

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

DISCIPLINE COMMITTEE

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

TO: Mr. David S. Stone
10 Northtown Way, #2208
TORONTO, ON M2N 7L4

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made January 14, 2009)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario convened on January 14, 2009, to hear charges of professional misconduct brought by the Professional Conduct Committee against David S. Stone, a suspended member of the Institute.
2. Alexandra Hersak appeared for the Professional Conduct Committee. She was accompanied by Bruce Armstrong, CA, the investigator appointed by the Professional Conduct Committee. She was also accompanied by Peggy Bennett, CA, an expert retained by the Professional Conduct Committee.
3. Mr. Stone attended, and was represented by counsel, Thomas Sosa.
4. The decision and the terms of the order were made known at the hearing on January 14, 2009. The written Decision and Order was sent to the parties on January 21, 2009. These reasons, given pursuant to Bylaw 574, include the charges, the decision, the order, and the reasons of the panel for its decision and order.

CHARGES

5. Ms. Hersak raised, as a preliminary matter, the withdrawal of charge No. 5 and the amendment of charge Nos. 1 and 2. The charges (Exhibit 1) originally laid by the Professional Conduct Committee on August 15, 2008, with charge Nos. 1 and 2 as amended, read as follows:

1. THAT the said David S. Stone, in or about the period January 1, 2000 through April 30, 2002 prepared and filed his personal income tax returns for the years ~~1999~~, 2000 and 2001 which he knew or should have known were false or misleading contrary to Rule 205 of the Rules of Professional Conduct in that he noted on the returns that he did not own or hold foreign property at any time in the year with a total cost of more than CAN\$100,000 when in fact he owned such property.

2. THAT the said David S. Stone, in or about the period January 1, 2000 through April 30, 2002 prepared and filed the personal income tax returns of his spouse, "JC", for the years 1999, 2000 and 2001 which he knew or should have known were false or misleading contrary to Rule 205 of the Rules of Professional Conduct in that he noted on the returns that he did not own or hold foreign property at any time in the year with a total cost of more than CAN\$100,000 when in fact she owned such property.
3. THAT the said David S. Stone, in or about the period January 1, 2001 through April 30, 2001 prepared and filed his personal income tax return for the year 2000 which he knew or should have known was false or misleading contrary to Rule 205 of the Rules of Professional Conduct in that he failed to report foreign accrual property income earned by "Q Corp" and "E Corp," both of which were jointly owned by him and his spouse, resulting in an understatement of his taxable income in the amount of \$281,450.
4. THAT the said David S. Stone, in or about the period January 1, 2001 through April 30, 2001 prepared and filed the personal income tax return of his spouse, "JC" for the year 2000 which he knew or should have known was false or misleading contrary to Rule 205 of the Rules of Professional Conduct in that he failed to report foreign accrual property income earned by "Q Corp" and "E Corp," both of which were jointly owned by him and "JC", resulting in an understatement of her taxable income in the amount of \$286,795.
5. ~~THAT the said David S. Stone, in or about the period January 1, 2001 through April 30, 2001, having assumed responsibility for filing the tax returns for "Q Corp" and "E Corp," both of which were jointly owned by him and his spouse "JC", did not file a Canadian tax return for "Q Corp" and "E Corp," and thereby avoided the payment of tax, contrary to Rule 201.1 of the Rules of Professional Conduct.~~

THE PLEA

6. Mr. Stone entered a plea of guilty to each of the four charges and confirmed for the record that he understood that on the basis of his plea of guilty, and on that basis alone, he could be found guilty of the charges.

THE PROCEEDINGS

7. Ms. Hersak gave a brief opening statement and filed an Agreed Statement of Facts (Exhibit 2) and a Document Brief and Brief of Authorities (Exhibit 3).
8. Ms. Hersak called Ms. Bennett who reviewed a number of applicable provisions of the *Income Tax Act* related to off-shore trading of securities. Mr. Sosa was given the opportunity to cross-examine Ms. Bennett, but did not do so. Members of the panel did have some questions for Ms. Bennett.
9. At the conclusion of Ms. Bennett's evidence, Ms. Hersak closed the case for the Professional Conduct Committee. Mr. Sosa indicated that he would not call evidence on the member's behalf.

