

Notice of Readmission

Marvin Otto, Thornhill, was expelled from the Institute after being found guilty of charges under Rules 201.1, 204.1 and 216, and his expulsion was reported in the April 1999 issue of *CheckMark*. Mr. Otto applied to the Discipline Committee and has been readmitted to the Institute after taking the CARE Preparation Course, passing the CA Reciprocity Examination, attending a professional development course and paying costs of \$1,500.

Marvin Howard Otto: Summary, as Published in *CheckMark*

Marvin Howard Otto, of Oakville, 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; two charges under Rule 204.1 of failing to hold himself free of any influence, interest or relationship which, in the view of a reasonable observer, would impair his professional judgment or objectivity in respect of an engagement; and one charge under Rule 216 of accepting commissions for his referral of a product to clients. While acting as the accountant and auditor of an association, Mr. Otto misappropriated funds in the amount of \$55,000. While a partner in a chartered accountancy firm, he entered into arrangements with two of his firm's clients. Without the knowledge of his partners, the time charged for his professional services was improperly inflated, and then discounted in return for home renovations and favourable pricing on computer equipment for his personal use. Mr. Otto also accepted commissions for the referral to some of his firm's clients of units in an entertainment production partnership, and, while engaged as the auditor of a company, he obtained two loans from the company's president. Prior to the hearing, full restitution had been made by Mr. Otto. He was fined \$7,500 and expelled from the Institute.

CHARGE(S) LAID re Marvin Howard Otto

The Professional Conduct Committee hereby makes the following charges against Marvin H. Otto, CA, a member of the Institute:

1. That, the said Marvin H. Otto, CA, on or about the 10th day of April 1997, while acting as the accountant and auditor for Ethnocultural Training Advisory Council (ETAC), failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the rules of the professional conduct in that he misappropriated funds in the amount of \$55,000, the property of ETAC.
2. THAT, the said Marvin H. Otto, CA, in or about the period July 1, 1995 through July 31 1997, while a partner in the firm Serbinski & Partners, Chartered Accountants, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve public interest, contrary to Rule 201.1 of the rules of professional conduct in that:
 - (a) ~~He entered into an arrangement with Rochera Homes Limited, a client of Serbinski & Partners, without the knowledge of his partners, to discount billings rendered by Serbinski & Partners to the client in return for renovations done to the basement of his home.~~
 - (b) he improperly inflated the time charged for professional services completed for a client of the firm, Rochera Homes Limited in the approximate amount of \$8,000 and then discounted by approximately \$8,000 the fee based on the inflated time set out in invoices dated June 30, 1995, July 31, 1995 and September 29, 1995, in return for Rochera Homes Limited carrying out renovations to his home valued at approximately \$8,000, and thereby obtained a benefit to which he was not entitled
3. THAT, the said Marvin H. Otto, in or about the years 1994, 1995 and 1996 while a partner at the firm Sebinski & Partners, Chartered Accountants, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the rules of professional conduct in that:
 - (a) he entered into an arrangement with a client of Sebinski & Partners, C.N.S. Canada Inc., without the knowledge of his partners, to discount billings rendered by Serbinski & Partners to the client as partial payment for computer equipment purchased by him for his personal use;
 - (b) he improperly inflated the time charged for professional services completed for a client of the firm, C.N.S. Canada Inc., in the approximate amount of \$1,800 and then discounted by approximately \$1,800 the fee based on the inflated time set out in invoices dated March 31, 1995 and May 31, 1995, in return for C.N.S. Canada Inc. selling him computer

equipment at a price approximately \$1,800 less than fair market, thereby obtaining a benefit to which he was not entitled.

4. THAT, the said Marvin H. Otto, CA, in or about the period November 1, 1996 through March 31, 1997, while engaged in the practice of public accounting as a partner in the firm Serbinski & Partners, Chartered Accountants, accepted commissions from Malcolm Silver & Co., in the approximate amount of \$20,250, for his referral to his clients William G. Scott, R. Morrissey, M. Morrissey and B. Udashkin, of units of the Monarch Entertainment Production Partnership sold by Malcolm Silver & Co. Ltd., contrary to Rule 216 of the rules of professional conduct.
5. THAT, the said Marvin H. Otto, CA, on or about February 29, 1996, while he was engaged as the auditor for Inland & Marine Salvage Ltd., failed to hold himself free of any influence, interest or relationship which, in the view of a reasonable observer, would impair his professional judgment or objectivity in respect of the engagement, in that he requested and obtained from Inland Marine & Salvage, through William G. Scott, President of the company, a loan in the amount of \$10,000, contrary to Rule 204.1 of the rules of professional conduct.
6. THAT, the said Marvin H. Otto, CA, on about February 19, 1997, while he was engaged as the auditor for Inland Marine & Salvage Ltd., failed to hold himself free of any influence, interest or relationship which, in the view of a reasonable observer, would impair his professional judgment or objectivity in respect of the engagement, in that he requested and obtained from William G. Scott, President of the company, a loan in the amount of \$28,000, contrary to Rule 204.1 of the rules of professional conduct.

