

Donald Richard Gandza: Summary, as Published in *CheckMark*

Donald Richard Gandza, of Burlington, was found guilty of one charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, one charge under Rule 202 of failing to perform his professional services with integrity, and one charge under Rule 205 of associating himself with reports, statements and representations which he knew or should have known were false or misleading. While employed as company controller, Mr. Gandza knowingly participated in the scheme of Joe Adrian Vos, his superior, to falsify and manipulate the books and records of the company in support of Mr. Vos' misappropriations from the company. Mr. Gandza was not a willing participant in the scheme, but participated out of intimidation by Mr. Vos and in order to keep his job which he could not afford to lose. Mr. Gandza was fined \$5,000, charged costs of \$2,000, and suspended for one year.

CHARGE(S) LAID re Donald Richard Gandza

The Professional Conduct Committee hereby makes the following charges
Against Donald R. Gandza, CA, a member of the Institute:

1. THAT the said Donald R. Gandza, in or about the period January 1999 through October 2001, while employed as an accountant and/or controller for Metafore Corporation and/or its predecessor companies ("Metafore"), failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he knowingly participated in a scheme to falsify and manipulate the books and records of Metafore, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT the said Donald R. Gandza, in or about the period January 1999 through October 2001, while employed as an accountant and/or controller for Metafore Corporation and/or its predecessor companies, failed to perform his professional services with integrity, contrary to Rule 202 of the rules of professional conduct, in that:
 - a) he failed to communicate to the auditors information that he knew or should have known was relevant to the financial position of the company, including information concerning improper payments to Joe Vos or his designates and information concerning the improper manipulation of the books and records of the company;
 - b) he failed to communicate to owners/shareholders of the company information which he knew or should have known materially affected the financial position of the company, including information concerning the improper manipulation of the books and records of the company.
3. THAT the said Donald R. Gandza, in or about the period January 1999 through October 2001, while employed as an accountant and/or controller for Metafore Corporation and/or its predecessor companies, associated himself with reports, statements and representations which he knew or should have known were false or misleading, contrary to Rule 205 of the rules of professional conduct.

Dated at Toronto, Ontario this 26th day of September 2002.

D.D. MELOCHE, CA - DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Donald Richard Gandza

DECISION AND ORDER IN THE MATTER OF: Charges against **DONALD RICHARD GANDZA, CA**, a member of the Institute, under **Rules 201.1, 202 and 205** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE FEBRUARY 6, 2003

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1, 2 and 3, the Discipline Committee finds Donald Richard Gandza guilty of charges Nos. 1, 2 and 3.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Gandza be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Gandza be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within three (3) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Gandza be and he is hereby charged costs fixed at \$2,000, to be remitted to the Institute within three (3) years from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Gandza be suspended from the rights and privileges of membership in the Institute for a period of one (1) year from the date this Decision and Order becomes final under the bylaws.
5. THAT notice of this Decision and Order, disclosing Mr. Gandza'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 the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
6. THAT Mr. Gandza 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. Gandza. In the event Mr. Gandza fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 4 shall be extended one day for each day the certificate remains undelivered to the secretary.

7. THAT in the event Mr. Gandza fails to comply with any of 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.

DATED AT TORONTO THIS 10TH DAY OF FEBRUARY, 2003
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Donald Richard Gandza

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **DONALD RICHARD GANDZA, CA**, a member of the Institute, under **Rules 201.1, 202 and 205** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE FEBRUARY 6, 2003

1. This panel of the discipline committee of the Institute Chartered Accountants of Ontario convened on February 6, 2003 to hear charges brought by the professional conduct committee against Mr. Donald Richard Gandza, a member of the Institute.
2. The professional conduct committee was represented by Mr. Paul Farley, who was accompanied by investigator Robert Fowlie. Mr. Gandza was present and represented by his counsel, Mr. James Lane.
3. The formal decision and order of February 6, 2003 was signed by the committee secretary on February 10 and sent to the parties that day. These reasons, given pursuant to Bylaw 574, include the charges, the decision, the order and the reasons of the discipline committee.