10. Ms. Hersak made submissions which Mr. Sosa confirmed were joint submissions.

THE DECISION

11. After deliberating, the panel made the following decision:

THAT, charge No. 5 having been withdrawn by the Professional Conduct Committee and charge Nos. 1 and 2 having been amended at the hearing and having seen, heard and considered the evidence including the agreed statement of facts, filed, and having heard the plea of guilty to charge Nos. 1, 2, 3 and 4 the Discipline Committee finds Mr. David S. Stone guilty of charge Nos. 1, 2, 3 and 4.

THE REASONS FOR THE DECISION

12. Mr. Stone and his spouse, Ms. Chang, incorporated two companies in the Turks & Caicos Islands, and in 2000 transferred almost \$1.5 million to those companies which actively traded put options of a public company whose shares were traded on the Toronto Stock Exchange. Ms. Chang was at all material times the Director of Investor Relations of this public company. Mr. Stone and his spouse made substantial profits and other investment income from trading and investment activities through 2001.

13. Mr. Stone prepared his and his spouse's income tax returns for the years 2000 and 2001. He failed to disclose the fact that he and his spouse owned more than \$100,000 of foreign property in the years 2000 and 2001.

14. Mr. Stone understated his taxable income to the Canadian Revenue Agency for the year 2000 by \$281,450. He also understated his spouse's taxable income to the Canadian Revenue Agency for the year 2000 by \$286,795.

15. On April 11, 2005, the Ontario Securities Commission (OSC) found that Mr. Stone and Ms. Chang, when in possession of facts not publicly disclosed, had contravened section 76(2) of the *Securities Act* by purchasing 1000 put options of the public corporation for which Ms. Chang worked.

16. The panel concluded that the allegations set out in the four charges had been proven, that Mr. Stone's conduct constituted professional misconduct and, therefore, he was guilty of the charges.

SANCTION

17. Mr. Hersak outlined the order requested by the Professional Conduct Committee namely: a reprimand, a fine in the amount of \$15,000, a suspension for two years, costs fixed at \$10,000 and the usual publicity, including publication of a notice disclosing Mr. Stone's name in a newspaper published in the Toronto area.

18. Ms. Hersak submitted that the three principles: rehabilitation; specific deterrence; and general deterrence, which apply when a panel imposes sanction, were all relevant in this case.

19. Ms. Hersak submitted that the fact Mr. Stone had already been sanctioned by the OSC was relevant, but it did not mean that the Institute should not impose a sanction for his professional misconduct which was a separate matter from his breach of the *Securities Act*.

20. Ms. Hersak submitted that the aggravating circumstances were: the misconduct involved clear breaches of the *Income Tax Act* and the *Securities Act*; and the amount of money involved was significant.

21. Ms. Hersak submitted that the mitigating factors were that Mr. Stone voluntarily disclosed the misconduct to the Institute, that he had paid the tax including penalties and interest, that his misconduct did not involve clients, that he had cooperated with the Professional Conduct Committee and in the discipline process including signing an Agreed Statement of Facts.

22. Ms. Hersak submitted that a reprimand was necessary to emphasize to Mr. Stone the seriousness of his misconduct.

23. Ms. Hersak submitted that both specific deterrence and general deterrence required a fine in the range of \$15,000.

24. Ms. Hersak submitted that a suspension of two years was required as a specific deterrent to Mr. Stone, to allow him a period of time to rehabilitate himself, and as a general deterrent to other members.

25. Ms. Hersak said that the requested notice was necessary as a general deterrent to other members as well as a specific deterrent to Mr. Stone and that it also served to inform the public. She advised the panel that Mr. Stone knew of the requested term of the order and agreed to publication of a notice in a local newspaper disclosing his name.

26. Ms. Hersak filed a Costs Outline (Exhibit 4) which disclosed that the full cost of the investigation, prosecution and hearing exceeded \$32,000.

27. Ms. Hersak referred to the cases of *Haar* (1991 and 1992), *White* (1991 and 1992), *Fryers* (2001), *Lutvak* (1989), *Cuke* (2001), *Kelly* (1994) as cases which supported the terms of the order requested.

28. In his submissions, Mr. Sosa agreed and adopted the submissions made by Ms. Hersak.

29. In addition, he emphasized that Mr. Stone acknowledged his misconduct, had cooperated with the Institute, was genuinely remorseful and that his misconduct did not involve clients.