Dated at Toronto this 7th day of April, 1998

MICHAEL T. CONNOLLY, FCA –DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Marvin Howard Otto

DECISION AND ORDER IN THE MATTER OF: Charges against **MARVIN HOWARD OTTO, CA**, a member of the Institute, under **Rules 201.1, 204.1 and 216** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JULY 29, 1998

DECISION

THAT, having seen and considered the evidence, the Discipline Committee finds Marvin Howard Otto guilty of charges Nos. 1, 2, 3, 4, 5 and 6, as amended.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Otto be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Otto be and he is hereby fined the sum of \$7,500, 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. Otto be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Otto's 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*; and
 - (d) by publication in *The Globe and Mail*.
5. THAT Mr. Otto 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.

DATED AT TORONTO THIS 30TH DAY OF JULY, 1998
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Marvin Howard Otto

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **MARVIN HOWARD OTTO, CA**, a member of the Institute, under **Rules 201.1, 204.1 and 216** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE JULY 29, 1998

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were commenced on July 9 and concluded on July 29, 1998.

Mr. Paul F. Farley attended on behalf of the professional conduct committee. Mr. Otto was present and represented by his counsel, Mr. Braham M. Taveroff.

DECISION ON THE CHARGES

Six charges, laid under three different rules of professional conduct, had been laid against Mr. Otto. Charges Nos. 1, 2 and 3 were that Mr. Otto failed to maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1.

Charge No. 1 alleged that Mr. Otto misappropriated \$55,000 from a client while acting as the client's accountant and auditor.

Charges Nos. 2 and 3 related to Mr. Otto's inflation of fees to certain clients, which he then discounted in exchange for personal benefits received from the clients to the value of the discounted amounts, thereby obtaining benefits to which he was not entitled.

Charge No. 4, laid under Rule 216, was that, while engaged in the practice of public accounting, Mr. Otto accepted commissions for his referral of clients.

Charges Nos. 5 and 6, laid under Rule 204.1, alleged that Mr. Otto failed to hold himself free of any influence, interest or relationship which, in the view of a reasonable observer, would impair his professional judgment or objectivity in respect of an audit engagement, in that he requested and obtained from the president of a client company loans of \$10,000 and \$28,000, respectively, in successive years.

Mr. Otto pleaded guilty to the charges, as amended by the withdrawal of one particular by the professional conduct committee, and confirmed that he understood that upon a plea of guilty, and upon that basis alone, he could be found guilty of the charges by the discipline committee.

In presenting its case, the professional conduct committee filed as exhibits an agreed statement of facts and a document brief. This was the evidence for the prosecution, and Mr. Farley went through it in some detail. Mr. Taveroff did not call evidence or make submissions on behalf of Mr. Otto.

Based on the evidence filed, and the plea of guilty, the discipline committee found Mr. Otto guilty of the charges, as amended.

ORDER AS TO SANCTION

The discipline committee then heard evidence on behalf of the member with respect to sanction, as well as submissions on the issue from both counsel.

There were two terms of the sanctions requested by the professional conduct committee with which Mr. Taveroff took issue. He submitted that the suggested fine was not appropriate given Mr. Otto's lack of financial resources, and that the requested publication of the notice of expulsion in *The Globe and Mail*, disclosing his client's name, would be unfair to Mr. Otto given the letter from Dr. Charles Honein, M.D., psychotherapist, which cautioned that "in the event that his [i.e. Mr. Otto's] case become [sic] publicized, this might trigger back such tendencies or intents for suicide which we would very much prefer to avoid".

The committee deliberated, and settled on the other aspects of the sanction which it considered appropriate in this case, but did not decide the issue of newspaper publication. With respect to this issue, the committee decided to adjourn to a future date to give the member the opportunity to present further medical evidence, ideally in the form of oral testimony by the psychotherapist.

