

## **Joe Adrian Vos: Summary, as Published in *CheckMark***

**Joe Adrian Vos**, of Elora, was found guilty of two charges under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, and one charge under Rule 203.2(b) of failing to cooperate in a professional conduct committee investigation. While an officer and part-owner of a company, Mr. Vos directed the falsification and manipulation of the books and records of the company over a lengthy period of time in order to misappropriate for his own personal use in excess of \$8 million. In so doing, he involved Gordon Stewart and Donald Gandza, neither of whom received any personal benefit from their involvement. Mr. Vos then failed to cooperate in the professional conduct committee's investigation into the misappropriations. He was fined \$50,000, charged costs of \$15,000, and expelled from the Institute.

## **CHARGE(S) LAID re Joe Adrian Vos**

The Professional Conduct Committee hereby makes the following charge against J.A. (Joe) Vos, CA, a member of the Institute:

1. THAT the said J.A. (Joe) Vos, in or about the period from January 1996 to October 2001, while an officer of Metafore Corporation and/or its predecessor companies, 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 misappropriated in excess of \$8 Million from the company, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT the said J.A. (Joe) Vos, in or about the period from January 1, 1996 to October 2001, while an officer of Metafore Corporation and/or its predecessor companies, 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 directed the falsification and manipulation of books and records of the company, contrary to Rule 201.1 of the rules of professional conduct.
3. THAT the said J.A. (Joe) Vos, in or about the period from January 12, 2002 through to June 18, 2002, 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(b) of the rules of professional conduct.

Dated at Toronto, Ontario this 18<sup>th</sup> day of June 2002.

G.W. MILLS, CA - DEPUTY CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re Joe Adrian Vos**

**DECISION AND ORDER IN THE MATTER OF:** Charges against **JOE ADRIAN VOS**, a suspended member of the Institute, under **Rules 201.1 and 203.2(b)** of the Rules of Professional Conduct, as amended.

**DECISION AND ORDER MADE DECEMBER 18, 2002**

### **DECISION**

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Joe Adrian Vos guilty of charges Nos. 1, 2 and 3.

### **ORDER**

IT IS ORDERED in respect of the charges:

1. THAT Mr. Vos be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Vos be and he is hereby fined the sum of \$50,000, 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. Vos be and he is hereby charged costs fixed at \$15,000, 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. Vos be and he is hereby expelled from membership in the Institute.
5. THAT notice of this Decision and Order, disclosing Mr. Vos' 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;
  - (c) by publication in *CheckMark*; and
  - (d) by publication in *The Globe and Mail*, and the *Kitchener-Waterloo Record*.
6. THAT Mr. Vos 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.

DATED AT TORONTO THIS 20TH DAY OF DECEMBER, 2002  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

## **DISCIPLINE COMMITTEE re Joe Adrian Vos**

**REASONS FOR THE DECISION AND ORDER IN THE MATTER OF:** Charges against **JOE ADRIAN VOS**, a suspended member of the Institute, under **Rules 201.1 and 203.2(b)** of the Rules of Professional Conduct, as amended.

### **REASONS FOR THE DECISION AND ORDER MADE DECEMBER 18, 2002**

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on December 18, 2002 to hear charges brought by the professional conduct committee against Joe Adrian Vos, a suspended member of the Institute.
2. Paul Farley represented the professional conduct committee. He was accompanied by Marc D'Amour, CA, the Chief Financial Officer and Vice President Finance of Hartco Corporation; Robert Fowlie, CA, Senior Manager, Forensic Services, Deloitte & Touche LLP; and Robert Chambers, CA, the investigator appointed by the professional conduct committee.
3. Mr. Vos and his counsel, Peter Copeland, were present briefly at the start of the hearing.
4. The decision and order of the discipline committee were announced at the hearing on December 18, 2002. These reasons, given in writing pursuant to Bylaw 574, set out the charges, the decision, the order and the reasons of the committee.

