

## **Dale Thomas Durand: Summary, as Published in *CheckMark***

**Dale Thomas Durand**, of Etobicoke, was found guilty of one charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, one charge under Rule 202 of failing to perform his professional services with due care, and one charge under Rule 212.2 of failing to handle trust property with due care. While engaged to provide professional services and act as the trustee of a family trust, Mr. Durand caused the trust to guarantee payment of loans up to \$1.5 million by pledging approximately 70% of the trust assets as security in circumstances not appropriate to the trust, and then failed to adequately monitor the trust's exposure to loss under the guarantee. Over a period of several years, he failed to declare on the trust tax returns interest and capital gains earned and expenses incurred by the trust. He also failed to report on his personal tax returns the trustee fees paid to him by the trust. Mr. Durand was fined \$12,500, charged costs of \$10,000, and suspended for eighteen months.

## CHARGE(S) LAID re Dale Thomas Durand

The Professional Conduct Committee hereby makes the following charges against Dale T. Durand, CA, a member of the Institute:

1. THAT, the said Dale Durand, in or about the period September 1, 1993 through April 30, 2001, failed to conduct himself in a manner that will 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;
  - (i) he failed to report on his personal income tax returns as income, fees due to him for the administration of a family trust known as the "Granata Family Trust" paid or payable in the estimated amount of \$5,500.00 each month commencing August 1993 and ending May 2000 ;
  - (ii) ~~in September 1993 he caused the "Granata Family Trust" to make a loan to 773840 Ontario Limited, operating as Shangri-La Campground, Lodge and Marina, in the amount of \$75,000.00 at a time that he had a personal interest in the company without disclosing his interest to the beneficiaries of the trust.~~  
*WITHDRAWN BY P.C.C. APRIL 2, 2003*
2. THAT, the said Dale Durand, in or about the period August 1, 1993 through April 30, 2000, while engaged to provide professional services to Frank Granata and Theresa Granata and to act as the trustee of the "Granata Family Trust", failed to handle the trust property with due care, contrary to Rule 212.2 of the Rules of Professional Conduct, in that;
  - (i) he caused the trust to guarantee payment of loans up to \$1.5 million made by Royal Bank of Canada to Robertson Foods Inc., by pledging as security trust assets having a market value of approximately \$1.5 million, representing approximately 70% of the trust assets, in circumstances not appropriate to the trust;
  - (ii) having pledged approximately 70% of the trust assets as collateral for a loan made by Royal Bank of Canada to Robertson Foods Inc., he failed to adequately monitor the exposure of the trust to loss under the guarantee.
3. THAT, the said Dale Durand, in or about the period August 1, 1993 through April 30, 2000, while engaged to provide professional services to Frank Granata and Theresa Granata and act as the trustee of the "Granata Family Trust" failed to perform his professional services with due care, contrary to Rule 202 of the Rules of Professional Conduct, in that;
  - (i) he failed to declare on the trust tax returns filed for the taxation years 1993 through 1998 mortgage interest earned by the trust in the approximate amount of \$41,800.00;
  - (ii) he failed to declare as an expense on the trust tax returns filed for the taxation years 1993 through 2000 the trustee's fees paid by the trust in the approximate amount of \$300,000.00;

- (iii) he failed to declare on the trust tax returns filed for the 1999 taxation year approximately \$477,000.00 of capital gains resulting from a conversion of equities to treasury bills.

~~4. THAT, the said Dale Durand, in or about the period August 1, 1993 through April 30, 2000, while engaged to provide professional services to Frank Granata and Theresa Granata and act as the trustee of the "Granata Family Trust" failed to maintain such records as necessary to account properly for the money or other property, contrary to Rule 212.1 of the Rules of Professional Conduct. WITHDRAWN BY P.C.C. APRIL 2, 2003~~

Dated at Toronto, this 25th day of October, 2002;

R.A. JOHNSTON, FCA - DEPUTY CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re Dale Thomas Durand**

**DECISION AND ORDER IN THE MATTER OF:** Charges against **DALE THOMAS DURAND, CA**, a member of the Institute, under **Rules 201.1, 202, 212.1 and 212.2** of the Rules of Professional Conduct, as amended.

