

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **HAROLD MARVIN CHAPMAN, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Harold Marvin Chapman, CA
128 Fenn Avenue
Toronto, ON M2P 1X6

AND TO: The Professional Conduct Committee, ICAO

REASONS FOR THE DECISION AND ORDER MADE DECEMBER 22, 2004

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on December 22, 2004 to hear the charge brought by the professional conduct committee against Harold Marvin Chapman, a member of the Institute.

2. The professional conduct committee was represented by Mr. Paul Farley. He was accompanied by Ms. Kimberley Mills, the investigator appointed by the professional conduct committee. Mr. Harold Chapman was present at the hearing and was represented by his counsel, Mr. Allan Sternberg.

3. The decision and order of the panel was made known at the hearing on December 22, 2004. The formal, written decision and order was signed by the secretary to the discipline committee and sent to the parties on January 6, 2005. These reasons, given in writing pursuant to Bylaw 574, set out the charge, the decision, the order, as well as the reasons of the discipline committee.

THE CHARGE AND THE PLEA

4. The notice of the assignment hearing dated September 29, 2004 together with the procedural outline; the notice of hearing dated October 28, 2004; and the charge made on September 14, 2004, were marked as Exhibits Nos. 1, 2 and 3, respectively. The parties advised that there were no preliminary matters to deal with and the member was asked to enter a plea to the charge.

5. The charge, made by the professional conduct committee and dated September 14, 2004, reads as follows:

1. THAT the said Harold M. Chapman, in or about the period October 1, 2001 through to February 22, 2002, 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 purchased shares of "R. Corp." in contravention of section 76(1) of the *Securities Act*,

R.S.O. 1990, c.S.5 as amended, contrary to Rule 201.1 of the rules of professional conduct.

6. Mr. Chapman entered a plea of guilty and confirmed for the record that he understood that upon the basis of that plea, and on that basis alone, he could be found guilty of the charge.

THE CASE FOR THE PROFESSIONAL CONDUCT COMMITTEE

7. Mr. Farley gave an overview of the case and filed an Agreed Statement of Facts (Exhibit No. 4), and a Document Brief (Exhibit No. 5). The Document Brief included a copy of section 76 (1) of the *Ontario Securities Act* and a copy of the settlement agreement between the staff of the Ontario Securities Commission (OSC) and Harold M. Chapman, which was dated March 17, 2004.

8. Mr. Chapman received his designation in 1952. At the time of the hearing, he was a senior partner at the accounting firm Chapman Matten Welton Winter LLP. His responsibilities were primarily administrative and supervisory in nature.

9. One of the firm's clients entered into negotiations to acquire the common shares of another corporation which was listed on the Toronto Stock Exchange.

10. While Mr. Chapman was not the partner in charge of the engagement, he did know of the proposed purchase and attended a meeting where a number of issues were discussed. He concluded that the purchase of the shares would likely increase the value of the shares of the listed company and he purchased 9,700 shares. After the announcement that the agreement had been reached, the shares did increase in value and Mr. Chapman realized a "deemed profit", as that term is used by the OSC, of \$7,511.

11. Mr. Chapman was an experienced stock trader. The value of the shares he acquired was approximately two percent of his portfolio. Mr. Chapman acknowledged that the purchase of the shares in the circumstances contravened section 76 (1) of the *Ontario Securities Act*. The settlement with the OSC required Mr. Chapman to pay a fine of \$10,000 and make a payment of \$5,000 in respect of the costs of the OSC investigation.

DECISION ON THE CHARGE

12. After deliberating, the panel concluded that Mr. Chapman was guilty as charged and accordingly, when the hearing reconvened, the Chair read the following decision for the record.

THAT, having seen and considered the evidence, including the Agreed Statement of Facts, filed, and having heard the plea of guilty to the charge, the Discipline Committee finds Harold Marvin Chapman guilty of the charge.

SANCTION

13. Mr. Farley requested an order which included a reprimand; a fine of \$5,000; the usual term for publication of notice of the decision and sanction imposed disclosing Mr. Chapman's name; and an order for costs in the amount of \$10,000.

14. Mr. Farley acknowledged that Mr. Chapman was clearly remorseful, that his misconduct did not result in material harm to the investing public and that the misconduct was inadvertent. But offsetting these mitigating factors, in Mr. Farley's submission, was the aggravating factor that the OSC had to deal with Mr. Chapman who had clearly breached the *Ontario Securities Act*.

