

David Sacks: Summary, as Published in *CheckMark*

David Sacks, of Willowdale, was found guilty of five charges under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, and one charge under Rule 205 of signing or associating himself with a document which he knew or should have known was false or misleading. Without authorization, Mr. Sacks signed the names of certain clients on powers of attorney and guarantee documents relating to a mortgage on real property, and then, having signed their names, signed his own name as witness to the signatures. In one case, Mr. Sacks swore a false affidavit attesting that he was personally present and witnessed the signature of a client on a document, when in fact he did not witness the signature, having signed the document himself. He was fined \$2,500 and expelled from the Institute.

CHARGE(S) LAID re David Sacks

The Professional Conduct Committee hereby makes the following charges against David Sacks, a suspended member of the Institute:

1. THAT, the said David Sacks, on or about November 28, 1990, signed or associated himself with a document which he knew or should have known was false or misleading, in that he swore an affidavit attesting that he was personally present and witnessed the signature of A. Herman on a power of attorney given by A. Herman to David Sacks, when he did not witness A. Herman's signature on the power of attorney, and did thereby swear a false affidavit, contrary to Rule 205 of the rules of professional conduct.
2. THAT, the said David Sacks, in or about November 1990, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that:
 - (a) he signed, without authorization, Alfred Herman, QC's name on a power of attorney relating to a mortgage on real property in St. John's, Newfoundland; and
 - (b) having signed Alfred Herman, QC's name on a power of attorney relating to a mortgage on real property in St. John's, Newfoundland, he signed his own name as witness to the signature of Alfred Herman, QC,contrary to Rule 201.1 of the rules of professional conduct.
3. THAT, the said David Sacks, in or about November 1990, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that:
 - (a) he signed, without authorization, Alfred Herman, QC's name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland; and
 - (b) having signed Alfred Herman, QC's name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland, he signed his own name as witness to the signature of Alfred Herman, QC,contrary to Rule 201.1 of the rules of professional conduct.
4. THAT, the said David Sacks, in or about November 1990, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that:
 - (a) he signed, without authorization, Terry Logaridis' name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland; and
 - (b) having signed Terry Logaridis' name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland, he signed his own name as witness to the signature of Terry Logaridis,

contrary to Rule 201.1 of the rules of professional conduct.

5. THAT, the said David Sacks, in or about November 1990, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that:

- (a) he signed, without authorization, Betty Stratford's name on a power of attorney relating to a mortgage on real property in St. John's, Newfoundland; and
- (b) having signed Betty Stratford's name on a power of attorney relating to a mortgage on real property in St. John's, Newfoundland, he signed his own name as witness to the signature of Betty Stratford,

contrary to Rule 201.1 of the rules of professional conduct.

6. THAT, the said David Sacks, in or about November 1990, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that:

- (a) he signed, without authorization, Betty Stratford's name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland; and
- (b) having signed Betty Stratford's name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland, he signed his own name as witness to the signature of Betty Stratford,

contrary to Rule 201.1 of the rules of professional conduct.

Dated at Toronto this 5th day of June, 1997.

NICHOLAS M. HODSON, CA - ACTING CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re David Sacks

DECISION AND ORDER IN THE MATTER OF: Charges against **DAVID SACKS**, a suspended member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE NOVEMBER 18, 1997

DECISION

THAT, having seen, heard and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Sacks, pursuant to Institute bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to charges Nos. 1, 2, 3, 4, 5 and 6, the Discipline Committee finds Mr. Sacks guilty of charges Nos. 1, 2, 3, 4, 5 and 6.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Sacks be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Sacks be and he is hereby fined the sum of \$10,000, 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. Sacks be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Sacks'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 Globe and Mail*.
5. THAT Mr. Sacks 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 24TH DAY OF NOVEMBER 1997
BY ORDER OF THE DISCIPLINE COMMITTEE

BRYAN W. STEPHENSON, BA, LLB

SECRETARY - DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re David Sacks

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **DAVID SACKS**, a suspended member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE NOVEMBER 18, 1997

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on November 18, 1997, to hear evidence concerning charges brought by the professional conduct committee against Mr. David Sacks.

