

Gerald Earl Cadesky: Summary, as Published in *CheckMark*

Gerald Earl Cadesky, of Willowdale, was found guilty of two charges of professional misconduct, under Rules 201 and 212, relating to his improper handling of trust funds in connection with Florida time-share units. In sanctioning, the discipline committee considered, among other things, that prior to coming before it, the member had reached a settlement with, and obtained releases from, those affected by his misconduct. He was fined \$5,000.

Mr. Cadesky returned to MEMBERSHIP IN GOOD STANDING on November 22, 1995

CHARGE(S) LAID re Gerald E. Cadesky

The professional conduct committee hereby makes the following charges against Gerald E. Cadesky, CA, a member of the Institute:

1. THAT, the said Gerald E. Cadesky, during the period May 1984 through to March 1986, while acting as a trustee for investors on a loan to Lahania Associates, Inc., a Florida Corporation, failed to handle the money or other property of the trust in accordance with the terms of the trust and the general law relating to trusts, contrary to Rule 212 of the Rules of Professional Conduct as amended, in that:
 - a) he used trust monies for purposes other than that for which they were intended including investing in other, unrelated, trust investments known as the "Smoketree" and "Vagabond" trusts;
 - b) while acting as a trustee he received four cheques each payable to Gerald Cadesky, Trustee in the total amount of \$38,333 issued by James Dvorin, P.A., Attorney at Law and drawn on the escrow account for Lahania Associates, Inc., and converted the proceeds of those cheques to a use other than authorized by the terms of the trust by endorsing them over to the credit of Lahania Associates, Inc.;
 - c) while acting as a trustee he failed to hold himself free from any interest in Lahania Associates Inc., the corporation to which trust monies were being advanced and in fact was a 50% owner of Lahania Associates Inc.;
 - d) while acting as a trustee he failed to hold himself free of any interest in the trust investment by investing approximately \$30,000 in the trust mortgage loan through Maple Leaf Bancorp Ltd., a company wholly owned by him.
2. THAT, the said Gerald E. Cadesky, during the period May 1984 through to March 1986, while acting as a trustee for investors in a mortgage loan to Lahania Associates Inc., failed to conduct himself at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201 of the Rules of Professional Conduct as amended, in that;
 - a) contrary to representations made to investors that each of the 400 weeks of time-share units in Lahania Inn Resort, Fort Meyers, Florida would act as security for the mortgage loan and would be released only upon the receipt by the trustee, on behalf of the beneficiaries of the trust, of a release fee of \$2,500 per time-share week, Cadesky arranged the release of forty weeks of the time-share units without obtaining the \$2,500 release fee referred to and without obtaining any other consideration for the benefit of the beneficiaries of the trust and in so doing he improperly diluted the collateral upon which the mortgage loan was secured;

- b) contrary to representations made to investors that time-share weeks would only be released after payment of a \$2,500 release fee, he improperly permitted the release of time –share weeks after accepting mortgage takebacks in place of the \$2,500 release fee when when-time share weeks were sold;
- c) having improperly accepted mortgage takebacks in place of the \$2,500 release fee represented to investors as being required by the terms of the mortgage document prior to any time-share weeks being sold, he failed to ensure that payments on the mortgages taken back were being sold, he failed to ensure that payments on the mortgages taken back were being made in accordance with the terms on the said mortgage documents and that the mortgages remained at all times in good standing so that the beneficiaries interests were properly protected;
- d) he held a substantial interest in Lahania Associates Inc., the Florida Corporation which received mortgage money initially provided by investors to Gerald E. Cadesky Trustee for investment;
- e) in all instances when a \$2,500 release fee was obtained on the sale of time-share weeks of Lahania Associates Inc. Cadesky applied or permitted the payment to be applied to interest and other expenses rather than as a reduction in the principal outstanding on the \$700,000 mortgage loan, contrary to the terms of the mortgage loan application agreement.

DATED at Toronto this 20th day of February 1992.

J.L.M. BADALI, FCA – CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Gerald Earl Cadesky

DECISION AND ORDER IN THE MATTER OF: Charges against **GERALD EARL CADESKY, CA**, a member of the Institute, under **Rules 201 and 212** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JUNE 12, 1992

DECISION

THAT, having seen, heard and considered the evidence, and having entered a plea of not guilty to each charge on behalf of the member, and having dismissed particular (c) of charge No. 2, THE DISCIPLINE COMMITTEE FINDS Gerald Earl Cadesky guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Cadesky be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Cadesky be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Cadesky's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants,

and it is recommended that such notice indicate that, prior to the hearing, Mr. Cadesky had reached a settlement with, and obtained releases from, those affected by his misconduct herein.

4. THAT in the event Mr. Cadesky fails to comply with the requirement of paragraph 2 of this Order within the time period therein specified, he shall thereupon be suspended from the rights and privileges of membership in the Institute, and notice of his suspension, disclosing his name, shall be given in the manner specified in paragraph 3 hereof.
5. THAT in the event Mr. Cadesky is suspended pursuant to paragraph 4 hereof, the suspension shall terminate upon his compliance with paragraph 2 of this Order, provided that he complies within thirty (30) days from the date of his suspension.
6. THAT in the event Mr. Cadesky fails to terminate suspension within thirty (30) days, 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 3 hereof.

