

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **M. DANIEL BELL**, a suspended member of the Institute, under **Rules 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. M. Daniel Bell
13 Jessica Lane
Guelph, ON N1E 1S3

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made February 3, 2009)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on February 3, 2009, to hear charges of professional misconduct brought by the Professional Conduct Committee against M. Daniel Bell, a suspended member of the Institute.
2. Paul Farley appeared on behalf of the Professional Conduct Committee. He was accompanied by Scott Porter, CA, the investigator appointed by the Professional Conduct Committee in this matter. Mr. Bell was not represented by counsel and did not attend.
3. The Professional Conduct Committee filed the Notice of Hearing with proof of personal service on Mr. Bell on the October 24, 2008 (Exhibit 3). The panel determined Mr. Bell had received proper notice of the hearing in accordance with the bylaws and that it had the jurisdiction to proceed in his absence.
4. Mr. Farley also filed an e-mail from Mr. Bell of January 28, 2009 and Mr. Farley's e-mail response of January 29, 2009 (Exhibit 4). Mr. Bell's e-mail indicates he was aware of the hearing date but would be unable to attend until, possibly, later in the spring. Mr. Farley's e-mail stated that the Professional Conduct Committee would be seeking to proceed on the date set for hearing. There was no response to Mr. Farley's e-mail.
5. The panel considered whether, in light of the exchange of e-mails and despite having jurisdiction to proceed, it would be unfair to the member to proceed in his absence. The panel noted that the charges were serious. The panel was also informed that the Professional Conduct Committee had made full disclosure to Mr. Bell and had told him the sanction that the Committee would seek should there be a finding of guilt. The panel also noted that Mr. Bell did not provide specifics or confirmation of his reason for not being able to attend the hearing; nor did he provide definite dates for his availability. Taking into account all the circumstances, the panel determined the hearing both could and should proceed.

CHARGES

6. The following charges were laid against Mr. Bell by the Professional Conduct Committee on August 21, 2008:

1. THAT, the said M. Daniel Bell, in or about the period April 11, 2005 through September 11, 2006, while a President and shareholder of "GM Inc.", failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that he misappropriated from bankruptcy clients of "GM Inc." approximately \$39,300; contrary to Rule 201.1 of the rules of professional conduct.
2. THAT, the said M. Daniel Bell, on or about August 4, 2006, while a President and shareholder of "GM Inc.", failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that he misappropriated from "GM Inc.", approximately \$4,465; contrary to Rule 201.1 of the rules of professional conduct.
3. THAT, the said M. Daniel Bell, on or about the 20th day of March 2006, while a President and shareholder of "GM Inc.", failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that he misappropriated approximately \$4,274 from the trust account of bankruptcy client "S" and diverted the monies to bankruptcy client "P"; contrary to Rule 201.1 of the rules of professional conduct.

PLEA

7. Mr. Bell not being present, a plea of not guilty to each of the charges was entered on his behalf by the Chair of the panel.

EVIDENCE

8. The Professional Conduct Committee called two witnesses: Larry Norman Arndt, CA, a partner in a CA firm in Cambridge, and Mr. Porter, the investigator. The witnesses referred to a Document Brief (Exhibit 6).

9. The evidence establishes that GM & Partners is a full service public accountancy firm in the Cambridge area. There are four partners, including Mr. Arndt. In 2003, Mr. Bell approached the partners of the firm about establishing a bankruptcy practice in conjunction with the firm. An agreement was entered into, although no formal documentation was drawn up.

10. GM Inc. was incorporated, with Mr. Bell a 40% shareholder, and the four partners of GM & Partners, along with a retired partner of that firm, each holding a 12% share to make up the other 60%. Mr. Bell was also the president of the company. All cheques of the company had to be signed by Mr. Bell and one of the other shareholders.

11. In mid-2006, an employee of GM Inc. brought a cheque drawn on that company's account to the attention of Mr. Arndt, one of the partners of GM & Partners. That cheque had been altered, with the payee whited out and Mr. Bell's name inserted. The change was initialled by Mr. Bell (Exhibit 6, Tab 4).