The professional conduct committee was represented by Ms. Deborah McPhadden. Mr. Sacks was not present at the hearing. Ms. Karen Radford, an administrative assistant at Mr. Sacks' office, was present at the outset of the hearing for the purpose of requesting an adjournment of the proceeding.

Ms. Radford indicated to the panel that she had been asked to attend the hearing by Mr. Sacks, and that she was requesting an adjournment on his behalf on the basis that important documents in a related civil action had not yet been received by him. It was Mr. Sacks' view, she explained, that these documents -- being transcripts in an ongoing civil action involving the same issues as those before this panel -- were required before the discipline hearing could properly proceed.

Ms. McPhadden, on behalf of the professional conduct committee, opposed the adjournment for the following reasons:

- It was Ms. McPhadden's understanding that the transcripts referred to were, in fact, available on November 13, 1997.
- Mr. Sacks verbally advised Ms. McPhadden on November 12, 1997 that, in addition to the issue of the transcripts noted above, Mr. Sacks would not be able to attend the hearing as he would be at a convention in the United States.
- All witnesses to be called by the professional conduct committee were in attendance to give evidence.

After deliberating on the submissions made by Ms. McPhadden and Ms. Radford, the panel unanimously concluded that the hearing should proceed pursuant to Bylaw 560. The charges against Mr. Sacks were of a serious nature. If it was so important to him that this hearing be adjourned, then he should have been in attendance to make the request. The panel accepted the submission of Ms. McPhadden that all relevant documentation relating to the charges had been made available to Mr. Sacks, and determined from the evidence before it that Mr. Sacks was well aware of the date of this hearing, noting that the date had been chosen at the assignment hearing of August 14, 1997, at which Mr. Sacks had been present.

Upon the announcement by the chair of the decision to proceed, Ms. Radford excused herself from the hearing.

THE CHARGES AND THE PLEA

The professional conduct committee had laid the following six charges of professional misconduct against Mr. Sacks:

1. *THAT, the said David Sacks, on or about November 28, 1990, signed or associated himself with a document which he knew or should have known was false or misleading, in that he swore an affidavit attesting that he was personally present and witnessed the signature of A. Herman on a power of attorney given by A. Herman to David Sacks, when he did not witness A. Herman's signature on the power of attorney, and did thereby swear a false affidavit, contrary to Rule 205 of the rules of professional conduct.*
2. *THAT, the said David Sacks, in or about November 1990, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that:*
 - (a) *he signed, without authorization, Alfred Herman, QC's name on a power of attorney relating to a mortgage on real property in St. John's, Newfoundland; and*
 - (b) *having signed Alfred Herman, QC's name on a power of attorney relating to a mortgage on real property in St. John's, Newfoundland, he signed his own name as witness to the signature of Alfred Herman, QC,**contrary to Rule 201.1 of the rules of professional conduct.*
3. *THAT, the said David Sacks, in or about November 1990, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that:*
 - (a) *he signed, without authorization, Alfred Herman, QC's name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland; and*
 - (b) *having signed Alfred Herman, QC's name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland, he signed his own name as witness to the signature of Alfred Herman, QC,**contrary to Rule 201.1 of the rules of professional conduct.*
4. *THAT, the said David Sacks, in or about November 1990, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that:*
 - (a) *he signed, without authorization, Terry Logaridis' name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland; and*
 - (b) *having signed Terry Logaridis' name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland, he signed his own name as witness to the signature of Terry Logaridis,**contrary to Rule 201.1 of the rules of professional conduct.*
5. *THAT, the said David Sacks, in or about November 1990, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that:*
 - (a) *he signed, without authorization, Betty Stratford's name on a power of attorney relating to a mortgage on real property in St. John's, Newfoundland; and*

(b) *having signed Betty Stratford's name on a power of attorney relating to a mortgage on real property in St. John's, Newfoundland, he signed his own name as witness to the signature of Betty Stratford, contrary to Rule 201.1 of the rules of professional conduct.*

6. *THAT, the said David Sacks, in or about November 1990, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that:*

(a) *he signed, without authorization, Betty Stratford's name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland; and*
(b) *having signed Betty Stratford's name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland, he signed his own name as witness to the signature of Betty Stratford, contrary to Rule 201.1 of the rules of professional conduct.*

In the absence of Mr. Sacks, a plea of not guilty to each charge was entered on his behalf.

