

Joel Greenspan: Summary, as Published in *CheckMark*

Joel Greenspan, of Toronto, was found guilty of one charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest; one charge under Rule 204.2 of failing to hold himself free of any influence, interest or relationship which, in the view of a reasonable observer, would impair his professional judgment or objectivity in respect of an engagement; and one charge under Rule 208 of receiving, bargaining for and acquiring fees, remuneration or benefits without his employer's knowledge or consent. On one occasion, while engaged to review the financial statements of a client company, Mr. Greenspan accepted a payment from the client of \$10,000 over and above the amount earned and charged by his firm for professional fees. Over time, Mr. Greenspan received, bargained for and acquired fees, remuneration or benefits in the approximate total amount of \$35,000 without his employer's knowledge or consent. He then failed to disclose on his personal income tax returns these monies received by him directly from clients of his firm, thereby evading the payment of tax properly payable. Taking into account a number of personal mitigating circumstances, and the fact that without the member's admissions and cooperation it is unlikely his misconduct would have been discovered, Mr. Greenspan was fined \$3,000 and suspended from membership for nine months.

Mr. Greenspan returned to MEMBERSHIP IN GOOD STANDING on June 8, 2000

CHARGE(S) LAID re Joel Greenspan

The Professional Conduct Committee hereby makes the following charges against Joel Greenspan, CA, a member of the Institute:

1. THAT, the said Joel Greenspan, CA, on or about December 12, 1996, while employed with the firm Soberman Isenbaum and Colomby, Chartered Accountants and engaged to review the financial statements of Bernardo Metal Products Limited for the year ended October 31, 1997, failed to hold himself free of any influence, interest or relationship which, in the view of a reasonable observer, would impair his professional judgment or objectivity in respect of the engagement, in that he accepted from the company a payment in the amount of \$10,000., over and above the amount earned and charged by the firm for professional fees for the year, contrary to Rule ~~204.1~~ 204.2 of the rules of professional conduct.
2. THAT, the said Joel Greenspan, CA, in or about the period January 1, 1992 through December 31, 1997, while employed with the firm, Soberman Isenbaum and Colomby Chartered Accountants, received, bargained for and acquired fees, remuneration or benefits in the approximate amount of \$35,000. without his employer's knowledge or consent, contrary to Rule 208 of the rules of professional conduct.
3. THAT, the said Joel Greenspan, CA, in or about the period January 1, 1992 through December 31, 1997, 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 failed to disclose on his personal income tax returns monies received by him directly from clients of Soberman Isenbaum and Colomby Chartered Accountants for professional services rendered in the approximate amount of \$35,000. and did thereby evade the payment of tax properly payable, contrary to Rule 201.1 of the rules of professional conduct.
4. *WITHDRAWN BY PCC*

Dated at Toronto this 23rd day of February 1998.

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

DISCIPLINE COMMITTEE re Joel Greenspan

DECISION AND ORDER IN THE MATTER OF: Charges against **JOEL GREENSPAN, CA**, a member of the Institute, under **Rules 201.1, 204.1 and 208**, of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE MAY 13, 1999

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, charge No. 1 having been amended, and charge No. 4 having been withdrawn, and having heard the plea of guilty to charges Nos. 1, 2 and 3, the Discipline Committee finds Joel Greenspan guilty of charges Nos. 1, 2 and 3.

ORDER

IT IS ORDERED in respect of charges Nos. 1, 2 and 3:

1. THAT Mr. Greenspan be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Greenspan be and he is hereby fined the sum of \$3,000, to be remitted to the Institute within nine (9) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Greenspan be suspended from the rights and privileges of membership in the Institute for a period of nine (9) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Greenspan's name, be given after this Decision and Order becomes final under the bylaws:
 - (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 Mr. Greenspan 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 during the period of suspension and thereafter returned to Mr. Greenspan. In the event Mr. Greenspan fails to surrender his certificate of membership within this ten day period, his suspension shall be extended one day for each day the certificate remains undelivered to the secretary.
6. THAT in the event Mr. Greenspan fails to comply with paragraph 2 of this Order within the time period specified, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in a newspaper distributed in the geographic area of Mr. Greenspan's practice.

DATED AT TORONTO THIS 20TH DAY OF MAY, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Joel Greenspan

REASONS FOR DECISION AND ORDER IN THE MATTER OF: Charges against **JOEL GREENSPAN, CA**, a member of the Institute, under **Rules 201.1, 204.1 and 208**, of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE MAY 13, 1999

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on May 13, 1999.

