. 2

19. The half interest of 654418 Ontario Limited (the Weisbrod family company) in Westmount was subsequently split and shared equally with Mr. Philip Smith some time after he became a partner in Weisbrod Smith. Accordingly, Westmount was then owned by Mr. Philip Smith (25%), 654418 Ontario Limited (25%), and Mr. Joe Wade, in Trust (50%).

20. The firm of Weisbrod Smith were the accountants for Westmount for the period 1991 to 1994. Mr. Weisbrod prepared Notice to Reader financial statements for Westmount for the periods ending October 31, 1991, 1992 and 1993. The Notices to Reader did not disclose the relationship of the partners of Weisbrod Smith to Westmount.

21. Mr. Weisbrod had always been involved with 654418 Ontario Limited, the Weisbrod family company, and appeared to be the person who directed its affairs. It was clear that he had been instrumental in setting up the corporation and making the arrangements with Lease-Well.

Charge No. 3

22. In part because the relationship with Mr. Wade broke down, Able II Lease was set up so that Mr. Weisbrod and Mr. Smith could refer clients of their public accounting practice to another automobile leasing company. The leasing company was to be run by Mr. Melvin Wise, who owned 50% of Able II Lease through his company 1282958 Ontario Limited.

23. The 25% interests of Mr. Weisbrod and Mr. Smith in Able II Lease were held through their respective 50% interests in The Audit Shoppe Inc. Mr. Weisbrod and Mr. Smith were both directors and officers of Audit Shoppe.

24. There was a change in the partnership Weisbrod Smith when Mr. Smith left the partnership and Mr. Goldmacher became a partner. According to Mr. Weisbrod, Mr. Goldmacher took over Mr. Smith's interest in Able II Lease. Whether the corporate records were brought up to date, and whether full and proper payment for the shares was made by Mr. Goldmacher, may be matters of dispute. Exhibit 8, however, which sets out the shareholdings of Able II Lease Inc., and which Mr. Weisbrod said was accurate, shows Mr. Smith owning 25% of the shares of Able II Lease through his half interest in Audit Shoppe.

25. The firm of Weisbrod Goldmacher, LLP were the accountants for Able II Lease for the years ending September 30, 1999 and September 30, 2000.

26. On May 24, 2000 the firm of Weisbrod Goldmacher, LLP signed and attached a Notice to Reader report to the financial statements of Able II Lease Inc. This Notice to Reader report was amended on July 25, 2000, and as amended reads as follows:

We have compiled the balance sheet of Able II Lease Inc. as at September 30, 1999 and the statements of operations, deficit and cash flow for the year then ended from information provided by management. We have not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information. Accordingly, readers are cautioned that these statements may not be appropriate for their purposes.

Readers are cautioned that certain partners of this firm may have a direct or indirect interest in the company.

27. A similar Notice to Reader communication was attached to the financial statements of Able II Lease Inc. for the year ending September 30, 2000. It was signed by the firm of Weisbrod Goldmacher, LLP on March 28, 2001.

Amendments to the Charges

28. During his submissions on the charges on the second day of the hearing, counsel for the professional conduct committee asked that charge No. 3 be amended so as to read at the end thereof as follows:

...and he did not adequately disclose the interest or relationship in his written report, contrary to Rules 204.4 and 204.3 of the rules of professional conduct, respectively.

29. The change requested was due to a renumbering of the clauses within the objectivity rule, Rule 204. Mr. Farley submitted that no substantive change had been made to the rule as a result of the numbering, and that the standard of the profession remained the same. He further stated that Mr. Weisbrod acknowledged that he knew the issue before the discipline committee was whether or not he had met the objectivity standard of the profession.

30. Counsel for the professional conduct committee submitted that the discipline committee had the authority, as a matter of common law, to amend the charge as the member would not be thereby prejudiced, and referred to cases which held that in matters of professional conduct an amendment such as the one he sought was appropriate. In particular, the cases held that charges of professional misconduct were not to be treated as criminal indictments.

