

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **GHULAM MHAYIUDDIN MALIK**, a suspended member of the Institute, under **Rules 201.1, 203.2, 206.1, 218 and 302.2** of the Rules of Professional Conduct, as amended.

TO: Mr. Ghulam M. Malik, CA
33 City Center Drive
Suite 363B
MISSISSAUGA, ON L5B 2N5

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order Made March 23, 2007)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on March 23, 2007 to hear charges of professional misconduct brought against Ghulam Mhayiuddin Malik, a suspended member of the Institute.

2. Mr. Paul Farley appeared on behalf of the Professional Conduct Committee. He was accompanied by Mr. Paul Gibel, CA, the investigator appointed by the Professional Conduct Committee. Mr. Malik attended and was represented by counsel, Mr. Murray Page. Ms. Elizabeth Cowie attended as counsel to the panel.

3. The decision of the panel was made known at the conclusion of the hearing and the written Decision and Order sent to the parties on April 17, 2007. 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.

4. During the course of the hearing, it was determined by the panel that, while Mr. Malik had been a member in good standing as of the date the charges were laid against him, he has since been suspended for administrative reasons, as he has experienced difficulties maintaining professional liability insurance. Mr. Malik indicated to the panel that he intends to resolve this difficulty, and it bore no significance to the panel in its deliberations, decision or order.

CHARGES

5. The following charge was laid against Mr. Malik by the Professional Conduct Committee on April 7, 2006:

1. THAT the said Ghulam Mhayiuddin Malik, in or about the period August 5, 2005

to April 4, 2006 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, contrary to Rule 203.2 of the rules of professional conduct.

6. The following further charges were laid against Mr. Malik by the Professional Conduct Committee on September 25, 2006:

1. THAT the said Ghulam Mhayiuddin Malik, in or about the period December 31, 2003 through May 20, 2004, while engaged to perform an audit of the financial statements of "J.S.R. Inc." as at December 31, 2003, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206.1 of the Rules of Professional Conduct (as amended from time to time), in that he failed to ensure:
 - (a) that the financial statements were prepared on a comparative basis when it was appropriate to do so;
 - (b) full disclosure of the authorized share capital and the details of the share capital transactions during the year;
 - (c) appropriate disclosure of the basis of valuation of inventory;
 - (d) appropriate presentation of the acquisition of capital assets, shareholder advances and loss on disposal of equipment on the statement of cash flows;
 - (e) disclosure of related party transactions;
 - (f) appropriate disclosure of financial instruments;
 - (g) appropriate disclosure of the accounting for income taxes; and
 - (h) reference to "Canadian" generally accepted auditing standards and "Canadian" generally accepted accounting principles in his Auditor's Report.
2. THAT the said Ghulam Mhayiuddin Malik, in or about the period May 20, 2004 through September 12, 2006, failed to retain for a reasonable period of time such working papers, records or other documentation which reasonably evidence the nature and extent of the work done in respect of any engagement, contrary to Rule 218 of the rules of professional conduct, in that he failed to retain his working papers for the audit of "JSR Inc." for the year ended December 31, 2003.
3. THAT the said Ghulam Mhayiuddin Malik, in or about the period August 2005 through September 2006, failed to conduct himself in a manner that would maintain the good reputation of the profession and its ability to protect the public interest, contrary to Rule 201.1 of the rules of professional conduct, in that he failed to maintain his files relating to "JSR Inc." in a secure location thus compromising the confidentiality of the information contained in such files.

4. THAT the said Ghulam Mhayiuddin Malik, in or about the period August 31, 2005 through January 24, 2006, while engaged to perform an audit of the financial statements of "SOISO" as at August 31, 2005, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206.1 of the Rules of Professional Conduct (as amended from time to time), in that:
 - (a) he failed to ensure that the financial statements were prepared using an appropriate basis of accounting;
 - (b) he failed to ensure disclosure of the fair value of financial instruments;
 - (c) he failed to make a preliminary decision as to materiality and the components of audit risk;
 - (d) he failed to communicate at least annually, in a letter to the audit committee, matters that bear on independence;
 - (e) he failed to reference "Canadian" generally accepted auditing standards and "Canadian" generally accepted accounting principles in his Auditor's Report; and
 - (f) the wording of his Auditor's report does not accord with the CICA Handbook requirements.
5. THAT the said Ghulam Mhayiuddin Malik, in or about the period December 31, 2005 through May 14, 2006 while engaged to perform an audit of the financial statements of "MIZAN Inc." as at December 31, 2005, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206.1 of the Rules of Professional Conduct (as amended from time to time), in that:
 - (a) he failed to make a preliminary decision as to materiality;
 - (b) he failed to ensure that the terms of the engagement were documented in a written agreement;
 - (c) he failed to ensure that the representations of management set out in the representation letter signed May 14, 2006 included representations relating to fraud and error;
 - (d) he failed to obtain sufficient appropriate audit evidence to support the financial statement assertions with respect to cash; and
 - (e) he failed to communicate at least annually, in a letter to the audit committee, matters that bear on independence.
6. THAT the said Ghulam Mhayiuddin Malik, in or about the period August 1, 2004 through August 31, 2006, failed to conduct himself in a manner that would

maintain the good reputation of the profession and its ability to protect the public interest, contrary to Rule 201.1 of the rules of professional conduct, in that, having been engaged, in or about August 2004 to compile financial statements and prepare tax returns in a timely manner for MD's corporation, he failed to do so until August 2006.