**DECISION AND ORDER MADE APRIL 2, 2003**

### **DECISION**

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, particular (ii) of charge No. 1 and charge No. 4 having been withdrawn by the professional conduct committee, and having heard the plea of guilty to charges Nos. 1, 2 and 3, the Discipline Committee finds Dale Thomas Durand guilty of charges Nos. 1, 2 and 3.

### **ORDER**

IT IS ORDERED in respect of charges Nos. 1, 2 and 3:

1. THAT Mr. Durand be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Durand be and he is hereby fined the sum of \$12,500, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Durand be and he is hereby charged costs fixed at \$10,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Durand be suspended from the rights and privileges of membership in the Institute for a period of eighteen (18) months from the date this Decision and Order becomes final under the bylaws.
5. THAT notice of this Decision and Order, disclosing Mr. Durand'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*.
6. THAT Mr. Durand 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, to be held during the period of suspension and thereafter returned to Mr. Durand.

7. THAT in the event Mr. Durand fails to comply with any of the requirements of this Order, 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 7TH DAY OF APRIL, 2003  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

## **DISCIPLINE COMMITTEE re Dale Thomas Durand**

**REASONS FOR DECISION AND ORDER IN THE MATTER OF:** Charges against **DALE THOMAS DURAND, CA**, a member of the Institute, under **Rules 201.1, 202, 212.1 and 212.2** of the Rules of Professional Conduct, as amended.

### **REASONS FOR THE DECISION AND ORDER MADE APRIL 2, 2003**

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on April 2, 2003 to hear charges brought by the professional conduct committee against Mr. Dale Thomas Durand, a member of the Institute.
2. The professional conduct committee was represented by Mr. Paul Farley. Mr. Durant, who was present at the hearing, was represented by his counsel, Mr. Clifford Cole.
3. The decision and the terms of the order were made known at the conclusion of the hearing. The formal decision and order was signed by the secretary of the discipline committee and sent to the parties on April 7, 2003. These reasons, given pursuant to Bylaw 574, include the charges, and the decision and order as well as the reasons of the discipline committee.

### **DECISION ON THE CHARGES**

4. The notice of assignment hearing, notice of hearing and charges were marked as Exhibits 1, 2 and 3, respectively. Before the member was asked to enter a plea to the charges, the professional conduct committee withdrew charge No. 4 and particular (ii) of charge No.1. As a result, the charges to which Mr. Durand was asked to plead read as follows:

1. THAT, the said Dale Durand, in or about the period September 1, 1993 through April 30, 2001, failed to conduct himself in a manner that will 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;
  - (i) he failed to report on his personal income tax returns as income, fees due to him for the administration of a family trust known as the "Granata Family Trust" paid or payable in the estimated amount of \$5,500.00 each month commencing August 1993 and ending May 2000 ;
2. THAT, the said Dale Durand, in or about the period August 1, 1993 through April 30, 2000, while engaged to provide professional services to Frank Granata and Theresa Granata and to act as the trustee of the "Granata Family Trust", failed to handle the trust property with due care, contrary to Rule 212.2 of the Rules of Professional Conduct, in that;

- (i) he caused the trust to guarantee payment of loans up to \$1.5 million made by Royal Bank of Canada to Robertson Foods Inc., by pledging as security trust assets having a market value of approximately \$1.5 million, representing approximately 70% of the trust assets, in circumstances not appropriate to the trust;
  - (ii) having pledged approximately 70% of the trust assets as collateral for a loan made by Royal Bank of Canada to Robertson Foods Inc., he failed to adequately monitor the exposure of the trust to loss under the guarantee.
- 3. THAT, the said Dale Durand, in or about the period August 1, 1993 through April 30, 2000, while engaged to provide professional services to Frank Granata and Theresa Granata and act as the trustee of the "Granata Family Trust" failed to perform his professional services with due care, contrary to Rule 202 of the Rules of Professional Conduct, in that;
  - (i) he failed to declare on the trust tax returns filed for the taxation years 1993 through 1998 mortgage interest earned by the trust in the approximate amount of \$41,800.00;
  - (ii) he failed to declare as an expense on the trust tax returns filed for the taxation years 1993 through 2000 the trustee's fees paid by the trust in the approximate amount of \$300,000.00;
  - (iii) he failed to declare on the trust tax returns filed for the 1999 taxation year approximately \$477,000.00 of capital gains resulting from a conversion of equities to treasury bills.