### **THE CHARGES AND THE PLEA**

5. The Notice of Assignment Hearing, the Notice of Hearing and the charges were marked as Exhibits 1, 2 and 3, respectively. The charges laid by the professional conduct committee dated June 18, 2002 read as follows:
  1. THAT the said J.A. (Joe) Vos, in or about the period from January 1996 to October 2001, while an officer of Metafore Corporation and/or its predecessor companies, 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 misappropriated in excess of \$8 Million from the company, contrary to Rule 201.1 of the rules of professional conduct.
  2. THAT the said J.A. (Joe) Vos, in or about the period from January 1, 1996 to October 2001, while an officer of Metafore Corporation and/or its predecessor companies, 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 directed the falsification and manipulation of books and records of the company, contrary to Rule 201.1 of the rules of professional conduct.
  3. THAT the said J.A. (Joe) Vos, in or about the period from January 12, 2002 through to June 18, 2002, 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(b) of the rules of professional conduct.

6. The chair asked if there were any preliminary matters to deal with before the member was asked to enter a plea to the charges. Mr. Copeland said that Mr. Vos had offered to have his membership terminated, that he had not practised public accounting for many years, and that he would not enter a plea or continue to remain at the hearing. Following the statement, Mr. Copeland and Mr. Vos left the hearing and did not return.

7. On behalf of Mr. Vos, the chair of the hearing entered a plea of not guilty to each of the charges.

## **DECISION ON THE CHARGES**

8. Mr. Farley made a brief opening statement and summarized the case for the professional conduct committee. Thereafter, he filed a document brief, with the relevant exhibits set out under 25 separate tabs, which was marked as Exhibit 4. He then called Mr. Marc D'Amour, who testified about the efforts he made to finalize the financial statements of Metafore Corporation for the year ending January 31, 2001, and, more particularly, about the action he took to prompt Mr. Vos to finalize the books and records of Metafore in order that the financial statements could be finalized and audited.

9. Ultimately, Mr. Vos acknowledged that he had misappropriated a substantial amount of money. Mr. D'Amour called in a forensic team to investigate the misappropriation. Mr. Fowlie, who was a member of the forensic team, gave evidence with respect to the team's findings, and as to his discussions with Mr. Vos, and referred specifically to the summaries the forensic team made which were included in the document brief.

10. The panel found Mr. D'Amour and Mr. Fowlie to be credible witnesses, and accepted the evidence which they gave. Their evidence was supported by documents contained in the document brief. The summary of facts which follows is based on their evidence and the relevant documents.

11. Mr. Vos and his brother, Ed Vos, who is not a member of the Institute, owned a corporation called Metafore Inc., which supplied computer hardware and systems to relatively sophisticated users in southwestern Ontario. The corporate structure in the period 1995 to August 2000 was not simple, nor did it remain constant. What did remain constant was that Mr. Vos controlled the financial books and records of the corporation and the various entities it operated.

12. Much of the computer hardware equipment which Metafore Inc. sold was supplied by Hartco Corporation. Effective August 2000, there was a merger in which Metafore Inc. became part of Metafore Corporation (hereinafter referred to as Metafore). Hartco became a one-third owner of Metafore, Joe and Ed Vos each became a one-sixth owner, James Alexander and Moshe Lerman together became a one-sixth owner, and Bryant Jackson became the owner of the other one-sixth interest.

13. While the merger was effective August 1, 2000, it was not until September that the bankers for the merged company, Deutsche Financial Services ("DFS"), took over the actual financing of the merged operation. Metafore had a line of credit from DFS which depended on the accounts receivable of Metafore. Mr. Vos, from time to time, had to certify to DFS the outstanding accounts receivable of Metafore.

14. There was little or no due diligence prior to or after August 2000 when the merger took place. The first year-end of the merged company was January 31, 2001. The corporate structure was complex, and it proved to be a difficult task to put the books and records together, as a result of which the audit was delayed. Mr. D'Amour was hired by Hartco Corporation in April 2001, and it was clear that one of his tasks, on the recommendation of the audit committee, was to complete the financial statements of Metafore so that Deloitte & Touche could audit them.

15. Mr. D'Amour did not know until September 2001 that Mr. Vos had been manipulating the accounts receivable of Metafore prior to and after the merger in August 2000. But he did know that there were some suspicious invoices, particularly invoices involving Row Capital Corporation and Onlinetel Inc. at the end of January and the beginning of February 2001.

16. When Mr. D'Amour could not make headway investigating the accounts receivable of Metafore in the summer of 2001, he became increasingly insistent that Mr. Vos provide answers to questions which were raised, particularly with respect to accounts receivable.