DECISION ON THE CHARGES

4. The charges laid by the professional conduct committee dated September 26, 2002 read as follows:

1. THAT the said Donald R. Gandza, in or about the period January 1999 through October 2001, while employed as an accountant and/or controller for Metafore Corporation and/or its predecessor companies ("Metafore"), failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he knowingly participated in a scheme to falsify and manipulate the books and records of Metafore, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT the said Donald R. Gandza, in or about the period January 1999 through October 2001, while employed as an accountant and/or controller for Metafore Corporation and/or its predecessor companies, failed to perform his professional services with integrity, contrary to Rule 202 of the rules of professional conduct, in that:
 - a) he failed to communicate to the auditors information that he knew or should have known was relevant to the financial position of the company, including information concerning improper payments to Joe Vos or his designates and information concerning the improper manipulation of the books and records of the company;
 - b) he failed to communicate to owners/shareholders of the company information which he knew or should have known materially affected the financial position of the company, including information concerning the improper manipulation of the books and records of the company.

3. THAT the said Donald R. Gandza, in or about the period January 1999 through October 2001, while employed as an accountant and/or controller for Metafore Corporation and/or its predecessor companies, associated himself with reports, statements and representations which he knew or should have known were false or misleading, contrary to Rule 205 of the rules of professional conduct.
5. The hearing was called to order and the Notice of Assignment Hearing, Notice of Hearing and charges were marked as Exhibits 1, 2 and 3 respectively. Mr. Gandza entered a plea of guilty to each of the three charges and confirmed his understanding that on the basis of his plea, and on that basis alone, he could be found guilty of the charges.
6. Mr. Farley gave an overview of the case for the professional conduct committee, and filed an agreed statement of facts and a document brief containing copies of documents relevant to the charges.
7. Mr. Farley did not call evidence, and the entire case for the professional conduct committee on the charges was set out in the agreed statement of facts and document brief.
8. Mr. Lane did not call evidence on behalf of Mr. Gandza, but he did confirm the facts set out in the agreed statement, as well as Mr. Gandza's acknowledgement that his wrongdoing amounted to professional misconduct.
9. Mr. Gandza's misconduct can be succinctly summarized. Mr. Gandza worked for Metafore Inc. and its various subsidiary companies which were owned by Joe Vos and his brother Ed Vos. Joe Vos was a member of the Institute, his brother was not. Joe Vos was responsible for the books and records of Metafore Inc. and the various subsidiaries, and he intimidated Mr. Gandza. Acting under the directions of Joe Vos, Mr. Gandza adjusted the books and records and accounts receivable statements of Metafore Inc. and its subsidiaries. In August 2000, Metafore Inc. merged with its main hardware supplier Hartco Corporation, a TSE-listed company, and two other companies, to form Metafore Corporation. Subsequent to the merger, Mr. Gandza acted under the directions of either Joe Vos, or Gordon Stewart, the CFO, who was also a member of the Institute, to adjust the books and records and accounts receivable statements of Metafore Corporation. Both Joe Vos and Gordon Stewart have been expelled from the Institute.
10. Mr. Gandza was not the mastermind of the misappropriation scheme, nor was he a particularly willing or active participant in it. The scheme was that of Joe Vos. Mr. Gandza personally did not receive any of the \$8 or \$9 million which Mr. Vos misappropriated. However, he did mislead Metafore's bank, the company's auditors, and Mr. Marc D'Amour, CA, Vice-President of Finance and CFO of Hartco Corporation, when Mr. D'Amour started to investigate Metafore.
11. Upon deliberation, the panel concluded on the uncontradicted evidence that the charges had been proven and that Mr. Gandza was guilty of professional misconduct. When the hearing reconvened, the chair read the following decision into the record:

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1, 2 and 3, the Discipline Committee finds Donald Richard Gandza guilty of charges Nos. 1, 2 and 3.

ORDER AS TO SANCTION

12. Counsel advised the panel that they did not intend to call evidence on the issue of sanction. Accordingly, Mr. Farley made his submissions with respect to sanction, following which Mr. Lane made his submissions. When the panel began deliberating, we found we had a number of questions, as a result of which the hearing resumed so that the questions could be answered.

13. The answers to the questions proved relevant in our deliberations. In essence, the questions related to:

- the nature and extent of Mr. Gandza's involvement in Mr. Vos' scheme from 1998 to 2001;
- whether or not Mr. Gandza had signed representation letters to the bank, and if so when;
- Mr. Gandza's dealings or cooperation with the forensic auditors, and whether or not he had reported his misconduct to the Institute;
- Mr. Gandza's financial obligations, income and assets, including his family obligations; and
- any efforts made by Mr. Gandza to find alternative employment to working for Mr. Vos.