5. Mr. Durand entered a plea of guilty to the three charges, as amended, and confirmed that he understood that on the basis of his plea, and on that basis alone, he could be found guilty of the charges.

### **The Relevant Facts**

6. Mr. Farley presented his case by way of a document entitled "Joint Submission Of Facts Respecting Disposition And Penalty", which was signed by Mr. Durand on his own behalf, and by Mr. Farley on behalf of the professional conduct committee. The joint submission, which was marked as Exhibit 4, refers to a number of relevant documents set out under twelve separate tabs in a document brief which was marked as Exhibit 5. It is clear from the joint submission and document brief that Mr. Durand acknowledges the allegations set out in the charges, and admits his misconduct.

7. Mr. Durand was 49 years old at the time of the hearing, and had been a member of the Institute since 1982. At the time of the hearing he was a certified financial planner, a licenced stockbroker, and a licenced life insurance agent. He had concluded the process of winding down his public accounting practice – a process he had started in 1995 – and had surrendered his public accounting licence.

8. Mr. Durand's sister Theresa Granata, and her husband Francesco Granata, won the sum of \$2,551,907 in the Ontario *Lotto 6/49* lottery. As they had previously had some financial difficulties, including Mr. Granata's bankruptcy, and were inexperienced in investment matters, they turned to Mr. Durand for assistance. The Granata Family Trust was established, and Mr. Durand was appointed trustee. Mr. Durand's misconduct related to his failure to properly administer this trust, and his failure to report his trustee fees as income.

#### Tax-related Misconduct

9. Charge No. 1 and particulars (i) and (ii) of charge No. 3 are related. Mr. Durand was entitled to fees of 3 per cent of the value of the trust funds on the anniversary date of the trust agreement each year. Rather than take these fees, Mr. Durand borrowed from the trust approximately \$265,000, which he repaid with interest at 10 per cent by offsetting his trustee's fees in the amount of \$5,500 per month, being 1/12 of his 3 per cent annual fee on the original principal of \$2.2 million. On this basis, he repaid the loan in full with interest by March 1998. However, he did not declare the \$5,500 per month as income in his personal income tax returns for the taxation years 1993 to 1998, and accordingly failed to pay income tax on this income.

10. After the loan had been repaid in March 1998, Mr. Durand did not bill or receive any further monthly trustee fees. He only rendered an account for his trustee fees after he consulted with counsel in connection with the events giving rise to charge No. 2. On the advice of counsel, he rendered an account and refiled his income tax returns for the years 1993 to 2000. He also paid the tax, interest and penalties owing, which totalled \$228,189. Mr. Durand acknowledges that his failure to pay personal income taxes over the years was a breach of Rule 201.1.

11. Mr. Durand did not declare on the trust tax returns for the years 1993 to 1998 the \$41,800 which he repaid in interest on his loan over these years. Similarly, he did not declare as an expense of the trust during those years the trustee fees which totaled over \$307,000. Mr. Durand acknowledges that the allegations set out in particulars (i) and (ii) of charge No. 3 are correct.

12. Concerned about the perceived Y2K problem, Mr. Durand reallocated certain equity-based mutual fund investments into treasury bills, which resulted in net capital gains to the trust of approximately \$471,000. However, he inadvertently failed to declare the income from the capital gains on the trust tax return for the year 1999. Mr. Durand acknowledges that the allegations set out in particular (iii) of charge No. 3 are true.

#### The Robertson Loans

13. In 1994, Mr. Durand pledged assets of the Granata Family Trust to cover a bank loan which Robertson International Foods Inc. (Robertson International) obtained from the CIBC. Robertson International was controlled and operated by Douglas Robertson, with whom Mr. Durand had had no previous connection. Robertson International paid a fee to the trust for the guarantee, which amounted to a 10% annual return on the amount guaranteed and provided the trust with income of approximately \$10,000 per month. In December 1996, Robertson International became insolvent. CIBC covered its debt from

other assets of Robertson International and did not call upon the trust to answer on its guarantee.

