

Martin Lapedus: Summary, as Published in *CheckMark*

Martin Lapedus, of North York, was found guilty of three charges under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, and three charges under Rule 202 of failing to perform his professional services with integrity. Over a two-year period Mr. Lapedus altered a dozen client cheques, and misappropriated the clients' funds to his own personal use. Mr. Lapedus was fined \$1,000 and expelled from the Institute. His appeal of the discipline committee's order was dismissed by the appeal committee. Mr. Lapedus brought an application for judicial review, asking the Divisional Court to set aside the order of expulsion. His application was dismissed, with costs awarded to the Institute.

CHARGE(S) LAID re Martin Lapedus

The Professional Conduct Committee hereby makes the following charges against Martin Lapedus, a suspended member of the Institute:

1. THAT, the said Martin Mapedus, in or about February 1993, 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 improperly diverted \$600 from his client, Tony Curtis and Associates, to himself by altering a cheque dated January 31, 1993 entrusted to his care and payable to the Receiver General and negotiating same without the client's knowledge or consent, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT, the said Martin Lapedus, in or about March 1993, 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 improperly diverted \$525 from his client, Tony Curtis and Associates, to himself by altering a cheque dated January 17, 1992 entrusted to his care and payable to Revenue Canada and negotiating the same without the client's knowledge or consent, contrary to Rule 201.1 of the rules of professional conduct.
3. THAT, the said Martin Lapedus, in or about the period February 1991 through February 1993 failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, and in that having been provided by his client Marcia Cosmetics Inc. with 10 cheques in the total amount of approximately \$8,610.51, and having been instructed by the client to pay approximately \$8,310.51 to Revenue Canada as amounts owing for Goods and Services Tax failed to do so and instead diverted the entire amount to his own use, contrary to Rule 201.1 of the rules of professional conduct.
4. THAT, the said Martin Lapedus, in or about the period February 1991 through March 1993, failed to perform his professional services with integrity, in that he improperly diverted \$600 from his client, Tony Curtis and Associates, to himself by altering a cheque dated January 31, 1993 entrusted to his care and payable to the Receiver General and negotiating same without the client's knowledge or consent, contrary to Rule 202 of the rules of professional conduct.
5. THAT, the said martin Lapedus, in or about March 1993, failed to perform his professional services with integrity, in that he improperly diverted \$525 from his client, Tony Curtis and Associates, to himself by altering a cheque dated January 17, 1992 entrusted to his care and payable to Revenue Canada and negotiating same without the client's knowledge or consent, contrary to Rule 202 of the rules of professional conduct.
6. THAT, the said Martin Lapedus, in or about the period February 1991 through February 1993 failed to perform his professional services with integrity, in that having been provided by his client Marcia Cosmetics Inc. with 10 cheques in the total amount of approximately \$8,610.51, and having been instructed by the client to pay approximately \$8,310.50 to Revenue Canada as amounts owing for Goods and Services Tax failed to do so instead diverted the entire amount to his own use, contrary to Rule 202 of the rules of professional conduct.

DATED at Toronto this 29th day of March, 1994

J.L.M. BADALI, FCA – CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Martin Lapedus

DECISION AND ORDER IN THE MATTER OF: Charges against **MARTIN LAPEDUS**, a suspended member of the Institute, under **Rules 201.1 and 202** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE AUGUST 16, 1994

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1, 2, 3, 4, 5 and 6, THE DISCIPLINE COMMITTEE FINDS Martin Lapedus guilty of charges Nos. 1, 2, 3, 4, 5 and 6.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Lapedus be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Lapedus be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within ninety (90) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Lapedus be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Lapedus' name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
5. THAT Mr. Lapedus surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws.

DATED AT TORONTO THIS 24TH DAY OF AUGUST, 1994
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Martin Lapedus

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **MARTIN LAPEDUS**, a suspended member of the Institute, under **Rules 201.1 and 202** of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE AUGUST 16, 1994

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were held on August 16, 1994. Ms. Deborah McPhadden attended on behalf of the professional conduct committee, and Mr. Lapedus attended with his counsel, Mr. David Goodman.

Mr. Lapedus pleaded guilty to the following 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:

1. *THAT, the said Martin Lapedus, in or about February 1993, 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 improperly diverted \$600 from his client, Tony Curtis and Associates, to himself by altering a cheque dated January 31, 1993 entrusted to his care and payable to the Receiver General and negotiating same without the client's knowledge or consent, contrary to Rule 201.1 of the rules of professional conduct.*
2. *THAT, the said Martin Lapedus, in or about March 1993, 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 improperly diverted \$525 from his client, Tony Curtis and Associates, to himself by altering a cheque dated January 17, 1992 entrusted to his care and payable to Revenue Canada and negotiating same without the client's knowledge or consent, contrary to Rule 201.1 of the rules of professional conduct.*
3. *THAT, the said Martin Lapedus, in or about the period February 1991 through February 1993 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 having been provided by his client Marcia Cosmetics Inc. with 10 cheques in the total amount of approximately \$8,610.51, and having been instructed by the client to pay approximately \$8,310.51 to Revenue Canada as amounts owing for Goods and Services Tax failed to do so and instead diverted the entire amount to his own use, contrary to Rule 201.1 of the rules of professional conduct.*
4. *THAT, the said Martin Lapedus, in or about the period February 1991 through March 1993, failed to perform his professional services with integrity, in that he improperly diverted \$600 from his client, Tony Curtis and Associates, to himself by altering a cheque dated January 31, 1993 entrusted to his care and payable to the Receiver General and negotiating same without the client's knowledge or consent, contrary to Rule 202 of the rules of professional conduct.*