31. Mr. Balaban, then counsel for the member, pointed out that the application had not been made in accordance with the bylaws, and submitted that it should therefore be rejected. He did not address the issue of prejudice, or the common law principles set out in the cases cited by Mr. Farley.

32. The panel concluded that it was within its power to amend the charge as requested, and that Mr. Weisbrod had not been prejudiced by the failure of the charge to specify a breach of Rule 204.4 in respect of the period prior to June 12, 2001, and a breach of Rule 204.3 in respect of the period after June 12, 2001. On June 12, 2001, Rules 204.1 and 204.2, relating to audit and review engagements, respectively, were combined into one rule, the present Rule 204.1. As a result, what had been Rule 204.3 prior to June 12, 2001 was renumbered 204.2, and what had been Rule 204.4 was renumbered Rule 204.3. The only change to the text of the rule requiring disclosure of conflicts was that the reference in old Rule 204.4 to "Rules 204.1 or 204.2 or 204.3" was changed in new Rule 204.3 to "Rules 204.1 or 204.2". Accordingly, the charge was amended to read as follows (the amendments are underlined):

3. THAT, the said Alan A.M. Weisbrod, on or about May 24, 2000 and March 28, 2001, while engaged in the practice of public accounting, prepared Notice to Reader financial statements for Able II Lease Inc., and attached Notice to Reader reports and released the financial statements when he knew or should have known that there was an influence, interest or relationship which would be seen by a reasonable observer to impair his professional judgment or objectivity, to wit, he and his partner held an interest in the company through a corporate entity, and he did not adequately disclose the interest or relationship in his written report, contrary to Rules 204.4 and 204.3 of the rules of professional conduct, respectively.

33. Mr. Farley also asked, in light of Mr. Weisbrod's evidence, that the first charge be amended by deleting the words "the approximate amount of" before "\$2,180.00" in the fourth line, and adding the words "an amount up to" in their place.

34. This amendment was not the subject of serious opposition or objection. Accordingly, the panel ordered that charge No. 1 be amended as follows (amendment underlined):

1. THAT, the said Alan A.M. Weisbrod, in or about the period February 1, 1992 through December 31, 1993, while engaged in the practice of public accounting, accepted directly or indirectly from a person who was not a public accountant, a commission or other compensation in an amount up to \$2,180.00 for a referral to a client of products or services of Lease-Well Inc., contrary to Rule 216 of the rules of professional conduct.

2.

DECISION ON THE CHARGES

Charge No. 1

35. We rejected Mr. Weisbrod's denial with respect to the receipt of commissions, which contradicted his letter of April 2, 2000 to Ms. Hare. We also accepted Mr. Chambers' testimony that Mr. Weisbrod confirmed to him the information set out in that letter.

36. We also rejected the submissions of Mr. Weisbrod's counsel Mr. Balaban, who sought to draw a distinction between the obligations of Mr. Weisbrod and the obligation of the firm of which he was a partner. Mr. Weisbrod's professional obligations were no different personally than as a partner of the firm. As a partner, he accepted indirectly from a person who was not a public accountant a commission or other compensation for the referral of a client. Accordingly Mr. Weisbrod was found guilty of charge No. 1.

Charge No. 2

37. On the facts as set out above, it is clear that Mr. Weisbrod had at least an indirect interest in Westmount, and that there was an interest and relationship which would be seen by a reasonable observer to impair his objectivity. It is also clear that Mr. Smith had a direct interest in Westmount which would be seen by a reasonable observer to impair his objectivity.

38. The Notice to Reader report did not disclose the fact of the influence, interest or relationship. The rule required Mr. Weisbrod and the other members of his firm to disclose the fact that the objectivity of both partners could be impaired. Had Mr. Weisbrod not known of the influence, interest or relationship, it would not have been a defence to the charge. But Mr. Weisbrod was fully aware of the influence, interest or relationship that the partners had in the client. While the arrangement involved incorporated entities, the arrangement was made between Mr. Wade and Mr. Weisbrod. Accordingly, he was found guilty of the charge.

