

Guiseppe (Joe) Spidalieri: Summary, as Published in *CheckMark*

Giuseppe (Joe) Spidalieri, of Windsor, was found guilty of one charge under Rule 203.2 of failing to cooperate in a professional conduct committee investigation. Mr. Spidalieri was fined \$2,500 and ordered to provide certain documents to the director of standards enforcement within a prescribed time, failing which he would be expelled. As a result of his failure to provide the documents as required, Mr. Spidalieri was expelled from the Institute.

CHARGE(S) LAID re Guiseppe (Joe) Spidalieri

The Professional Conduct Committee hereby makes the following charge against Joe Spidalieri, a suspended member of the Institute:

THAT the said Joe Spidalieri, in or about the period October 3, 2001 through to November 1, 2001, 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.

Dated at London, Ontario this 5th day of November, 2001.

G.W. MILLS – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Guiseppe (Joe) Spidalieri

DECISION AND ORDER IN THE MATTER OF: A charge against **GIUSEPPE (JOE) SPIDALIERI**, a suspended member of the Institute, under **Rule 203.2** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE FEBRUARY 7, 2002

DECISION

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Giuseppe (Joe) Spidalieri guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Spidalieri be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Spidalieri be and he is hereby fined the sum of \$2,500, to be remitted to the Institute within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Spidalieri cooperate in the professional conduct committee investigation within seven (7) days from the date this Decision and Order becomes final under the bylaws, by providing to the director of standards enforcement both:
 - (a) the documents requested in the letter to Mr. Spidalieri dated October 4, 2001 contained at Tab 1 of Exhibit 4 filed at this hearing; and
 - (b) the completed and signed authorization & direction to Mr. Spidalieri's trustee in bankruptcy contained at Tab 3 of Exhibit 4 filed at this hearing.
4. THAT notice of this Decision and Order, disclosing Mr. Spidalieri's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
 - (b) to the Public Accountants Council for the Province of Ontario;
 - (c) to the Canadian Institute of Chartered Accountants; and
 - (d) by publication in *CheckMark*.
5. THAT in the event Mr. Spidalieri fails to comply with 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, and by publication in *The Globe and Mail* and *The Windsor Star*.

DATED AT TORONTO THIS 15TH DAY OF FEBRUARY, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Guiseppe (Joe) Spidalieri

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against **GIUSEPPE (JOE) SPIDALIERI**, a suspended member of the Institute, under **Rule 203.2** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE FEBRUARY 7, 2002

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on February 7, 2002 to hear a charge brought by the professional conduct committee against Mr. Guiseppe (Joe) Spidalieri.
2. The professional conduct committee was represented by Ms. Barbara Glendinning, who was accompanied by the professional conduct committee investigator, Mr. Bruce Armstrong. Mr. Spidalieri represented himself and confirmed he understood he had the right to be represented by legal counsel.
3. The hearing concluded on February 7, 2002. The decision and the terms of the order were made known at the hearing. The formal, written decision and order was signed on February 15, 2002 and sent to Mr. Spidalieri that day. These reasons of the discipline committee, given pursuant to Bylaw 574, include the charge, the decision and the order.

THE CHARGE AND THE PROCEEDINGS

4. The charge made by the professional conduct committee against Mr. Spidalieri dated November 5, 2001 reads as follows:

THAT the said Joe Spidalieri, in or about the period October 3, 2001 through to November 1, 2001, 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.

5. Mr. Spidalieri entered a plea of not guilty to the charge.
6. Ms. Glendinning made an opening statement, called Mr. Armstrong to testify, and filed a document brief containing copies of letters from Mr. Armstrong and Mr. Farley to Mr. Spidalieri, and copies of letters between Ms. Glendinning and Mr. Spidalieri. Included with one of the letters from Mr. Spidalieri to Ms. Glendinning was a copy of a letter dated September 24, 2001 from Mr. Spidalieri to Maak Consulting (Windsor) Limited and Mr. Michael Myers, and a copy of Mr. Spidalieri's account to them of the same date.
7. Mr. Spidalieri cross-examined Mr. Armstrong, and called as a witness Mr. Michael Stork, CA, a partner of accounting firm Goldfarb Shulman Patel & Co. LLP, at which Mr. Spidalieri now works.
8. Mr. Spidalieri did not testify. He made his position clear, however, in his letter to Ms. Glendinning dated January 28, 2002, contained in the document brief, as well as in his cross-examination of Mr. Armstrong, and in his submissions.

THE RELEVANT FACTS

9. In 1998, Mr. Spidalieri carried on a practice in Windsor. Mr. Michael Myers was a client who, in the last few months of 1998, provided Mr. Spidalieri with \$25,000 in five cheques, each payable to a Spidalieri company, each in the amount of \$5,000, and each on its face stating to be re: income tax.

