

Henry Joseph Finkelstein: Summary, as Published in *CheckMark*

Henry Joseph Finkelstein, of Willowdale, was found guilty of a charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, for forging the signature of a client; a charge under Rule 202 of failing to perform his professional services with integrity and due care, and a charge under Rule 205 of signing or associating himself with notice-to-reader financial statements of a client company for two different year-ends, which he knew or should have known were false or misleading. Among other things, the member failed to file a corporate tax return for a client's company, resulting in the company's dissolution. In an attempt to revive the dissolved company, he filed Articles of Revival upon which he signed the client's name without the client's knowledge or consent. Mr. Finkelstein was fined \$6,000, ordered to take three professional development courses, and suspended from membership for six months. His appeal of the discipline committee's order was dismissed by the appeal committee.

CHARGE(S) LAID re Henry Joseph Finkelstein

The Professional Conduct Committee hereby makes the following charges against Henry J. Finkelstein, a member of the Institute:

1. THAT, the said Henry J. Finkelstein, in or about the month of April 1991, while engaged as the accountant for Evron Holdings Limited, signed or associated himself with the Notice to Reader financial statements of Evron Holdings Limited as at October 31, 1989 and as at October 31, 1990 which he knew or should have known were false or misleading, contrary to Rule 205 of the rules of professional conduct, and in particular;
 - a) the Statement of Income and Retained Earnings included in the 1989 financial statements show Sales 18,956" when Evron Holdings Limited was not entitled to the income of \$18,956;
 - b) the Statement of Income and Retained Earnings included in the 1990 financial statements show dividends of \$7,000 and the Statement of Income and Retained Earnings included in the 1989 financial statements show dividends of \$14,000 when a dividend of \$31,500 was declared on December 31, 1989;
 - c) the 1990 balance sheet shows as an asset ATRUCK, net of depreciation \$21,080" when the truck was not owned by the company but by one of its shareholders, Carmelo Laurretta;
 - d) the presentation in the financial statements as at October 31, 1990 is misleading as the disclosure should have included AInvestment in joint ventures".
 - e) the financial statements as at October 31, 1989 and October 31, 1990 show on the balance sheet AINVESTMENT IN GRASCAN CONSTRUCTION LTD., at cost \$29,790 (1990) \$0 (1989) when Evron Holdings Limited's subscription to Class A shares, purchased in Grascan Construction Ltd., are as follows: October 31, 1989 \$11,400...October 31, 1990 \$32,237...
2. THAT, the said Henry J. Finkelstein, in or about the period November 1988 through April 1991, while engaged as the accountant for Evron Holdings Limited Holdings Limited, failed to perform his professional services with integrity and due care, contrary to Rule 202 of the rules of professional conduct, in that;
 - a) he failed to identify Evron Holdings Limited as a Apersonal services business within the meaning of the Income Tax Act, R.S.C. when it was appropriate to do so for tax purposes;
 - b) he treated as sales of Evron Holdings Limited for the year ended October 31, 1989 an amount of \$18,956 when this amount was Carmelo Laurretta's share of the bonus paid by Grascan Construction Ltd. for the 1988 calendar year and should have been included in his income;

- c) he recorded as an asset of Evron Holdings Limited, for the year ended October 31, 1990, a truck belonging to Carmelo Laurretta, without obtaining the approval of the owner;
 - d) he treated dividends paid by Grascan Construction Ltd. to Evron Holdings Limited as exempt from Part IV tax under section 186 of the Income Tax Act on the basis that Grascan Construction Ltd. was a Aconnected corporation within the meaning of The Income Tax Act, R.S.C. when Grascan Construction Ltd. was not a Aconnected corporation as Evron Holdings Limited did not own shares in Grascan Construction Ltd. having more than 10% of the vote and the fair market value of all the issued shares of Grascan Construction Ltd. as required by the Act;
 - e) he failed to file on time Ontario Corporation Tax returns for Evron Holdings Limited for 1989 after accepting the responsibility to do so resulting in Evron Holdings Limited being dissolved by order dated January 21, 1991.
3. THAT, the said Henry J. Finkelstein, on or about the 16th day of July 1991, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the rules of professional conduct in that, after Evron Holdings Limited had been dissolved for his failure to file 1989 tax returns on the company's behalf, he signed the name of Roberta Laurretta, without her knowledge or consent, to Articles of Revival and filed same .

DATED at Bellville this day of 1995.