Charge No. 3

39. Mr. Weisbrod held at least an indirect interest in Able II Lease, which relationship would be seen by a reasonable observer to impair his objectivity. It is also clear that Mr. Goldmacher had an indirect interest in Able II Lease which would be seen by a reasonable observer to impair his objectivity.

40. The disclosure made in the Notices to Reader failed to indicate the true nature of the influence or relationship, or the true nature and extent of the interest of the partners. Mr. Weisbrod, as a partner, was responsible for the Notice to Reader reports which the firm released. He acknowledged in his evidence that he had seen and approved the financial statements.

41. Mr. Weisbrod's defence that his signature was attached electronically, and that Mr. Goldmacher had the responsibility for the particular financial statements, suggested that Mr. Weisbrod either misunderstood his obligations as a partner or was prepared to trivialize the discipline process of the Institute. He was found guilty of charge No. 3.

EVIDENCE AND SUBMISSIONS ON SANCTION

42. Upon the resumption of the hearing on July 30, 2002 Mr. Weisbrod attended with different counsel, Mr. Staley. Before submissions were made with respect to sanction, Mr. Weisbrod, acknowledging that he was still under oath, gave evidence. He said that he had had a long time to think about his conduct and these proceedings prior to the resumption of the hearing, and that he regretted much of his conduct and took responsibility for it. He specifically said he accepted that what he had done was wrong, that he accepted the findings of the discipline committee, and that his professional conduct had been wrong both with respect to the specific charges and with respect to his conduct generally.

43. With respect to the first two days of the hearing, which he described as acrimonious, he said that he accepted responsibility for contributing to the acrimony, and that he felt that in many ways he had been too focused on how the professional conduct committee was treating him differently than his former partner, Mr. Smith, and too focused on the dispute with his former partner and the complainant, Mr. Wade, and not focused enough on his own misconduct.

44. With respect to his practice, Mr. Weisbrod testified that there would be no more referrals from himself, his family or members of the office to any entity in which he or his family had an interest, and that he expected within a couple of months to be out of his relationship with Able II Lease. He also said that he was going to focus on his practice, and indicated that he understood the importance of complying with the standards of the profession.

45. Mr. Weisbrod also testified about the impact of the process on him, his family, and his practice. He said that he recognized he had brought much of this problem on himself and should have accepted responsibility earlier, but that this did not diminish the financial or emotional impact on him.

46. He said he was fearful of the impact public disclosure of this proceeding would have on his modest practice and his life, much of which was tied up in his practice as he and his wife worked in an accountant's world. He also expressed the hope that the discipline committee would see it in his interest not to burden him with more costs.

47. Mr. Farley submitted on behalf of the professional conduct committee that while this case was not a moral turpitude case, there was ample evidence that Mr. Weisbrod had not understood the professional standard and had not behaved appropriately. Accordingly, the order sought by the professional conduct committee was intended to deter others from similar misconduct, and to deter Mr. Weisbrod from similar misconduct in the future and thus to help rehabilitate him.

48. Specifically, Mr. Farley said that the professional conduct committee sought a reprimand, a fine of \$5,000, the usual order as to notice, and the costs of the hearing.

49. Mr. Farley asked that the order require Mr. Weisbrod to pay an amount of \$13,650 on account of costs. In particular, he asked for the recovery of the costs of the investigator in the amount of \$7,900, and the costs of counsel to the discipline committee in the amount of \$5,750. The counsel fees requested were based on the new Costs Grid set out in Part 1 of Tariff A to the Rules of Civil Procedure of the Ontario Superior Court of Justice, which indicates a trial counsel fee on the partial indemnity scale of up to \$2,300 per day. For a two and a half day hearing, therefore, Mr. Farley submitted that \$5,750 was an appropriate fee for the services of the discipline committee's very experienced counsel.

50. Mr. Staley submitted that Mr. Weisbrod had learned a costly lesson, and that partly on that account a lesser penalty than the one requested by Mr. Farley would be appropriate.

51. With respect to a fine, Mr. Staley submitted that a fine similar to the one levied on Mr. Grant in 1998, namely \$4,000, would be appropriate.

