

Albert Aaron Title: Summary, as Published in CheckMark

Albert Aaron Title, of Toronto, was found guilty of a charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest. Mr. Title had a minor interest in a retirement complex. In order to overcome a temporary mortgage financing problem in the start-up phase, he participated in a scheme whereby the lender was told that the complex had more rent-paying residents than it actually had. There was no long-term financing problem, and no losses were suffered. Mr. Title reported his own misconduct. In the circumstances, he was suspended from membership for three months.

Mr. Title returned to MEMBERSHIP IN GOOD STANDING on April 4, 1996

CHARGE(S) LAID re Albert A. Title

The Professional Conduct Committee hereby makes the following charges against Albert A. Title, a member of the Institute:

1. THAT, the said Albert A. Title, in or about the period March 1993 through December 1993, while a principal of B.R.L.C. Developments Inc. and while a partner in his Chartered Accountancy firm, Simon Margel, was the accountant for Briargate Retirement Living Centre Limited Partnership, failed to maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the rules of professional conduct, in that:
 - (a) in an effort to secure mortgage financing for Briargate Retirement Living Centre Limited Partnership he, along with his partner Simon Margel, arranged to meet First National Financial Corporation's required debt service coverage of 1.25, by artificially increasing the revenue of Briargate Retirement Living Centre Limited Partnership through recruiting persons to hold themselves out as residents and pay rent when those persons had no intention of taking up residence and paid the rent only on agreement that they would be fully reimbursed for all rental payments made.

Dated at Belleville this 3rd day of August, 1995.

JENNIFER L. FISHER, CA – CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Albert Aaron Title

DECISION AND ORDER IN THE MATTER OF: A charge against **ALBERT AARON TITLE, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE AUGUST 29, 1995

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to the charge, THE DISCIPLINE COMMITTEE FINDS Albert Aaron Title guilty of the charge.

ORDER

IT IS ORDERED in respect of charge:

1. THAT Mr. Title be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Title 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.
3. THAT notice of this Decision and Order, disclosing Mr. Title's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
4. THAT Mr. Title surrender his certificate of membership in the Institute to the secretary of the discipline committee within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held by the secretary during the period of suspension and thereafter returned to Mr. Title.

DATED AT TORONTO THIS 8TH DAY OF SEPTEMBER, 1995
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Albert Aaron Title

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against **ALBERT AARON TITLE, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE AUGUST 29, 1995

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were held on August 29, 1995.

Mr. Paul Farley attended on behalf of the professional conduct committee. Mr. Title attended with his counsel Mr. Robert Amsterdam and Ms. Cynthia Amsterdam.

The professional conduct committee had laid the following charge against Mr. Title, to which he pleaded guilty:

1. *THAT, the said Albert A. Title, in or about the period March 1993 through to December 1993, while a principal of B.R.L.C. Developments Inc. and while a partner in his Chartered Accountancy firm, Simon Margel, was the accountant for Briargate Retirement Living Centre Limited Partnership, failed to maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the rules of professional conduct, in that:*
 - *in an effort to secure mortgage financing for Briargate Retirement Living Centre Limited Partnership he, along with his partner Simon Margel, arranged to meet First National Financial Corporation's required debt service coverage of 1.25, by artificially increasing the revenue of Briargate Retirement Living Centre Limited Partnership through recruiting persons to hold themselves out as residents and pay rent when those persons had no intention of taking up residence and paid the rent only on agreement that they would be fully reimbursed for all rental payments made.*

The member confirmed that he understood that upon a plea of guilty, and upon that basis alone, he could be found guilty by the discipline committee.

Mr. Farley entered as exhibits an agreed statement of facts accompanied by a document brief. After deliberation upon the evidence presented, the committee found Mr. Title guilty of the charge.

