

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **JEFFREY FINSTEIN, CA**, a member of the Institute, under **Rules 206 and 206.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Jeffrey Finstein, CA
2180 Steeles Avenue West, Suite 215
CONCORD, ON L4K 2Z5

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision And Order Made February 21, 2006)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on February 21, 2006 to hear charges of professional misconduct against Jeffrey Finstein, a member of the Institute.

2. Ms. Barbara Glendinning appeared on behalf of the Professional Conduct Committee, and was accompanied by Mr. Raymond G. Harris, FCA, the investigator appointed by the Professional Conduct Committee. Mr. Finstein was in attendance. He was not represented by counsel, and indicated he was aware of his right to be so represented and was prepared to represent himself.

3. The decision of the panel was made known to the parties at the conclusion of the hearing on February 21, 2006, and the written Decision and Order served on them at that time. 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.

CHARGES

4. The following charges were laid by the Professional Conduct Committee against Mr. Finstein on December 5, 2005:

1. THAT the said Jeffrey Finstein, in or about the period August 31, 2003 through July 28, 2004, while engaged to perform a review of the financial statements of the "H. Y. B. Council" for the year ended August 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 of the rules of professional conduct (as amended), in that:

- (a) he failed to ensure disclosure of the fact that financial information and the review engagement report apply only to the bingo account; [8100.26; 8500.01]

- (b) he failed to ensure adequate disclosure of the status of the organization under income tax legislation; [4400.04]
 - (c) he indicated in his Review Engagement Report that he had reviewed the statement of cash flows when he had not, in fact, done so.
2. THAT the said Jeffrey Finstein, in or about the period July 28, 2004 through January 24, 2005, while engaged to perform an audit of the financial statements of the "H. Y. B. Council" for the year ended August 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, in that:
- (a) having issued an unqualified review engagement report dated July 28, 2004, and following the subsequent revision of the financial statements by the inclusion of additional revenues and expenses, he re-stated the financial statements and issued an audit report dated January 24, 2005 without double-dating that report or stating that the original report had been withdrawn or providing an explanation of the revision; [8100.47 & 5405.17]
 - (b) he failed to obtain sufficient and appropriate audit evidence to support the expression of a qualified opinion in his Auditor's Report dated January 24, 2005; [5510.22 & 5025.76]
 - (c) he failed to communicate with those having oversight responsibility for the financial reporting process to confirm his independence; [5751.08 & .32]
 - (d) he indicated in his Auditor's Report that he had audited the statement of cash flows when he had not, in fact, done so.
3. THAT the said Jeffrey Finstein, in or about the period July 31, 2004 through November 18, 2004, while engaged to perform a review of the financial statements of "M.F.F. Inc." for the year ended July 31, 2004, 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, in that:
- (a) he failed to ensure separate disclosure of the current and future income tax expenses; [3465.91]
 - (b) he accepted an inappropriate disclosure of the basis of accounting for future income taxes; [1505]
 - (c) he failed to ensure the appropriate classification and disclosure of amounts receivable from drivers for mobile catering vehicles purchased on their behalf; [3020 & 2061]
 - (d) he accepted the amortization of goodwill in circumstances where it was not appropriate to do so; [3062.63 & .66]
 - (e) he failed to present a cash flow statement when it was appropriate to do so;

[1540.03]

(f) he failed to ensure the appropriate statement presentation and disclosure for capital leases and long-term debt; [3065.21, .24, & .26; 3210.03 & .09]

(g) he failed to ensure complete and appropriate disclosure of related parties and related party transactions; [3840.43]

4. THAT the said Jeffrey Finstein, in or about the period March 31, 2005 through July 6, 2005, while engaged to perform a review of the financial statements of "L.I.S.W. Ltd." for the year ended March 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, in that

(a) he failed to ensure separate disclosure of the current and future income tax expenses; [3465.91]

(b) he accepted an inappropriate disclosure of the basis of accounting for future income taxes; [1505]

(c) he failed to ensure that the basis of valuation of inventories was clearly stated; [3030.10]

(d) he failed to present a cash flow statement when it was appropriate to do so; [1540.03]

(e) he failed to document items important to support his report, in that his working papers contained no documentation to evidence the procedures used to determine the plausibility of:

(i) loans receivable;

(ii) wages payable; or

(iii) a shareholder loan. [8100.15]

5. At the outset of the hearing, the Professional Conduct Committee withdrew Charge No. 4.

PLEA

6. Mr. Finstein entered a plea of guilty to Charge Nos. 1, 2 and 3. He acknowledged that he understood that, on the basis of the plea of guilty and on that basis alone, he could be found guilty of the charges.

EVIDENCE

7. The evidence in this matter was presented by way of an Agreed Statement of Facts (Exhibit 4) and an accompanying Document Brief (Exhibit 5). Neither party called any further evidence.

8. The panel finds the evidence as contained in the Exhibits is clear, cogent and convincing, and that it supports the allegations of misconduct as set out in the charges. In particular, the panel finds that Mr. Finstein failed to perform professional services for which he was engaged in accordance with the generally accepted standards of practice of the profession.

DECISION

9. After deliberation, the panel was satisfied that the allegations set out in the charges have been proven and that the nature and extent of the departure from the required standard of practice are so significant as to constitute professional misconduct. The panel found Mr. Finstein guilty of the charge. The Chair read the following decision:

THAT, having seen, and considered the evidence, including the agreed statement of facts, filed, charge No. 4 having been withdrawn by the Professional Conduct Committee, and having heard the plea of guilty to charge Nos. 1, 2, and 3, the Discipline Committee finds Mr. Jeffrey Finstein guilty of charge Nos. 1, 2, and 3.

