

David M. Abraham: Summary, as Published in *CheckMark*

David M. Abraham, of Windsor, was found guilty of two charges of professional misconduct under Rule 201.1. He improperly removed funds from bank accounts not belonging to him and converted those funds to his own use. In particular, he took funds belonging to a charitable organization while the sole signing authority on the bank account of the organization. He also took money from a client company of the chartered accounting firm of which he was a partner while a director and signing officer of the client company. He was fined \$5,000, and expelled from membership. Mr. Abraham's appeal was dismissed by the appeal committee.

CHARGE(S) LAID re David M. Abraham

The Professional Conduct Committee hereby makes the following charges against David M. Abraham, CA, a member of the Institute:

1. THAT, the said David M. Abraham, in or about the period August, 1991 through to May, 1992, 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) While the sole signing authority on the bank account of B'nai Brith Blue Haven Foundation in Windsor Ontario, he improperly removed funds from the B'nai Brith Blue Haven Foundation bank account in the amount of approximately \$9,064, \$11,984, and converted those funds to his own use.
2. THAT, the said David M. Abraham, in or about the period October, 1991 through to May, 1992, 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) While a director and signing officer of Wippman Services Limited, a client of the chartered accounting firm in which he was a partner, he improperly removed funds in the approximate amount of \$74,882 from the Wippman Services Limited bank account and converted those funds to his own use.

DATED at Toronto this 12th day of August 1992.

J.L.M. BADALI, FCA – CHAIR

PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re David M. Abraham

DECISION AND ORDER IN THE MATTER OF: Charges against DAVID M. ABA CA, a member of the Institute, under Rule 201.1 of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JANUARY 8, 1993

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having amended charge No. 1 upon the consent of both parties, and having heard the plea of guilty to the charges, THE DISCIPLINE COMMITTEE FINDS David M. Abraham guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Abraham be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Abraham be and he is hereby fined the sum of \$5,000, 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. Abraham be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Abraham'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.
5. THAT Mr. Abraham surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws.

DATED AT TORONTO, THIS 13TH DAY OF JANUARY, 1993
BY ORDER OF THE DISCIPLINE COMMITTEE
BRYAN W. STEPHENSON, BA, LLB
SECRETARY – DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re David M. Abraham

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against DAVID M. ABRAHAM, 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 JANUARY 8, 1993

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on January 8, 1993.

Mr. Paul Farley attended on behalf of the professional conduct committee. Mr. Abraham attended with, and was represented by, his counsel, Mr. Michael H. Gordner.

The professional conduct committee had laid two charges of professional misconduct against Mr. Abraham under Rule of Professional Conduct 201.1. The charges related to his improperly converting the funds of others to his own use. Following an amendment to one of the charges, made on consent, the charges read as follows:

1. *THAT, the said David M. Abraham, in or about the period August, 1991 through to May, 1992, 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) *While the sole signing authority on the bank account of B'nai Brith Blue Haven Foundation in Windsor Ontario, he improperly removed funds from the B'nai Brith Blue Haven Foundation bank account in the amount of approximately \$11,984 and converted those funds to his own use.*
2. *THAT, the said David M. Abraham, in or about the period October, 1991 through to May, 1992, 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) *While a director and signing officer of Wippman Services Limited, a client of the chartered accounting firm in which he was a partner, he improperly removed funds in the approximate amount of \$74,882 from the Wippman Services Limited bank account and converted those funds to his own use.*

Mr. Abraham pleaded guilty to both charges, and confirmed his understanding that he could be found guilty of the charges based solely on his guilty plea. Counsel for the professional conduct committee filed an agreed statement of facts and a document brief, both of which were agreed to by Mr. Abraham.

On the grounds of the evidence filed, and Mr. Abraham's plea, the discipline committee found Mr. Abraham guilty as charged.

After making its findings on the charges, the panel heard testimony from three individuals called on behalf of Mr. Abraham, and submissions from both counsel, upon the issue of sanction. It also received documentary evidence from both parties. After deliberation on sanction, the committee made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Abraham be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Abraham be and he is hereby fined the sum of \$5,000, 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. Abraham be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Abraham'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.
5. THAT Mr. Abraham surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws.

The panel was advised that the misappropriated funds have been repaid in full, and that the parties directly involved have not pressed criminal charges. The panel was also informed that Mr. Abraham is undergoing psychiatric treatment, and that he voluntarily provided an undertaking to the professional conduct committee in September 1992 not to hold himself out as a chartered accountant pending this hearing.

Mr. Abraham is currently employed on a one-year contract basis, due to expire at the end of May, 1993, by the firm of which he had been a partner prior to the events giving rise to the charges in this case.

The reasoning behind the panel's order on sanction is set out below. In reaching its conclusions, the panel considered the sentencing principles of general deterrence, specific deterrence and rehabilitation, though it ultimately concluded that a rehabilitative order was not appropriate in the circumstances of this case.