DECISION ON THE CHARGES

Facts

Ms. McPhadden, on behalf of the professional conduct committee, filed a document brief (Exhibit 10), that contained various documents in support of the charges. Ms. McPhadden also called witnesses that provided oral evidence in support of the charges. The witnesses, Terry Logaridis, Valerie Logaridis, Alfred Herman and Betty Stratford, provided the panel with the following evidence:

- They had used the accounting and/or tax preparation services of David Sacks for a number of years prior to the events leading to the charges in this case.
- They asked Mr. Sacks to recommend a long-term investment strategy or vehicle that would achieve income tax savings.
- Mr. Sacks recommended a real estate venture in the Province of Newfoundland.
- Mr. Sacks provided very little detail with regard to the real estate venture, but promised that details would follow, which never did.
- Mr. Sacks signed their names to a mortgage guarantee document and a power of attorney document, when they had never agreed to either guarantee a mortgage or provide Mr. Sacks with power of attorney to sign their names.
- The signatures that appeared on the mortgage guarantee and the power of attorney document were not their signatures.
- They never gave Mr. Sacks the authority to sign anything on their behalf.
- They were unaware that Mr. Sacks had improperly signed their names on documents relating to the real estate venture, or that the venture was in financial difficulty, until they received correspondence from a mortgage

company advising that they had personally guaranteed a mortgage that was in default.

Mr. John Douglas, CA, an investigator hired by the professional conduct committee, gave oral evidence that he had reviewed the various documents in issue, and had met with David Sacks. Mr. Douglas testified that Mr. Sacks had admitted signing the mortgage guarantees and powers of attorney on behalf of his clients. He stated that Mr. Sacks had indicated to him, however, that all the participants had given him oral permission to sign the documents. Even if this were true, Mr. Sacks would not be justified or entitled to swear the affidavit he did. Mr. Sacks in effect lied under oath.

It was the panel's understanding that a civil action involving Mr. Sacks, the above-noted participants in the real estate venture, and the mortgage company, was in progress.

On the basis of the oral and documentary evidence tendered by the professional conduct committee, the panel, upon deliberation, found Mr. Sacks guilty of the six charges laid against him.

ORDER AS TO SANCTION

After making its findings of guilty, the panel heard submissions from Ms. McPhadden on the issue of sanction, after which, upon deliberation, it made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Sacks be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Sacks be and he is hereby fined the sum of \$10,000, 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. Sacks be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Sacks'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 Globe and Mail*.
5. THAT Mr. Sacks 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.

The following are the panel's reasons for the sanctions order imposed. In reaching its conclusions as to sanction, the panel considered the principles of general deterrence, specific deterrence and rehabilitation.

Reprimand

The panel concluded that a letter of reprimand to Mr. Sacks was necessary to stress to him the unacceptability of his actions, and to underline the fact that a chartered accountant has a duty to uphold the good reputation of the profession. Mr. Sacks signed documents on behalf of his clients without their knowledge or consent. This type of behavior is totally unacceptable conduct, and will not be tolerated by the Institute.

Fine

The professional conduct committee requested a fine of \$5,000. The panel's view was that forging clients' signatures was one of the most serious offences that a chartered accountant could commit, and felt that a larger fine was required. It ultimately decided that a fine in the amount of \$10,000 would be appropriate, to act as a general deterrent to like-minded members, and also to serve as a specific deterrent to Mr. Sacks.