14. Mr. Farley stated that this was a case of moral turpitude. He submitted that it is not enough for a member in a position such as that in which Mr. Gandza found himself to merely stand aside in a passive role and participate as little as he can in another's illicit scheme, but that there is a positive obligation to take an active role in uncovering and stopping such a scheme. Mr. Gandza should have notified Joe Vos' partner and brother Ed Vos, the company's auditors, and Mr. D'Amour of the fraud being perpetrated by Joe Vos.

15. Mr. Farley conceded that, while significant, Mr. Gandza's misconduct was not in the same category as the misconduct of Joe Vos, nor even as serious as that of Mr. Stewart, who had actively involved himself in the manipulation of the accounts receivable, actively misled the bank, and willingly participated in the scheme with Mr. Vos, even though not reaping the rewards garnered by Mr. Vos.

16. Mr. Farley submitted that the length of time Mr. Gandza was involved in the scheme, the fact that he knowingly participated, that the scheme facilitated a multi-million dollar fraud, that he misled those relying upon the financial information, and that he continued to participate until caught, were all aggravating circumstances in the case. He also acknowledged the mitigating circumstances that, once caught, Mr. Gandza was forthcoming and cooperative in the investigation, and that he indicated at a very early stage that he intended to plead guilty to the charges. Mr. Gandza had, in fact, assisted the professional conduct committee in the cases against Mr. Vos and Mr. Stewart.

17. While indicating that all three sanctioning principles of general deterrence, specific deterrence and rehabilitation were applicable in this case, Mr. Farley advised that the position of the professional conduct committee was that Mr. Gandza should be given the opportunity to rehabilitate himself, but that it was also necessary that the order be a significant deterrent to other like-minded members.

18. On behalf of the professional conduct committee, Mr. Farley requested an order which included a reprimand, a fine of \$5,000, a suspension of two years, the usual order as to the giving of notice including by way of publication in *CheckMark*, and costs of \$2,000.

19. Mr. Farley indicated to the panel that the amount of the fine and costs he was seeking were substantially lower than what the professional conduct committee had originally intended to recommend, on account of Mr. Gandza's strained financial position.

20. While he did not give evidence, Mr. Gandza did make a statement to the panel in which he acknowledged the seriousness of his misconduct. He explained that fear and intimidation had controlled his actions, and that he was ashamed and disappointed in himself. Saying that the emotional and financial costs that have flowed from his misconduct have been high, he assured the panel that he had learned from his mistakes and that they would not be repeated.

21. On behalf of the member, Mr. Lane characterized Mr. Gandza's misconduct as allowing himself to be used. He indicated that his client experienced a "gradually escalating awareness of wrongdoing", but that he naively thought or hoped the situation would correct itself. Instead it became worse. Mr. Lane conceded that somewhere along the line Mr. Gandza should have sounded an alarm and failed to do so, but advised that he at least took steps at one point to keep funds away from Mr. Vos. While agreeing that his client should have acted differently, Mr. Lane submitted that Mr. Gandza's misconduct was not misconduct amounting to moral turpitude.

22. Mr. Lane took issue with the quantum of the fine and the length of the suspension, and asked for a substantial period of time for Mr. Gandza to pay any fine or costs ordered.

23. Mr. Lane submitted that Mr. Gandza had, in effect, already been suspended for 15 months from the time he reported his misconduct to the Institute to the date of the hearing, because the prosecution of his case had awaited the prosecution of both the Vos and Stewart cases. Mr. Gandza had had the matter hanging over his head for the previous 15 months during which he had not practised public accounting, and had not worked as a chartered accountant or been remunerated as such.

24. Mr. Lane submitted that Mr. Gandza had acted, or more accurately had failed to act, out of fear of and intimidation by Mr. Vos, and emphasized the heavy cost and serious impact Mr. Gandza's errors of omission had already had upon him.

25. Upon deliberation, the panel made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Gandza be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Gandza be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within three (3) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Gandza be and he is hereby charged costs fixed at \$2,000, to be remitted to the Institute within three (3) years from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Gandza be suspended from the rights and privileges of membership in the Institute for a period of one (1) year from the date this Decision and Order becomes final under the bylaws.
5. THAT notice of this Decision and Order, disclosing Mr. Gandza'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 the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
6. THAT Mr. Gandza 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. Gandza. In the event Mr. Gandza fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 4 shall be extended one day for each day the certificate remains undelivered to the secretary.
7. THAT in the event Mr. Gandza fails to comply with any of 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.

Reprimand

26. The panel was of the view that a reprimand is necessary as a specific deterrent to the member, to stress to him the importance of maintaining the standards of the profession, and the unacceptability of his conduct as a chartered accountant.