The evidence showed that Mr. Title and his partner Mr. Margel, and both their spouses, were directly and/or indirectly partners in the Briargate Retirement Living Centre Limited Partnership (BRLC Partnership), a real estate project that developed a retirement home near Kingston, and principals in B.R.L.C. Developments Inc. (BRLC Developments), the developer and contractor for the project. The financing for the project was being provided by way of an interim construction mortgage, the maturity date of which had been extended twice by the mortgagee. The intention of Mr. Title and the others was to secure long term financing to pay out the interim mortgage. There were not enough tenants in the retirement home project to generate the rental

revenue necessary to secure a debt service coverage of 1.25, as required by the long term mortgagee. In response, one of the other principals of BRLC Developments devised a scheme, in which Title and Margel actively participated, whereby various individuals made application for residence in the project and paid rent on the understanding that they would be tenants in name only, and would be fully reimbursed their "rental payments". These people were friends or relatives of Title or Margel, and were not clients. Based upon the artificially inflated rental information, the debt service coverage requirements of the mortgagee were met and the mortgage advance was made. Title and Margel subsequently made voluntary disclosure of their misconduct to the professional conduct committee. No one suffered any actual damage as a result of the actions of Title and Margel. At all times the cash flow of the BRLC Partnership was sufficient to fund the mortgage, which was also personally guaranteed by the principals of the developer, including Title and Margel.

After making its finding of guilty, the discipline committee heard testimony from Mr. Title and several character witnesses, followed by submissions as to sanction from both parties, whereupon, after deliberation, it made the following order:

ORDER

IT IS ORDERED in respect of charge:

1. THAT Mr. Title be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Title 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.
3. THAT notice of this Decision and Order, disclosing Mr. Title's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
4. THAT Mr. Title surrender his certificate of membership in the Institute to the secretary of the discipline committee within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held by the secretary during the period of suspension and thereafter returned to Mr. Title.

The reasons for the committee's order are briefly set out below. In determining the appropriate sanctions to levy in the circumstances of this case, the committee considered the sentencing principles of general deterrence, specific deterrence and rehabilitation.

Reprimand

The committee is of the view that a reprimand is necessary as a specific deterrent to the member, to stress to him the unacceptability of his conduct as a chartered accountant.

Fine and suspension

The professional conduct committee recommendation on fine and suspension was a fine in the range of \$3,000 to \$5,000, and a six-month suspension. Counsel for the professional conduct committee argued that this recommendation was lenient, and took into account the mitigating

factors that this member had a previously unblemished record, that he had reported himself to the professional conduct committee, fully cooperated in its investigation, and pleaded guilty to the charge, and that he demonstrated great remorse for his misconduct.

Counsel for Mr. Title asked that the committee not suspend the member, on the basis that this case was unique and distinguishable from other cases previously before the discipline committee, and cited numerous mitigating factors including those expressed in the preceding paragraph.

The committee felt that Mr. Title had demonstrated that he felt genuine remorse for his actions, and that his behaviour was not in character. The most compelling reason for not imposing a heavier penalty was the fact that Mr. Title self-reported his misconduct to the Institute. The committee concluded that a three-month suspension and no fine would demonstrate to the membership that the type of conduct undertaken by Mr. Title was unacceptable, and thereby serve the principle of general deterrence, while at the same time affording Mr. Title the opportunity to rehabilitate himself.

Publicity

Counsel for the member asked that publicity not be ordered in this case because of the stigma attached to such publicity and the member's current psychological state. He argued that the consequences of publication of Mr. Title's name may be so crushing that he may not be able to cope with them. The discipline committee could not accept this submission. Publication is not likely to be more consequential for Mr. Title than for many other members brought before the discipline committee. Publicity, including the member's name, is a very significant general deterrent, and a demonstration to the public that the profession is regulating itself. The discipline committee did not find in this case those rare and unusual circumstances that might persuade it to withhold the member's name from publication, and, therefore, made its usual order as to the giving of notice.

DATED AT TORONTO, THIS _____ DAY OF _____, 1995
BY ORDER OF THE DISCIPLINE COMMITTEE

P.A. CAMPOL, CA - CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

B.M. BYRNE, CA
L.R. FLEMMING, CA
H.R. KLEIN, CA
J.J. LONG, CA
V.G. STAFL (Public representative)