REASONS FOR THE DECISION

10. The evidence discloses that Mr. Finstein was engaged to provide professional services to the clients identified in the charges. In conducting the two review and one audit engagements for the clients, he failed to make appropriate professional judgments and adequate disclosure, or to conduct the engagements in accordance with the generally accepted standards of practice of the profession.

11. His failure to meet those standards, as disclosed in the allegations set out in the charges which the panel accepts as proven, was significant and pervasive. There were fundamental deficiencies in the conduct of the assurance engagements, and a failure to follow requirements of the CICA Handbook which had been in place for many years. This clearly constitutes professional misconduct.

SANCTION

12. The Professional Conduct Committee submitted that a sanction of: a written reprimand; a period of supervision with respect to his assurance files; reinvestigation after the period of supervised practice; professional development; the usual publicity; and costs of \$2,500 would serve to both rehabilitate the member and to further the principles of general and specific deterrence.

13. The Professional Conduct Committee noted that rehabilitation is the primary principle embodied by the recommended sanction and submitted that Mr. Finstein has shown himself an appropriate candidate for rehabilitation, not only by his cooperation with the Institute and the remorse shown by his plea of guilty, but by his already having taken a significant number of professional development courses to bring his practice up to the standards of the profession. A certificate of attendance was filed as Exhibit 6 in support of that submission.

14. Mr. Finstein made no submissions, but did indicate that he was in agreement with those made by the Professional Conduct Committee.

ORDER

15. After consideration, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Finstein be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Finstein be and he is hereby charged costs fixed at \$2,500 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. Finstein be and he is hereby required to pay for and complete, in their entirety, within one (1) year from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute, or, in the event a course listed below becomes unavailable, the successor course which takes its place:
 - (a) *Financial Statement Presentation & Disclosure, and*
 - (b) *Essentials of Review Engagements*
4. THAT Mr. Finstein be and he is hereby required to have his practice supervised with respect to two (2) assurance files, for a period of twelve (12) months, by a supervisor who has been chosen by Mr. Finstein, has been approved by the Director of Standards Enforcement, and has agreed in writing to accept the engagement.
5. THAT notice of this Decision and Order, disclosing Mr. Finstein'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*.
6. THAT in the event Mr. Finstein 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 (3) month period, he shall thereupon be expelled from the 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. Finstein's employment and/or residence.

REASONS FOR THE ORDER

Reprimand

16. The panel orders Mr. Finstein be reprimanded in writing by the Chair of the panel to emphasize to Mr. Finstein that his conduct fell well below the acceptable standards of practice of the profession and cannot be tolerated by either the profession or the public.

Costs

17. It is appropriate that the member charged, as opposed to the membership as a whole, bear a portion of the costs of the investigations and prosecution occasioned by his misconduct. The panel finds the joint submission to be well within the appropriate range and therefore accepts that the quantum of costs ordered should be \$2,500.

Professional Development

18. Of significant concern to the panel is Mr. Finstein's ability, on an ongoing basis, to service his clients in accordance with the standards of the profession, including the recommendations set out in the *CICA Handbook*, in a manner which protects both the public and the reputation of the profession. The requirement that he attend professional development is intended to address that concern and reduce the risk of future deficiencies.

Supervised Practice

19. The evidence before the panel indicates that assurance work is a very small proportion of Mr. Finstein's practice. However, it is of critical importance that such engagements be performed to the highest standards. Ordering that a significant sample of Mr. Finstein's assurance engagements be supervised by another member of the Institute will not only protect the public but provide Mr. Finstein with guidance and support.

20. It should be noted that the Professional Conduct Committee had sought a reinvestigation of Mr. Finstein's practice following the period of supervision. The panel declines to make such an order. The panel anticipates that, given the professional development courses Mr. Finstein has recently taken, those he will take, and the supervision of his practice, he will have a clear understanding of what is required of him should he accept assurance engagements.

21. The panel also notes that Mr. Finstein's practice will be inspected in 2007. While recognizing that a practice inspection is different and distinct from a re-investigation by the Professional Conduct Committee, and that the Discipline Committee has no power to order a practice inspection, the panel would expect any problems with Mr. Finstein's standards of practice after the period of supervision to be identified by such an inspection. The Practice Inspection Committee does have the authority to refer a matter to the Professional Conduct Committee.

Notice

22. Publishing names of members found guilty of professional misconduct is often the single most significant sanction that may be administered for general deterrence, education of the membership at large, and protection of the public. The panel therefore orders the publication of the proceeding in *CheckMark* and orders that notice be given to the Public Accountants Council for the Province of Ontario and to the Canadian Institute of Chartered Accountants.

Expulsion for Failing to Comply

23. To encourage compliance with discipline orders in cases in which the member is not expelled outright, orders of a panel generally specify expulsion with newspaper notification to the public as an ultimate consequence for non-compliance. The panel so orders in this hearing.

DATED AT TORONTO THIS 21ST DAY OF APRIL, 2006
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

J. B. BARRACLOUGH, CA
N. A. MACDONALD EXEL, CA
A. D. NICHOLS, FCA
R. CARRINGTON (PUBLIC REPRESENTATIVE)