5. *THAT, the said Martin Lapedus, in or about March 1993, failed to perform his professional services with integrity, in that he improperly diverted \$525 from his client, Tony Curtis and Associates, to himself by altering a cheque dated January 17, 1992 entrusted to his care and payable to Revenue Canada and negotiating same without the client's knowledge or consent, contrary to Rule 202 of the rules of professional conduct.*
6. *THAT, the said Martin Lapedus, in or about the period February 1991 through February 1993 failed to perform his professional services with integrity, in that having been provided by his client Marcia Cosmetics Inc. with 10 cheques in the total amount of approximately \$8,610.51, and having been instructed by the client to pay approximately \$8,310.51 to Revenue Canada as amounts owing for Goods and Services Tax failed to do so and instead diverted the entire amount to his own use, contrary to Rule 202 of the rules of professional conduct.*

Counsel for the professional conduct committee led the panel through an agreed statement of facts and a document brief, which were both filed as exhibits. Counsel for the member called no evidence with respect to the issue of innocence or guilt, and agreed that the facts as presented by the professional conduct committee were substantially correct. After reviewing the evidence as presented, the panel found Mr. Lapedus guilty of the six charges laid.

Following the panel's findings of guilty, counsel for the member asked for an adjournment of the proceedings to August 29, being the last of three days that had been reserved for this hearing. His submissions were that August 29 was a scheduled hearing day, and that he wished to call a medical doctor as a witness upon the issue of sanctions who was not available until that date. Upon enquiry from the panel, Mr. Goodman indicated that he had not yet taken steps to obtain a medical report. The member and his counsel were not entirely sure of what all a medical report might say, but advised that Mr. Lapedus is suffering from high blood pressure and diabetes.

The panel denied the motion for adjournment, as Mr. Lapedus had already been granted an adjournment of the original hearing dates of June 28, 29 and 30, and he had been made aware that upon a finding of guilty the panel would expect to address the issue of sanctions immediately.

The panel then heard testimony from Mr. Lapedus, followed by submissions from both counsel as to sanction. Mr. Lapedus testified that he suffered from high blood pressure, diabetes and liver damage. He also testified that he was negligent in his actions and that he had no excuses for his actions, but that he felt he was not physically or mentally able to cope with his circumstances during the time of the offences.

Upon deliberation the panel made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Lapedus be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Lapedus be and he is hereby fined the sum of \$1,000, to be remitted to the Institute within ninety (90) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Lapedus be and he is hereby expelled from membership in the Institute.

4. THAT notice of this Decision and Order, disclosing Mr. Lapedus' name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
5. THAT Mr. Lapedus surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws.

The reasons for the panel's order are briefly set out below.

Reprimand

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

Fine

The professional conduct committee asked for a fine of \$10,000 against the member. Counsel for the member submitted that to levy a fine against a member already under suspension for bankruptcy is totally unreasonable. The panel concurred with counsel for the professional conduct committee that a fine is important as both a general and a specific deterrent. In setting the quantum of the fine at \$1,000, the panel took into consideration the financial position of the member. In addition, the appropriate size of fine was discussed in conjunction with deliberations as to the appropriateness of expulsion.

Expulsion

The principle of general deterrence is of utmost importance in this case. The charges of which Mr. Lapedus was found guilty involved moral turpitude. His behaviour was not isolated, or the result of a momentary lapse of judgment, but was misconduct which took place over an extended period of time. Mr. Lapedus admitted that he altered cheques, and made use of clients' funds which had been entrusted to him for specified purposes by the clients, for his own personal use.

Counsel for the professional conduct committee asked for the expulsion of Mr. Lapedus as the appropriate specific and general deterrent in this case. Counsel for the member argued that a 2-year suspension was the appropriate sanction.

The panel formed the opinion that, even though there appeared to be remorse on the part of the member, his conduct so undermined the reputation of the profession that it could not be tolerated by the discipline committee. The panel came to the conclusion that a sanction less than expulsion would not be appropriate in the circumstances of this case, and ordered accordingly.

Notice

The disciplinary process of a professional body must be viewed by its members and the public as an open process. Not having been advised of any rare or unusual circumstances to

persuade it to withhold the member's name from publication when giving notice of this case, the panel made the usual order as to the giving of notice.

Surrender of Certificate

As is usual in cases of expulsion, the member was ordered to surrender his certificate of membership in the Institute.

DATED AT TORONTO, THIS _____ DAY OF _____, 1994
BY ORDER OF THE DISCIPLINE COMMITTEE

D.P. SETTERINGTON, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

K.V. CHERNICK, FCA
F.J. DUNN, CA
P. RAYSON, CA
W.L. WOOD, CA
V.G. STAFL (Public representative)