Reprimand

In tarnishing his own reputation, Mr. Abraham has also tarnished the reputation of the profession as a whole. Therefore, the panel believes that the specific deterrent of a reprimand is necessary to stress to Mr. Abraham the unacceptability of his conduct as a chartered accountant.

Fine

The panel concluded that the imposition of a fine emphasizes to Mr. Abraham, all members of the profession, and the general public, that actions such as those of Mr. Abraham are not tolerable to the profession.

Expulsion

While the panel was advised that no criminal charges had been laid in this case, it was of the view that Mr. Abraham's conduct might well have warranted the laying of such charges. He abused the trust that was placed in him, and by so doing, besmirched the reputation for integrity and ethical conduct which is the hallmark of the chartered accountancy profession.

A great deal of psychiatric evidence was presented as part of Mr. Abraham's case, including the oral testimony of his psychiatrist who had been seeing him regularly since August 1992. The panel understood from the evidence that Mr. Abraham suffers deep psychological problems. It was also clear from the evidence, however, that the member understood that what he was doing was wrong, and the seriousness of his misconduct. While Mr. Abraham is presently under psychiatric care, his psychiatrist's evidence was that he could not give a meaningful prognosis at this time of his patient's likelihood of recovery, and may not be in a position to do so for two years.

In all these circumstances, the panel ultimately concluded that the appropriate disposition in this case was the member's expulsion from the Institute.

Disclosure

Providing evidence to members that the profession is active in self-regulation, and vigilant to discipline breaches of its bylaws and rules of conduct, is important to the Institute's role in the governance of the profession. Such evidence is provided through notification of the decisions and orders of the Institute's disciplinary committees, and is, in the opinion of the panel, a practice that has significant general deterrent value.

Surrender of certificate

Since the protection of the public interest is a fundamental tenet of the profession, the committee believes that it is important that the certificate of membership of an expelled member be surrendered to the Institute.

DATED AT TORONTO, THIS 25th DAY OF February, 1993
BY ORDER OF THE DISCIPLINE COMMITTEE

F.A. DROZD, FCA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

P.J. FITZPATRICK, CA
R.G. HARRISON, FCA
T.J.T. MARK, FCA
R.J. NOBES, FCA
R.W. WARKENTIN, PEng (Public representative)

APPEAL COMMITTEE re David M. Abraham

DECISIONS AND REASONS OF THE APPEAL COMMITTEE IN THE MATTER OF: An appeal filed on April 2, 1993 by DAVID M. ABRAHAM against the decision and order of the discipline committee made on January 8, 1993, pursuant to the bylaws of the Institute, as amended.

DECISION AND REASONS FOR DECISION MADE AUGUST 23, 1993

DECISION

This appeal was heard by a panel of the appeal committee on August 23, 1993. Mr. David M. Abraham, the appellant, attended on his own behalf, and Mr. Paul F. Farley attended for the professional conduct committee.

After reviewing the decision and order of the discipline committee, and that committee's written reasons, as well as the notice of appeal and the evidence that was before the discipline committee, and after hearing submissions of Mr. Abraham and counsel for the professional conduct committee, the appeal committee upheld the decision and order of the discipline committee made on January 8, 1993, save that the fine of \$5,000 is ordered to be remitted to the Institute within eighteen (18) months from the date the decision and order of the discipline committee becomes final under the bylaws, rather than within thirty (30) days, as ordered by the discipline committee.

All parties were informed of the appeal committee's decision and were advised that written reasons for its decision would follow.

These are the reasons for the appeal committee's decision.

REASONS FOR DECISION

Based on the submissions made by Mr. Abraham and counsel for the professional conduct committee, and on its reading of the transcript of the hearing of the discipline committee, including the agreed statement of facts filed before the discipline committee, the appeal committee was not convinced that any reviewable error had been made by the discipline committee in reaching its decision as to sanction. Mr. Abraham had pleaded guilty to all charges before the discipline committee.

In the course of the hearing, Mr. Abraham advised the committee that his one-year employment contract with Brudner Zdziarski & Friedman had expired in June 1993 and that he was presently unemployed. For this reason, and this reason alone, the appeal committee ordered that the period afforded to Mr. Abraham for the payment of the fine imposed by the discipline committee be increased to eighteen months.

With the exception of ordering further time for payment of the fine by Mr. Abraham, the appeal committee found no basis upon which to otherwise vary or reject the decision of the discipline committee and, accordingly, dismissed Mr. Abraham's appeal.

DATED at Toronto, this 25th day of September, 1993

R.G. STACKHOUSE, FCA - CHAIR
THE APPEAL COMMITTEE

MEMBERS OF THE PANEL:

J.M. BALFE, CA

W.G. BROWN, FCA

D.J. HERLICK, CA

W.K. McINTYRE, FCA

A. BROWN (Public representative)