Mr. Paul Farley represented the professional conduct committee. Mr. Greenspan was present and represented by his legal counsel, Mr. Frank Bowman.

DECISION ON THE CHARGES

Four charges had been laid against Mr. Greenspan, pursuant to Rules 201.1, 204.1 and 208 of the rules of professional conduct. At the outset of the hearing, the professional conduct committee withdrew charge No. 4, and applied to amend charge No. 1 to read "contrary to Rule 204.2" instead of "contrary to Rule 204.1". The application was not opposed by the member, and was granted.

In general, charges Nos. 1, 2 and 3 alleged that Mr. Greenspan, while employed with the firm Soberman, Isenbaum and Colomby, Chartered Accountants, accepted payments from clients and other persons to which he was not entitled, without the firm's knowledge or consent, and then failed to report such payments on his personal income tax return.

The charges read as follows:

1. THAT, the said Joel Greenspan, CA, on or about December 12, 1996, while employed with the firm Soberman Isenbaum and Colomby, Chartered Accountants and engaged to review the financial statements of Bernardo Metal Products Limited for the year ended October 31, 1997, failed to hold himself free of any influence, interest or relationship which, in the view of a reasonable observer, would impair his professional judgment or objectivity in respect of the engagement, in that he accepted from the company a payment in the amount of \$10,000., over and above the amount earned and charged by the firm for professional fees for the year, contrary to Rule 204.2 of the rules of professional conduct.
2. THAT, the said Joel Greenspan, CA, in or about the period January 1, 1992 through December 31, 1997, while employed with the firm, Soberman Isenbaum and Colomby Chartered Accountants, received, bargained for and acquired fees, remuneration or benefits in the approximate amount of \$35,000. without his employer's knowledge or consent, contrary to Rule 208 of the rules of professional conduct.

3. THAT, the said Joel Greenspan, CA, in or about the period January 1, 1992 through December 31, 1997, 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 failed to disclose on his personal income tax returns monies received by him directly from clients of Soberman Isenbaum and Colomby Chartered Accountants for professional services rendered in the approximate amount of \$35,000 and did thereby evade the payment of tax properly payable, contrary to Rule 201.1 of the rules of professional conduct.

Mr. Greenspan entered a plea of guilty to the three charges, and confirmed that he understood that upon a plea of guilty, and upon that basis alone, he could be found guilty of the charges by the discipline committee.

Mr. Farley filed as exhibits an agreed statement of facts and an accompanying document brief. The agreed statement of facts, which makes specific reference to the document brief, succinctly sets out, in twenty-one numbered paragraphs, the facts which prove the allegations made in the charges. The fifty page document brief contains documents relevant to the charges, including a listing of the amounts of money received by Mr. Greenspan in the years 1991 to 1997, inclusive.

The panel deliberated, having had the opportunity to review the agreed statement of facts and document brief, and having heard the member's plea of guilty, and concluded that the allegations set out in the charges had been proven, and that Mr. Greenspan was guilty of the charges laid against him.

ORDER AS TO SANCTION

Having found Mr. Greenspan guilty of the three charges, the hearing proceeded to a determination of the appropriate sanction.

Mr. Farley said that he did not propose to call evidence with respect to sanction, and that, as Mr. Bowman did, he proposed to reserve his submissions until after the evidence was heard.

Mr. Bowman advised the panel that there was disagreement between the parties as to the appropriateness of the sanction which Mr. Farley had been instructed by the professional conduct committee to request. He then called Mr. Greenspan, and two other witnesses who testified as to Mr. Greenspan's good character and competence.

Both counsel then made submissions as to the appropriate sanction. Mr. Farley said that his instructions from the professional conduct committee were to ask for:

- a reprimand in writing by the chair of the hearing,
- a fine of between \$3,000 and \$5,000,
- a suspension lasting from six to twelve months, and
- the usual notice in *CheckMark*, to the Canadian Institute of Chartered Accountants, and to the Public Accountants Council.

Counsel for the professional conduct committee submitted that, while all three principles which govern the imposition of sanction were important, in the circumstances of this case the principles of general deterrence and rehabilitation were the principles that should be given priority, and that it was unlikely that Mr. Greenspan needed to be specifically deterred from similar conduct in the future.

