Allen Berenbaum: Summary, as Published in *CheckMark*

Michael Larry Bank, of Thornhill, **Allen Berenbaum**, of Toronto, and **Ronald Torch**, of Thornhill, were each 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. They defrauded the chartered accounting firm of which they were partners by the misappropriation of firm funds. Mr. Bank misappropriated $282,381; Mr. Berenbaum misappropriated $1,110,000; and Mr. Torch misappropriated $543,247. Each was fined $25,000 and expelled from the Institute.

In June 1996, the membership passed a new bylaw provision stipulating that, subject to some disciplinary tribunal discretion, the public is to be notified of the expulsion of members by disciplinary order by newspaper publication or some other means chosen by the tribunal. The three former members described immediately above—Messrs. Bank, Berenbaum, and Torch—were the first expelled members to whom the new bylaw provision applied. Notices of their expulsions were published in *The Globe and Mail* and the *Toronto Star*.

CHARGE(S) LAID re Allen Berenbaum

The Professional Conduct Committee hereby makes the following charges against Allen Berenbaum, a member of the Institute:

1. THAT, the said Allen Berenbaum, in or about the period January 1, 1991 through August 21, 1995, failed to maintain the good reputation of the profession and its ability to serve the public interest in that, while a partner of the chartered accounting firm Doane Raymond, he defrauded the firm Doane Raymond by the misappropriation of firm funds in the approximate amount of $1,110,000 contrary to Rule 201.1 of the rules of professional conduct

Dated at Toronto this 7th day of May, 1996.

JENNIFER L. FISHER, CA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE
B.W. BOWDEN (Public representative)

DISCIPLINE COMMITTEE re Allen Berenbaum

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

DECISION AND ORDER MADE JULY 4, 1996

DECISION

THAT, having seen and considered the evidence, including the agreed statements of facts, filed, the Discipline Committee finds Allen Berenbaum guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Berenbaum be reprimanded in writing by the chair of the hearing.

2. THAT Mr. Berenbaum be and he is hereby fined the sum of $25,000, to be remitted to the Institute within one (1) year from the date this Decision and Order becomes final under the bylaws.

3. THAT Mr. Berenbaum be and he is hereby expelled from membership in the Institute.

4. THAT notice of this Decision and Order, disclosing Mr. Berenbaum=s name, be given after this Decision and Order becomes final under the bylaws:

    (a) to the Public Accountants Council for the Province of Ontario;
    (b) to the Canadian Institute of Chartered Accountants;
    (c) by publication in *CheckMark; and*
    (d) by publication in *The Toronto Star* and *The Globe and Mail.*

5. THAT Mr. Berenbaum 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.

DATED AT TORONTO THIS 11th DAY OF JULY, 1996
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Michael Larry Bank

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

REASONS FOR THE DECISION AND ORDER MADE JULY 4, 1996

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario convened on Thursday, July 4, 1996, to hear the charges of professional misconduct made against Allen Berenbaum, Ronald Torch and Michael Larry Bank.

The professional conduct committee was represented by Mr. Paul Farley. Mr. Berenbaum was present and represented by his counsel, Mr. Mark Sandler. Mr. Bank was present and represented by his counsel, Mr. Neil Kozloff. Mr. Torch was present and represented by his counsel, Mr. William Horkins.

At the commencement of the hearing an application was made by Mr. Farley for an order to combine the formal hearings of the charge against each individual member, so that there would be one proceeding and the evidence would be applicable to all three members charged. This application was made pursuant to Section 9.1 of the *Statutory Powers Procedure Act* and Bylaw 565 of the Institute bylaws. Counsel for Messrs. Berenbaum, Torch and Bank consented, and an order was made that the three formal hearings would be combined and proceed as one.

DECISION ON THE CHARGES

Each member was charged with breach of Rule 201.1, in that the member had defrauded the firm in which he was a partner, Doane Raymond, by misappropriating a substantial amount of money over a period of time. Mr. Berenbaum was charged with misappropriating $1,110,000 between January, 1991 and August, 1995. Mr. Torch was charged with misappropriating $543,247 between May, 1992 and August, 1995. Mr. Bank was charged with misappropriating $282,381 between August, 1993 and August, 1995.

Each of the members entered a plea of guilty to the charge against him, and each of the members confirmed his understanding that on the basis of his plea of guilty and on that basis alone, he could be found guilty of professional misconduct.

In presenting its case, the prosecution filed as exhibits three agreed statements of facts, each signed by one of the members charged and counsel for the professional conduct committee, to each of which was attached as Schedule 1 a Statement of Agreed Facts signed by Allen Berenbaum, Ronald Torch, Michael Bank and Doane Raymond, the firm in which the three were partners. This joint statement was dated April 19, 1996. Each of the members present confirmed that he had signed the joint statement and that the facts set out therein were substantially true. Each individual agreed statement of facts filed as an exhibit stated that the facts set out in the joint statement attached to it were accurate.

The joint Statement of Agreed Facts makes it explicitly clear that each member did what the specific charge against him alleges and that each of the three is guilty of professional misconduct.

Based on the evidence filed, and the pleas of guilty, the discipline committee found Messrs. Berenbaum, Torch and Bank guilty of the charge made against each of them.