14. In May 1997, Mr. Durand arranged for the Granata Family Trust to guarantee a loan of \$1.5 million which Robertson Foods Inc. (Robertson Foods), another company controlled and operated by Douglas Robertson, obtained from the Royal Bank of Canada. In return for the guarantee the trust received a fee equal to 9% per annum of the guaranteed amount, which provided it with approximately \$11,200 per month. The amount of \$1.5 million pledged under the guarantee represented 70% of the assets of the trust at the time of the pledge.

15. Robertson Foods was in the same business as Robertson International had been in. Mr. Durand, as a trustee, had the right to monitor the operations of Robertson Foods, but did not do so effectively. Unknown to Mr. Durand, the banking documentation was changed subsequent to the giving of the guarantee by the Granata Family Trust. The total amount of the bank's loan to Robertson Foods was increased, the company's auditor KPMG was discharged, the audit requirement was downgraded to a review engagement, and the company's accounts receivable reporting requirement was reduced from a weekly to a monthly requirement. Mr. Durand was either unaware of these events or took no effective steps to protect the interests of the trust.

16. Robertson Foods committed a fraud and caused the collapse of its business. Ultimately, the Royal Bank sold the trust's mutual funds which had been pledged to cover the company's debt. In all, the trust paid \$1,579,468 on account of the outstanding indebtedness of Robertson Foods. Mr. Durand was duped by Douglas Robertson, who always paid the monthly fee owing to the trust and left Mr. Durand with the impression that everything in the business was fine.

### **The Decision**

17. After hearing submissions from Mr. Farley and Mr. Cole, the panel deliberated and concluded that the charges had been proven and that Mr. Durand was guilty of professional misconduct.

18. When the hearing reconvened, the chair read the panel's decision into the record as follows:

#### **DECISION**

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, particular (ii) of charge No. 1 and charge No. 4 having been withdrawn by the professional conduct committee, and having heard the plea of guilty to charges Nos. 1, 2 and 3, the Discipline Committee finds Dale Thomas Durand guilty of charges Nos. 1, 2 and 3.

### **ORDER AS TO SANCTION**

19. In his opening submissions, Mr. Farley set out the terms of the order sought by the professional conduct committee: a reprimand; a fine in the amount of \$12,500; costs in the amount of \$13,000; suspension from membership for a period of 12 to 18 months; and the usual notice including publication in *CheckMark*.

20. The only major difference in the positions of the professional conduct committee and the member relating to sanction was in respect of the length of suspension that should be ordered. Mr. Cole submitted that the appropriate order would include a suspension of 6 to 12 months, rather than 12 to 18 months as requested by Mr. Farley. Though counsel for the professional conduct committee sought costs of \$13,000, he indicated that the member had agreed to pay costs in the amount of \$10,000. In all other respects the submissions with respect to sanction were joint submissions.

21. Mr. Farley advised the panel that the professional conduct committee accepted the proposition that Mr. Durand could rehabilitate himself and deserved the opportunity to do so. He submitted that while the sanction must also address the issues of general and specific deterrence, the professional conduct committee was recommending a substantial suspension and fine rather than expulsion because it thought rehabilitation should be the principle given priority in this case.

22. Mr. Farley reviewed the aggravating and mitigating factors of the case. The aggravating factors included the amount of money involved and the large percentage of the total trust assets put at risk, the fact that Mr. Durand knew the Granatas wanted their funds to remain secure, his willingness to so readily back a second Robertson company after the bankruptcy of the first Robertson company, his total failure to then monitor the operations of the company his clients' trust was guaranteeing, and the lengthy period of time over which his misconduct took place. Among the mitigating factors were Mr. Durand's openness and candor both with the successor trustee and the professional conduct committee, and the fact that he had not tried to hide or misconstrue any of his misconduct.

23. Mr. Farley reviewed for the panel a number of precedent cases where there had been suspensions ordered, including the cases of *White*, *McConomy*, *Peebles*, *Jerrold Greenspan*, *Joel Greenspan*, *Fryers* and *Clarence*.