Expulsion

The panel concluded that the serious nature of the offence committed in this case left it no choice but to expel Mr. Sacks. Dishonest behavior of the kind exhibited by this member dangerously undermines the public's confidence in the chartered accountancy profession, and tarnishes the good reputation the profession works so hard to uphold. In the circumstances, the panel rejected any notion of Mr. Sacks' rehabilitation.

Notice

The panel ordered the usual notice of this matter, including the publication of Mr. Sacks' expulsion in *The Globe and Mail* newspaper. It is important that the public be informed of serious disciplinary proceedings, particularly in cases where members of the public have suffered losses as a result of a member's dishonesty and moral turpitude.

Surrender of Certificate

As is usual in cases involving expulsion, the panel ordered Mr. Sacks to surrender his certificate of membership, to which he is no longer entitled.

DATED AT TORONTO, THIS DAY OF MARCH, 1998
BY ORDER OF THE DISCIPLINE COMMITTEE

L. P. BOOKMAN, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL

H.B. BERNSTEIN, CA
S.W. SALTER, CA
B.L. STEPHENS, CA
K. TSE, CA
B.W. BOWDEN (Public representative)

APPEAL COMMITTEE re David Sacks

DECISION AND REASONS IN THE MATTER OF: An appeal by **David Sacks**, a suspended member of the Institute, of the Decision and Order of the Discipline Committee made on November 18, 1997, pursuant to the bylaws of the Institute, as amended.

DECISION AND REASONS FOR DECISION MADE SEPTEMBER 9, 1998

This appeal was heard by a panel of the appeal committee of the Institute of Chartered Accountants of Ontario on September 9, 1998.

Ms. Deborah McPhadden appeared on behalf of the professional conduct committee. Mr. Sacks attended on his own behalf without benefit of legal counsel.

Mr. Sacks was seeking an order from the appeal committee setting aside completely the decision and order of the discipline committee made on November 18, 1997, and granting a new hearing. In the alternative, Mr. Sacks asked for an order varying the quantum of the fine levied by the discipline committee.

After hearing and deliberating on the submissions made by the parties, a majority of the panel members concluded that, in the circumstances of this case, the discipline committee should not have refused the request made on behalf of Mr. Sacks for an adjournment, and should not have proceeded with his hearing in his absence. Accordingly, pursuant to its authority under Bylaw 605 to proceed in such manner and grant such relief as the nature of the case or natural justice may require, the panel ordered that a new hearing into the charges be conducted 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 in due course.

MAJORITY REASONS FOR DECISION

The basic facts of the case were that Mr. Sacks failed to attend the discipline hearing on the date scheduled, but instead sent an administrative assistant from his office to request an adjournment of the proceeding on his behalf. This request was opposed by the professional conduct committee. After hearing submissions and deliberating on the matter, the discipline panel denied the adjournment request, and proceeded with the hearing in Mr. Sacks' absence. The discipline panel found Mr. Sacks guilty of the charges laid against him, and ordered that he be fined \$10,000 and expelled from membership in the Institute.

During the appeal hearing it became apparent to a majority of the members of the appeal panel that Mr. Sacks did not distinguish between the professional conduct committee and the discipline committee, and therefore did not differentiate their separate and distinct roles. Mr. Sacks corresponded twice by letter and once by telephone with Ms. McPhadden, requesting an adjournment of his hearing, and notifying her that it was the advice of his legal counsel that he not attend a hearing until in possession of evidence believed required for a fair hearing. This evidence was a transcript from a related civil suit, and did not arrive at Mr. Sacks' office until November 14, 1997. Although there was no question that Ms. McPhadden had advised Mr. Sacks that the professional conduct committee would not agree to an adjournment, it was not

clear that he was aware that it was the discipline committee, and not the professional conduct committee, that had the authority to grant adjournments, and that an adjournment request had to be put before the discipline committee. At no time did Mr. Sacks correspond with the discipline committee to seek an adjournment.