Mr. Farley pointed out the mitigating circumstances, including the full cooperation Mr. Greenspan had given to the Institute, and to Soberman Isenbaum and Columby, but also pointed out the aggravating circumstances, including that the member had engaged in dishonest conduct in taking money from his employer, or money which should have gone to his employer, over a number of years. While the amounts were small, the conduct was deliberate, and Mr. Greenspan did not report his income accurately to Revenue Canada.

Mr. Greenspan is fifty-seven years of age and has not previously been the subject of a complaint or investigation. He cooperated with the professional conduct committee throughout the investigation, and has acknowledged his breach of the rules of professional conduct.

Mr. Bowman took issue with the length of the suspension sought by the professional conduct committee, submitting that a suspension of between three and six months would be more in order. He also submitted that any fine imposed should be at the lower end of the range suggested by Mr. Farley, citing among other things the financial strain his client was under.

Mr. Bowman submitted that Mr. Greenspan had voluntarily disclosed amounts he had received beyond the \$10,000 from Bernardo Metal Products (the first charge), and that there had been no harm to clients, though he admitted that Soberman Isenbaum and Colomby had been a victim. He also submitted that Mr. Greenspan had shown remorse and was rehabilitated, and that he had retained the trust and confidence of his clients, as evidenced by the fact that all but one of the clients that he had introduced to the firm had moved with him upon his departure from Soberman Isenbaum and Columby.

After deliberating on the evidence and submissions heard, the panel made the following order:

ORDER

IT IS ORDERED in respect of charges Nos. 1, 2 and 3:

1. THAT Mr. Greenspan be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Greenspan be and he is hereby fined the sum of \$3,000, to be remitted to the Institute within nine (9) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Greenspan be suspended from the rights and privileges of membership in the Institute for a period of nine (9) months from the date this Decision and Order becomes final under the bylaws.

4. THAT notice of this Decision and Order, disclosing Mr. Greenspan's name, be given after this Decision and Order becomes final under the bylaws:
 - (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 Mr. Greenspan 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 during the period of suspension and thereafter returned to Mr. Greenspan. In the event Mr. Greenspan fails to surrender his certificate of membership within this ten day period, his suspension shall be extended one day for each day the certificate remains undelivered to the secretary.
6. THAT in the event Mr. Greenspan fails to comply with paragraph 2 of this Order within the time period specified, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in a newspaper distributed in the geographic area of Mr. Greenspan's practice.

The reasons for the discipline committee's order as to sanction are set out below. In reaching its conclusions, the panel considered the principles of general deterrence, specific deterrence and rehabilitation.

Reprimand

The panel believes that a reprimand in writing from the chair of the hearing is necessary as a specific deterrent to the member, to stress to him the serious nature of his offences, and the unacceptability of his conduct as a chartered accountant.

Fine

The panel agreed that the suggested fine of \$3,000 was appropriate as a specific deterrent to Mr. Greenspan, and as a general deterrent to like-minded members, to convey the message that the conduct displayed by Mr. Greenspan is not appropriate.

Suspension

The panel concluded that Mr. Greenspan's misconduct giving rise to his conviction on the three charges was misconduct involving dishonesty. Mr. Greenspan knowingly accepted monies that did not belong to him, and failed to report them as income. He admitted that he would not expect his clients to engage in such conduct. The public expects, and the Institute demands, at least as high a level of integrity from its members.

The panel felt that a suspension would clearly send a message to both Mr. Greenspan and other members that such conduct is not acceptable.

Publication

Publication of the decision and order, including Mr. Greenspan's name, is, in the opinion of the panel, a general deterrent. Communication of the fact that the profession views breaches of its bylaws and rules of professional misconduct seriously is an important factor in the governance of the profession. The disciplinary process of a self-governing professional body must be viewed by its members and the public as an open process. The panel therefore ordered the normal publication of these proceedings.

Certificate of Membership

The panel felt that during the time of suspension it was important that Mr. Greenspan not hold himself out to the general public as a chartered accountant. Accordingly, the panel ordered that Mr. Greenspan submit his certificate of membership to the committee secretary, to be held during the period of suspension.

DATED AT TORONTO, THIS 28TH DAY OF JULY, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE

P.B.A. CLARKSON, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL
H.B. BERNSTEIN, CA
B.L. STEPHENS, CA
K. TSE, CA
R.D. WHEELER, FCA
R.W. WARKENTIN (Public representative)