30. Mr. Sosa advised the panel that Mr. Stone was aware of the requested publicity including the disclosure of his name in a newspaper. He advised the panel that, in addition to the sanction imposed by the OSC, Mr. Stone had suffered other consequences as a result of his misconduct and in particular, that his marriage had broken down and he was separated from his children.

31. The panel asked a number of questions of both counsel. The panel was advised that Mr. Stone had no previous history of misconduct and that, at the time of the hearing, he was working in an administrative capacity to a CEO and President of a venture capital business.

ORDER

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Stone be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Stone be and he is hereby fined the sum of \$15,000 to be remitted to the Institute within ninety (90) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Stone be suspended from the rights and privileges of membership in the Institute for a period of two (2) years from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Stone's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
 - (a) to all members of the Institute; and
 - (b) to all provincial institutes/Ordre,and shall be made available to the public.
5. THAT notice of the suspension, disclosing Mr. Stone's name, be given by publication on the Institute's website and in *The Globe and Mail*.
6. THAT Mr. Stone 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. Stone.
7. THAT in the event Mr. Stone fails to comply with 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 by publication in *The Globe and Mail*. All costs associated with the publication shall be borne by the member and shall be in addition to any other costs ordered by the committee.

AND IT IS FURTHER ORDERED:

8. THAT Mr. Stone be and he is hereby charged costs fixed at \$10,000 to be remitted to the Institute within ninety (90) days from the date this Decision and Order becomes final under the bylaws.

REASONS FOR THE ORDER

33. The panel agreed that the jointly submitted sanction fell within the range of sanction which was appropriate for the misconduct in this case and the circumstances of the member.

Reprimand

34. Mr. Stone is to be reprimanded in writing by the Chair of the panel to stress that his misconduct was wholly unacceptable.

Fine

35. A fine of \$15,000 is required as a specific deterrent, as well as a general deterrent to other members. As requested, the panel provided that Mr. Stone could pay the fine within 90 days of the order becoming final.

Suspension

36. The panel imposed a suspension of two years as a specific deterrent to Mr. Stone, to provide a period in which he could rehabilitate himself, and as a general deterrent to other members.

Notice

37. The publication of a notice of the misconduct and the sanction imposed, which discloses the name of the member, is often the most significant sanction that can be imposed for the purposes of specific and general deterrence. Such a notice also informs the public that the chartered accounting profession takes its responsibility as a self-governing profession seriously.

38. It has been held that it is only in the most rare and unusual circumstances that the name of the member should be withheld from the notice. As members value their reputations, the effectiveness of the notice lies in the knowledge of the members that, should they misconduct themselves, any finding of their misconduct and the sanction imposed will be made known to the profession and made available to the public. In this case, there were no rare and unusual circumstances that outweighed the need for publication of the notice disclosing the member's name.

Suspension and Expulsion for failure to comply

39. Orders of the Discipline Committee which impose an obligation on a member, such as the payment of a fine and cost would be meaningless if there were no consequences for the failure to comply with the terms of the order. Accordingly, the order in this case, as is usual, provides a suspension for failure to comply with the terms of the order, and if the failure to comply continues that the member shall be expelled.

40. In the event of the suspension of a member, the member's licence to practise public accounting is also suspended. Accordingly, the fact of the suspension of the member and of the member's licence should be made available to the public. In the event of expulsion from the Institute, with the consequent revocation of the member's licence to practise public accounting, notice is to be given in a newspaper published in the location where the member practised or resides. The costs of such publication shall be borne by the member.

Costs

41. An order for costs is not made as a sanction but to indemnify the Institute, in whole or in part, for the costs of the investigation, prosecution and hearing. The costs in this case were incurred solely as a result of the member's misconduct and it is not appropriate that the membership as a whole should bear the entire burden of these costs.

42. The panel was satisfied that the costs set out in the Costs Outline filed by the Professional Conduct Committee were reasonable. Further, the panel concluded that it was appropriate that Mr. Stone indemnify the Institute to the extent of \$10,000 within 90 days of the order becoming final.

DATED AT TORONTO THIS 17th DAY OF JUNE, 2009
BY ORDER OF THE DISCIPLINE COMMITTEE

M.B. MARTENFELD, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.H. CARRINGTON (PUBLIC REPRESENTATIVE)
S.M. DOUGLAS, FCA
S.J. HOLTOM, CA
D.G. WILSON, CA