

Gary Martin Pollack: Summary, as Published in *CheckMark*

Gary Martin Pollack, of North York, 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, and one charge under Rule 212.1 of failing to properly handle trust money. Mr. Pollack caused a company owned or controlled by his wife to make loans to a client, which carried excessive rates of interest. When he received money in trust on behalf of this client, he failed to hold the money in accordance with the terms of the engagement, failed to maintain records necessary to account properly for the money, and failed to keep the money in a separate trust bank account. Mr. Pollack was fined \$5,000, suspended from membership for 12 months, and lost his right to use the FCA designation.

Mr. Pollack returned to MEMBERSHIP IN GGOD STANDING on April 8, 2000.

CHARGE(S) LAID re Gary Martin Pollack

The Professional Conduct Committee hereby makes the following charges against Gary M. Pollack, FCA, a member of the Institute:

1. THAT, the said Gary M. Pollack, on or about the 20th day of January, 1994, 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 he negotiated a Government of Canada taxation refund cheque dated September 7, 1993 in the amount of \$5,175.83 which was made payable to his client, Kathleen Billins, by endorsing it "K. Billings" and depositing it to a bank account over which he had control, without the knowledge or authority of Kathleen Billins, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT, the said Gary M. Pollack, in or about the period April 1, 1993 through to March 31, 1994, 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 he caused 932546 Ontario Inc., a company owned or controlled by his wife, to make loans to his client, Kathleen Billins, which carried excessive rates of interest, contrary to Rule 201.1 of the rules of professional conduct, and in particular;
 - a) \$6,000 was loaned to Kathleen Billins on or about April 27, 1993 and was repaid on or about May 31, 1993 along with an additional \$1,000 by way of interest;
 - b) \$5,000 was loaned to Kathleen Billins on or about July 16, 1993 and was repaid on or about August 23, 1993 along with an additional \$833 by way of interest;
 - c) \$6,000 was loaned to Kathleen Billins on or about January 21, 1994 and was repaid on or about March 28, 1994 along with an additional \$2,000 by way of interest;
3. THAT, the said Gary M. Pollack, in or about the period September 1993 to May 1995, having received as a trustee money belonging to Kathleen Billins in the amount of \$5,175.83;
 - (a) failed to hold the money in accordance with the terms of the engagement;
 - (b) failed to maintain such records as were necessary to account properly for the money; and
 - (c) failed to keep the money in a separate trust bank account,contrary to Rule 212.1 of the rules of professional conduct.

Dated at Toronto this day of December, 1997.

DOUGLAS A. BOUFFORD, CA – DEPUTY CHAIR

PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Gary Martin Pollack

DECISION AND ORDER IN THE MATTER OF: Charges against **GARY MARTIN POLLACK, FCA**, a member of the Institute, under **Rules 201.1 and 212.1** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JUNE 25, 1998

DECISION

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Gary Martin Pollack not guilty of charge No. 1 and guilty of charges Nos. 2 and 3.

ORDER

IT IS ORDERED in respect of charges Nos. 2 and 3:

1. THAT Mr. Pollack be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Pollack be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws. In the event Mr. Pollack fails to remit the fine within this three month period, his suspension pursuant to paragraph 3 shall be extended one day for each day the fine remains outstanding.
3. THAT Mr. Pollack be suspended from the rights and privileges of membership in the Institute for a period of twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Pollack's Fellowship in the Institute and his right to use the FCA designation be suspended for the duration of his membership in the Institute.
5. THAT notice of this Decision and Order, disclosing Mr. Pollack'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; and
 - (c) by publication in *CheckMark*.
6. THAT Mr. Pollack surrender his certificate of membership in the Institute and his certificate of Fellowship 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 certificate of membership will be held during the period of suspension and thereafter returned to Mr. Pollack. In the event Mr. Pollack fails to surrender his certificate of membership and his certificate of Fellowship, or either of them, within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificates or either of them remains undelivered to the secretary.

7. THAT in the event Mr. Pollack fails to comply with the requirements of paragraphs 2 and 6 or either of them, and such failure continues for a period of thirty (30) days from the date compliance was due, 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 in paragraph 5, and by publication in *The Globe and Mail*.