JENNIFER FISHER, CA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Henry Joseph Finkelstein

DECISION AND ORDER IN THE MATTER OF: Charges against HENRY JOSEPH FINKELSTEIN, CA, a member of the Institute, under Rules 201.1, 202 and 205 of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE DECEMBER 12, 1995

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, particulars (b) and (c) of charge No. 2 having been withdrawn, and having heard the plea of guilty to charges Nos. 1, 2 (as amended) and 3, THE DISCIPLINE COMMITTEE FINDS Henry Joseph Finkelstein guilty of charges Nos. 1, 2 and 3.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Finkelstein be reprimanded in writing by the chair of the hearing.
 2. THAT Mr. Finkelstein be and he is hereby fined the sum of \$6,000, 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. Finkelstein be suspended from the rights and privileges of membership in the Institute for a period of six (6) months from the date this Decision and Order becomes final under the bylaws.
 4. THAT Mr. Finkelstein be and he is hereby required to complete, by attending in their entirety, within twelve (12) months from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute:
 1. Practice Ethics
 2. Income Tax Refresher - Corporate
 3. Review and Compilation Engagements
- or, in the event that a course becomes unavailable, the successor course which takes its place.
5. THAT notice of this Decision and Order, disclosing Mr. Finkelstein'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.

6. THAT Mr. Finkelstein surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held by the secretary during the period of suspension and thereafter returned to Mr. Finkelstein.
7. THAT in the event Mr. Finkelstein fails to comply with any of the requirements of this Order within the time periods 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 5 hereof.
8. THAT in the event Mr. Finkelstein is suspended pursuant to paragraph 7 hereof, the suspension shall terminate upon his compliance with the term of the Order in respect of which he was suspended, provided that he complies within six (6) months from the date of his suspension.
9. THAT in the event Mr. Finkelstein fails to terminate a suspension imposed pursuant to paragraph 7 hereof within the time period specified in paragraph 8, 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 hereof.

DATED AT TORONTO THIS 20TH DAY OF DECEMBER, 1995
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Henry Joseph Finkelstein

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against HENRY JOSEPH FINKELSTEIN, CA, a member of the Institute, under Rules 201.1, 202 and 205 of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE DECEMBER 12, 1995

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were held on October 24 and December 12, 1995. Mr. Paul Farley attended on behalf of the professional conduct committee, and Mr. Finkelstein attended with his counsel, Mr. Frank Bowman.

The hearing was adjourned on October 24 because Mr. Finkelstein had only within the previous week engaged Mr. Bowman as his counsel. The member charged did have ample opportunity to consult and engage counsel before agreeing to set the date for the hearing. He had received an outline of the procedures of the hearing process and been advised to retain counsel. He attended at an assignment hearing on May 15, 1995 when the date for the hearing was set. It appeared to the committee that the prosecution had disclosed the investigator's report rather late and that counsel for Mr. Finkelstein would not have been able to properly prepare if the matter were to proceed. As the charges on their face were serious, and if proven would call for a serious sanction, the committee thought it was appropriate to adjourn the matter but in all the circumstances it was made peremptory on the member charged. Accordingly, the hearing was adjourned to December 12, 1995.

At the outset of the hearing on December 12 the professional conduct committee withdrew particulars (b) and (c) of charge No. 2, whereupon Mr. Finkelstein pleaded guilty to charges Nos. 1, 2 (as amended), and 3. The member confirmed that he understood that upon his plea of guilty, and upon that basis alone, he could be found guilty of the charges.

An agreed statement of facts, signed by Mr. Finkelstein and counsel for the professional conduct committee, was filed as an exhibit, as was a two-volume document brief and a flow chart. The particulars alleged in the charges were proven, and those particulars and the facts set out in the agreed statement of facts clearly constitute breaches of the rules of professional conduct. Accordingly the discipline committee determined that Mr. Finkelstein was guilty.