Suspension

27. The issue of whether rehabilitation or general deterrence should be the principle of sanctioning given priority in this case – and accordingly whether suspension or expulsion was the appropriate sanction in the circumstances – proved to be a difficult one. The panel agreed that this was a case of moral turpitude and that Mr. Gandza had acted dishonestly. When a chartered accountant who is an employee is directed to do as Mr. Gandza was directed, the appropriate response is not only to resolutely refuse, but to expose the scheme to the board of directors and the auditors. Mr. Gandza knew or should have known this. The evidence on behalf of Mr. Gandza was that he was working under the intimidation of Joe Vos, and that he was in a vulnerable economic position, with no alternative employment prospects in sight. Fearing the impact his being fired would have on his family, Mr. Gandza's response to the position he was in was to passively acquiesce, when he should have resolutely “blown the whistle”.

28. There is no doubt that general deterrence is an important principle in this case. One of the members of the panel was strongly inclined to the view that only expulsion would send the proper message to the profession. While the majority did not agree that expulsion was required, it did agree that general deterrence demanded an order which would have very serious consequences for Mr. Gandza, and was satisfied, given Mr. Gandza's circumstances, that its order would have such an effect.

29. Though recognizing the importance of general deterrence in this case, the majority concluded that Mr. Gandza should be given the opportunity to rehabilitate himself and to continue to practise within the discipline of his profession. There was no doubt that his remorse over his misconduct was genuine. He fully cooperated in the forensic audit, and in the investigations of the professional conduct committee, including the investigations into the misconduct of Mr. Vos and Mr. Stewart. At the time of the hearing, he had not worked as a chartered accountant for many months, and there has been a significant financial impact on his life and the life of his family. It appears that he has learned a costly lesson, and that he will not repeat his past mistakes. Given the relatively minor role he played in the scheme, and the fact that he did not derive personal benefit from his participation other than the retention of his employment, the majority was persuaded – and we must say just persuaded – that rehabilitation should be given priority in this case, and that the required general deterrent message can be satisfactorily conveyed through the suspension, fine and notice ordered.

30. The professional conduct committee, properly in our view, decided to proceed against Mr. Vos and Mr. Stewart before proceeding with the charges against Mr. Gandza. The result was that Mr. Gandza's hearing took place later than it could have. During this period, Mr. Gandza's designation was, in effect, in limbo. Given this delay in the prosecution of Mr. Gandza, albeit for entirely valid reasons, the majority concluded that the appropriate length of suspension to order was one year.

Fine

31. Having regard to Mr. Gandza's precarious financial position, the details of which were provided at the hearing, the panel agreed with the professional conduct committee's recommendation that the appropriate fine in this case is \$5,000. We gave Mr. Gandza three years to pay the fine, which we felt would provide him with adequate time to sort out his financial troubles and “get back on his feet” as a chartered accountant following his one-year suspension.

Notice

32. The panel ordered notice of its decision and order in the manner prescribed, including disclosure of the member's name, as a specific and general deterrent. We considered such notification to also be necessary to demonstrate to the public that the profession is regulating itself so as to retain public confidence in the profession's ability to self-govern.

Certificate of Membership

33. It is important that members not appear to be chartered accountants during periods of suspension. Accordingly, Mr. Gandza was ordered to surrender his certificate of membership to the discipline committee secretary, to be held throughout the period of his suspension.

Costs

34. The panel concluded that the appropriate quantum of costs to be assessed against Mr. Gandza in this matter was \$2,000, to be paid within the same three year period as the fine.

35. The panel recognized that the costs of the investigation and hearing considerably exceeded \$2,000, but set the amount in recognition of Mr. Gandza's financial circumstances, and his degree of cooperation throughout this matter.

Possible Consequential Expulsion

36. The order in this case, as do all orders of the discipline committee, provides for expulsion in the event the member does not comply with its terms. While orders must contain such a provision in order not to be meaningless, the panel's intention in giving Mr. Gandza so long to pay the fine and costs was to provide him full opportunity to comply with the order and thereby avoid expulsion.

DATED AT TORONTO THIS 29TH DAY OF MAY, 2003
BY ORDER OF THE DISCIPLINE COMMITTEE

B.A. TANNENBAUM, FCA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

E.R. ARCHIBALD, CA
M.S. LEIDERMAN, CA
J.G. SEDGWICK, CA
D.J. ANDERSON (Public representative)