DATED AT TORONTO THIS 13TH DAY OF JULY, 1998
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Gary Martin Pollack

REASONS FOR DECISION AND ORDER IN THE MATTER OF: Charges against **GARY MARTIN POLLACK, FCA**, a member of the Institute, under **Rules 201.1 and 212.1** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE JUNE 25, 1998

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario convened on May 20 and 21, and June 25, 1998, to hear evidence concerning charges brought by the professional conduct committee against Mr. Gary Martin Pollack, FCA.

The professional conduct committee was represented by Ms. Deborah McPhadden, and Mr. Douglas McTavish represented the member.

At the commencement of the hearing, Mr. McTavish made an application to have either charge No. 1 or charge No. 3 dismissed. He submitted that his application was based on a well-established principle of law that it is not possible to convict a person twice on the same facts. To support his position, Mr. McTavish submitted the Supreme Court of Canada decision in *Kienapple v. The Queen*.

On behalf of the professional conduct committee, Ms. McPhadden took the position that Mr. Pollack could be found guilty of charge No. 1 or charge No. 3, but not both. She submitted that, according to the principle set out in the *Kienapple* case, charge No. 3 had to be treated as an alternative to charge No. 1, and that, as the professional conduct committee was seeking a conviction on charge No. 1, she would only look for a conviction on charge No. 3 in the event charge No. 1 was dismissed.

The panel deliberated and conferred with its counsel on the principle of law established in *Kienapple* before concluding that the charges were in order, and denying the application to dismiss charges Nos. 1 and 3. The panel was clear on the principle of law at issue, and understood that Mr. Pollack could not be convicted on both charges Nos. 1 and 3.

The charges laid against Mr. Pollack read as follows:

1. THAT, the said Gary M. Pollack, on or about the 20th day of January, 1994, 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 he negotiated a Government of Canada taxation refund cheque dated September 7, 1993 in the amount of \$5,175.83 which was made payable to his client, Kathleen Billins, by endorsing it "K. Billings" and depositing it to a bank account over which he had control, without the knowledge or authority of Kathleen Billins, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT, the said Gary M. Pollack, in or about the period April 1, 1993 through to March 31, 1994, 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 he caused 932546 Ontario Inc., a company owned or controlled by his wife, to make loans to his client, Kathleen Billins, which carried excessive rates of interest, contrary to Rule 201.1 of the

rules of professional conduct, and in particular;

- (a) \$6,000 was loaned to Kathleen Billins on or about April 27, 1993 and was repaid on or about May 31, 1993 along with an additional \$1,000 by way of interest;
- (b) \$5,000 was loaned to Kathleen Billins on or about July 16, 1993 and was repaid on or about August 23, 1993 along with an additional \$833 by way of interest;
- (c) \$6,000 was loaned to Kathleen Billins on or about January 21, 1994 and was repaid on or about March 28, 1994 along with an additional \$2,000 by way of interest;

8. THAT, the said Gary M. Pollack, in or about the period September 1993 to May 1995, having received as a trustee money belonging to Kathleen Billins in the amount of \$5,175.83;

- (a) failed to hold the money in accordance with the terms of the engagement;
- (b) failed to maintain such records as were necessary to account properly for the money; and
- (c) failed to keep the money in a separate trust bank account,

contrary to Rule 212.1 of the rules of professional conduct.

Mr. Pollack entered a plea of not guilty to all charges.

DECISION ON THE CHARGES

Facts

Ms. McPhadden presented a document brief, called a number of witnesses, and produced exhibits in support of the charges.

In summary, the evidence with respect to charge No. 1 indicated that Mr. Pollack came into possession of a Revenue Canada refund cheque in the amount of \$5,175.83 belonging to his client, Kathleen Billins, which he deposited into a bank account over which he had control. There was some discrepancy as to the nature of this bank account, but, in any event, Ms. Billins, who was also known and commonly referred to as Katie Wright, testified that she did not give Mr. Pollack the authority to deposit her refund cheque. Mr. Pollack, on the other hand, testified that verbal authority had been given to him by Ms. Billins to hold the cheque for her as a deposit or security for a future loan of \$25,000 to be made to her by him.

