

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **LOUIS LUIGI ISABELLA, CA** a member of the Institute, under **Rules 202 and 205** of the Rules of Professional Conduct, as amended.

TO: Mr. Louis Luigi Isabella

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made February 9, 2011)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on February 9, 2011 to hear charges of professional misconduct brought by the Professional Conduct Committee against Louis Luigi Isabella, a member of the Institute.

2. Mr. Paul Farley appeared on behalf of the Professional Conduct Committee. Mr. Isabella attended, and was represented by counsel, Mr. James Lane. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee.

3. The decision of the panel was made known at the conclusion of the hearing on February 9, 2011, and the written Decision and Order sent to the parties on February 25, 2011. 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

4. The following charges were laid against Mr. Isabella by the Professional Conduct Committee on August 9, 2010: The Professional Conduct Committee withdrew Charge No. 4 at the hearing.

1. THAT, the said Louis L. Isabella, in or about April 2008 through July 2008, made or associated himself with a statement or representation which he knew or should have known was false or misleading, contrary to Rule 205 of the rules of professional conduct in that:
 - a) He prepared and filed on behalf of his client A.E. a T1 General 2007 tax return and claimed a business investment loss in the amount of \$94,000 in circumstances where it was not appropriate to do so.
2. THAT, the said Louis L. Isabella, in or about April 2009 through May 2009 made or associated himself with a statement or representation which he knew or should have known was false or misleading, contrary to Rule 205 of the rules of professional conduct in that:
 - a) He prepared and filed on behalf of his client L.Z. a T1 General 2008 tax return and claimed a business investment loss in the amount of \$70,000 in

circumstances where it was not appropriate to do so.

3. THAT, the said Louis L. Isabella, in or about April 2009 through May 2009 made or associated himself with a statement or representation which he knew or should have known was false or misleading, contrary to Rule 205 of the rules of professional conduct in that:

- a) He prepared and filed on behalf of his client T.F. a T1 General 2008 tax return and claimed a business investment loss in the amount of \$25,000 in circumstances where it was not appropriate to do so.

Plea

5. Mr. Isabella entered a plea of guilty to the charges, as amended.

The proceedings

6. Mr. Farley made a brief opening statement. He then called Ms. Margaret Bennett, CA, the investigator appointed in this matter, and filed a copy of her *curriculum vitae* (Exhibit 1). Mr. Farley asked that Ms. Bennett be accepted as an expert witness qualified to give opinion evidence with respect to tax matters. The panel accepted Ms. Bennett's qualifications and granted Mr. Farley's request.

7. Mr. Farley filed a Document Brief (Exhibit 2) to which Ms. Bennett referred in the course of her evidence. Mr. Lane cross-examined Ms. Bennett. There were no other witnesses called on behalf of the Professional Conduct Committee. Mr. Lane called Mr. Isabella who testified on his own behalf. Mr. Farley cross-examined Mr. Isabella. There was no other evidence called with respect to the charges.

The relevant facts

8. The relevant facts in this case were not in dispute. Mr. Isabella was approached by an acquaintance with the idea of a television reality show where young players would compete for a chance to become a pro soccer player. Mr. Isabella ran and managed the administrative aspects of the venture. When the anticipated financial results were not realized, Mr. Isabella invested his own money, solicited and received investment funds from clients, business associates and friends, including the clients referred to in the charges as A.E., L.Z. and T.F. Mr. Isabella provided these clients with a Promissory Note whereby he personally guaranteed the principal and interest on the monies they advanced.

9. While the primary goal of sending a young soccer player to Europe was realized, the reality show venture ran into financial difficulties, became insolvent and the investors lost their money.

10. Mr. Isabella repaid a portion of the losses to the investors. In an effort to recoup the balance of the lost investments for his clients A.E., L.Z. and T.F., Mr. Isabella prepared and claimed a business investment loss in the full amount of the original investment on each of their General T1 tax returns.

11. Ms. Bennett, in her evidence, noted that Mr. Isabella was a tax practitioner with many years experience who prepared over 300 tax returns per year and that this was not a complicated tax

matter. Ms. Bennett opined that Mr. Isabella should have known that claiming the full investment loss on his clients' tax returns was false and misleading to CRA. Ms. Bennett also opined that Mr. Isabella should and could have claimed the investment loss personally on his tax return and given the refund money to his clients.

12. Mr. Isabella explained to Ms. Bennett when she interviewed him that he considered the money given back to his clients to be a "gift" rather than a repayment. Ms. Bennett noted that the payment of the money to the clients did not meet the gift criteria since Mr. Isabella had guaranteed the loans.

13. Mr. Isabella testified that until the interview with Ms. Bennett he did not understand that there was some question about the propriety of what he had done. Prior to the interview he did not feel it was wrong to claim a loss on his clients' returns since he was not claiming a loss on his own tax return. His intention was to ensure that the clients recouped the full amount of their investment as quickly as possible. He gained no personal benefit from his actions.

14. Mr. Isabella acknowledged that while his intentions were good, he now regrets his actions and understands that what he did was incorrect. He said steps have been taken to ensure that there are no future problems, he is now in a partnership with two tax partners to rely on, review procedures are in place and all tax returns are channeled through the tax department.

Finding

15. The panel accepted the opinion evidence which Ms. Bennett gave and concluded that Mr. Isabella, in preparing the T1 General Tax Returns referred to in the charges, associated himself with statements which he knew or should have known were false and misleading. The evidence, including the documents in the Document Brief as summarized above, clearly proved the allegations set out in the charges.

