

John Bovos: Summary, as Published in *CheckMark*

John Bovos, of Whitby, was found guilty of a charge under Rule 210.1 of using confidential information concerning the affairs of a client of his chartered accounting firm. Mr. Bovos received confidential information that a client of his firm was about to purchase all the shares of another company, and he acted on that information to purchase shares of that other company prior to the proposed buyout becoming public. Mr. Bovos was fined \$2,314, being an amount equal to twice the profit he realized on his subsequent sale of the shares, and was suspended for three months.

CHARGE(S) LAID re JOHN BOVOS, CA

The Professional Conduct Committee hereby makes the following charges against John Bovos, a member of the Institute:

1. THAT, the said John Bovos, in or about the period August 1, 2000 through to September 30, 2000, used confidential information concerning the affairs of a client of his chartered accounting firm, contrary to Rule 210.1 of the rules of professional conduct, in that he received confidential information from firm sources that a client of the firm, "LTC" was about to purchase all shares of a company "DPS" and acted partly or entirely on that information to purchase shares of "DPS" prior to the proposed buyout becoming public.

Dated at Kitchener this 25th day of April 2001.

**WILLIAM R. SCHMIDT, CA – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE**

DISCIPLINE COMMITTEE re JOHN BOVOS, CA

DECISION AND ORDER IN THE MATTER OF: A charge against **JOHN BOVOS, CA**, a member of the Institute, under **Rule 210.1** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JUNE 14, 2001

DECISION

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 John Bovos guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Bovos be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Bovos be and he is hereby fined an amount equal to twice the profit of \$1,157 realized upon his purchase and sale of shares of a client company, being the sum of \$2,314, 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. Bovos be and he is hereby suspended from the rights and privileges of membership in the Institute for a period of three (3) months from the date this Decision and Order is made.
4. THAT notice of this Decision and Order, disclosing Mr. Bovos' 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. Bovos surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the commencement date of his suspension, to be held during the period of suspension and thereafter returned to Mr. Bovos. In the event Mr. Bovos fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificate remains undelivered to the secretary, provided that in the event the suspension continues for a period of six (6) months on account of Mr. Bovos' failure to surrender his certificate, 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 4, and in *The Globe and Mail*.

DATED AT TORONTO THIS 21ST DAY OF JUNE, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re JOHN BOVOS, CA

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against **JOHN BOVOS, CA**, a member of the Institute, under **Rule 210.1** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE JUNE 14, 2001

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on June 14, 2001 to hear evidence concerning a charge brought by the professional conduct committee against John Bovos.
2. The professional conduct committee was represented by Mr. Paul Farley. Mr. Bovos was present and was represented by his counsel, Mr. James Douglas.
3. The hearing concluded on June 14, 2001, and the terms of the order were made known at the conclusion of the panel's deliberations with respect to sanction. The decision and order was issued on June 21, 2001. These reasons, issued in writing pursuant to Bylaw 574, include the decision and order and the charge.

DECISION ON THE CHARGE

The Charge

4. The charge laid by the professional conduct committee on April 25, 2001 reads as follows:

THAT, the said John Bovos, in or about the period August 1, 2000 through to September 30, 2000, used confidential information concerning the affairs of a client of his chartered accounting firm, contrary to Rule 210.1 of the rules of professional conduct, in that he received confidential information from firm sources that a client of the firm, "LTC" was about to purchase all shares of a company "DPS" and acted partly or entirely on that information to purchase shares of "DPS" prior to the proposed buyout becoming public.

5. Mr. Bovos entered a plea of guilty to the charge, and confirmed his understanding that upon the basis of his plea and upon that basis alone he could be found guilty of professional misconduct.

The Case for the Professional Conduct Committee

6. In presenting his case, Mr. Farley filed an agreed statement of facts [Exhibit No. 4] and a document brief [Exhibit No. 5] of 17 pages.

7. Mr. Bovos was admitted to membership in the Institute in May 1997. He took employment at the Toronto office of a large international accounting firm in the fall of 1998 as a senior associate in the tax department.

8. Mr. Bovos found out at the beginning of August 2000 from someone working in the firm's financial advisory service group that one of the firm's clients was considering purchasing a corporation whose shares were publicly traded. In the subsequent two weeks, Mr. Bovos heard from a source outside the firm about the possible purchase of this corporation.

9. Shortly thereafter, Mr. Bovos approached the person within the firm from whom he had initially heard of the proposed purchase, and looked up on the internet the price of the shares of the target corporation. Mr. Bovos was cautioned during this conversation, as he had been during the initial one, that the information about the possible purchase was confidential, and that it would be improper to act on the information.

10. In August 2000 Mr. Bovos purchased 1,000 shares of the public corporation at a cost of approximately \$5,000. Early in September 2000 there was a press release announcing the purchase, and the share price increased to \$6.50 per share. Mr. Bovos sold his shares the day of the press release for \$6.25 per share, and realized a profit of approximately \$1,150.00.

11. Mr. Bovos' employment with the firm required him to agree to and sign an annual declaration which among other terms provided:

I am not permitted to make investment decisions based on unpublished information obtained while I am employed by the firm.

Clearly, Mr. Bovos breached this declaration. More to the point for our purposes, Mr. Bovos clearly breached Rule 210.1.

The Panel's Decision

12. After considering the evidence, including the agreed statement of facts and document brief, and taking into account Mr. Bovos' plea of guilty, the panel found Mr. Bovos guilty of the charge. The formal decision is included in the decision and order set out later in these reasons.

ORDER AS TO SANCTION

13. Mr. Farley did not call evidence with respect to sanction. Mr. Douglas took the opportunity to present five letters of reference, three addressed to the professional conduct committee [Exhibit No. 6], and two addressed to the discipline committee [Exhibit Nos. 7 and 8]. The letters of reference spoke to Mr. Bovos' competence, willingness to work, diligence, commitment to his community, honesty and integrity.