10. In 1999, Mr. Spidalieri gave up his practice in Windsor. He made an assignment in bankruptcy in February 1999, and in June 2001 took employment with Goldfarb Shulman Patel & Co.

11. Prior to September 24, 2001, the standards enforcement area of the Institute received a complaint from a detective of the Windsor Police Service to the effect that Mr. Spidalieri had improperly used a portion of the \$25,000 provided to him by Mr. Myers. On September 24, 2001, on his personal letterhead, Mr. Spidalieri wrote to Mr. Myers at Maak Consulting (Windsor) Ltd. enclosing an account for services provided in the calendar years 1998, 1999 and 2000. The account was for the amount of \$16,500 plus GST of \$1,155, for a total of \$17,655. In his letter, Mr. Spidalieri gave "the final accounting" for the \$25,000 by showing the \$17,655 account together with two amounts totaling \$9,484.07 which were stated to represent income tax payments made on behalf of Mr. Myers and his wife Kristine. According to Mr. Spidalieri's letter, Mr. Myers owed him \$2,139.07, being the \$25,000 less the \$17,655 and \$9,484.07 amounts.

12. After Mr. Armstrong had been appointed by the professional conduct committee to investigate, he arranged to meet with Mr. Spidalieri on October 3, 2001. This interview was successful up to a particular point in Mr. Armstrong's enquiries. Mr. Spidalieri answered questions, and set aside a number of documents which were considered relevant so that he could photocopy them and provide Mr. Armstrong with copies. But then Mr. Spidalieri took offence at a comment Mr. Armstrong made and thereupon terminated the interview and declined to make copies of the documents which had been set aside. While Mr. Spidalieri did not testify, it was clear from his questions, remarks and submissions that he and Mr. Armstrong had different recollections of the interview and the comments made.

13. Mr. Armstrong wrote to Mr. Spidalieri on October 4, 2001. In this letter he listed, under the heading "Documents set out to be photocopied", the following documents which Mr. Spidalieri had originally set aside for photocopying at the October 3 meeting:

- fiscal 1998, 1999 and 2000 notice to reader financial statements for Maak Consulting;
- handwritten trial balance and journal entries in support of the 1998 and 1999 Maak financials;
- trial balance in support of the 2000 Maak financials;
- invoice to Maak for bookkeeping provided during July to September 1998; and
- memo from Mr. Myers to Mr. Spidalieri dated April 8, 2000.

Mr. Armstrong then listed under the heading "Documents still to be located", documents which he thought were relevant and wanted to see, including:

- the general ledger for Maak which supported the financial statements for the year 2000;
- other invoices which Mr. Spidalieri had sent to Maak or Mr. Myers;

- the sales journal recap of all invoices billed by Mr. Spidalieri in his professional practice during 1998, 1999 and 2000;
- the financial statements or professional statement reconciled to Mr. Spidalieri's T2032 returns for 1998, 1999 and 2000;
- Mr. Spidalieri's T1 returns for the years 1998, 1999 and 2000; and
- Mr. Spidalieri's "library" of all e-mails, faxes etc. to and from Mr. Myers from April 8, 2000 to October 4, 2001.

14. Mr. Armstrong also requested, subject to their availability, copies of the bank statements and cancelled cheques for the period September 1998 to January 1999 for the account(s) in which the five cheques from Mr. Myers were deposited, as well as a signed authorization permitting him to get the documentation directly from each bank or trust company. In subsequent correspondence to Mr. Spidalieri, Ms. Glendinning asked him to sign an authorization and direction to his trustee in bankruptcy authorizing the trustee to discuss with Mr. Armstrong all matters related to Mr. Spidalieri's bankruptcy, and to release to Mr. Armstrong copies of all books, records, accounts and other documents in the trustee's possession or control relating to Mr. Spidalieri and his bankruptcy.

15. Mr. Spidalieri's position was that:

- he had cooperated fully with Mr. Armstrong in dealing with all the relevant issues;
- this was a civil dispute between Mr. Myers and himself, and it was inappropriate for the Institute to be involved in a trivial (\$6,000) civil matter;
- Mr. Armstrong had conducted the investigation in a prejudicial and unprofessional manner;
- the documents requested were outside the scope of a proper investigation; and
- his bankruptcy report was a matter of public record and available to anyone.

16. It was the position of the professional conduct committee that:

- it did not have to prove that the documents requested in Mr. Armstrong's letter of October 4, 2001 were relevant but only that they could be relevant to the investigation; and
- it was obvious that the documents sought could be relevant to an investigation into what happened to \$25,000 which the member acknowledged he or corporations he controlled received.

DECISION ON THE CHARGE

17. When the discipline committee had heard the submissions of both parties, it deliberated. When the deliberations concluded, the parties were invited back into the Council Chamber and the decision was read into the record. Subsequent to the hearing, the formal decision was sent to Mr. Spidalieri. The decision reads as follows:

DECISION

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Giuseppe (Joe) Spidalieri guilty of the charge.