With respect to charge No. 2, the document brief contained copies of a number of cheques which evidenced that monies had been advanced by Mr. Pollack to Ms. Billins on various occasions, and that these funds had subsequently been repaid by her. In addition to repayment of the amounts advanced, additional funds were paid by Ms. Billins to Mr. Pollack, which Ms. Billins and the professional conduct committee characterized as interest payments on loans advanced. Mr. Douglas, the investigator for the professional conduct committee, submitted Exhibit No. 5 to illustrate how this interest was calculated. Mr. Pollack submitted that the funds which he advanced from time to time were investments made by him in certain racing horses

belonging to Ms. Billins, who was in the horse racing business, and that the monies paid back to him represented the return of his investments plus profits.

With regard to charge No. 3, though Mr. Pollack pleaded not guilty to the charge, he conceded during the hearing that documentation relating to the handling of money between Ms. Billins and him was non-existent.

After reviewing the document brief and other evidence filed, and hearing all the witnesses called, the panel deliberated and made the findings set out below.

Charge No. 1

Though the panel struggled with the credibility of the testimony of both Ms. Billins and Mr. Pollack, it ultimately found Mr. Pollack not guilty of charge No. 1. In its deliberations, the panel accepted the evidence of Mr. Pollack that he had met with Ms. Billins to review her 1992 personal income tax return in April, 1993. The transmittal letter with which Mr. Pollack delivered to Ms. Billins her 1992 tax return for signing and sending to Revenue Canada had certain markings on it, and the panel accepted that Mr. Pollack had made these marks when he reviewed the tax return with his client. The panel also accepted Mr. Pollack's testimony that Ms. Billins was aware of both her 1992 income tax refund, in an amount which he specified in the transmittal letter, and the additional refund to be received as a result of a loss carry-back to 1991, about which he notified her in his letter but which he did not quantify (the \$5,175.83 amount).

The panel concluded, with respect to the \$5,175.83 refund cheque, that it was possible that, during the meeting between Ms. Billins and Mr. Pollack, she had authorized him to retain the refund as a credit or deposit toward a substantial future business transaction. The majority of the panel was not persuaded that there was clear and cogent evidence establishing on a preponderance of probabilities that Mr. Pollack took the money without Ms. Billins' authority. Accordingly, Mr. Pollack was found not guilty of this charge.

Charge No. 2

The panel concluded that the funds advanced to Ms. Billins by Mr. Pollack were, in fact, loans. The panel arrived at this conclusion after reviewing the evidence, including the following:

- funds were advanced;
- definite times for repayment were established;
- post-dated cheques for the amounts owing from time to time (including interest), were issued to repay the loans;
- security for each loan was lodged and then released when the loan was repaid;
- the amount of each loan plus interest was calculated based on the number of days the loan was to be outstanding.

The panel accepted the testimony of Mr. Douglas, the professional conduct committee investigator, and in particular his document filed as Exhibit No. 5, showing his calculations of interest on the various sums advanced by Mr. Pollack to Ms. Billins.

The panel rejected Mr. Pollack's evidence that the funds which he advanced to Ms. Billins from time to time were to be used by her in the horse racing business, and that the repayment of each amount advanced included a profit element on the deal to which it related, and not

interest. The panel was at a loss as to how the “profit element” on any particular transaction could be predetermined as suggested by Mr. Pollack.

Having determined that the funds advanced were loans, and that the “profit element” on the loans was interest, the panel concluded that the interest charged on the loans, which ranged from 145% to 182% per annum, was excessive, and that Mr. Pollack was guilty of charge No. 2.

Charge No. 3

The document brief and oral testimony of Mr. Pollack himself, along with repeated acknowledgments by counsel for Mr. Pollack that documentation as to his client’s handling of the Revenue Canada refund to Ms. Billins was non-existent, convinced the panel that a finding of guilty on charge No. 3 was appropriate.

ORDER AS TO SANCTION

After finding Mr. Pollack guilty of charges Nos. 2 and 3, the panel heard from a character witness on the issue of sanction, as well as submissions from both counsel.

The professional conduct committee submitted that, while the misconduct indicated under charge No. 3 was serious, the actions giving rise to charge No. 2 were acts of moral turpitude, and that the sanction which it sought was largely in response to the seriousness of this latter breach of the rules of professional conduct. Mr. McTavish, on the other hand, contended that the offense set out in charge No. 2 was one of sloppy documentation just as in charge No. 3, that it did not amount to moral turpitude, and that it thus did not require a strong sanction.