7. THAT the said Ghulam Mhayiuddin Malik, in or about the period December 3, 2004 through April 10, 2005, having received a letter dated December 3, 2004 from the successor accountant, "L. G., CA", failed to respond promptly to that communication, contrary to Rule 302.2 of the rules of professional conduct.

PLEA

7. Mr. Malik entered a plea of guilty to each of the charges, and acknowledged that he understood that, on the basis of the plea and the plea alone, he could be found guilty of the charges.

EVIDENCE

8. The Professional Conduct Committee filed an Agreed Statement of Facts (Exhibit 3), along with a Document Brief and several other supporting documents (Exhibits 4 – 8). Mr. Farley called no other evidence. Mr. Malik, through his counsel, called no evidence and made no submissions on the issue of guilt.

9. The documents filed clearly show that the Institute received a complaint concerning Mr. Malik from a successor accountant with respect to Mr. Malek's failure to cooperate with the successor accountant as required under Rule 303.. Mr. Paul Gibel, CA, was appointed as the investigator and made numerous attempts to contact Mr. Malik, commencing with a letter from the Professional Conduct Committee dated June 16, 2005, and obtain information and documentation from him. Mr. Malik made a number of promises to the investigator that he did not keep. He eventually turned over the files that had been requested on May 9, 2006, after he had been served with a charge of failing to cooperate and one day before he was to appear to set a date for hearing.

10. The files provided by Mr. Malik did not include a working paper file that had been requested (the "JSR Inc." file). Mr. Malik advised he was no longer in possession of that file, as he had stored it in an insecure location (a friend's garage) and it had been lost. For this reason, he had failed to respond to the successor accountant, leading to the involvement of the Institute and the first charge.

11. On May 9, 2006, Mr. Malik provided financial statements for JSR Inc. An examination of the financial statements revealed a number of deficiencies in the financial statements prepared by Mr. Malik. In particular, Mr. Malik failed to:

- Include comparative figures for the corresponding previous period to the audit;
- Disclose the attributes of the preferred shares;
- Disclose the details of a transfer of capital assets to the company in consideration for preferred shares;
- Disclose an appropriate basis on which the inventory was valued;
- Appropriately account for the acquisition of capital assets, the shareholder advances, and the loss on disposal of equipment;
- Disclose a related party transaction on the transfer of capital assets from a

- proprietorship owned by the shareholder;
- Disclose, with appropriate information, any financial instruments;
- Account appropriately for income tax purposes, including disclosing future income taxes and selecting the differential reporting option; and
- Make reference in the auditor's report to "Canadian Generally Accepted Auditing Standards" and "Canadian Generally Accepted Accounting Principles".

12. The review of another file provided by Mr. Malik (the "SOISO" file) revealed many of the same deficiencies in the audit. Mr. Malik:

- Utilized an inappropriate basis of accounting in the preparation of the financial statements, by using a cash basis;
- Failed to disclose the fair value of an investment held by the organization;
- Failed to make preliminary decisions as to materiality and audit risk, by not filling in those sections on his checklist at the planning stage of the audit;
- Failed to communicate with the audit committee at least annually as to independence, including a disclosure of all audit and non-audit fees received during the year; and
- Did not reference "Canadian Generally Accepted Auditing Standards" and "Canadian Generally Accepted Accounting Principles" or use language in accordance with the *CICA Handbook* in the auditor's report.

13. A review of a third file (the "MIZAN" file) also disclosed deficiencies. Mr. Malik:

- Failed to make preliminary decisions as to materiality and audit risk;
- Did not obtain written confirmation of the scope and terms of the engagement;
- Failed to ensure the management representation letter included the required representations with respect to fraud and error;
- Failed to investigate and reconcile a difference between the bank statement and bank balance; and
- Failed to communicate with the audit committee at least annually as to independence, including a disclosure of all audit and non-audit fees received during the year.

14. On December 19, 2005, a separate complaint was received by the Institute concerning Mr. Malik, and investigated. That investigation determined that Mr. Malik had been engaged in August, 2004 by "MD" to compile financial statements and prepare tax returns for MD's corporation. Despite being paid a retainer, Mr. Malik failed to perform the work, resulting in MD receiving notices of default from the tax authorities. Mr. Malik, after making numerous promises, returned the file to the client in August, 2006, without performing the work for which he was engaged.