17. Two of the Metafore shareholders, Mr. Alexander and Mr. Lerman, had also raised concerns about accounts receivable, including an invoice apparently issued to Row Capital Corporation for a total amount of \$781,429.56 on January 31, 2001. On February 1, 2001, one day after Metafore's year-end, a credit memo was issued to Row Capital Corporation for the same amount. There was also an invoice to Row Capital Corporation dated February 1, 2001 for the amount of \$730,308.

18. Finally, in late September 2001, after continuing efforts by Mr. D'Amour to sort out the accounts receivable, Mr. Vos admitted that some of the accounts receivable were fictitious and that he had misappropriated money from Metafore. His admission to Mr. D'Amour in the first instance was that he had misappropriated approximately \$1.3 million.

19. Mr. Vos was put on administrative leave. On October 1, 2001, Mr. Gordon Stewart, CA, who had carried out many of Mr. Vos' instructions with respect to the false invoices and credit memos, met with Mr. D'Amour and admitted that the Row Capital and Onlinetel accounts receivable were fictitious. Mr. D'Amour told Mr. Stewart that he wanted to see the cheques, and the two of them met again on October 2. Mr. Vos met with Mr. D'Amour and the forensic accountants on October 3, and acknowledged more extensive misappropriations. The exact amount of money which Mr. Vos misappropriated was not an issue and may not be known. The evidence supported the allegation set out in charge No. 1 that Mr. Vos misappropriated in excess of \$8 million.

20. Mr. Fowlie described one scheme used by Mr. Vos to steal monies from Metafore. Mr. Vos caused the company, both before and after the amalgamation, to pay money purportedly for supplies or services provided by entities which he owned or in which he had an interest. Mr. Fowlie testified, and it was set out at Tab 13 of the document brief, that the total monies paid to or for the benefit of Mr. Vos over the period 1995 to August 2001 was \$41,773,900. The evidence was not precise with respect to

how much of this money Mr. Vos kept. Much of it was paid back to provide cash flow for the corporation and to mask the misappropriations. According to Mr. Fowlie , and as set out at Tab 11 of the document brief, Mr. Vos misappropriated \$10,638,000, but subsequently paid back \$2,082,528, leaving a net amount misappropriated of \$8,555,472.

21. In order to secure financing from DFS, Mr. Vos had to certify the accounts receivable of Metafore. The certification he signed on September 26, 2001 showing receivables of \$38 million was overstated by approximately \$10.5 million.

22. Ultimately, Hartco had to cover the losses of Metafore to DFS. The Metafore financial statements as at January 31, 2001, had to be restated, the result being that Hartco has about \$12 million invested in Metafore as more or less semi-permanent capital, to use Mr. D'Amour's description.

23. Mr. Vos paid about \$300,000 in restitution, and Mr. D'Amour was optimistic that Hartco might recover perhaps as much as another \$500,000. Mr. D'Amour also testified that about \$6 million to \$7 million could not be traced.

24. Mr. Chambers' evidence established that Mr. Vos had refused to cooperate with the investigation of the professional conduct committee.

25. Upon deliberation, for the reasons set out above, the panel concluded that the charges had been proven and that Mr. Vos was guilty of professional misconduct. When the hearing was resumed, the chair read the following decision into the record:

### DECISION

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Joe Adrian Vos guilty of charges Nos. 1, 2 and 3.

### **ORDER AS TO SANCTION**

26. The professional conduct committee did not call evidence with respect to sanction, but Mr. Farley made submissions and set out the order requested by the professional conduct committee.

27. Mr. Farley characterized the misconduct of Mr. Vos as the most egregious type of professional misconduct. He submitted that there were no mitigating factors that could be mentioned in Mr. Vos' favour, and that there was a long list of aggravating factors, including that Mr. Vos:

- stole a huge amount of money over an extended period of time;
- involved two other members of the Institute in his fraudulent scheme;
- falsified documents that were filed with Metafore's bankers when he knew that the banks (including DFS) would rely on these documents to advance monies to Metafore under its credit facilities, thus enabling Metafore to receive money from the banks to which it was not entitled;
- did not own up to his misconduct until he was caught, and even then only admitted a small amount of the total theft;
- demonstrated no remorse for his misconduct;
- did not cooperate in the professional conduct committee investigation; and

- had made only minor restitution to date, with little prospect of making any substantial restitution in future.

28. Mr. Farley submitted that the principle of sentencing which was most applicable in this case was general deterrence, and that it was necessary to expel Mr. Vos from membership and fine him a substantial amount of money in order to deter other members from being tempted to misconduct themselves as Mr. Vos had.