15. Mr. Sternberg, in his submissions, emphasized that it was an unintended violation and requested that there not be a further penalty, that is a penalty in addition to that imposed by the OSC. Mr. Sternberg acknowledged that there would be a reprimand and emphasized that this would be a blemish on an otherwise unblemished career of over 50 years as a chartered accountant. In these circumstances, he submitted that the notice should be published without the member's name.

16. In reply, Mr. Farley submitted that this was not a rare and unusual case which would justify withholding Mr. Chapman's name. Further, he submitted that the penalty was not a double penalty but rather a sanction imposed by Mr. Chapman's governing body for his misconduct.

17. In answer to questions from the panel, we were advised that Mr. Chapman had little experience with public companies, and that his firm had last acted for a client which was a public company about 15 years ago.

ORDER

18. When the panel concluded its deliberation, the hearing reconvened and the Chair summarized the terms of the order for the record. The formal, written order sent to the parties on January 6, 2005, provided as follows:

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Chapman be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Chapman be and he is hereby fined the sum of \$7,500, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Chapman be and he is hereby charged costs fixed at \$7,500, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Chapman'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. Chapman 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, and in *The Globe and Mail*.

REPRIMAND

19. A reprimand was necessary to stress to Mr. Chapman that his conduct was unacceptable.

FINE

20. The Agreed Statement of Facts and both counsel in their submissions referred to Mr. Chapman's conduct as an inadvertent breach of the *Ontario Securities Act*. Mr. Sternberg submitted that this was not the usual kind of insider trading, but Mr. Chapman's purchase of the shares of the target company was a conscious, deliberate act and it is contrary to a chartered accountant's fundamental obligation not to use information from a client to benefit himself or herself.

21. The principles governing the conduct of members and students are set out in the Foreword to the Rules of Professional Conduct under a series of bullets. The fourth bullet reads:

A member or student has a duty of confidence in respect of the affairs of any client and shall not disclose, without proper cause, any information obtained in the course of his or her duties, nor shall he or she in any way exploit such information to his or her advantage.

22. We concluded Mr. Chapman's contravention of this fundamental principle required a greater fine than that recommended by the professional conduct committee. We would like these reasons to serve notice that a breach of this principle will be treated as serious professional misconduct which will warrant, even in circumstances where there has not been a significant financial gain, a substantial sanction.

NOTICE

23. There were no rare and unusual circumstances which would warrant withholding Mr. Chapman's name from the notice set out in *CheckMark*. Both the principles of general and specific deterrence require notice of the misconduct, disclosing the member's name to be published.

COSTS

24. We concluded that Mr. Chapman, whose misconduct was solely responsible for this hearing, should reimburse the Institute for the reasonable costs of the hearing and the investigation. We accepted that the costs of this half-day hearing, on a partial indemnity basis, were about \$4,000. But we did not think it was reasonable for Mr. Chapman to reimburse the Institute for more than \$3,500 on account of the preparation for this hearing and the investigation. The Agreed Statement of Facts is four pages long. Virtually all of the relevant information came from the settlement agreement Mr. Chapman entered into with the

OSC, which was concluded before the investigator was appointed. There was no suggestion that Mr. Chapman had ever resiled from, or attempted to resile from, the admissions he made in the settlement agreement with the OSC. We concluded that costs in the amount of \$7,500 were reasonable and that Mr. Chapman should pay them.

EXPULSION FOR FAILURE TO COMPLY

25. An order which did not provide consequences for a failure to comply with the terms set out in the order would be meaningless. Accordingly, the order includes a provision that failure by Mr. Chapman to comply with the requirements of the order shall result in expulsion. In the event Mr. Chapman is expelled, notice of his expulsion shall be given to the CICA, the Public Accountants Council for the Province of Ontario, and notice disclosing his name shall be published in *CheckMark* and in *The Globe and Mail*.

DATED AT TORONTO THIS 18TH DAY OF JULY 2005
BY ORDER OF THE DISCIPLINE COMMITTEE

D.W. DAFOE, FCA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.I. COWAN, CA
M.S. LEIDERMAN, CA
B.D. LOVE, CA
M.B. MARTENFELD, FCA
D.J. ANDERSON (Public Representative)