In the written reasons for its decision, the discipline committee stated that “[i]f it was so important to him that this hearing be adjourned, then he should have been in attendance to make the request”. The discipline committee placed undue importance on Mr. Sacks’ absence from the hearing, it was decided by a majority of the panel, when his absence was on the advice of his legal counsel, and not because he did not take the charges seriously. The majority also decided that the discipline committee relied too heavily on the submission of Ms. McPhadden that all relevant documentation was available to Mr. Sacks prior to the hearing. Although Mr. Sacks received the transcripts he required on November 14, 1997, as the discipline hearing was scheduled for November 18 and 19, the intervening four days did not provide him sufficient time before the hearing to review the material and incorporate it into his defence.

A majority of the appeal panel came to the view that it could not uphold the expulsion of Mr. Sacks arising out of the discipline committee’s unfavourable disposition of his adjournment request. While Mr. Sacks acted inappropriately in failing to advise the discipline committee in advance of his desire for an adjournment, and in failing to attend the hearing personally to request the adjournment, the majority nevertheless decided that the grounds presented for an adjournment had sufficient merit that the adjournment should not have been denied, and that, as a result, the discipline committee’s decision and order could not stand. The panel’s decision, therefore, was that the decision and order of the discipline committee be struck, and that the matter be sent back to the discipline committee for a new hearing.

Having reached this conclusion, it was not necessary for the panel to consider Mr. Sacks’ alternative request for an order varying the quantum of the fine levied by the discipline committee.

MINORITY REASONS

The Institute’s disciplinary process is clear and understandable, and members charged are given all appropriate details and information concerning it at a very early stage. Mr. Sacks was provided with a document setting out discipline committee hearing procedure, and a copy of Part 500 of the Institute’s bylaws setting out the practice and procedure before the discipline committee, when he was served with the charges and Notice of Assignment Hearing in July, 1997, a month before the assignment hearing, and four months before the scheduled hearing.

Bylaws 510 and 530 describe the composition and powers of the professional conduct committee and the discipline committee, respectively, clearly distinguishing the separate constituencies and roles of the two committees. The Notice of Assignment Hearing stated that “the discipline committee will expect to proceed with the hearing on the date(s) set at the assignment hearing”. Mr. Sacks was present at the assignment hearing and agreed with the hearing dates established. When it became apparent to him that he would not have the documentation he believed was necessary to his defence in sufficient time prior to the hearing for it to be of benefit to him, Mr. Sacks did not attempt to correspond with the discipline committee about the possibility of an adjournment of his hearing.

Bylaw 560 states that “[a]ny person charged shall attend at the time and place appointed for the hearing of the charge; and if the person charged does not attend at the formal hearing, the discipline committee may proceed in his or her absence and he or she will not be entitled to any further notice in the proceedings”. Mr. Sacks made a conscious decision not to attend the

hearing, and therefore left it open to the discipline committee to proceed without him pursuant to Bylaw 560. He had the opportunity to appear and argue his reasons for an adjournment, and chose not to avail himself of that opportunity.

Due possibly to his lack of representation by legal counsel, and/or his apparent inability to accept the consequences of his own actions, Mr. Sacks failed to appreciate the nature and seriousness of the disciplinary process and the charges against him. He should not be relieved of his responsibilities under the bylaws, however, simply because, for whatever reason, he failed to take reasonable steps to protect his interests.

It is the minority opinion of this panel that the discipline committee acted fairly, and that its refusal to grant an adjournment did not constitute a denial of natural justice to Mr. Sacks. The minority would have denied Mr. Sacks' request for a new hearing, and dismissed his appeal.