14. In his submissions with respect to the appropriate sanction, Mr. Farley noted that Mr. Bovos had breached a rule which is fundamentally important to the profession, and submitted that conduct such as his cannot be tolerated. He explained that on its face this breach seemed to require a more substantial sanction than what was being proposed. He indicated however that, in formulating its recommendation as to sanction, the professional conduct committee had taken into account that this was an isolated incident of misconduct, by a relatively new member of the profession, who had acknowledged his guilt, who had cooperated completely with the professional conduct committee, who had

also cooperated fully with the Ontario Securities Commission in its investigation into possible insider trading, and who had acknowledged the error of his ways. In addition, Mr. Farley submitted that the relatively small size of the transaction was relevant.

15. On behalf of the professional conduct committee, Mr. Farley asked for a reprimand, a fine of \$1,000, a suspension of three months, and an order that notice of the decision and order be given to the Public Accountants Council and the CICA, and by way of publication in *CheckMark*.

16. Mr. Farley noted that there were no past precedents under Rule 210.1, and then by analogy referred to the past cases of *Frederick Scott Bendall* and *Simon Margel*.

17. Mr. Douglas, on behalf of Mr. Bovos, took no issue with the suggested sanction. He emphasized the significant costs to Mr. Bovos of his misconduct, being the loss of his job, the costs of legal counsel in respect of the Institute's and the OSC's investigations, and the costs associated with being under suspension as a sole practitioner.

18. Mr. Douglas advised the committee that the OSC had decided not to proceed against Mr. Bovos for insider trading. He pointed out that Mr. Bovos' conduct was not typical of someone using inside information, as he had not used a margin account or "loaded up" for something he regarded as a sure thing, but was instead consistent with the conduct of someone acting on information he learned from outside the firm.

19. The principles which we are required to consider when imposing a sanction – general deterrence, specific deterrence and rehabilitation - are well known. Prior cases are often relevant in the deliberations of the discipline committee because, while no two cases are exactly alike, and even similar cases have their differences, it is important that the sanctions imposed in similar cases be consistent.

20. As there are no precedents for this case, it is important that the panel state what this case is not about as well as what it is about.

21. As presented, this case is not about a breach of the independence and objectivity requirements of the profession, nor is it about the improper disclosure of confidential information by one member of a firm to another. It is also not a case of insider trading resulting in substantial profits.

22. On the evidence we heard, this is a case involving a single breach of Rule 210.1, by a young member who made a modest profit and who then recognized his misconduct and cooperated with the regulatory authorities in their investigations and, in the case of the Institute, prosecution of the misconduct.

23. As important as the principles of specific deterrence and rehabilitation are, we think that the most important principle in this case is general deterrence.

24. With respect to specific deterrence and rehabilitation, the panel was satisfied that the loss of his job, the fact that his misconduct and his conviction will be made known to the members of his profession, his suspension, his ordeal through the discipline process itself, and his knowledge that subsequent misconduct will be treated far more severely, should collectively be sufficient to specifically deter Mr. Bovos from misconduct in the future, and thus help him rehabilitate himself.

25. The panel believes that a fine of twice the profit made through the improper use of confidential information is appropriate to the particular facts and circumstances of this case.

26. We are aware and concur that this decision will not and should not bind other panels of the discipline committee who hear cases under Rule 210.1. We understand that if a member makes a substantial profit from his or her misconduct, a fine equal to twice that profit may not be realistic or appropriate. In this first case under Rule 210.1, however, we wanted every member to get the message that the fine imposed was purposefully set at twice the amount of the profit made.

The Decision and Order

27. The written decision and order which was sent to Mr. Bovos on June 21, 2001 reads as follows:

DECISION

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 John Bovos guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Bovos be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Bovos be and he is hereby fined an amount equal to twice the profit of \$1,157 realized upon his purchase and sale of shares of a client company, being the sum of \$2,314, 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. Bovos be and he is hereby suspended from the rights and privileges of membership in the Institute for a period of three (3) months from the date this Decision and Order is made.
4. THAT notice of this Decision and Order, disclosing Mr. Bovos' 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. Bovos surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the commencement date of his suspension, to be held during the period of suspension and thereafter returned to Mr. Bovos. In the event Mr. Bovos fails to surrender his certificate of membership within this ten day period, his suspension pursuant to paragraph 3 shall be extended one day for each day the certificate remains undelivered to the secretary, provided that in the event the suspension continues for a period of six

(6) months on account of Mr. Bovos' failure to surrender his certificate, 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 4, and in *The Globe and Mail*.

Reprimand

28. The reprimand was imposed as a specific deterrent to Mr. Bovos.

Fine

29. We have set out above our reasoning for imposing a fine in the amount of twice the profit as a general deterrent. With respect to the specific submission made by the professional conduct committee for a fine in the amount of \$1,000, we thought a fine in this amount, being less than the profit realized from the improper use of confidential information, was not enough.

Suspension

30. The suspension of three months was imposed as a general and specific deterrent. We agreed with the professional conduct committee that three months was the appropriate length for the suspension in this case.

Notice

31. We ordered that notice be given as both a general deterrent to the profession, and to make the public aware that members' breaches of the rules of professional conduct will result in the imposition of appropriate sanctions.

DATED AT TORONTO THIS 4TH DAY OF SEPTEMBER, 2001

BY ORDER OF THE DISCIPLINE COMMITTEE

L.P. BOOKMAN, CA – CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:
D.M. FORTNUM, FCA
N.A. MACDONALD EXEL, CA
D.O. STIER, CA
B. RAMSAY (Public representative)