ORDER AS TO SANCTIONS

The panel then heard submissions as to sanctions from the professional conduct committee and each member=s counsel. At the conclusion of the submissions, the discipline committee deliberated and then made three identical orders, one against each member, in the following terms:

1. That the member be reprimanded in writing by the chair of the hearing.

2. That the member be fined the sum of $25,000, to be remitted to the Institute within one year from the date of the decision and order becoming final under the bylaws.

3. That the member be expelled from membership in the Institute.

4. That the notice of the decision and order, disclosing the member's name, be given after the decision and order becomes final under the bylaws:

   (a) to the Public Accountants Council for the Province of Ontario;
   (b) to the Canadian Institute of Chartered Accountants;
   (c) by publication in *CheckMark*; and
   (d) by publication in *The Toronto Star* and *The Globe and Mail*.

5. That the member surrender his certificate of membership in the Institute to the discipline committee secretary within ten days from the date of the decision and order becoming final under the bylaws.

The reasons for the discipline committee's order are set out below. In reaching a determination as to the appropriate sanctions to levy in the circumstances, the committee took into account the principles of specific and general deterrence. The members did not contest the orders of reprimand and expulsion sought by the professional conduct committee, but they did have objections with respect to the fines and notice being asked for.

Reprimand

The committee is of the view that a reprimand in writing from the chair of the hearing is appropriate to stress to each member the unacceptability of his conduct as a chartered accountant.

Expulsion

Paragraph 17 of the joint Statement of Agreed Facts reads as follows:

> Each of BERENBAUM, TORCH and BANK will be subject to disciplinary action by the Institute of Chartered Accountants of Ontario. They have each signed Undertakings agreeing to not practice public accounting during the period of the Institute's investigation. Each of them will consent to the termination of their professional status.

At the hearing, counsel for each member acknowledged that the misconduct in this case warranted expulsion. In effect, the three members consented to being expelled from the Institute. This did not relieve the discipline committee from determining whether or not the conduct warranted expulsion.

The carefully calculated misconduct took place over an extended period of time. It was not isolated or confined to a moment of weakness. Some of the misconduct amounted to or resulted from a conspiracy over an extended period of time. The principle of general deterrence is of utmost importance in this case, since this type of conduct by these members so undermines the valuable reputation of the profession. Each member was found guilty of a charge that involved moral turpitude, including breach of the trust that his partners and clients had given to him. The committee had no difficulty concluding that all the members should be expelled.

Fine

The professional conduct committee asked for a fine to be imposed on each member in the range of $20-$25,000. Counsel for the members submitted that the purpose of an order of the discipline committee should not be to punish members and that, in circumstances where a member could not pay a fine, a fine ought not to be imposed. Counsel for the professional conduct committee submitted that there was no evidence that the members could not pay the fines sought or would not be able to pay them within a reasonable period of time.

The panel levied a fine of $25,000 as a general deterrent, in order to emphasize to the members of the profession and the public that actions similar to the misconduct of these members will not be tolerated.

Mr. Bank misappropriated less money than Mr. Berenbaum or Mr. Torch. Mr. Torch has paid back all of the money misappropriated by him. This suggested to the committee that there might be a reason for the fines to be different. However, the purpose of the fine is to stress to the profession as a whole and to the public at large how serious this misconduct is, and, while the amounts of money misappropriated may be different, the panel concluded not only that the amounts were very substantial but that the essential nature of the misconduct and the need to deter other members from similar misconduct warranted a fine of $25,000 against each of the three members.

Notice

New Institute Bylaw 575(3) provides:

> (3) Notice of expulsion of a member shall be given to the public by publication in a newspaper distributed in the geographic area of the member's current or former practice, employment and/or residence, or in such other manner as the discipline committee may determine to be appropriate, unless the committee determines that the circumstances of the case are of a nature that such notice is not necessary for the protection of the public and would be unfair to the member, in which case the committee shall provide written reasons for not ordering publication of the notice.

Counsel for the professional conduct committee submitted that in this case the notice was necessary for the protection of the public and would not be unfair to the three members. He asked that notice of expulsion be given in *The Toronto Star* and *The Globe and Mail*.

Counsel for the members did not object to the notice itself, but did object to the notice being published prior to the criminal charges against each of the members, relating to the fraud and misappropriation, being disposed of by the courts, on the grounds that publication could possibly prejudice the criminal trials in some presently unknown way. All three counsel requested this deferral out of an abundance of caution. Also, it was submitted that Mrs. Berenbaum, based on past history, would likely attempt to use the notice as a way to embarrass Mr. Berenbaum.

The joint Statement of Agreed Facts says in paragraph 29 that a copy of it was being provided to the Metropolitan Toronto Police Fraud Squad, and it was acknowledged that this document would be admissible in evidence in a criminal trial. As it consents to expulsion, and as the hearing was a public hearing, the discipline committee concluded that there was not a reasonable basis for the concern that the notice would prejudice any of the members in the criminal proceedings. Accordingly, the panel decided it would not defer the publication until after the criminal proceedings.

As is usual in cases of expulsion, the members were ordered to surrender their certificates of membership in the Institute.

DATED AT TORONTO THIS DAY OF SEPTEMBER, 1996
BY ORDER OF THE DISCIPLINE COMMITTEE

D.P. SETTERINGTON, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

H.B. BERNSTEIN, CA
L.P. BOOKMAN, CA
B.M. BYRNE, CA
B.A. TANNENBAUM, CA
B.W. BOWDEN (Public representative)