

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Charges against **DOMENIC A. GIUSTINI, CA**, a member of the Institute, under **Rules 104.1 and 201.1** of the Rules of Professional Conduct, as amended.

**TO:** Mr. Domenic A. Giustini

**AND TO:** The Professional Conduct Committee, ICAO

**REASONS**

**(Decision and Order made September 12, 2011)**

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on September 12, 2011 to hear charges of professional misconduct brought by the Professional Conduct Committee (PCC) against Dominec Angelo Giustini, a member of the Institute.

2. Ms. Alix Hersak appeared on behalf of the Professional Conduct Committee. Ms. Cynthia Amsterdam represented Mr. Giustini, who attended throughout the hearing. 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 September 12, 2011, and the written Decision and Order sent to the parties on September 13, 2011. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, contain the charges, the decision, the order, and the reasons of the panel for its decision and order.

**Charges**

4. The following charges were laid against Mr. Giustini by the Professional Conduct Committee on June 8, 2011:

1. THAT, the said Domenic A. Giustini, in or about the period October 1, 2008 through October 31, 2009, while acting as a Trustee in Bankruptcy, 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 he misappropriated funds in the approximate amount of \$37,000 from 114 bankrupt estates.
2. THAT, the said Domenic A. Giustini, in or about the period January 1, 2006 through December 31, 2009, while acting as a Trustee in Bankruptcy, 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 he directed his staff to maximize refunds on bankrupts' income tax returns by claiming, whether or not there was support:
  - a. accounting fees in the amount of \$525 per bankrupt, per return, on Schedule 4 to the T1 returns as though these were expenses incurred to earn income;

- b. a children's fitness tax credit \$500 for every bankrupt with a child;
  - c. child care expenses of \$500 per month for daycare for every bankrupt with a child; and
  - d. rent at \$800 per month for each single bankrupt or at \$900 per month for a family.
3. THAT the said Domenic A. Giustini, in or about the period May 20, 2010 to April 5, 2011, failed to co-operate with the regulatory process 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. Giustini pleaded guilty to the three charges.

### **The proceedings**

6. Ms. Hersak made an opening statement and filed an Agreed Statement of Facts (Exhibit 1) and a Document Brief (Exhibit 2). The Agreed Statement of Facts was signed by Mr. Giustini on his own behalf and by Ms. Hersak on behalf of the Professional Conduct Committee. Ms. Hersak reviewed the Agreed Statement of Facts for the panel. Ms. Amsterdam stated that she would rely on the Agreed Statement of Facts.

7. There were no witnesses called by the Professional Conduct Committee or Mr. Giustini, and neither party submitted any other evidence.

### **Evidence and relevant facts**

8. The relevant facts as set out in Exhibit 1 are not in dispute. Following a review of Mr. Giustini's practice conducted by the Office of the Superintendent in Bankruptcy (OSB), Directions for Conservatory Measures had been issued and published on the OSB website. The OSB identified numerous deficiencies in the reconciliation of the consolidated accounts of Mr. Giustini as trustee. The Directions noted Mr. Giustini's acknowledgement to the OSB that he had diverted funds properly owing to bankrupts to his own account in the approximate amount of \$37,000.

9. Respecting Charge No. 1, Canadian low income earners can receive quarterly GST refunds from the government which are exempt from the property of a bankrupt divisible among creditors. If no dividend is payable to creditors, the trustee is permitted to retain the GST refund for fees and costs. If receipts in a bankrupt's estate excluding the GST refund exceed the threshold of a trustee's fee of \$1,625, the GST is refunded to the bankrupt.

10. In 2008, Mr. Giustini prepared a listing of 53 separate estates to which GST refunds in a total amount of \$19,254.83 were owing to the bankrupts. These funds were misappropriated by Mr. Giustini and deposited to his personal bank account. In 2009, Mr. Giustini prepared a second listing referencing GST refunds due to 61 bankrupts in a total amount of \$17,755.94. These funds were also misappropriated and deposited to Mr. Giustini's personal bank account. To effect these payments, cheques were drawn on the consolidated bankruptcy trust account of Domenic Giustini

Ltd. and made payable to him personally, although the misappropriation was not reflected on the estates' trial balances. Ms. Hersak submitted that Mr. Giustini pleaded guilty to the charge and agreed to the facts set out.

11. Regarding Charge No. 2, Mr. Giustini oversaw the preparation and filing of the bankrupts' pre-bankruptcy and post-bankruptcy income tax returns. Clerical and administrative staff prepared the bankrupts' tax returns from tax input sheets provided by Mr. Giustini, rather than from source information in the bankrupts' files or notes. At all times, Mr. Giustini directed his staff to maximize the refunds on the bankrupts' tax returns by claiming accounting fees, children's fitness tax credit, child care expenses and rent, whether or not there was support for these claims. Ms. Hersak stated that these facts are acknowledged by Mr. Giustini and he has pleaded guilty.