After making its findings with respect to guilt, the committee heard submissions as to the appropriate sanction, and, upon deliberation, made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Finkelstein be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Finkelstein be and he is hereby fined the sum of \$6,000, 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. Finkelstein be suspended from the rights and privileges of membership in the Institute for a period of six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Finkelstein be and he is hereby required to complete, by attending in their entirety, within twelve (12) months from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute:
 1. Practice Ethics
 2. Income Tax Refresher - Corporate
 3. Review and Compilation Engagements or, in the event that a course becomes unavailable, the successor course which takes its place.
5. THAT notice of this Decision and Order, disclosing Mr. Finkelstein'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.
6. THAT Mr. Finkelstein surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held by the secretary during the period of suspension and thereafter returned to Mr. Finkelstein.
7. THAT in the event Mr. Finkelstein fails to comply with any of the requirements of this Order within the time periods 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 5 hereof.
8. THAT in the event Mr. Finkelstein is suspended pursuant to paragraph 7 hereof, the suspension shall terminate upon his compliance with the term of the Order in respect of which he was suspended, provided that he complies within six (6) months from the date of his suspension.
9. THAT in the event Mr. Finkelstein fails to terminate a suspension imposed pursuant to paragraph 7 hereof within the time period specified in paragraph 8, 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 hereof.

The submissions on sanction were joint submissions, and counsel for Mr. Finkelstein agreed with the proposed disposition put forward by counsel for the professional conduct committee.

Briefly set out below are the reasons for the sanctions ordered by the committee.

Reprimand

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

Fine

The professional conduct committee requested a fine of \$6,000. The discipline committee concurred with counsel for the professional conduct committee that a fine is important as both a general and a specific deterrent.

Suspension

While both counsel submitted that a suspension of three months was appropriate, the committee had a concern this was insufficient given the nature of the misconduct. Accordingly, it asked both counsel to readdress this issue, which they did.

It was accepted that the principle of deterrence, both general and specific, required a suspension in this case, and the committee determined that the gravity of the misconduct required a six month suspension. Mr. Finkelstein signed or associated himself with notice to reader financial statements which he knew or should have known were false and misleading in five particulars. He failed to perform his professional services with integrity and due care in three respects. Mr. Finkelstein also forged the signature of his client. The committee did not agree with Mr. Finkelstein's counsel that the misconduct could be characterized as aggressive tax planning. In all the circumstances of this case, in particular the facts set out above, the committee determined that the misconduct called for a six-month suspension.

Professional Development Courses

The committee believes that one of the purposes of the disciplinary process, in appropriate cases, is to encourage rehabilitation. The committee thought the courses recommended would help Mr. Finkelstein update his skills and thus assist in rehabilitation.

Notice

The disciplinary process of a self-governing professional body must be viewed by its members and the public as an open process. Not having been advised of any rare or unusual circumstances to persuade it to withhold the member's name from publication when giving notice of this case, the committee ordered that notice include the member's name.

DATED AT TORONTO, THIS 12TH DAY OF APRIL, 1996
BY ORDER OF THE DISCIPLINE COMMITTEE

D.P. SETTERINGTON, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

H.B. BERNSTEIN, CA
L.P. BOOKMAN, CA
W. L. WOOD, CA
B.A. YOUNG, PEng (Public representative)

APPEAL COMMITTEE re Henry Joseph Finkelstein

DECISION AND REASONS IN THE MATTER OF: An appeal by HENRY JOSEPH FINKELSTEIN, CA, a member of the Institute, of the decision and order of the discipline committee made on December 12, 1995, pursuant to the bylaws of the Institute, as amended.

DECISION AND REASONS FOR DECISION MADE OCTOBER 15, 1996

DECISION

This appeal was heard by a panel of the appeal committee of the Institute of Chartered Accountants of Ontario on October 15, 1996. Mr. Finkelstein sought to vary the penalty imposed by the discipline committee in its decision and order made December 12, 1995.

Mr. Paul Farley appeared on behalf of the professional conduct committee. Mr. Henry Finkelstein appeared without counsel.

After reviewing the decision and order and reasons of the discipline committee, and other documents filed, and after hearing submissions from Mr. Finkelstein and Mr. Farley, the appeal committee dismissed the appeal and confirmed the decision and order of the discipline committee made on December 12, 1995.

All parties were informed of the appeal committee's decision and were advised that written reasons for its decision would follow. These are the reasons for the appeal committee's decision.

REASONS FOR DECISION

The member submitted to the appeal committee at the outset of the hearing that he was seeking to vary the penalty imposed by the discipline committee in its decision and order made on December 12, 1995. He was not disputing the facts as set out in the agreed statement of facts submitted to the discipline committee, nor the findings of guilty made against him by the discipline committee. Mr. Finkelstein pleaded guilty and was found guilty by the discipline committee of three charges pursuant to Rules 201.1, 202 and 205 of the Rules of Professional Conduct. The professional conduct committee and Mr. Finkelstein made a joint submission on sanctions to the discipline committee, recommending that the committee make an order composed of the following terms:

- a reprimand by the chair;
- a fine of \$6,000;
- a suspension of three months;
- full publicity including the member's name in *CheckMark*, with notice to the Public Accountants Council and the Canadian Institute of Chartered Accountants; and
- completion of the following professional development courses:
 - i) Practice Ethics;
 - ii) Income Tax Refresher - Corporate; and

iii) Review and Compilation Engagements.