DATED AT TORONTO, THIS 26TH DAY OF JUNE, 1992
BY ORDER OF THE DISCIPLINE COMMITTEE

B.W. STEPHENSON, BA, LLB
SECRETARY - THE DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re Gerald Earl Cadesky

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **GERALD EARL CADESKY, CA**, a member of the Institute, under **Rules 201 and 212** of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE JUNE 12, 1992

These proceedings before a panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on June 12, 1992.

Ms. Karen Mitchell attended on behalf of the professional conduct committee, and Mr. Cadesky appeared with his counsel, Mr. John Keefe.

The professional conduct committee had laid one charge under each of Rules of Professional Conduct 201 and 212. Mr. Cadesky indicated that they would not contest the evidence and entered no plea to the charges.

The chair entered a plea of not guilty to both charges on behalf of Mr. Cadesky.

Ms. Mitchell called Mr. Bruce Armstrong, an investigator for the professional conduct committee, as a witness. A document brief was introduced as an exhibit and Mr. Armstrong reviewed the contents of the brief.

The evidence indicated that Mr. Cadesky, in his capacity as a mortgage broker, acted as a trustee in several Florida mortgage transactions. One of the investors in a specific mortgage on Florida time share units had complained about Mr. Cadesky's conduct.

Mr. Cadesky was charged under Rule 212 of the Rules of Professional Conduct that, while acting as a trustee for investors, he failed to handle the money or other property of the trust in accordance with the terms of the trust and the general law relating to trusts. Specifically, the particulars of the charge alleged that he

- co-mingled funds between different trust investments;
- converted proceeds to a use other than authorized by the terms of the trust;
- failed to hold himself free from any interest in the corporation to which trust monies were being advanced; and
- failed to hold himself free of any interest in the trust investment itself.

Mr. Cadesky was also charged under Rule 201 of the Rules of Professional Conduct that, while acting as a trustee for investors, he failed to conduct himself in a manner so as to maintain the good reputation of the profession and its ability to serve the public interest. Specifically, it was alleged that he

- released some time share weeks without receiving the required \$2,500 per week;

- accepted mortgage takebacks instead of the required \$2,500 cash;
- failed to use any of the release fees obtained to reduce the principal of the mortgage contrary to the terms of the mortgage loan application agreement; and
- failed to ensure that payments on the mortgages taken back were being made in accordance with the mortgage documents.

Based upon the evidence presented in the document brief, and the testimony of Mr. Armstrong, the investigator, the discipline committee, upon deliberation, dismissed particular (c) of charge No. 2 and found Mr. Cadesky guilty of charges Nos. 1 and 2.

The document brief and the investigator's evidence clearly indicated that Mr. Cadesky was guilty of all the particulars in charge No. 1 and all the particulars in charge No. 2 except for particular (c). The discipline committee felt that there was insufficient evidence to prove that Mr. Cadesky had failed to ensure that the payments on the mortgages were being made in accordance with the mortgage documents, as alleged in particular (c) of charge No. 2. Mr. Cadesky did not contest any of the evidence or testimony.

The discipline committee then heard submissions as to sanction from both counsel for the professional conduct committee and for Mr. Cadesky, and, upon deliberation, made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Cadesky be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Cadesky be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Cadesky's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants,

and it is recommended that such notice indicate that, prior to the hearing, Mr. Cadesky had reached a settlement with, and obtained releases from, those affected by his misconduct herein.

4. THAT in the event Mr. Cadesky fails to comply with the requirement of paragraph 2 of this Order within the time period therein specified, he shall thereupon be suspended from the rights and privileges of membership in the Institute, and notice of his suspension, disclosing his name, shall be given in the manner specified in paragraph 3 hereof.
5. THAT in the event Mr. Cadesky is suspended pursuant to paragraph 4 hereof, the suspension shall terminate upon his compliance with paragraph 2 of this Order, provided that he complies within thirty (30) days from the date of his suspension.

6. THAT in the event Mr. Cadesky fails to terminate suspension within thirty (30) days, 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 3 hereof.

Briefly the reasons for the committee's order are set out below.

The committee is of the view that a reprimand is necessary as a deterrent to the member, to stress the unacceptability of his conduct as a chartered accountant.

The imposition of a fine of \$5,000 is appropriate to emphasize to the member, the general membership of the Institute, and the public, the seriousness with which the discipline committee views members' failure to adhere to the rules of professional conduct.

The committee considered Mr. Cadesky's previously unblemished record, the fact that there was no personal gain, and that Mr. Cadesky had reached a settlement with, and obtained releases from, those affected by his misconduct. The committee also considered the fact that Mr. Cadesky had surrendered his mortgage broker's licence, and that, as a result, the public was not at further risk from Mr. Cadesky carrying on a brokerage business. In light of all these factors, a suspension was not considered necessary by the committee in this case.

The committee ordered publication and notice of its decision and order, including disclosure of the member's name, as both a specific deterrent to the member charged and a general deterrent to all members. It was recommended that the notice indicate that, prior to the hearing, Mr. Cadesky had reached a settlement with those affected by his misconduct, so as to explain why Mr. Cadesky had not been suspended or fined a larger amount.

DATED AT TORONTO, THIS ____ DAY OF _____, 1992
BY ORDER OF THE DISCIPLINE COMMITTEE

P.A. CAMPOL, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.G. HARRISON, FCA
J.B. SCOTT, CA
L.L. WORTHINGTON, FCA
V.G. STAFL (Public representative)