52. Mr. Staley submitted with respect to publication that this was a rare and unusual case and that Mr. Weisbrod's name should be withheld from publication. In particular, he noted that the matter should have been resolved at the professional conduct committee level, that there had been no harm to clients, and that Mr. Weisbrod would suffer as a result of publication of notice of this proceeding.

53. Mr. Staley acknowledged that there was authority to order costs and that this may well be an appropriate case for costs. He asked, however, that the discipline committee look at the total financial burden upon Mr. Weisbrod of this discipline proceeding when deliberating on the issue of costs.

ORDER AS TO SANCTION

54. After deliberation, the terms of the order were outlined on the record for the parties. The formal order was dated and sent to Mr. Weisbrod on August 2, 2002, and reads as follows:

IT IS ORDERED in respect of charges Nos. 1, 2 and 3, as amended, of which Alan A.M. Weisbrod was found guilty on June 5, 2002:

1. THAT Mr. Weisbrod be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Weisbrod be and he is hereby fined the sum of \$5,000, 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. Weisbrod be and he is hereby charged costs fixed at \$10,000, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Weisbrod'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 the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
5. THAT in the event Mr. Weisbrod fails to comply with paragraphs 2 and 3 of this Order, or either of them, 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 this 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 *The Globe and Mail*.

Reprimand

55. The panel was of the view that a reprimand is necessary as a specific deterrent to the member, to stress to him the importance of maintaining the standards of the profession and the unacceptability of this conduct as a chartered accountant.

Fine

56. The panel concluded that the appropriate fine would be \$5,000. Although this was not a case of moral turpitude, the panel agreed that Mr. Weisbrod had breached the rules of professional conduct in the performance of Notice to Reader engagements, placing himself in a clear conflict of interest situation. The panel fined Mr. Weisbrod this amount as a specific deterrent. In assessing the quantum of the fine, the panel took into account that the member had provided no evidence of financial hardship, and it was determined that this amount was reasonable in the circumstances.

Notice

57. The panel ordered notice of its decision and order in the manner specified, including disclosure of the member's name, as a specific and general deterrent. The panel also considered such notification necessary to demonstrate to the public that the profession is regulating itself, so as to retain public confidence in the profession's ability to self-govern.

58. In its deliberations, the panel took into consideration that no client was knowingly hurt, and that there did not appear to be harm to the public.

59. The panel rejected Mr. Staley's submission that notice of Mr. Weisbrod's name should be withheld because this was a rare and unusual case. The rare and unusual case that warrants the withholding of a member's name from publication does not include a case which is unusual because of the trivial nature of the defence and the obdurate refusal of the member to recognize, until the resumption of the hearing almost eight weeks after being found guilty of professional misconduct, that he had breached the objectivity standard of the profession.

60. It took two days to hear the evidence and reach the conclusion that the member was guilty of the charges, not because of the complexity of the fact situation, but rather because of the nature of the defence. On July 30, 2002, Mr. Weisbrod characterized the previous two days of hearing as acrimonious. The acrimony came primarily from the member and his counsel, who at times was obstreperous. The member himself, even in giving some of his evidence, took on the role of an advocate rather than that of a witness. Some of the member's testimony was inconsistent and even contradictory, some of it contradicting statements he had made in writing to the director or the associate director of standards enforcement during the course of the investigation.

61. The panel concluded that withholding Mr. Weisbrod's name from the notice of the decision and order in *CheckMark* would amount to rewarding him both for his misconduct, and for his refusal to acknowledge it as such until the discipline committee had spent two days on something which should have taken, at most, one half day. The fact that the matter was not resolved at the professional conduct committee level with guidance and advice to the member was not the fault of anyone other than Mr. Weisbrod. Had he acknowledged to the professional conduct committee what he acknowledged to the discipline committee panel on July 30, 2002, the matter would likely have been resolved before the professional conduct committee as it was in the case of his former partner, Mr. Smith.