In deciding upon the appropriate sanction in this case, the panel was guided by the three general principles of sanctioning, namely rehabilitation, general deterrence, and specific deterrence. After deliberating on the evidence and submissions heard, the panel made the following order:

ORDER

IT IS ORDERED in respect of charges Nos. 2 and 3:

1. THAT Mr. Pollack be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Pollack be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws. In the event Mr. Pollack fails to remit the fine within this three month period, his suspension pursuant to paragraph 3 shall be extended one day for each day the fine remains outstanding.
3. THAT Mr. Pollack be suspended from the rights and privileges of membership in the Institute for a period of twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Pollack’s Fellowship in the Institute and his right to use the FCA designation be suspended for the duration of his membership in the Institute.
5. THAT notice of this Decision and Order, disclosing Mr. Pollack’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; and
- (c) by publication in *CheckMark*.

6. THAT Mr. Pollack surrender his certificate of membership in the Institute and his certificate of Fellowship 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 certificate of membership will be held during the period of suspension and thereafter returned to Mr. Pollack. In the event Mr. Pollack fails to surrender his certificate of membership and his certificate of Fellowship, or either of them, within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificates or either of them remains undelivered to the secretary.
7. THAT in the event Mr. Pollack fails to comply with the requirements of paragraphs 2 and 6 or either of them, and such failure continues for a period of thirty (30) days from the date compliance was due, 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 in paragraph 5, and by publication in *The Globe and Mail*.

Reprimand

The panel was of the view that a reprimand in writing by the chair of the hearing was a necessary step as a specific deterrent to the member, to stress the serious nature of the offense, and the unacceptability of Mr. Pollack's conduct as a chartered accountant.

Fine

The professional conduct committee submitted that a fine of \$5,000 was appropriate in this case. Mr. McTavish, on behalf of the member, suggested that a fine in a modest amount would be appropriate. The panel concluded that a strong message must be sent to like-minded members and to the public at large that the type of behaviour demonstrated by Mr. Pollack was not acceptable, and ordered a fine of \$5,000.

Suspension

The panel concluded that the misconduct giving rise to the conviction on charge No. 2 was misconduct involving moral turpitude, and that, as a result, a suspension of twelve months from the rights and privileges of membership in the Institute was appropriate. The panel noted that, in the majority of past cases, acts of moral turpitude have resulted in expulsion from the Institute. In this case, however, the professional conduct committee was not requesting expulsion. Mr. McTavish submitted that the offence under charge No. 2 did not warrant even a suspension. The panel ultimately decided that, notwithstanding the moral turpitude involved in charge No. 2, and the seriousness of the misconduct under charge No. 3, as there had not been a conviction on charge No. 1 there should not be an order of expulsion made in this case. The lengthy suspension ordered instead was considered necessary both as a specific deterrent to Mr. Pollack and as a general deterrent to like-minded members.

Suspension of FCA Designation

The panel determined that the misconduct of Mr. Pollack in this case clearly tainted his past accomplishments, and decided that it was not appropriate for a member found guilty of an act of moral turpitude to continue to enjoy the benefits of the FCA designation. The panel therefore suspended Mr. Pollack's right to use the FCA designation for as long as he is a member of the

Institute. It was the view of the panel that suspension of the Fellowship designation would send a strong message to like-minded members as to the unacceptability of the misconduct displayed in this case, and would also act as a specific deterrent to Mr. Pollack.

Notice

The giving of notice, including publication, of disciplinary decisions and orders, disclosing the member's name, is, in the opinion of the discipline committee, a general deterrent. Communication of the fact that the profession views breaches of its bylaws and rules of professional conduct seriously is an important factor in the governance of the profession, and demonstrates to both members and the general public that the disciplinary process of the Institute is open and accountable. Accordingly, the panel made the usual order as to notice in this case.

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

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

MEMBERS OF THE PANEL

P. B. A. CLARKSON, CA
B. L. HAYES, CA
B. A. TANNENBAUM, CA
R. D. WHEELER, FCA
B. A. YOUNG (Public representative)