DATED AT TORONTO, THIS
BY ORDER OF THE APPEAL COMMITTEE

DAY OF DECEMBER, 1998

R.E. PARISI, CA – DEPUTY CHAIR
THE APPEAL COMMITTEE
(of the minority)

MEMBERS OF THE PANEL

E.W. CONLIN, CA (of the majority)
E.W. SLAVENS, FCA (of the minority)
E. ZAVERSHNIK, CA (of the majority)
L.L. WORTHINGTON, FCA (of the majority)
S. HORSFALL-EATON (Public representative) (of the majority)

DISCIPLINE COMMITTEE re David Sacks

DECISION AND ORDER IN THE MATTER OF: Charges against **DAVID SACKS**, a suspended member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JANUARY 12, 1999

DECISION

THAT, having seen, heard and considered the evidence, the Discipline Committee finds David Sacks guilty of charges Nos. 1, 2, 3, 4, 5 and 6.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Sacks be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Sacks be and he is hereby fined the sum of \$2,500, 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. Sacks be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Sacks' 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 Globe and Mail*.
5. THAT Mr. Sacks 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 19TH DAY OF JANUARY, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re David Sacks

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **DAVID SACKS**, a suspended member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE JANUARY 12, 1999

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on January 5, 6 and 12, 1999 to hear evidence concerning charges brought by the professional conduct committee against David Sacks.

The professional conduct committee was represented by Ms. Deborah McPhadden. Mr. Sacks was present without legal counsel and represented himself throughout the proceedings. He acknowledged that he was aware of his right to be represented by counsel, and that he had been made aware of this right prior to the hearing.

THE CHARGES AND THE PLEA

Six charges had been laid against Mr. Sacks. The first charge alleged that he had sworn an affidavit attesting that he was personally present and witnessed a signature on a document, when in fact he did not witness the signature, thereby swearing a false affidavit, contrary to Rule of Professional Conduct 205. The other five charges, laid pursuant to Rule of Professional Conduct 201.1, alleged that Mr. Sacks had signed, without authorization, the names of certain people on powers of attorney and guarantees relating to a mortgage on real property, and that, having signed their names, he had then signed his own name as witness to the signatures.

The charges read as follows:

1. *THAT, the said David Sacks, on or about November 28, 1990, signed or associated himself with a document which he knew or should have known was false or misleading, in that he swore an affidavit attesting that he was personally present and witnessed the signature of A. Herman on a power of attorney given by A. Herman to David Sacks, when he did not witness A. Herman's signature on the power of attorney, and did thereby swear a false affidavit, contrary to Rule 205 of the rules of professional conduct.*
2. *THAT, the said David Sacks, in or about November 1990, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that:*
 - (a) *he signed, without authorization, Alfred Herman, QC's name on a power of attorney relating to a mortgage on real property in St. John's, Newfoundland; and*
 - (b) *having signed Alfred Herman, QC's name on a power of attorney relating to a mortgage on real property in St. John's, Newfoundland, he signed his own name as witness to the signature of Alfred Herman, QC,*
contrary to Rule 201.1 of the rules of professional conduct.

3. *THAT, the said David Sacks, in or about November 1990, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that:*
 - (a) *he signed, without authorization, Alfred Herman, QC's name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland; and*
 - (b) *having signed Alfred Herman, QC's name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland, he signed his own name as witness to the signature of Alfred Herman, QC,*
contrary to Rule 201.1 of the rules of professional conduct.
4. *THAT, the said David Sacks, in or about November 1990, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that:*
 - (a) *he signed, without authorization, Terry Logaridis' name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland; and*
 - (b) *having signed Terry Logaridis' name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland, he signed his own name as witness to the signature of Terry Logaridis,*
contrary to Rule 201.1 of the rules of professional conduct.
5. *THAT, the said David Sacks, in or about November 1990, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that:*
 - (a) *he signed, without authorization, Betty Stratford's name on a power of attorney relating to a mortgage on real property in St. John's, Newfoundland; and*
 - (b) *having signed Betty Stratford's name on a power of attorney relating to a mortgage on real property in St. John's, Newfoundland, he signed his own name as witness to the signature of Betty Stratford,*
contrary to Rule 201.1 of the rules of professional conduct.
6. *THAT, the said David Sacks, in or about November 1990, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that:*
 - (a) *he signed, without authorization, Betty Stratford's name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland; and*
 - (b) *having signed Betty Stratford's name on a guarantee relating to a mortgage on real property in St. John's, Newfoundland, he signed his own name as witness to the signature of Betty Stratford,*
contrary to Rule 201.1 of the rules of professional conduct.