24. Mr. Cole submitted that a suspension in the range of 6 to 12 months was appropriate, as there had been no moral turpitude and no evidence of any intentional wrongdoing. He submitted that Mr. Durand knew that he was supposed to pay income tax, and that his failure to do so was an oversight rather than an intentional act. With respect to the Robertson loans, Mr. Cole emphasized that Mr. and Mrs. Granata had received independent legal advice, and that for the second loan appropriate arrangements had been made for an audit and for monitoring. He pointed out that prior to the Royal Bank calling on the guarantee to Robertson Foods, the Granata Family Trust had received approximately \$1.5 million from the two Robertson companies as guarantee fees, which he characterized as a very good return on the trust's investment. He also pointed out that Mr. Durand had clearly acted within his authority at all times, and that the Granatas' losses were the direct result of the fraud perpetrated by Douglas Robertson rather than any fault on the part of Mr. Durand.

25. In Mr. Cole's view, it was also relevant that Mr. Durand had had no previous involvement with the discipline process of the Institute, and that he had made full disclosure and been fully cooperative. Mr. Cole filed a letter from Theresa Granata which expressed the view that Mr. Durand was honest and had not intended to cause her husband or her harm.

26. Mr. Cole submitted that the misconduct in this case was purely a question of competence, and he reviewed the cases which he considered to be relevant in this regard, including the cases referred to by Mr. Farley.

### **Was Expulsion Necessary As A General Deterrent?**

27. In this case the most difficult issue for the panel was whether an 18 month suspension was a sufficient general deterrent or whether Mr. Durand's conduct required expulsion. We decided at an early stage in our deliberations to tell the parties of our difficulty and to ask them to make further submissions on the issue, which they did. The further submissions reinforced two points. First, while the parties did not agree as to how long Mr. Durand should be suspended, their submissions on sanction were otherwise joint submissions, except in respect of a minor difference as to the quantum of costs. Secondly, and more to the point, the position of both parties was clear that expulsion was neither required nor appropriate in this case.

28. While the discipline committee recognizes and accepts that a joint submission on sanction is entitled to be given great weight, the committee will nevertheless reject such a submission if it concludes that the sanction being jointly proposed is not appropriate to the misconduct demonstrated. In this case there were two particular reasons for questioning the appropriateness of the joint submission supporting a suspension rather than expulsion.

29. First, the misconduct relating to the Robertson loans was very troubling. Mr. Durand's failure to handle trust property with due care was egregious. Perhaps he had sufficient confidence in Mr. Robertson's financial depth as a result of the debts of Robertson International being satisfied without resort to the first loan guarantee to prompt him to place the second loan guarantee for Robertson Foods. Perhaps it is only in hindsight that it can properly be said that providing the second guarantee to a Robertson company was imprudent. Nevertheless, no degree of hindsight is required to conclude that, in light of his past experience with Robertson, Mr. Durand should have been vigilant in his monitoring of the activities of Robertson Foods, which he was not.

30. Secondly, the income tax related misconduct was not only very troubling, but it was particularly difficult to accept that Mr. Durand had inadvertently failed to declare and pay tax for several years, or had inadvertently forgotten to declare a capital gain of nearly half a million dollars.

31. Ultimately we came to the conclusion that the jointly suggested sanction did fall within the range of sanctions appropriate to the type of misconduct exhibited in this case. While we concluded as well that expulsion would also have been within the range of appropriate sanctions, there were a number of reasons why we decided that expulsion was not required as a general deterrent and that Mr. Durand should be given the opportunity to rehabilitate himself.

32. The professional conduct committee did not question Mr. Durand's honesty or integrity, and there was no suggestion that he benefited personally from his dealings with Mr. Robertson. Mr. Durand fully disclosed his misconduct to his successor trustee and to the Institute. He cooperated with the professional conduct committee throughout.

33. The agreed statement of facts was clear in its characterization of Mr. Durand's tax related misconduct. Paragraph 23 of the agreed statement of facts reads in part:

Although Durand knew or should have known that he was required to include fees earned as trustee in his income, his failure to pay tax was first appreciated by him at the time he consulted with legal counsel prior to his resigning as trustee of the Trust in May, 2000 and before any complaint to the ICAO was made or intimated would be made.

