

Michael Stephen Brosko: Summary, as Published in *CheckMark*

Michael Stephen Brosko, of Oshawa, was found guilty of two charges under Rule 104 of failing to promptly reply in writing to letters from the associate director of standards enforcement. He was fined \$1,000 and ordered to respond to the standards enforcement letters within a specified time. In a subsequent case, Mr. Brosko was found guilty of two charges under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest; seven charges under Rule 202 of failing to perform his professional services with due care; and one charge under Rule 303.2 of failing to promptly transfer to a client's successor accountant, on the client's instructions, all files, documents and paper work belonging to the client. Mr. Brosko was fined \$5,000, ordered to complete five professional development courses, and suspended for twelve months. After the second case was decided, Mr. Brosko was expelled from the Institute as a result of his failure to pay the \$1,000 fine levied under the first order.

CHARGE(S) LAID re Michael Stephen Brosko

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

1. THAT, the said Michael Brosko, in or about the period April 1993 to September 1997, failed to perform his professional services with due care in that while engaged to perform a review of the financial statements and prepare and file corporate tax returns for Antonio Ciccone Enterprises Inc. for the year ended March 31, 1993 and to compile the financial statements and file corporate tax returns for 532723 and 532724 Ontario Limited for the year ended November 30, 1993, he failed to do so on a timely basis, contrary to Rule 202 of the rules of professional conduct.
2. THAT, the said Michael Brosko, in or about the period April 1994 to September 1997, failed to perform his professional services with due care in that while engaged to compile the financial statements and prepare and file corporate tax returns for Antonio Ciccone Enterprises Inc. for the year ended March 31, 1994 and to compile the financial statements and file corporate tax returns for 532723 and 532724 Ontario Limited for the year ended November 30, 1994, he failed to do so on a timely basis, contrary to Rule 202 of the rules of professional conduct.
3. THAT, the said Michael Brosko, in or about the period April 1995 to September 1997, failed to perform his professional services with due care in that while engaged to compile the financial statements and prepare and file corporate tax returns for Antonio Ciccone Enterprises Inc. for the year ended March 31, 1995 and to compile the financial statements and file corporate tax returns for 532723 and 532724 Ontario Limited for the year ended November 30, 1995, he failed to do so on a timely basis, contrary to Rule 202 of the rules of professional conduct.
4. THAT, the said Michael Brosko, in or about the period April 1996 to January 1998, failed to perform his professional services with due care in that while engaged to compile the financial statements and prepare and file corporate tax returns for Antonio Ciccone Enterprises Inc. for the year ended March 31, 1996 and to compile the financial statements and file corporate tax returns for 532723 and 532724 Ontario Limited for the year ended November 30, 1996, he failed to do so on a timely basis, contrary to Rule 202 of the rules of professional conduct.
5. THAT, the said Michael Brosko, in or about the period January 13, 1998 to June 30, 1998, having been requested in writing, by the solicitor for the client, to transfer all files documents and paper work belonging to the client to the successor accountant Brian Jones, CA, with respect to the engagements for Antonio Ciccone Enterprises Inc., 532723 Ontario Limited, and 532724 Ontario Limited, did not do so promptly, contrary to Rule 303.2 of the rules of professional conduct.
6. THAT, the said Michael Brosko, in or about the period December 1, 1994 to January 14, 1998, failed to perform his professional services with due care in that he failed to prepare the 1994 financial statements and corporate tax return for 827691 Ontario Inc., after having been engaged to do so, contrary to Rule 202 of the rules of professional conduct.

7. THAT, the said Michael Brosko, in or about the period December 1, 1995 to January 14, 1998, failed to perform his professional services with due care in that he failed to prepare the 1995 financial statements and corporate tax return for 827691 Ontario Inc., after having been engaged to do so, contrary to Rule 202 of the rules of professional conduct.
8. THAT, the said Michael Brosko, in or about the period December 1, 1996 to January 14, 1998, failed to perform his professional services with due care in that he failed to prepare the 1996 financial statements and corporate tax return for 827691 Ontario Inc. after having been engaged to do so, contrary to Rule 202 of the rules of professional conduct.
9. THAT, the said Michael Brosko, in or about July 1998, 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 failed to take adequate steps to preserve his working paper files with respect to client engagements or otherwise ensure that his clients' interests were protected contrary to Rule 201.1 of the rules of professional conduct.

Dated at the City of Ottawa this 28th day of February, 2001.

MICHAEL CONNOLLY, FCA
DEPUTY CHAIR, PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Michael Stephen Brosko

DECISION IN THE MATTER OF: Charges against **MICHAEL STEPHEN BROSKO**, a suspended member of the Institute, under **Rules 201.2, 202 and 303.2** of the Rules of Professional Conduct, as amended.

DECISION MADE OCTOBER 9, 2001

THAT, having seen, heard and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Brosko pursuant to Institute 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 charges Nos. 1 to 10, inclusive, the Discipline Committee finds Michael Stephen Brosko guilty of charges Nos. 1 to 10, inclusive.

The panel will reconvene on October 29, 2001 at 2:00 p.m. to hear submissions from the parties with respect to appropriate sanction.

DATED AT TORONTO THIS 11TH DAY OF OCTOBER, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Michael Stephen Brosko

ORDER IN THE MATTER OF: Charges against **MICHAEL STEPHEN BROSKO**, a suspended member of the Institute, under **Rules 201.2, 202 and 303.2** of the Rules of Professional Conduct, as amended.