Mr. Sacks pleaded not guilty to all of the charges.

THE CASE FOR THE PROFESSIONAL CONDUCT COMMITTEE

Ms. McPhadden, on behalf of the professional conduct committee, filed a document brief that contained various documents in support of the charges. She also called witnesses - Terry Logaridis, a medical doctor; his wife Valerie Logaridis; Alfred Herman, a lawyer; and Betty Stratford, Mr. Herman's legal secretary - who provided the panel with the evidence hereinafter set out.

The witnesses had engaged Mr. Sacks as their accountant and/or tax preparer for a number of years. When they asked Mr. Sacks to recommend a tax shelter to them, he recommended a real estate venture in the Province of Newfoundland.

Due to time constraints of tax return filing deadlines, Mr. Sacks provided very little detail with regard to the real estate venture, but promised that details would follow. The witnesses claimed he never supplied documentation with regard to the investment.

Mr. Sacks signed their names to a mortgage guarantee document and a power of attorney document, when they had never agreed to either guarantee a mortgage or provide Mr. Sacks with power of attorney to sign their names.

The witnesses whose names appeared as signatories on the mortgage guarantee and power of attorney documents testified that the signatures that appeared thereon were not theirs, and that they had never given Mr. Sacks the authority to sign anything on their behalves.

They were unaware that Mr. Sacks had improperly signed their names on documents relating to the real estate venture, or that the venture was in financial difficulty, until they received a letter from a mortgage company advising that they had personally guaranteed a mortgage that was in default.

Mr. John Douglas, CA, the professional conduct committee investigator, gave oral evidence that he had reviewed the various documents and had met with David Sacks. Mr. Douglas testified that Mr. Sacks had admitted signing the mortgage guarantees and powers of attorney on behalf of his clients, but said he had done so only because he felt he had their permission.

Mr. Sacks cross-examined all the witnesses, and asked questions which went to their credibility. The panel struggled with the credibility of the witness Alfred Herman.

THE CASE FOR THE MEMBER

Mr. Sacks called his former partner, Mr. Gary Pollack, as a witness. He also testified himself. It was Mr. Sacks' evidence that he had been authorized by telephone to execute the documents in question by Mr. Herman, Dr. Logaridis and Ms. Stratford.

Mr. Sacks testified that he explained to all of the investors, whom he called partners, that, as partners, they faced unlimited liability for the project, but that if they agreed to provide guarantees, their liability on the guarantees would be limited to their percentage interest in the project. Understandably, in Mr. Sacks' view, the partners agreed, but, as they were too busy to attend at his office, they authorized him to sign on their behalves.

Contrary to the evidence of the investors, Mr. Sacks insisted that they had been sent financial information on the project on a regular and timely basis, and understood that they were liable as partners for all of the mortgage. Mr. Pollack's evidence related to the financial information, and confirmed Mr. Sacks' evidence in that regard. His testimony did not deal with the issue of whether or not the investors had given Mr. Sacks authority to sign their names.

Mr. Sacks' defence to the Rule 205 charge was that, as he was authorized to execute the power of attorney, it was also proper for him to swear the affidavit.

DECISION ON THE CHARGES

Charge No. 1

The panel concluded that Mr. Sacks should have known that the affidavit he swore was false, if in fact he did not know it was false. The affidavit reads in part: "I was personally present and witnessed the signature of A Herman on a Power of Attorney given by A Herman to David Sack..."

Even if Mr. Sacks believed that he had been authorized to sign the power of attorney, he should have known that he could not be both authorized to sign, and be witness to the signature. He knew that the point of the affidavit was to get the mortgage company to accept and act upon the power of attorney. Any and every chartered accountant should have known in those circumstances that the affidavit was false and misleading. Accordingly, the panel found Mr. Sacks guilty of charge No. 1.