15. Neither counsel on behalf of the Professional Conduct Committee nor the member made any submissions as to finding.

DECISION

16. After deliberations, the panel made the following decision:

THAT, having seen, and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charge No. 1 (dated April 7, 2006) and charge Nos. 1, 2, 3, 4, 5, 6 and 7 (dated September 25, 2006), the Discipline Committee finds Mr. Ghulam Mhayiuddin Malik guilty of charge No. 1 (dated April 7,

2006) and charge Nos. 1, 2, 3, 4, 5, 6 and 7 (dated September 25, 2006).

REASONS FOR THE DECISION

17. The panel finds the evidence presented by the Professional Conduct Committee to be clear, cogent and convincing, and to prove that Mr. Malik departed from the accepted standards of practice to such an extent that it constituted professional misconduct.

SUBMISSIONS

18. On sanction, Mr. Farley, on behalf of the Professional Conduct Committee, submitted that the misconduct had two facets. One facet was the standard of the work performed by Mr. Malik on the engagements, and the other was an issue of his conduct, in his failing to co-operate with the Institute and failing to complete his work in a timely manner. He asked the panel to consider specific deterrence, general deterrence, and rehabilitation in determining an appropriate sanction, and sought: a reprimand in writing; a fine in the amount of \$5,000; professional development courses; a suspension of both membership and public accounting licence until the completion of those courses; supervised practice for twelve months following the suspension; a re-investigation by the Professional Conduct Committee after the period of supervised practice; review and approval by a partner in Mr. Malik's firm of all assurance files for the rest of Mr. Malik's career; and full publicity. He also sought costs in the amount of \$6,000, on a partial indemnity basis, pointing out that this would only amount to one third of the costs incurred.

19. Mr. Farley submitted that the proposed sanction would enable Mr. Malik to bring himself to the standard of a competent practitioner, while putting both him and the profession on notice that the Institute considers both the failure to maintain standards and the breaches of conduct serious matters.

20. On behalf of Mr. Malik, Mr. Page submitted that, with one exception, he was joining with the Professional Conduct Committee in its submission. That one exception was the length of time for the partner review of Mr. Malik's files. That issue was resolved on further discussion between counsel, and Mr. Farley then informed the panel he had misunderstood the position of the parties, and that he was only seeking partner approval until the end of the period of supervision. With that concession, Mr. Page indicated there was a joint submission.

21. Mr. Page informed the panel that Mr. Malik is a 62-year-old member who has experienced significant family difficulties and who deserves a second chance. He submitted that Mr. Malik is both capable and desirous of rehabilitation.

ORDER

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Malik be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Malik be and he is hereby fined the sum of \$5,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.

3. THAT Mr. Malik be and he is hereby charged costs fixed at \$6,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Malik be suspended from the rights and privileges of membership in the Institute from the date this Decision and Order becomes final until he has fully complied with the requirement to complete all of the professional development courses specified in this order.
5. THAT the public accounting licence of Mr. Malik be suspended from the date this Decision and Order becomes final until he has fully complied with the requirement to complete all of the professional development courses specified in this order.
6. THAT Mr. Malik be and he is hereby required to complete, by paying for and attending in their entirety, the following professional development courses made available through the Institute:
 - (a) *Accounting Auditing & Professional Practice Update;*
 - (b) *Financial Statement Presentation & Disclosure – A Practitioner's Workshop;*
 - (c) *Not-for-Profit Organizations – Accounting Issues; and*
 - (d) *Not-for-Profit Organizations – Auditing Issues.*
7. THAT Mr. Malik be and he is hereby required to have his practice supervised for a period of twelve (12) months at his own cost, in that all audit and review engagements for year-ends which fall within the twelve (12) month period shall be approved by a supervisor. In particular:
 - (a) Mr. Malik shall, within thirty (30) days from the date this Decision and Order becomes final under the bylaws, file with the secretary of the discipline committee a supervised practice plan, which has been reviewed and approved by the director of standards enforcement, and which sets out the name and the detailed responsibilities of the supervisor, and which contains the agreement in writing of the supervisor to so act.
 - (b) The responsibilities of the supervisor shall include, at a minimum, the review and approval of Mr. Malik's working papers and financial statements prior to Mr. Malik's issuance of audit and review reports.
 - (c) In the event the professional conduct committee finds Mr. Malik's choice of supervisor unacceptable, or there is any other issue relating to the supervised practice plan about which Mr. Malik and the professional conduct committee cannot agree, either may apply to the chair of the discipline committee at an assignment hearing for directions.
 - (d) The twelve (12) month period of supervised practice shall commence on the day that the suspension pursuant to paragraph 4 is ended, or the day that Mr. Malik files the approved supervised practice plan in accordance with paragraph 7(a) above, or on the day the supervised practice plan is settled by the chair pursuant to paragraph 7(c) above, whichever of the

days is the latest.