12. As a result of an investigation conducted by Mr. Arndt and GM & Partners, three other cheques, altered in the same manner, were discovered (Exhibit 6, Tab 4). The total amount of the four cheques was \$4,465.29. The cheques were written on an account containing the mixed funds of a number of bankrupt clients. The accounting records of GM Inc. charged the debits to either interim draws or counselling fees. Although Mr. Arndt was the usual GM & Partners signatory, all four cheques had been signed by Peter Graham, another partner.

13. Mr. Arndt and Mr. Graham confronted Mr. Bell about the cheques. Mr. Bell admitted he had altered the cheques and that he had no right to the monies. He expressed remorse at the bad judgment he had shown, and attributed it to personal and work stress. He informed the partners there were no other altered cheques.

14. The partners of GM & Partners met to consider what action should be taken. They decided to continue the association with Mr. Bell, as he was the sole licensed trustee in bankruptcy, and therefore necessary to the operations of GM Inc. They placed certain controls on the cheque-signing practices, including requiring that all cheques be filled out and signed by Mr. Bell prior to the counter-signing by a partner of GM & Partners, and that the cheques would not be returned to Mr. Bell after signing. The partners of GM & Partners also instructed the staff of GM Inc. to continue to look at the cheques of the company and determine whether there were any other questionable ones.

15. The partners were also mindful of their obligation to inform the Institute of Mr. Bell's actions. Mr. Arndt called the Institute, and received information that the matter was not trivial and that the partnership should complete their investigation. This conversation was reported to Mr. Bell, and he was urged to self-report to the Institute.

16. The investigation by GM Inc. staff revealed further questionable payments, including a cheque payable to a law firm in trust, altered to be made payable to Mr. Bell's wife, four cheques altered to be payable to Mr. Bell, and one made payable to a supplier that was not a creditor of the bankrupt on whose account the cheque was drawn (Exhibit 6, Tab 2). There was also a cheque written on the account of one bankrupt to reimburse another for the funds taken from the account of the second bankrupt (Exhibit 6, Tab 3). These cheques were all written on accounts held for individual bankrupts, as opposed to the general bankrupts' account. The cheques were dated between June, 2005 and September, 2006, and, excluding the reimbursement cheque, totalled \$39,300.00.

17. Mr. Bell also altered a cheque payable from the account of "S", a bankruptcy client, ostensibly for landlord expenses, to be payable to "P", another bankruptcy client, in the amount of \$4,274.00 (Exhibit 6, Tab 5).

18. Mr. Bell was confronted with these cheques by the partners of GM & Partners, and, separately, by Mr. Porter. Mr. Bell admitted he had no authority to alter the cheques, or to make them payable to himself or other persons. He used the funds to defray his living expenses.

19. The partners of GM & Partners reported the matter to the Office of the Superintendent in Bankruptcy (OSB) shortly after meeting with Mr. Bell. The OSB seized the files of GM Inc. and suspended Mr. Bell's licence, effectively putting GM Inc. out of business.

DECISION

20. After deliberating, the panel decided that professional misconduct with respect to each of the charges had been proven on clear, cogent and convincing evidence, and made the following decision:

THAT, having determined to proceed with the hearing in the absence of Mr. Bell pursuant to Bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to each of the charges and having seen, heard, and considered the evidence, the Discipline Committee finds Mr. Martin Daniel Bell guilty of charge Nos. 1, 2 and 3.

SANCTION

21. Mr. Farley, on behalf of the Professional Conduct Committee, characterized the conduct of Mr. Bell, which included dishonesty, misappropriation and theft, as being most serious in nature. In order to preserve the public trust in the integrity of the profession, he urged the panel to expel Mr. Bell.

22. Mr. Farley noted a number of aggravating factors in the matter, including: Mr. Bell was in a position of trust as a trustee in bankruptcy; the clients involved were on the verge of financial extinction and thus vulnerable; Mr. Bell was also in a position of trust vis-à-vis the partners of GM & Partners; Mr. Bell took nearly \$50,000 over a lengthy period of time and in a deceitful manner; he stopped only when he was caught and even then attempted to minimize his involvement; and he has not made full restitution.