Charges Nos. 2 to 6

It will be seen from these charges that they are similar, and that particular (b) of each charge is that Mr. Sacks signed his own name as witness to the signature of the person who purportedly signed the document. Again, as with charge No. 1, the defence that Mr. Sacks thought he was authorized to sign a document is not a defence to his also signing as witness to the signature. Accordingly, he was found in breach of particular (b) of each of charges Nos. 2 to 6.

As with charge No. 1, Mr. Sacks again did not seem to appreciate that the gravamen of the misconduct alleged in charges Nos. 2 to 6 related not just to purporting to sign for Mr. Herman, Dr. Logaridis or Ms. Stratford, but also to the reasonable commercial expectations of those who received the documents.

This panel had more difficulty with particular (a) of these five charges. The standard of proof which the professional conduct committee must meet is something more onerous than the preponderance of probabilities, and there must be clear and cogent evidence of the facts alleged before a finding of guilty can be made. The panel was not persuaded that this standard had been met with respect to particular (a) of charges Nos. 2 and 3, but was persuaded the facts had been proven with respect to particular (a) of charges Nos. 4, 5 and 6.

The facts proven clearly constitute professional misconduct in respect of at least one particular of each charge, and, accordingly, Mr. Sacks was found guilty of all six charges.

It was only after the panel deliberated, and made and announced its decision, that counsel to the discipline committee advised that as a matter of law - issue estoppel - the decision of Justice Orsborn of the Supreme Court of Newfoundland in Mackenzie Trust v. Sacks et al precluded a finding that Dr. Logaridis or Ms. Stratford had authorized Mr. Sacks to execute the documents in question on their behalves. In light of the panel's finding, this advice did not impact on its decision.

ORDER AS TO SANCTION

After making its finding of guilty, the panel heard submissions from both Ms. McPhadden and Mr. Sacks on the issue of sanctions, after which, upon deliberation, it made the following order:

ORDER

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

2. THAT Mr. Sacks be and he is hereby fined the sum of \$2,500, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
6. THAT Mr. Sacks be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Sacks' 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 Globe and Mail*.
6. THAT Mr. Sacks 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.

Reprimand

The panel concluded that a letter of reprimand to Mr. Sacks was necessary to stress to him the unacceptability of his actions, and to underline the fact that a chartered accountant has a duty to uphold the good reputation of the profession. Mr. Sacks signed documents on behalf of his clients without their knowledge or consent. This type of behaviour is totally unacceptable conduct, and will not be tolerated by the Institute.

Fine

The professional conduct committee requested a fine of \$5,000. The panel decided that a fine in the amount of \$2,500 would be appropriate, to act as a general deterrent to like-minded members, and also to serve as a specific deterrent to Mr. Sacks.

Expulsion

The panel concluded that the serious nature of the offences committed in this case left it no choice but to expel Mr. Sacks. Dishonest behavior of the kind exhibited by this member dangerously undermines the public's confidence in the chartered accountancy profession, and must not be tolerated.

Notice

The giving of notice, including publication, of the discipline committee's decision and order, disclosing Mr. Sacks' name, is, in the opinion of the panel, a general deterrent. The discipline committee has a responsibility to ensure that members of the profession and the general public are made aware that failure on the part of members to cooperate with the self-regulatory functions of the Institute can result in serious consequences. An important factor in the governance of a profession is communication of the fact that it does not take breaches of its bylaws and rules of professional conduct lightly. Accordingly, the panel ordered the giving of notice of these proceedings, including by way of newspaper publication of expulsion in *The Globe and Mail*, as there had been no grounds presented to interfere with the application of Bylaw 575(3) in this regard.

Surrender of Certificate

As is usual in cases involving expulsion, the panel ordered Mr. Sacks to surrender his certificate of membership, to which he is no longer entitled.

DATED AT TORONTO THIS DAY OF MARCH, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE

D.P. SETTERINGTON, CA – CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

D.W. DAFOE, FCA
P.B.A. CLARKSON, CA
B.L. HAYES, CA
B.A. YOUNG (Public representative)