- (e) The supervisor shall file a report in writing with the Institute confirming that he or she has supervised Mr. Malik for the stipulated period of time and confirming that there were no compliance issues with Mr. Malik's practice, this report to be provided to the Institute within thirty (30) days of the conclusion of the supervised practice.
8. THAT Mr. Malik be reinvestigated by the professional conduct committee, or by a person retained by the professional conduct committee, within twelve (12) months after the period of supervised practice pursuant to paragraph 7 has been completed, the cost of the reinvestigation, up to \$2,000, to be paid by Mr. Malik within (30) days of receiving notification of the cost of the reinvestigation.
 9. THAT, for a period of twelve (12) months after Mr. Malik's period of supervised practice pursuant to paragraph 7 has been completed, a partner of Rosenthal, Pervez Noor LLP, Mr. Malik's current employer, or any future employer, will be required to review all assurance engagements which have been prepared, reviewed or signed by Mr. Malik.
 10. THAT notice of this Decision and Order, disclosing Mr. Malik'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;
 - (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.
 11. THAT notice of the suspension and subsequent restriction on practice of the public accounting licence, disclosing Mr. Malik's name, be given by publication on the Institute's website and in a newspaper or newspapers distributed in the geographic area of Mr. Malik's current or former practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Malik and shall be in addition to any other costs ordered by the committee.
 12. THAT Mr. Malik 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 becomes final under the bylaws to be held during the period of suspension and thereafter returned to Mr. Malik.
 13. THAT in the event Mr. Malik fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three month period, 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 in a newspaper distributed in the geographic area of Mr. Malik's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Malik and shall be in addition to any other costs ordered by the committee.

14. THAT in the event Mr. Malik fails to comply with any of the requirements of this Order, his public accounting licence shall thereupon be suspended until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three month period, his licence shall thereupon be revoked. Notice of his licence suspension and revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Malik's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Malik and shall be in addition to any other costs ordered by the committee.

REASONS FOR THE ORDER

Reprimand

23. Mr. Malik's failure to meet the expected standards of the profession, both in terms of the quality of his work and in his conduct, took place over a number of files and over a significant period of time. A reprimand is necessary to emphasize to him the seriousness of his actions and the need to ensure he does not again transgress.

Fine

24. A fine is necessary to demonstrate to Mr. Malik and other members of the profession the gravity of the conduct for which he has been found guilty. Mr. Malik's modest means are reflected in the quantum of the fine and in the time he has been given in which to pay it.

Professional Development and Suspension

25. The matters that have brought Mr. Malik before this panel demonstrate he has failed to remain current with and understand the importance of the standards of the profession. The professional development courses ordered will enable him to achieve that competence. The suspension until the completion of the courses has been ordered to protect the public and attempt to ensure that Mr. Malik does not practise without the necessary knowledge and skills.

Supervision and Re-investigation

26. A period of supervision and a re-investigation by the Professional Conduct Committee have been ordered to provide assurances to the public and the profession that Mr. Malik is practising to the appropriate standards of the profession, and to provide a mechanism to expeditiously address any further delicts. It will also serve as a reminder to Mr. Malik of the expectations of him, and the consequences should he fail to meet those expectations.

Notice

27. In order for the Institute to govern the profession and for the public to have confidence in its ability to do so, it is essential that matters of discipline be made available to the profession and the public. Such notice serves to educate and warn other members of the profession, and to indicate to the member charged the unacceptable nature of his conduct. For these reasons, except in rare and exceptional circumstances, publication is ordered. No such circumstances have been submitted in

this case.

Certificate of Membership

28. The certificate of membership belongs to the Institute, and it is appropriate that it be returned to the Institute for the period of time during which Mr. Malik is not a member in good standing, in order to reduce any possibility of confusion concerning his status.

Failure to Comply

29. To encourage compliance with this order, and to provide an immediate sanction should the member not comply, the panel orders that if the member fails to comply, he shall be suspended for a period of time and then, should the lack of compliance continue, be expelled.

Costs

30. It is appropriate that the member charged, rather than the membership as a whole, bear a portion of the cost of the discipline proceeding occasioned by his conduct. The costs ordered do not even approach partial indemnity, but, given the totality of the sanction and the means of the member, the panel has determined the amount to be appropriate.

DATED AT TORONTO THIS 26TH DAY OF APRIL, 2007
BY ORDER OF THE DISCIPLINE COMMITTEE

M.B. MARTENFELD, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

D.M. FORTNUM, FCA
P.M. CLEVELAND, FCA
N.A. MACDONALD, CA
P.W. WONG (PUBLIC REPRESENTATIVE)