

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **CRAIG ROY SITTER, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Craig R. Sitter, CA
77 Main Street South
P.O. Box 40
Hagersville, ON N0A 1H0

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made September 17, 2008)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on September 17, 2008 to hear a charge of professional misconduct laid by the Professional Conduct Committee against Craig R. Sitter, CA, a member of the Institute.
2. Alexandra Hersak appeared as counsel for the Professional Conduct Committee and was accompanied by Jodie L. Wolkoff, CA, CA.IFA, the investigator appointed by the Professional Conduct Committee.
3. Mr. Sitter did not attend. James Lane was in attendance, but indicated he was not appearing as counsel as he had no instructions from Mr. Sitter. He sought permission to withdraw, which was granted by the panel.
4. The panel determined that Mr. Sitter had been provided with proper notice of the hearing and decided to proceed in his absence, in accordance with the bylaws.
5. The decision of the panel was made known at the conclusion of the hearing and the written Decision and Order sent to the parties on September 18, 2008. These reasons, given pursuant to Bylaw 574, contain the charge, the decision, the order, and the reasons of the panel for its decision and order.

CHARGE

6. The following charge was laid against Mr. Sitter by the Professional Conduct Committee on March 20, 2008:

THAT the said Craig R. Sitter, in or about the period September 15, 2004 through February 6, 2008, while engaged as the accountant for "HS", failed to act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that while acting pursuant to a power of attorney, he borrowed from his client "HS", funds in the approximate amount of \$465,000 and used those funds for his own personal use, contrary to Rule 201.1 of the Rules of

Professional Conduct.

PLEA

7. A plea of not guilty was entered on behalf of Mr. Sitter.

EVIDENCE

8. The evidence in this matter consisted of a Document Brief (Exhibit 4) and the testimony of Ms. Wolkoff, the investigator appointed by the Professional Conduct Committee.

9. The evidence establishes that Mr. Sitter was retained by HS, commencing in 1984, to prepare his income tax returns. HS remained a client of Mr. Sitter's until his death in 2007 and, during that time, also named Mr. Sitter as his power of attorney and as his executor.

10. In September, 2004, Mr. Sitter, through his company, Rettis Ltd. ("Rettis"), purchased a residential income property for \$285,000. At that time, HS had been found to be incompetent and Mr. Sitter was managing his affairs through the authority of the power of attorney. Mr. Sitter caused HS to loan \$350,000 to Rettis, which loan was secured against the property purchased by Rettis.

11. On August 3, 2005, May 15, 2006, and June 30, 2006, Mr. Sitter caused HS to loan the amounts of \$15,000, \$10,000 and \$15,000, respectively, to Rettis. On November 24, 2005, Mr. Sitter caused HS to loan \$75,000 to Mr. Sitter. None of these loans, including the mortgage, or interest on the loans, had been repaid as of the date of HS's death.

12. After HS's death, and after the commencement of the Professional Conduct Committee investigation, Mr. Sitter and Rettis repaid the loans and paid the arrears of mortgage interest, in November and December, 2007. However, the principal amount of the mortgage remains outstanding.

13. During a previous incapacity of HS in 2000, Mr. Sitter had caused HS to loan \$15,000 to Rettis. That loan and interest was repaid. During the times HS was in control of his own finances, he did not make any loans to Rettis or Mr. Sitter. Mr. Sitter remains as executor of the HS estate, and it does not appear he has made the beneficiaries of that estate aware of the loans and mortgage.

DECISION

14. After hearing submissions and deliberating, the panel made the following decision:

THAT, having seen, heard and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Sitter pursuant to Bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to the charge, the Discipline Committee finds Mr. Craig Roy Sitter guilty of the charge.

SANCTION

15. Ms. Hersak, on behalf of the Professional Conduct Committee, submitted that a sanction of: a written reprimand; a fine in the amount of \$25,000; expulsion from membership and revocation of the public accounting licence; and full publicity, including publication in the newspapers, would be appropriate. She also sought costs in the amount of \$15,000, approximately one half of the costs incurred by the Professional Conduct Committee in investigating and bringing the matter to a hearing, as set out in the Costs Outline, filed (Exhibit 6).

16. Ms. Hersak noted a number of factors in aggravation in this matter, including that Mr. Sitter took advantage of his position of trust with a vulnerable client, that the amount loaned was significant, that repayment only took place once the investigation commenced, and that the mortgage exceeded the value of the property. In mitigation she noted that, although Mr. Sitter did not attend the hearing, he had cooperated with the investigation.