29. Mr. Farley submitted that rehabilitation was not a principle which applied in this case, and that the only way to deter Mr. Vos from misconducting himself as a chartered accountant was to expel him so that he could not hold himself out as a chartered accountant.

30. After deliberation, the chair summarized the order of the panel. The terms of the formal order were sent to both counsel on December 20, 2002. The formal order reads as follows:

#### ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Vos be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Vos be and he is hereby fined the sum of \$50,000, 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. Vos be and he is hereby charged costs fixed at \$15,000, 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. Vos be and he is hereby expelled from membership in the Institute.
5. THAT notice of this Decision and Order, disclosing Mr. Vos' 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;
  - (c) by publication in *CheckMark*; and
  - (d) by publication in *The Globe and Mail*, and the *Kitchener-Waterloo Record*.
6. THAT Mr. Vos 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.

#### **Reprimand**

31. The panel determined that a reprimand to Mr. Vos was necessary in order to stress to him the serious nature of his offence and the unacceptability of his conduct as a chartered accountant.



## **Fine and Expulsion**

32. The panel concluded that as a matter of general deterrence, Mr. Vos should be expelled from membership in the Institute.

33. Mr. Farley requested a fine in the range of \$25,000 to \$30,000 based on various precedents that he identified to the panel, including *McLeod*, *Rinaldi*, *Eckstein*, *Garside* and *Falco*.

34. The panel concluded, based on Mr. Vos' misconduct, that a fine in the amount of \$50,000 was more appropriate in this case.

## **Publicity**

35. The panel determined that the normal publicity ordered in expulsion cases was appropriate in this case as well. In light of the fact that Hartco was a public corporation, it was decided that notice should be placed in *The Globe and Mail*. As it was also considered to be important that Mr. Vos' expulsion be drawn to the attention of the people in the city where he lived, notice was also ordered to be published in the *Kitchener-Waterloo Record*.

## **Costs**

36. After the terms of the order above had been given, the panel considered the professional conduct's committee's request for costs.

37. Mr. Farley reviewed the amendments to the *CA Act* and the bylaws which empower the discipline committee to order a member found guilty of professional misconduct to pay costs.

38. Mr. Farley also referred to court cases which addressed the question of whether or not it was appropriate to order a member of a professional self-governing body found guilty of professional misconduct to pay costs, and which also dealt with some of the factors which should be considered if such an order is made.

39. In the case of *Hoff v. Alberta Pharmaceutical Association*, Justice Dea of the Alberta Court of Queen's Bench said the following at the end of paragraph 25 of the court's reasons:

As a member of the pharmacy profession the appellant enjoys many privileges. One of them is being part of a self-governing profession. Proceedings like this must be conducted by the respondent association as part of its public mandate to assure to the public competent and ethical pharmacists. Its costs in so doing may properly be borne by the member whose conduct is at issue and has been found wanting.

40. In the case of *Jaswal v. Newfoundland Medical Board*, Justice Green of the Newfoundland Supreme Court outlined what he termed a non-exhaustive list of factors which should be considered when making an award of costs in circumstances such as this. In essence, Justice Green set out factors to help determine the reasonableness of the steps taken by the prosecution in a case for which it was seeking a costs order from the tribunal. The factors identified were the degree of success of the member in resisting any of the charges laid, the necessity for calling all the witnesses who were called and for incurring other hearing expenses, the reasonable expectations of the prosecution prior to the hearing as to the outcome of the case and the necessity for calling certain witnesses and incurring certain expenses, whether the member cooperated in the investigation and hearing, and the financial circumstances of the member.

41. The panel concluded that it was appropriate that Mr. Vos bear some of the costs that resulted from his misconduct. Based on the information provided by Mr. Farley, the panel came to the conclusion that the amount of \$15,000, which would amount to a partial indemnity only, and not a substantial or full indemnity of the costs of the investigation and hearing, should be paid by Mr. Vos, and accordingly made that order.

DATED AT TORONTO THIS 1ST DAY OF MAY, 2003  
BY ORDER OF THE DISCIPLINE COMMITTEE

M. BRIDGE, CA – DEPUTY CHAIR  
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

D.M. FORTNUM, FCA  
S.W. SALTER, CA  
R.D. WHEELER, FCA  
N.C. AGARWAL (Public representative)