

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **DAVID FRANKLIN QUICK** a suspended member of the Institute, under **Rules 104.1, 201.1, 205 and 212** of the Rules of Professional Conduct, as amended.

TO: Mr. David F. Quick

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made May 17, 2011)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on May 17, 2011 to hear charges of professional misconduct brought by the Professional Conduct Committee against David F. Quick, a suspended member of the Institute.

2. Ms. Alexandra Hersak appeared on behalf of the Professional Conduct Committee. Mr. Quick attended without counsel. He confirmed that he knew that he had the right to attend with counsel and waived that right. Mr. Glenn Stuart attended the hearing as counsel to the Discipline Committee.

3. The decision of the panel was made known at the conclusion of the hearing on May 17, 2011, and the written Decision and Order sent to the parties on May 25, 2011. These reasons, given pursuant to Bylaw 574, contain the charges, the decision, the order, and the reasons of the panel for its decision and order.

Charges

4. Four charges were laid against Mr. Quick by the Professional Conduct Committee on March 8, 2011. The Professional Conduct Committee amended Charge No. 4 at the hearing on consent of all parties. The Professional Conduct Committee proceeded with the following charges before the panel.

1. THAT the said David F. Quick, in or about the period February 1, 2007 through March 31, 2009, while a co-Trustee of and/or engaged as the accountant for "AT" failed to conduct himself in a manner which 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:
 - a. He misappropriated funds in the approximate amount of \$30,000 from "AT"; and
 - b. He led "AT" to believe that trust funds in the form of marketable securities valued in the approximate amount of \$30,000 were assets of "AT" when they were not.
2. THAT the said David F. Quick, in or about the period December 31, 2007 through August 15, 2008, while a co-Trustee of and engaged as the accountant for "AT," prepared notice to reader financial statements for "AT" for the year ended December 31, 2007, which he knew were false or misleading contrary to Rule 205 of the Rules of

Professional Conduct in that he included "Marketable securities 32,934" as a current asset on the balance sheet when he knew "AT" no longer owned that asset.

3. THAT the said David F. Quick, in or about the period February 1, 2007 through February 4, 2009 failed to administer a trust in accordance with its terms contrary to Rule 212 of the Rules of Professional Conduct.
4. THAT the said David F. Quick, in or about the period June 7, 2010 through March 1, 2011, failed to co-operate with the regulatory processes of the Institute contrary to Rule 104.1 of the Rules of Professional Conduct in that he failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct an investigation on behalf of the Professional Conduct Committee.

Plea

5. Mr. Quick entered a plea of guilty to the charges, as amended.

The proceedings

6. Ms. Hersak made a brief opening statement. She then called Mr. David Murray who was the Controller from January 2008 and May 2010 at the construction company owned by LA (LA was the principal of a group of companies and a family trust, AT). Ms. Hersak also filed a Document Brief (Exhibit 5). Ms. Hersak referred Mr. Murray to various documents contained in the Document Brief during her examination. Upon completion of Ms. Hersak's examination, Mr. Quick was provided an opportunity to cross examine Mr. Murray. Mr. Quick declined.

7. Ms. Hersak then called Ms. Alison Thomas, CA, CBV, and a trained forensic accountant. Ms. Thomas was engaged by the Professional Conduct Committee to investigate Mr. Quick after receiving a complaint from the successor accountant to Mr. Quick for LA's companies. Ms. Hersak also filed a transcript of an interview on June 2, 2010, conducted by Ms. Thomas with Mr. Quick. Upon completion of Ms. Hersak's examination, Mr. Quick had no questions for Ms. Thomas.

The relevant facts

8. Mr. Quick brought no evidence forward, although he did make a statement. Mr. Quick indicated that he was not contesting the charges or any of the evidence presented. He offered his sincere regret for his actions and accepted that he had allowed all trust to disappear. His actions were not appropriate and he should not make excuses. He apologized for his actions. Since 2006, when his financial situation became strained the stress of this situation and his actions has caused medical problems. His marriage had also collapsed. He recognized the honour and pride in having the CA designation and understood he has misused and abused the designation. Mr. Quick asked for understanding.

9. The relevant facts in this case were not in dispute. Mr. Quick was the auditor/accountant for LA's group of companies. He had a 20 year relationship with LA, the principal of the companies and was a co-trustee with LA for the AT. AT is a family trust set up for the benefit of LA's children. Mr. Quick was a Trustee of the trust and kept all the records of the Trust. The Trust held, among other assets, certain marketable securities.

10. In January 2008, LA decided to have the marketable securities held by the Trust managed by TD Waterhouse. He requested Mr. Quick provide TD Waterhouse with the necessary information, particularly the broker statements. The broker statements were not forthcoming.

11. Over the next several months, further attempts were made by Mr. Murray on LA's behalf to obtain the broker statements from Mr. Quick. There was always some excuse. Finally, some

schedules were provided, but these schedules were not in fact broker statements.

12. In February 2009, after many further demands for the information, LA and Mr. Murray forced Mr. Quick to resign as a Trustee. In a meeting in March 2009 with representatives of AT, Mr. Quick admitted that the marketable securities were no longer held by the Trust.

13. During 2007, Mr. Quick was under financial pressure as a result of losses on personal investments. In 2007, he transferred the securities from the Trust to his bank. Subsequently, the bank froze Mr. Quick's accounts, seized the securities and sold them.

14. Mr. Quick prepared notice to reader statements for the Trust for the 2007 year showing the marketable securities being still held by the Trust, when in fact they had been taken by a third party for the benefit of Mr. Quick. Although the evidence suggested that Mr. Quick may not have directed the conversion of these securities, it was clear that by lodging the securities at his bank, Mr. Quick had in fact used the securities for his own benefit. While the mechanics of this transaction were unclear, the effect was clear: in the result, they had been misappropriated by Mr. Quick.