The discipline committee accepted the joint submission on sanctions with one exception. The committee imposed a six month suspension rather than the three month suspension jointly recommended. While both counsel submitted that a three month suspension was appropriate, the discipline committee had a concern that it was insufficient given the nature of the misconduct, and asked both counsel to readdress the issue, which they did.

After listening to both counsel, the discipline committee held its reasons as follows:

It was accepted that the principle of deterrence, both general and specific, required a suspension in this case, and the committee determined that the gravity of the misconduct required a six-month suspension. Mr. Finkelstein signed or associated himself with notice to reader financial statements which he knew or should have known were false and misleading in five particulars. He failed to perform his professional services with integrity and due care in three respects. Mr. Finkelstein also forged the signature of his client. The committee did not agree with Mr. Finkelstein's counsel that the misconduct could be characterized as aggressive tax planning. In all the circumstances of this case, in particular the facts set out above, the committee determined that the misconduct called for a six-month suspension.

Mr. Finkelstein was appealing the length of the suspension and the amount of the fine imposed by the discipline committee. He submitted that the suspension should be reduced to three months, as agreed upon in the joint submission, and that the fine should be reduced to \$3,000.

The issue was whether the discipline committee, after considering the evidence and submissions of counsel, had properly exercised its discretion and imposed a sanction within an appropriate range given the facts of this particular case. Under Bylaw 530(3), the discipline committee has wide powers to impose sanctions on a member found in breach of the rules of professional conduct. In exercising its discretion as to the appropriate sanctions to impose in a particular case, the discipline committee's responsibility is to act fairly in the application of the principles of sentencing, in a manner consistent with previous cases. The major reason for making reference to earlier cases is to ensure that the standards for assessing the appropriate sanction are applied consistently. Although a joint submission on sanction should be given considerable weight, such a submission does not diminish the discretion of the discipline committee, as that committee is charged with the responsibility of imposing the sanction or sanctions which it considers appropriate in the circumstances of each individual case before it.

The appeal committee believed that the discipline committee properly considered and applied the sentencing principles of specific deterrence, general deterrence and rehabilitation, and imposed a penalty within the range of sentences appropriate for a breach of Rules 201.1, 202 and 205 of the rules of professional conduct. In this regard, the committee had reference to the following past discipline committee reasons:

- Chester Lupinski (Oct. 1991)
- Wayne Matheson (Nov. 1991)
- Marc Grunberg (Mar. 1993)
- Maurizio LoRusso (Sept. 1994)
- Albert Title (Aug. 1995)

- Simon Margel (Nov. 1995)

The reasons given by the discipline committee in this case make it clear that it gave proper regard to all of the arguments presented on behalf of Mr. Finkelstein with respect to sanction, and fully describe the bases upon which the committee exercised its discretion with respect to sanction.

The appeal committee was not persuaded that the discipline committee had made an error in principle. The discipline committee understood the applicable principles which govern the imposition of sanction. In applying those principles to the facts of this case the discipline committee did not misconstrue the evidence or place too much weight on the factors it identified as the reason for increasing the sanction from that jointly recommended.

The sanction imposed should fit the misconduct. But, it would be wrong to assume that there is only one precisely defined sanction which would fit a particular case. Here a six month suspension falls within the range of what is appropriate. The discipline committee set out the reasons for the six month suspension it imposed. The misconduct was serious, and a six month suspension should be a more effective general deterrent than a three month suspension. The appeal committee did not think the decision was wrong and therefore did not interfere with it.

DATED AT TORONTO THIS DAY OF MAY, 1997
BY ORDER OF THE APPEAL COMMITTEE

R.J. NOBES, FCA - CHAIR
THE APPEAL COMMITTEE

MEMBERS OF THE PANEL:

D.L. CHANT, FCA
D.J. HERLICK, CA
M.B. MARTENFELD, FCA
R.E. PARISI, CA
E. ZAVERSHNIK, CA
V. INGLIS (Public representative)