12. Regarding Charge No. 3, an independent CA firm had been retained by Mr. Giustini's legal counsel to ensure there were no additional improprieties in Mr. Giustini's accounts. Mr. Uwe Manski, FCA, the investigator for the PCC, met with Mr. Giustini and Ms. Amsterdam, requesting that he be advised of the CA firm's progress and be provided with any reports issued. Subsequently, Mr. Manski requested Mr. Giustini's personal bank statements and related documentation in order to perform a more detailed review. Despite numerous requests and deadlines given to Mr. Giustini and his counsel, the bank statements were not provided nor did Mr. Manski receive details of the CA firm's mandate.

13. The PCC was advised that Mr. Giustini was making a voluntary disclosure to CRA. Mr. Manski requested that Mr. Giustini provide a copy of the disclosure and any particulars related to it. Ms. Amsterdam indicated that Mr. Giustini was requesting an extension from CRA and would provide a copy of the particulars when the voluntary disclosure was completed.

14. Upon request by Ms. Amsterdam, Mr. Manski provided guidelines as to the nature of the information required with respect to the CA firm's mandate. No further details of the mandate or any reports prepared by the CA firm were provided, despite undertakings by Mr. Giustini's counsel to do so.

15. A package of material representing the voluntary disclosure to the CRA, along with personal and corporate tax returns of Mr. Giustini, was provided by Ms. Amsterdam to Mr. Manski. No source documents or supporting information was provided to Mr. Manski to enable him to determine what comprised approximately \$1.2 million of "other income" or to determine the sources of the balance of the under-reported income.

16. The PCC appointed a second investigator, Ms. Peggy Bennett, CA, to review the documentation underlying the voluntary disclosure. Ms. Bennett requested that Mr. Giustini's counsel provide files related to the voluntary disclosure, specifying that the purpose of her review was to determine the sources of additional income now being reported to CRA and how the understatement of income came about.

17. Ms. Amsterdam indicated to Ms. Bennett that her firm's files were subject to solicitor client privilege and that she would have to determine what information could be made available from the source documents versus solicitor client-related work.

18. Mr. Hersak, on behalf of the PCC, wrote to Ms. Amsterdam clarifying that the PCC had no interest in reviewing the work product but required production of the files supporting the voluntary disclosure made by Mr. Giustini and his companies, consisting of Mr. Giustini's personal and business records. Despite numerous communications and undertakings to provide documentation, the information requested by the PCC with respect to source documentation underlying Mr. Giustini's voluntary disclosure was not received. Ms. Hersak submitted that Mr. Giustini had

pleaded guilty to the charge and had agreed that he failed to comply with requests for information. Ms. Hersak stated that there is clear, cogent and convincing evidence of Mr. Giustini's failure to cooperate with the regulatory process

19. With respect to Charge No. 3, Ms. Amsterdam noted that her letter to Ms. Hersak sets out her legal opinion that the privilege pertaining to the working papers of the CA firm cannot be waived without waiving the entirety of the solicitor client privilege (Exhibit 2, Tab 28). Mr. Giustini had accepted her advice that the interest of the client must be protected.

20. Ms. Hersak submitted that the PCC wanted to see source documents such as the general ledgers, T4 slips and bank statements. Mr. Giustini's financial records are not privileged information, and Ms. Hersak filed *Turnbull v. Alberta Securities Commission* case (Exhibit 4) which deals with solicitor/client privilege. The documents requested of Mr. Giustini were source documents generated by him. These documents were very relevant for the PCC to review, as they are entitled to under the Rules and the *Chartered Accountants Act, 2010*.

21. Ms. Amsterdam stated that her comments concerning Charge No. 3 were more in the vein of an explanation, and that Mr. Giustini has accepted and agreed to the facts.

### **Finding**

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

THAT, having heard the plea of guilty to Charge Nos. 1, 2, and 3, and having seen and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee finds Domenic A. Giustini guilty of the charges.

### **Reasons for Finding**

23. The panel was satisfied that the allegations set out in the charges, as detailed in the Agreed Statement of Facts, supported by the Document Brief had been proven.

### **Sanction**

24. Ms. Hersak, on behalf of the PCC, did not call evidence with respect to sanction.

25. Ms. Amsterdam, on behalf of Mr. Giustini, stated that she wished to present documents to the panel to be filed in the absence of the public. After review and deliberations, the panel concluded that the interest of Mr. Giustini in not having disclosed the intimate personal information in these documents outweighed the general principle that hearings be open to the public. Consequently, the panel ordered, under Rule 16.02 of the Rules of Practice and Procedure, that the documents and the portion of the hearing discussing these documents would be held in the absence of the public. Ms. Amsterdam filed documents outlining Mr. Giustini's personal circumstances (Exhibit 4, sealed).