15. During the investigation by Ms. Thomas, Mr. Quick represented that the documents existed, but, although promised numerous times, they were never produced. This pattern continued before the Professional Conduct Committee and even the Discipline Committee, when Mr. Quick was suspended on an interim basis on March 28, 2011.

Finding

16. The panel accepted the uncontradicted testimony of Mr. Murray and Ms. Thomas, supported by the material in the Document Brief and Interview Transcript, that Mr. Quick did misappropriate funds from the Trust, associated himself with financial statements which he knew were false and misleading, failed in his duties as a Trustee of the Trust, and did not cooperate with the Professional Conduct Committee investigation.

Decision

17. The evidence in this matter is clear, cogent and convincing. The misconduct as charged has been proven. After deliberating, the panel made the following decision:

THAT, charge No. 4 having been amended at the hearing, and having heard the plea of guilty to Charge Nos. 1, 2, 3 and 4, and having seen, heard and considered the evidence, the Discipline Committee finds David F. Quick guilty of the charges.

Sanction

18. Neither party called additional evidence with respect to sanction, although Mr. Quick's earlier statement of his circumstances was considered by the panel in relation to penalty with the consent of counsel for the Professional Conduct Committee.

19. Ms. Hersak, on behalf of the Professional Conduct Committee, submitted that an appropriate sanction in this matter would be: a written reprimand; a fine in the amount of \$10,000; revocation of membership; and full publicity including newspaper publication. The Professional Conduct Committee also sought an order for the costs of the investigation and hearing on a partial indemnity basis. Ms. Hersak filed a Costs Outline (Exhibit 7) which showed that the costs of the investigation and hearing were in excess of \$48,000. The Professional Conduct Committee was seeking an order for recovery of 50% of the costs. Ms. Hersak indicated the outline had assumed that the hearing would take two days and invited the panel to make any necessary adjustments.

20. Ms. Hersak submitted that the proposed sanctions would satisfy the principles of sentencing:

specific and general deterrence. Mr. Quick's dishonest actions brought the good reputation of the profession into jeopardy. He not only misappropriated client's funds; he filed false financial statements, misled his client, misused his position of trust and, finally, did not cooperate with the investigation.

21. The conversion of client's assets to his own use, as occurred in Mr. Quick's case, clearly involves moral turpitude. In addition, there are still unanswered questions resulting from his lack of full cooperation with the investigation. Further aggravating factors include that Mr. Quick took advantage of the trust of a long-time client; abused his fiduciary responsibilities as a trustee; misled his client over an extended period; and prepared false financial statements.

22. Ms. Hersak indicated that the mitigating factors included that Mr. Quick had pleaded guilty and had expressed remorse. He has no previous contact with the Professional Conduct Committee in 35 years of practice as a CA, and he had made restitution to his client.

23. Ms. Hersak distributed a case brief with cases containing one or more of the issues of this case. Ms. Hersak pointed out relevant items in each case included in the brief.

24. Mr. Quick stated he accepted the sanction of expulsion. He asked that the panel take into account his financial situation and that a \$5,000 fine might be appropriate, with 24 months to pay. He also stated he had made full restitution to his client.

Order

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Quick be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Quick be and he is hereby fined the sum of \$10,000 to be remitted to the Institute within twenty-four (24) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Quick's membership in the Institute be and is hereby revoked.
4. THAT notice of this Decision and Order, disclosing Mr. Quick's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to all members of the Institute
 - (b) to all provincial institutes/Ordre;
 and shall be made available to the public.
5. THAT notice of the revocation of membership disclosing Mr. Quick's name, be given by publication on the Institute's website and in *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Quick and shall be in addition to any other costs ordered by the committee.
6. THAT Mr. Quick 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.

IT IS FURTHER ORDERED:

7. THAT Mr. Quick be and he is hereby charged costs fixed at \$10,000 to be remitted to the Institute within twenty-four (24) months from the date this Decision and Order becomes final under the bylaws.

Reasons for Sanction

26. The misappropriation of client funds is an offence that strikes at the very heart of the chartered accountant profession. It has the potential to destroy public trust in the integrity of every member of that profession. The fact that the client received full restitution is not relevant to the issue of sanction. Client funds were converted to Mr. Quick's own use; his fiduciary duty as a trustee was not fulfilled; and he lied and misled his client over an extended period. Finally, he failed to cooperate fully with the Professional Conduct Committee's investigation. Accordingly, the panel concluded that revocation of membership was required.

27. The panel was of the view that a reprimand is necessary to stress the unacceptability of his conduct as a chartered accountant.

28. The principles of general and specific deterrence require that a member who conducts himself or herself as Mr. Quick did, in addition to membership revocation, must face a financial penalty. The Professional Conduct Committee submitted a \$10,000 fine was appropriate. The panel concluded that such a fine was appropriate, meeting both the specific and general deterrence criteria.

Costs

29. The Costs Outline submitted by the Professional Conduct Committee discloses that the cost of the investigation of this case was almost \$49,000. After taking into account that the hearing was only one day, the costs would be approximately \$44,000. The Professional Conduct Committee was seeking 50% of such costs. After considering the costs incurred, and the financial situation of Mr. Quick, the panel concluded that in the circumstances a cost award of \$10,000 would be appropriate.

DATED AT TORONTO THIS 5TH DAY OF JULY, 2011
BY ORDER OF THE DISCIPLINE COMMITTEE



S.F. DINELEY, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

J.H. FRIDAY, FCA
B. SOLWAY (PUBLIC REPRESENTATIVE)
D.G. WILSON, CA