23. Mr. Farley also set out some factors in mitigation: Mr. Bell cooperated with the investigation; he has no disciplinary record; and he has made partial restitution.

24. In light of the egregious nature of the conduct, the Professional Conduct Committee sought: a reprimand in writing; a fine of \$25,000; expulsion; revocation of public accounting licence; and full publication, including newspaper publication in the Guelph and Cambridge areas.

25. Mr. Farley filed a Costs Outline (Exhibit 8), detailing the costs of the investigation and hearing, and asked the panel to order costs in the amount of \$25,000.

ORDER

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Bell be reprimanded in writing by the chair of the hearing.

2. THAT Mr. Bell be and he is hereby fined the sum of \$20,000 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. Bell be and he is hereby expelled from membership in the Institute.

4. THAT notice of this Decision and Order, disclosing Mr. Bell'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 Office of the Superintendent of Bankruptcy Canada;
 - (c) to all provincial institutes/Ordre,
- and shall be made available to the public.

5. THAT notice of the expulsion, disclosing Mr. Bell's name, be given by publication on the Institute's website, in a newspaper distributed in each of Cambridge, Kitchener and Guelph and in the *Globe and Mail*. All costs associated with the publication shall be borne by Mr. Bell and shall be in addition to any other costs ordered by the committee.

6. THAT Mr. Bell 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.

AND IT IS FURTHER ORDERED:

7. THAT Mr. Bell be and he is hereby charged costs fixed at \$20,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.

REASONS

27. Mr. Bell took money to which he was not entitled. He misappropriated \$4,465 from the mixed bankruptcy account of GM Inc. and a further \$39,300 from specified bankruptcy clients of GM Inc. He used that money to his benefit and to the benefit of related persons and entities. He misappropriated a further \$ 4,274 from one bankruptcy client and used it to benefit another client, with whom he had a social relationship. The evidence presented to this panel proves each of the charges against him. Mr. Bell is guilty of professional misconduct for each of the misappropriations.

28. The Discipline Committee has stated in numerous matters that members who steal cannot be tolerated within the profession. This is so even in cases where the circumstances of the member engender empathy in the panel. Chartered accountants are known for their financial acumen and probity. Were the public to have reason to doubt that integrity, the entire profession would suffer. A member who steals commits an offence not only against the client, but against the public and the profession.

29. Being a member of a profession brings with it many benefits. It also carries responsibilities. The greatest of these is the responsibility to be trustworthy. Mr. Bell

has shown he is not trustworthy. He has lost the privilege of being called a chartered accountant or being associated with this profession. He must be expelled. Any lesser sanction would be a dereliction of our duty to the public and the profession.

30. An integral part of our duty is not only to ensure the profession is regulated in the public interest, but that we are seen to do so. Publication is an essential component of that aspect. The public has a right to know that Mr. Bell has been expelled. Other members of the profession have a need to know no less, so that they can govern themselves so as to avoid the same fate. There are no extraordinary circumstances of which we have been made aware that would lead to a consideration not to publicize the matter.

31. Mr. Bell stole for his own benefit. Not only did he breach the most basic tenets of this profession, he profited by that breach. He, and others who might be likewise tempted, need to be deterred from such conduct. The fine imposed is intended to provide such deterrence. The quantum is significant, and reflects the egregious nature of the conduct, and our denunciation of it.

32. Finally, Mr. Bell has been ordered to pay a portion of the costs of the investigation and hearing of the matter of his misconduct. It is appropriate that he, as the person who caused the necessity of the investigation and hearing, as opposed to the membership as a whole, bear a portion of those costs. The panel received no information or evidence that Mr. Bell was unable to pay either these costs or the fine we have ordered.

DATED AT TORONTO THIS 26th DAY OF MARCH, 2009
BY ORDER OF THE DISCIPLINE COMMITTEE

M.B. MARTENFELD, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

S.F. DINELEY, FCA
G. KROFCHICK, CA
H.G. TARADAY, CA
S.B. WALKER (PUBLIC REPRESENTATIVE)