26. Ms. Hersak, on behalf of the Professional Conduct Committee, submitted that an appropriate sanction would be: a written reprimand, a fine of \$20,000, revocation of membership in the Institute and public accounting licence, and the usual order regarding publicity including publication in a newspaper. The Professional Conduct Committee also sought an order for partial indemnity for 50% of the costs of the investigation and hearing in the amount of \$30,000.

27. Ms. Hersak submitted that Mr. Giustini had been dishonest and exhibited reprehensible

behaviour towards vulnerable clients facing financial ruin who had come to him for assistance. These clients placed their trust in Mr. Giustini who then took their money. Mr. Giustini had instructed clerical staff under his management to make false claims on clients' income tax returns. Despite assurances, full cooperation was never provided by Mr. Giustini. It was within his control to provide relevant documents, as required by the *CA Act*.

28. Ms. Hersak stated that the sanction imposed should reflect the breach of trust and lack of integrity shown by Mr. Giustini, and act as a deterrent for like-minded members. Mr. Giustini, while in a position of trust, misappropriated funds from 114 clients over a two-year period. He only stopped because the OSB did a practice review and he was caught.

29. Ms. Hersak also noted a number of mitigating factors. Mr. Giustini acknowledged his misconduct, pleaded guilty to the three charges, had no discipline history, and has repaid the GST refunds owing to the bankrupts.

30. Ms. Hersak filed a Costs Outline (Exhibit 5) which showed that the costs of the investigation and hearing were approximately \$66,000. The Professional Conduct Committee was seeking costs on a partial indemnity basis in the amount of \$30,000, less than 50% of the actual costs incurred. Ms. Hersak said this was an extensive investigation, involving numerous interviews and two investigators. Ms. Hersak said the PCC would not object to allowing a reasonable period of time to pay the fine and costs.

31. Ms. Hersak distributed a Case Brief containing five ICAO Discipline Committee cases involving failure to maintain the good reputation of the profession: *Bell, Doutre, Sitter, McWilliams* and *Shilson*. All of these cases resulted in revocation of membership.

32. Ms. Amsterdam submitted that Mr. Giustini accepts responsibility for his actions and is continuing with the CRA disclosure matter. While she took no issue with the other sanctions proposed, Ms. Amsterdam submitted that the costs in similar cases were in the \$15,000 to \$20,000 range. She asked the panel to consider allowing Mr. Giustini a 12-month period to pay the fine and costs.

## **Order**

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Giustini be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Giustini be and he is hereby fined the sum of \$20,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order is made.
3. THAT Mr. Giustini's membership in the Institute be and it is hereby revoked.
4. THAT the public accounting licence of Mr. Giustini be and it is hereby revoked.
5. THAT notice of this Decision and Order, disclosing Mr. Giustini's name, be given after this Decision and Order is made:
  - (a) to all members of the Institute
  - (b) to the Public Accountants Council for the Province of Ontario; and
  - (c) to all provincial institutes/Ordre;

and shall be made available to the public.

6. THAT notice of the revocation of membership disclosing Mr. Giustini's name, be given by publication on the Institute's website and in the *Kitchener-Waterloo Record* and the *Guelph Mercury*. All costs associated with the publication shall be borne by Mr. Giustini and shall be in addition to any other costs ordered by the committee.
7. THAT Mr. Giustini surrender his certificate of membership in the Institute and public accounting licence to the Discipline Committee Secretary within ten (10) days from the date this Decision and Order is made.

IT IS FURTHER ORDERED:

8. THAT Mr. Giustini be and he is hereby charged costs fixed at \$20,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order is made.

**Reasons for Sanction**

34. Mr. Giustini, through his counsel, took no issue with the sanctions proposed by the Professional Conduct Committee. Mr. Giustini has, through his misappropriation of funds and directing staff to prepare false returns, clearly broken the public trust. Mr. Giustini has also shown himself to be ungovernable through his lack of cooperation with the investigation.

35. Accordingly, the only remedy to meet the principles of general and specific determent is that Mr. Giustini's membership in the Institute must be revoked and the payment of a significant fine is warranted.

36. A written reprimand is necessary as a specific deterrent to the member and to stress the unacceptability of his conduct as a chartered accountant.

37. Publicity is called for, including publication in the newspaper, to warn and protect the public.

38. The panel, after considering the impact that the Agreed Statements of Facts, the guilty plea and Mr. Giustini's acceptance of the sanctions had on shortening the hearing, concluded that the appropriate partial indemnity to be paid by the member whose misconduct was responsible for the investigation and hearing with the resulting costs was \$20,000.

DATED AT TORONTO THIS *18<sup>TH</sup>* DAY OF OCTOBER, 2011  
BY ORDER OF THE DISCIPLINE COMMITTEE



S.F. DINELEY, FCA – CHAIR  
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.H. CARRINGTON (PUBLIC REPRESENTATIVE)  
C. DANCHUK, CA  
S.J. HOLTOM, CA  
H.G. TARADAY, CA