Decision

16. The evidence in this matter is clear, cogent and convincing. The misconduct as charged has been proven. After deliberating, the panel made the following decision:

THAT, Charge No. 4 having been withdrawn by the Professional Conduct Committee, and having seen, heard and considered the evidence, and having heard the plea of guilty to Charge Nos. 1, 2, and 3, the Discipline Committee finds Louis Luigi Isabella guilty of Charge Nos. 1, 2, and 3.

Sanction

17. Neither party called additional evidence with respect to sanction.

18. Mr. Farley stated that the facts do not support that this was a case of incompetence, rather than malfeasance. Mr. Isabella was an experienced tax practitioner who would have known that claiming an investment loss for the full amount on the investors' tax returns, rather than the portion he had not repaid, was incorrect. He had put his clients at risk with CRA by claiming amounts on the tax returns to which they were not entitled.

19. Mr. Farley, on behalf of the Professional Conduct Committee, submitted that an appropriate

sanction in this matter would be: a written reprimand; a fine in the amount of \$10,000; four professional development courses relating to tax; a suspension for a period of six months; and the usual order with respect to publicity. The Professional Conduct Committee also sought an order for costs of the investigation and hearing on a partial indemnity basis. Mr. Farley filed a Costs Outline (Exhibit 3) which showed that the costs of the investigation and hearing were in excess of \$25,000. The Professional Conduct Committee was seeking an order for costs of \$10,000. Mr. Farley submitted that the proposed sanctions would satisfy all the principles of sentencing: specific and general deterrence and rehabilitation of the member.

20. Mr. Farley distributed a Brief of Authorities containing similar tax-related cases. Mr. Farley stated that while this matter does warrant suspension, the length of suspension would depend on whether the panel felt Mr. Isabella knew or if ought to have known his actions were false and misleading.

21. Mr. Farley also noted a number of mitigating factors. Mr. Isabella had pleaded guilty to the charges, cooperated with the investigation and there was no loss of revenue to CRA.

22. Mr. Lane, on behalf of Mr. Isabella, submitted that the Professional Conduct Committee had led no evidence of deliberate wrong doing by Mr. Isabella. Mr. Isabella's errors were regrettable but not deliberate. While he took no issue with the professional development courses, the imposition of a fine or the payment of costs, he asked the panel to consider costs of \$5,000.

23. Mr. Lane stated that the other elements of the sanction would meet the principles of general and specific deterrence, and that suspension was not appropriate in this case. Mr. Lane distributed a Brief of Authorities, noting that suspension is usually reserved for egregious cases of moral turpitude or dishonesty involving a breach of trust to a client and bringing the profession into disrepute.

Order

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Isabella be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Isabella be and he is hereby fined the sum of \$10,000 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Isabella be suspended from the rights and privileges of membership in the Institute and his public accounting licence shall be suspended for a period of six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Isabella be and he is hereby required to complete, by paying for and attending in their entirety, on or before December 31, 2011, the following professional development courses made available through the Institute:
 - (a) *Everyday Tax Issues for the General Practitioner*
 - (b) *General Practitioners – "Need to Know"*
 - (c) *Income Tax Refresher – Personal*

(d) *Personal Tax Returns Workshop*

or, in the event a course listed above becomes unavailable, the successor course which takes its place.

5. THAT notice of this Decision and Order, disclosing Mr. Isabella'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.
7. THAT Mr. Isabella surrender his certificate of membership in the Institute and public accounting licence to the Discipline Committee Secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.
8. THAT in the event Mr. Isabella fails to comply with any of the requirements of this Order, he shall be suspended from the rights and privileges of membership in the Institute and his public accounting licence shall 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 (3) month period, his membership in the Institute and his public accounting licence shall be revoked, and notice of his membership and licence revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Isabella's practice and/or residence. All costs associated with the publication shall be borne by Mr. Isabella and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

9. THAT Mr. Isabella be and he is hereby charged costs fixed at \$10,000 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

25. The panel agreed with Mr. Lane that there was no moral turpitude involved in Mr. Isabella's conduct. He did not enrich himself at his client's expense or at the expense of CRA. In fact, Ms. Bennett's evidence made it clear that CRA had not been deprived of appropriate tax revenue.

26. The panel concluded that the tax losses which Mr. Isabella in effect claimed for his clients were so clearly wrong that the principle of general deterrence required a six-month suspension and a fine of \$10,000. No competent chartered accountant would have concluded that it was appropriate to claim losses in the manner that Mr. Isabella did.

27. The panel was of the view that a reprimand is necessary as a specific deterrent to the member and to stress the unacceptability of his conduct as a chartered accountant.

28. The panel accepted Mr. Isabella's statements that he has made arrangements to ensure that such mistakes do not happen in the future. Nevertheless, the panel concluded that the principle of rehabilitation required Mr. Isabella to take the courses stipulated.

29. The panel concluded that the appropriate partial indemnity to be paid by the member whose misconduct was responsible for the investigation and hearing with the resulting costs was \$10,000. Even with this partial indemnity, the membership as a whole was bearing a significant portion of the costs occasioned by his misconduct.

DATED AT TORONTO THIS *12TH* DAY OF MAY, 2011
BY ORDER OF THE DISCIPLINE COMMITTEE



S.F. DINELEY, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

P.A. BUSCH, CA
H.G. TARADAY, CA
R.A. VICKERS, FCA
S.B. WALKER (PUBLIC REPRESENTATIVE)