Possible Consequential Suspension and/or Expulsion

62. This order, as all orders of the discipline committee, provides for expulsion in the event that the member does not comply with its terms. In setting the time within which a disciplined member must comply, discipline panels weigh the importance of particular provisions of an order against the possible consequences of non-compliance. In this case, if the member fails to comply with the order he will be suspended from membership for three months, and in the event he does not comply within the three month period of suspension he will be expelled.

63. In the event Mr. Weisbrod is expelled for failure to comply with the terms of the discipline committee's order, notice of expulsion will be published in *The Globe and Mail* in addition to the notice provisions set out above.

Costs

64. There have not been many requests or orders for costs since the *Chartered Accountants Act* and the bylaws were amended to empower the discipline and appeal committees to levy costs. Panels of the discipline committee have been reluctant to make such orders in the absence of a general policy direction from the Council or submissions on the general principles which are applicable. In this case, Mr. Farley did refer to court decisions which considered orders of discipline tribunals requiring the member disciplined to pay costs.

65. In the case of *Hoff v. Alberta Pharmaceutical Association*, Justice Dea of the Alberta Court of Queen's Bench said the following in the last paragraph of the court's reasons:

As a member of the pharmacy profession the appellant enjoys many privileges. One of them is being part of a self-governing profession. Proceedings like this must be conducted by the respondent association as part of its public mandate to assure to the public competent and ethical pharmacists. Its costs in so doing may properly be borne by the member whose conduct is at issue and has been found wanting.

66. In another case referred to by Mr. Farley, *Jaswal v. Newfoundland Medical Board*, Justice Green of the Newfoundland Supreme Court outlined what he termed a non-exhaustive list of factors which ought to be considered before deciding to order the payment of costs. Adapted to our context, the factors cited are:

- the degree of success, if any, of the member in resisting any or all of the charges;
- the necessity for calling all of the witnesses who gave evidence, or for incurring other expenses associated with the hearing;
- whether the professional conduct committee could reasonably have anticipated the result based on what it knew prior to the hearing;
- whether the professional conduct committee could reasonably have anticipated the lack of need for certain witnesses, or for incurring certain expenses, in light of what it knew prior to the hearing;
- whether the member cooperated in the investigation and offered to facilitate proof; and
- the financial circumstances of the member, and the degree to which his or her financial position has already been affected by other aspects of any penalty that has been imposed.

67. This panel is aware that an award for costs, when costs have not been agreed to, is a change in the discipline process which will have a financial impact on the member disciplined. We accepted the reasoning of Justice Dea in *Hoff*, and found it appropriate that Mr. Weisbrod bear some of the costs which resulted from his misconduct. We also found the factors set out in *Jaswal* helpful, particularly in light of our conclusion that this matter should have been a one-day hearing and not a three-day hearing.

68. We have been critical of Mr. Weisbrod for both refusing to acknowledge until late in the discipline process that his conduct was wrong, and for ignoring the objectivity standard of the profession which is fundamentally important. That notwithstanding, however, it must also be said that Mr. Weisbrod's breach of the objectivity standard was relatively minor. We are mindful of the fact that for this relatively minor breach Mr. Weisbrod will have to pay substantial sums of money in connection with the discipline process, to his lawyers and for the fine, and that he will also suffer a loss of reputation when the notice of this decision and order are published.

69. After considering all of the facts and circumstances of this case, the panel concluded that Mr. Weisbrod should be required to pay \$10,000 on account of the cost of this hearing and investigation.

70. We recognize \$10,000 is a partial indemnity only. We want to emphasize that it is not our intention that this case be taken as a precedent which sets a cap on the amount of costs that can be ordered for a three-day hearing, or that it be taken as establishing as a general principle that only a partial indemnity is to be considered appropriate in any particular case. Those determinations must be left to individual panels deciding individual cases.

DATED AT TORONTO THIS 29TH DAY OF NOVEMBER, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE

B.A. TANNENBAUM, FCA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

P.M. CLEVELAND, FCA
B.L. HAYES, CA
A. HANSON, CA
B. RAMSAY (Public representative)