34. With respect to the anticipated Y2K problem and capital gains, the agreed statement of facts, at paragraph 55, states:

Durand inadvertently failed to declare the income from the capital gains on the Trust tax return for the 1999 tax year. These returns were being prepared by him at the same time that he was responding to the collapse of Robertson Foods and the fact that the Trust would suffer a very significant loss as a result.

35. While we were skeptical about inadvertence as the explanation for the tax related misconduct, we could not disregard what was stated in the agreed statement of facts on the issue.

36. Mr. & Mrs. Granata received legal advice in respect of the establishment of the Granata Family Trust, as well as in respect of and prior to the giving of each loan guarantee to a Robertson company. Mrs. Granata wrote on Mr. Durand's behalf expressing full confidence in his integrity and honesty.

37. We were satisfied that Mr. Durand's participation in these proceedings, including the complaint, the investigation and this hearing, had already had a rehabilitative effect upon him. We do not think he will repeat his misconduct, and were satisfied that he deserved the opportunity to rehabilitate himself.

## **The Order**

38. Upon concluding our deliberations, the hearing reconvened and the chair summarized the terms of the order on the record. The formal order signed by the discipline committee secretary and sent to the parties on April 7, 2003 reads as follows:

### ORDER

IT IS ORDERED in respect of charges Nos. 1, 2 and 3:

1. THAT Mr. Durand be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Durand be and he is hereby fined the sum of \$12,500, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.

3. THAT Mr. Durand be and he is hereby charged costs fixed at \$10,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Durand be suspended from the rights and privileges of membership in the Institute for a period of eighteen (18) months from the date this Decision and Order becomes final under the bylaws.
5. THAT notice of this Decision and Order, disclosing Mr. Durand'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*.
6. THAT Mr. Durand 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, to be held during the period of suspension and thereafter returned to Mr. Durand.
7. THAT in the event Mr. Durand fails to comply with any of the requirements of this Order, 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**

39. A reprimand is necessary to emphasize to Mr. Durand that his conduct was inappropriate and unacceptable.

### **Fine**

40. The fine of \$12,500 was imposed as a specific deterrent to Mr. Durand, and as a general deterrent to other members of the profession. While Mr. Durand's misconduct was not in connection with the attest function or the practice of public accounting, members must realize that when they provide professional services, whether or not they are practising public accounting, they must perform those services with the diligence and competence required of the profession.

### **Suspension**

41. A suspension was imposed as a specific deterrent to Mr. Durand and a general deterrent to other members.

## **Notice**

42. No suggestions were made by the parties that there existed any rare or unusual circumstances in this case that would justify the withholding of Mr. Durand's name from the notice to be published in *CheckMark*. Such notice, disclosing Mr. Durand's name, was ordered as a specific deterrent to Mr. Durand and a general deterrent to other members.

## **Possible Consequential Expulsion**

43. An order of the discipline committee which did not provide a consequence for failure to comply with its terms would be largely meaningless. Accordingly, the order provides that failure to comply with any of its requirements will result in Mr. Durand's expulsion from the Institute.

## **Surrender Of Certificate Of Membership**

44. Where, as here, a suspension has been ordered, it is appropriate that the suspended member surrender his membership certificate to the Institute for the period of the suspension.

## **Costs**

45. Since the amending of the *CA Act* and bylaws to authorize the making of an order for the payment of costs by those found guilty of professional misconduct, the discipline committee has accepted the principle that those whose misconduct necessitates investigations and discipline proceedings should at least partially indemnify the Institute for the costs of those investigations and proceedings. In this case, costs were fixed at \$10,000, which Mr. Durand had agreed to pay, and which was not too much lower than what had been sought by the professional conduct committee.

DATED AT TORONTO THIS 14th DAY OF NOVEMBER, 2003  
BY ORDER OF THE DISCIPLINE COMMITTEE

L.P. BOOKMAN, CA –CHAIR  
THE DISCIPLINE COMMITTEE

### **MEMBERS OF THE PANEL:**

M.S. LEIDERMAN, CA  
G.R. PEALL, CA  
S.W. SALTER, CA  
P.W. WONG (Public representative)