

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **JOHN A. ZABA, CA**, a member of the Institute, under **Rule 203.2(a) and 203.2(b)** of the Rules of Professional Conduct, as amended.

TO: Mr. John A. Zaba, CA
1-431 Bayview Drive
BARRIE, ON L4N 8Y2

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made June 30, 2009)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on June 30, 2009, to hear charges of professional misconduct brought by the Professional Conduct Committee against John A. Zaba, a member of the Institute.
2. Diana Soos appeared on behalf of the Professional Conduct Committee.
3. Mr. Zaba appeared on his own behalf and confirmed for the record that he understood he was entitled to be represented by counsel, and that he was waiving that right.
4. The decision of the panel was made known at the conclusion of the hearing on June 30, 2009, and the written Decision and Order sent to the parties on July 13, 2009. These reasons, given pursuant to Bylaw 574, contain the charges, the decision, the order, and the reasons of the panel for its decision and order.

CHARGES

5. The following charges were laid against Mr. Zaba by the Professional Conduct Committee on February 27, 2009:
 1. THAT the said John A. Zaba, in or about the period August 15, 2008 to February 10, 2009, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct a practice inspection, contrary to Rule 203.2(a) of the Rules of Professional Conduct.
 2. THAT the said John A. Zaba, in or about the period November 7, 2008 to February 10, 2009, 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.

PLEA

6. Mr. Zaba entered a plea of guilty to the charges and 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 for the Professional Conduct Committee was presented by way of two affidavits, one from Grant Dickson, FCA, Director of Practice Inspection (Exhibit 3), and the other from Tatiana Rabinovitch, CA, Associate Director, Standards Enforcement (Exhibit 4). The facts contained in those affidavits were not disputed by Mr. Zaba.

8. The evidence establishes that Mr. Zaba was selected for practice inspection and sent a letter dated January 31, 2008, asking him to complete and return certain forms by March 7, 2008. He did not do so. Mr. Dickson sent a follow up letter to Mr. Zaba, dated March 17, 2008, requiring the forms by March 31, 2008. Mr. Zaba faxed the forms on March 31, 2008.

9. On July 17, 2008, a staff member sent Mr. Zaba a letter requesting he submit certain specific files and other information by August 15, 2008. Mr. Zaba did not respond and did not submit the requested documentation. Mr. Dickson sent a follow up letter on August 21, 2008, requiring a response by September 4, 2008. Mr. Dickson referred the matter to the Professional Conduct Committee on September 8, 2008.

10. On September 9, 2008, Practice Inspection received a faxed letter dated September 6, 2008, from Mr. Zaba, stating he had been ill and would provide the documentation by September 30, 2008. He did not do so. Mr. Zaba provided the requested materials on April 6, 2009.

11. On October 2, 2008, Ms. Rabinovitch wrote to Mr. Zaba asking for an explanation of his failure to respond to Practice Inspection, and requiring a response by October 17, 2008. Mr. Zaba did not respond, and Ms. Rabinovitch sent a follow up letter on October 23, 2008, requiring a response by November 7, 2008. On that date, Mr. Zaba wrote and stated he was sending all the requested material that day by courier. He did not.

12. On January 6, 2009, Ms. Rabinovitch again wrote to Mr. Zaba, requiring a response by January 16, 2009. Mr. Zaba did not respond.

13. Mr. Zaba testified on his own behalf. He admitted he had failed to respond to both Practice Inspection and Standards Enforcement, and stated that he had intended to comply, but had been suffering from an ongoing medical problem. He provided no documentary evidence of his medical condition, and acknowledged that the Professional Conduct Committee had requested such proof in April and May, 2009. He apologized to the panel for failing to comply with his professional obligations.

DECISION

14. The panel deliberated and found that, on clear, cogent and compelling evidence, the Professional Conduct Committee had established on a balance of probabilities that Mr. Zaba had breached the Rules of Professional Conduct, and that the breaches were of a serious enough nature to constitute professional misconduct. The panel made the following decision:

THAT, having heard the plea of guilty to charge Nos. 1 and 2, and having seen, heard and considered the evidence, the Discipline Committee finds Mr. John A. Zaba guilty of charge Nos. 1 and 2.

SANCTION

15. Ms. Soos, on behalf of the Professional Conduct Committee, sought a sanction of: a written reprimand; a fine in the amount of \$3,000; and full publicity of the matter. She also asked for 50% of the costs of the investigation and hearing, and filed a Costs Outline (Exhibit 6). In aggravation of the matter, she noted that practice inspection is a crucial component of self-governance and protection of the public, and that Mr. Zaba had been cautioned or admonished on three previous occasions (November, 2000; February, 2001; and September, 2004) by the Professional Conduct Committee for similar conduct. In mitigation, she noted Mr. Zaba's guilty plea and the fact he did eventually provide Practice Inspection with the required materials.

16. Mr. Zaba explained that his practice was not substantial, and asked for the financial sanctions to be as moderate as possible. He indicated he intends to give up his professional practice within this calendar year, and does not intend to continue in the field of accounting.

ORDER

17. After deliberating, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Zaba be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Zaba be and he is hereby fined the sum of \$3,000 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Zaba'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 all members of the Institute;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to all provincial institutes/Ordre, and shall be made available to the public.
4. THAT in the event Mr. Zaba 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 and his public accounting licence shall thereupon be suspended 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 month period, he shall thereupon be expelled from membership in the Institute and his licence shall thereupon be revoked, and notice of his expulsion and licence suspension and revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Zaba's practice. All costs associated with the publication shall be borne by Mr. Zaba and shall be in addition to any other costs ordered by the committee.

AND IT IS FURTHER ORDERED:

5. THAT Mr. Zaba be and he is hereby charged costs fixed at \$3,000 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.

REASONS FOR SANCTION

18. The panel was concerned about the apparent pattern of conduct demonstrated by Mr. Zaba of failing to meet his professional obligations and, particularly, his failure to communicate and address issues in a timely manner. The reprimand is ordered to stress to him the requirement to deal quickly and appropriately with his governing body.

19. It is important that both Mr. Zaba and other like-minded members of the profession be deterred from acting in a similar cavalier manner towards important and reasonable requirements of the Institute, and the fine and publicity will serve that purpose. The publicity also assures the public that the Institute governs the profession in the best interests of the public, and that this is a duty taken seriously.

20. It is appropriate that the member whose conduct required the investigation and hearing, as opposed to the membership as a whole, bear a portion of the costs, and it has been so ordered.

DATED AT TORONTO THIS 5TH DAY OF AUGUST 2009
BY ORDER OF THE DISCIPLINE COMMITTEE

M.B. MARTENFELD, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

J.B. BARRACLOUGH, FCA
R. CARRINGTON (PUBLIC REPRESENTATIVE)
S.R. LOWE, CA