18. As Mr. Spidalieri initially set aside a number of documents which he agreed were relevant to the enquiry, and then subsequently refused to photocopy them or to provide copies to the professional conduct committee, it is apparent that he failed to cooperate even with respect to matters which he himself had acknowledged were relevant.

19. While Mr. Spidalieri asserted that the other documents sought were not relevant, the panel disagreed and determined that all of the documents sought could help shed light on what happened to the \$25,000.

20. Mr. Spidalieri's deliberate and emphatic refusal to cooperate was a clear breach of Rule 203.2, and accordingly he was found guilty of professional misconduct.

ORDER AS TO SANCTION

21. Ms. Glendinning made submissions with respect to sanction, and asked for a reprimand as a specific deterrent to Mr. Spidalieri, a fine of \$2,500 as both a general and a specific deterrent, and an order that Mr. Spidalieri cooperate in the professional conduct committee investigation by providing the documents outlined in Mr. Armstrong's letter of October 4, 2001. She also sought the usual order as to notice, including publication in *CheckMark*.

22. Mr. Spidalieri made very brief submissions. He said he was putting a stop to the investigation as of the hearing date, February 7, 2002. He also said he was not going to cooperate, that if the discipline committee was going to order him to do so it might as well expel him, and that he would not have his CA designation held over his head. He then left the hearing room.

23. After deliberation, the discipline committee made the following order:

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Spidalieri be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Spidalieri be and he is hereby fined the sum of \$2,500, to be remitted to the Institute within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Spidalieri cooperate in the professional conduct committee investigation within seven (7) days from the date this Decision and Order becomes final under the bylaws, by providing to the director of standards enforcement both:
 - (a) the documents requested in the letter to Mr. Spidalieri dated October 4, 2001 contained at Tab 1 of Exhibit 4 filed at this hearing; and
 - (b) the completed and signed authorization & direction to Mr. Spidalieri's trustee in bankruptcy contained at Tab 3 of Exhibit 4 filed at this hearing.
4. THAT notice of this Decision and Order, disclosing Mr. Spidalieri'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*.

5. THAT in the event Mr. Spidalieri fails to comply with 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, and by publication in *The Globe and Mail* and *The Windsor Star*.

Reprimand

24. Mr. Spidalieri's refusal to cooperate is a refusal to adhere to the standards of the profession. The discipline committee thought that a reprimand was 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.

Fine

25. The discipline committee concluded that a fine was necessary as both a specific deterrent to Mr. Spidalieri, and a general deterrent to other members who might be inclined to refuse to cooperate with an investigation being conducted on behalf of the professional conduct committee. We took into account the fact that Mr. Spidalieri, who is now employed with an accounting firm, is an undischarged bankrupt. The nature of his misconduct required a fine which was something more than a licence fee, and accordingly he was fined \$2,500 and given sixty days from when the order becomes final to pay it.

Cooperation

26. As we concluded that the documents sought could be relevant to the investigation, we ordered that those documents be provided. Mr. Spidalieri's conduct and comments at the hearing raised the issue of whether or not he was governable. The obligation to cooperate with the Institute transcends personal animosities, and in the hope Mr. Spidalieri will come to understand this we ordered him to provide the documents to the director of standards enforcement within seven days of the date the order becomes final.

Notice

27. The committee ordered notice of its decision and order in the manner specified, including disclosure of the member's name, as a specific and general deterrent. Such publicity is also important to show that the profession is a self-regulating body that takes steps to ensure standards are being adhered to. This publicity serves to give the public and members confidence in the profession's ability to self-govern. The giving of such notice is a well-established practice of the discipline committee, which it follows unless a persuasive reason not to is presented. No such reason was put forward in this case.

Possible Consequential Expulsion

28. This order, as all orders of the discipline committee, provides for expulsion in the event the member does not comply with its terms. In setting the time within which a disciplined member must comply, discipline panels weigh the importance of particular provisions of an order against the consequences of non-compliance. In this case, the committee is primarily concerned that the member demonstrate his willingness to comply with the standards of conduct required of chartered accountants. It appeared that the information requested by the professional conduct committee investigator was readily available and would facilitate the completion of the investigation. Accordingly, we concluded that the requested information and documents should be provided within seven days from the date of the decision and order becoming final under the bylaws.

29. If the member fails to comply with the order and is expelled, notice of his expulsion will be given to the profession in the manner described above. In addition, as it is considered to be important that the public receive notice of members' expulsions, we ordered that in the event of expulsion notice of it be published in *The Globe and Mail* and *The Windsor Star*.

DATED AT TORONTO THIS 30TH DAY OF APRIL, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

R.I. COWAN, CA
B.L. HAYES, CA
N.A. MACDONALD EXEL, CA
J.M. MULHALL, CA
P.W. WONG (Public representative)