The committee reconvened on July 29, 1998, and at that time Mr. Taveroff filed as an exhibit another letter from Dr. Honein which further alluded to Mr. Otto's suicidal tendencies. Mr. Taveroff stated that the doctor was not available to testify, and that his client wished to expedite and conclude this matter on the basis of the evidence and submissions already presented.

After deliberation, the committee made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Otto be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Otto be and he is hereby fined the sum of \$7,500, 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. Otto be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Otto's 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;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Globe and Mail*.
5. THAT Mr. Otto 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.

Reprimand

The discipline committee believes that a reprimand in writing from the chair of the hearing stresses to Mr. Otto the unacceptability of his conduct as a chartered accountant.

Fine

The professional conduct committee submitted that a fine in the range of \$5,000 to \$10,000 should be levied against Mr. Otto, both as a general deterrent to like-minded members, and as a demonstration to the public of the profession's intolerance for the type of conduct in which he engaged. The discipline committee concurred with this submission, and levied a fine of \$7,500 against Mr. Otto.

Expulsion

The committee felt compelled to order expulsion in this case, as a general deterrent. Mr. Otto pleaded guilty to charges which involved moral turpitude. The chartered accounting profession cannot, and will not, tolerate members who gain positions of trust because of their designation, and then abuse this trust to steal funds for their own benefit.

Notice

Counsel for Mr. Otto reluctantly conceded that his client's name should be published in *CheckMark*, but took extreme exception to the request of the professional conduct committee that the notice of expulsion be published in *The Globe and Mail* pursuant to Institute Bylaw 575(3), which provides as follows:

Notice of expulsion of a member shall be given to the public by publication in a newspaper distributed in the geographic area of the member's current or former practice, employment and/or residence, or in such other manner as the discipline committee may determine to be appropriate, unless the committee determines that the circumstances of the case are of a nature that such notice is not necessary for the protection of the public and would be unfair to the member, in which case the committee shall provide written reasons for not ordering publication of the notice.

Bylaw 575(3), as well as previous decisions of the Institute's discipline and appeal committees, make it clear that publication of a member's name is a significant general deterrent which should be withheld only in the most exceptional of circumstances. With respect to newspaper publication of expulsion, the committee was not persuaded that the two-fold test set out in the bylaw for dispensing with publication had been satisfied.

Mr. Taveroff argued that newspaper notice was not necessary for the protection of the public, and would be unfair to his client. He submitted that the extreme remorse which Mr. Otto was experiencing, and the fact that he was not in public practice, were adequate protections for the public, as Mr. Otto was neither likely to repeat the misconduct nor have the opportunity to do so. He submitted that the risk of Mr. Otto taking his life because of this publication was so great that the potential unfairness to him far outweighed any desire to provide a measure of protection to the public.

The second part of Mr. Taveroff's argument, that the publication would be unfair to the member because of his suicidal tendencies, was troublesome to the committee. It is often submitted that publication will have a very negative effect on a member and his or her family - an effect far beyond embarrassment - and the committee had no doubt that there would be a negative impact in this case. But, while accepting that a depressed person might not react to things in a

way which others would find reasonable, it was difficult for the committee to understand how publication in *CheckMark*, which is sent to all chartered accountants and CA students in Ontario, could be conceded by the defence as an acceptable risk, but yet publication in the legal notices section of a newspaper could not.

The committee appreciated the uncertainty stated by the doctor as to the effect of publication on Mr. Otto, and was not persuaded that there was sufficient evidence of a risk of suicide to interfere with the operation of Bylaw 575(3).

Mr. Otto's improper conduct took place over many months, and was not curtailed by any sense of remorse which he may have had. The public and other members of the profession are entitled to have confidence that such serious misconduct is being properly dealt with. The committee concluded that the publication of the expulsion, including Mr. Otto's name, was of overriding importance in this case for the protection of the public.

Certificate of Membership

The committee concluded that it is important that Mr. Otto no longer appear to be a member of the chartered accountancy profession after his expulsion. Accordingly, he was ordered to surrender his certificate of membership in the Institute to the secretary of the discipline committee.

At the conclusion of the hearing, the chair advised Mr. Taveroff that the committee thought it advisable that Dr. Honein be notified of its order.

DATED AT TORONTO THIS DAY OF NOVEMBER, 1998
BY ORDER OF THE DISCIPLINE COMMITTEE

D.P. SETTERINGTON, CA – CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

E.R. ARCHIBALD, CA
G.A. PORTER, CA
S.W. SALTER, CA
K. TSE, CA
J.T. ANDERS (Public representative)