17. Ms. Hersak characterized the conduct of Mr. Sitter as jeopardizing the reputation of every member of the profession. Mr. Sitter's client had reposed the ultimate trust in him, and had that trust abused. For these reasons, she urged the panel to consider deterrence as the primary principle of sanctioning.

ORDER

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

IT IS ORDERED in respect of the charge:

1. THAT Mr. Sitter be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Sitter be and he is hereby fined the sum of \$25,000 to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Sitter be and he is hereby expelled from membership in the Institute.
4. THAT the public accounting licence of Mr. Sitter be and it is hereby revoked.
5. THAT notice of this Decision and Order, disclosing Mr. Sitter'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;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to all provincial institutes/Ordre, and shall be made available to the public.
6. THAT notice of the expulsion and revocation of the public accounting licence, disclosing Mr. Sitter's name, be given by publication on the Institute's website and in a newspaper distributed in the geographic area of the member's current or former practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Sitter and shall be in addition to any other costs ordered by the committee.

7. THAT Mr. Sitter surrender his certificate of membership in the Institute and his public accounting licence 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:

8. THAT Mr. Sitter be and he is hereby charged costs fixed at \$15,000 to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.

REASONS FOR THE DECISION AND ORDER

19. HS was a client of Mr. Sitter. It was as a result of that fiduciary relationship that the power of attorney was given. HS trusted Mr. Sitter to look after his affairs when he himself was unable to. Mr. Sitter took advantage of that relationship and that trust. It is noteworthy that HS did not make any loans to Rettis or Mr. Sitter when he was handling his own affairs; the loans all took place during two periods of incapacity, when Mr. Sitter was acting under the power of attorney.

20. For Mr. Sitter to personally benefit from the power of attorney was inappropriate. He was acting as HS's guardian, a position incompatible with that of beneficiary. That conduct is compounded by the fact that he placed a mortgage on property containing insufficient security, and that both the mortgage and the loans were permitted to go into arrears without any enforcement action being taken. The principal amount of the mortgage is still outstanding. Mr. Sitter, by his actions, brought the reputation of himself and the profession into disrepute.

21. Mr. Sitter's conduct is no different than misappropriation. He used his client's funds for his own purposes and to his own benefit, to alleviate his own financial difficulties. Chartered accountants are faced every day with the temptation of client funds within their reach. The clients, and the public, have to be able to have absolute trust in the chartered accountant not to surrender to that temptation. When that trust is breached, the profession must react swiftly to denounce the conduct, conduct that strikes at the very heart of the reputation of the profession. Mr. Sitter has betrayed his client's trust and, in doing so, he has betrayed each and every member of this profession. He cannot remain a member, and so has been ordered expelled, and his public accounting licence has been ordered revoked.

22. The public has a right to expect that any chartered accountant will act in an ethical and professional manner, and to be assured that those who do not are disciplined appropriately. Publicity is an effective manner of demonstrating that. It is also the means by which other members of the profession are informed and educated. There are no extraordinary circumstances in this matter, and there should be full publicity. On this point, the panel would have liked to have been able to notify HS's beneficiaries directly of the outcome of this hearing, as it appears they may well be unaware of Mr. Sitter's conduct. Unfortunately, we were not provided with a copy of the will or any information concerning those beneficiaries.

23. A fine has been ordered to bring home to Mr. Sitter the complete unacceptability of his actions. It would have been of assistance to have had some background on Mr. Sitter, so that the panel could have a "picture" of him and be in a position to more carefully assess the appropriate quantum of the fine, as well as any costs.

24. It is appropriate that Mr. Sitter, as opposed to the membership as a whole, bear a portion of the costs of the investigation and hearing which his conduct made necessary. The Professional Conduct Committee has sought only one half of those costs, and that is the amount we have ordered. However, we do note that the costs were considerably higher and that there were no submissions made to indicate Mr. Sitter was unable to, or should not, bear the full amount.

DATED AT TORONTO THIS 16th DAY OF DECEMBER, 2008
BY ORDER OF THE DISCIPLINE COMMITTEE

M.B. MARTENFELD, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

J.B. BARRACLOUGH, FCA
A.R. DAVIDSON, CA
R.A. VICKERS, FCA
B.M. SOLWAY (PUBLIC REPRESENTATIVE)