ORDER MADE OCTOBER 29, 2001

IT IS ORDERED in respect of the charges:

1. THAT Mr. Brosko be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Brosko be and he is hereby fined the sum of \$5,000, 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. Brosko be suspended from the rights and privileges of membership in the Institute for a period of twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Brosko be and he is hereby required to complete, by paying for and attending in their entirety, by December 31, 2002, the following professional development courses made available through the Institute:
 1. Income Tax Refresher – Corporate;
 2. Income Tax Refresher – Personal;
 3. Financial Statement Presentation & Disclosure;
 4. Staying Out of Trouble; and
 5. Triple Your Memory & Confidence & Halve Your Stress,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. Brosko'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 Timmins *Daily Press*.
6. THAT Mr. Brosko 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, to be held during the period of suspension and thereafter returned to Mr. Brosko.

7. THAT in the event Mr. Brosko fails to comply with the requirements of this Order, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 5 above.

DATED AT TORONTO THIS 2ND DAY OF NOVEMBER, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Michael Stephen Brosko

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **MICHAEL STEPHEN BROSKO**, a suspended member of the Institute, under **Rules 201.2, 202 and 303.2** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION MADE OCTOBER 9 AND ORDER MADE OCTOBER 29, 2001

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on October 9 and 29, 2001 to hear charges brought by the professional conduct committee against Michael S. Brosko, a suspended member of the Institute.
2. Mr. Brian Bellmore represented the professional conduct committee. The member was not present and was not represented by counsel.
3. The panel's decision was made on October 9, 2001 and the order with respect to sanction was made on October 29, 2001. These reasons, issued in writing pursuant to Bylaw 574, contain the Decision of the panel which was sent to Mr. Brosko on October 11, 2001, and the Order which was sent to Mr. Brosko on November 2, 2001.

DECISION TO PROCEED

4. Exhibit No. 2 to these proceedings is a copy of the transcript of the assignment hearing held on July 25, 2001, at which the dates for this hearing were set. Mr. Brosko was in attendance at the assignment hearing and confirmed that the dates assigned were satisfactory.
5. Exhibit No. 3 to these proceedings is a copy of a letter dated August 20, 2001 from the secretary of the discipline committee advising Mr. Brosko of the dates for this hearing. The letter requested that Mr. Brosko acknowledge receipt of the Notice of Hearing (Exhibit No. 4 to these proceedings) by signing a copy of the letter and returning it to the discipline committee secretary. Mr. Brosko signed and returned the acknowledgement.
6. Mr. Brosko advised a member of the Institute staff by voicemail in the week prior to the October 9, 2001 hearing date that he would not be present at the hearing.
7. As a result of the circumstances noted above, the panel was satisfied that Mr. Brosko had received proper notice of the hearing and decided to proceed in his absence pursuant to Bylaw 560.

DECISION ON THE CHARGES

8. A notice of application to amend the charges by adding an additional charge (as charge No. 6, with the following charges renumbered), and to amend the final charge by adding the words "through February, 2001" after the words "in or about July 1998" was filed as Exhibit No. 5 to this hearing. The panel accepted the notice of application and the amendments to the charges were made.

9. The chair of the hearing then entered a plea of not guilty on behalf of Mr. Brosko to the following charges laid against him:

1. THAT, the said Michael Brosko, in or about the period April 1993 to September 1997, failed to perform his professional services with due care in that while engaged to perform a review of the financial statements and prepare and file corporate tax returns for Antonio Ciccone Enterprises Inc. for the year ended March 31, 1993 and to compile the financial statements and file corporate tax returns for 532723 and 532724 Ontario Limited for the year ended November 30, 1993, he failed to do so on a timely basis, contrary to Rule 202 of the rules of professional conduct.
2. THAT, the said Michael Brosko, in or about the period April 1994 to September 1997, failed to perform his professional services with due care in that while engaged to compile the financial statements and prepare and file corporate tax returns for Antonio Ciccone Enterprises Inc. for the year ended March 31, 1994 and to compile the financial statements and file corporate tax returns for 532723 and 532724 Ontario Limited for the year ended November 30, 1994, he failed to do so on a timely basis, contrary to Rule 202 of the rules of professional conduct.
3. THAT, the said Michael Brosko, in or about the period April 1995 to September 1997, failed to perform his professional services with due care in that while engaged to compile the financial statements and prepare and file corporate tax returns for Antonio Ciccone Enterprises Inc. for the year ended March 31, 1995 and to compile the financial statements and file corporate tax returns for 532723 and 532724 Ontario Limited for the year ended November 30, 1995, he failed to do so on a timely basis, contrary to Rule 202 of the rules of professional conduct.
4. THAT, the said Michael Brosko, in or about the period April 1996 to January 1998, failed to perform his professional services with due care in that while engaged to compile the financial statements and prepare and file corporate tax returns for Antonio Ciccone Enterprises Inc. for the year ended March 31, 1996 and to compile the financial statements and file corporate tax returns for 532723 and 532724 Ontario Limited for the year ended November 30, 1996, he failed to do so on a timely basis, contrary to Rule 202 of the rules of professional conduct.

5. THAT, the said Michael Brosko, in or about the period January 13, 1998 to June 30, 1998, having been requested in writing, by the solicitor for the client, to transfer all files documents and paper work belonging to the client to the successor accountant Brian Jones, CA, with respect to the engagements for Antonio Ciccone Enterprises Inc., 532723 Ontario Limited, and 532724 Ontario Limited, did not do so promptly, contrary to Rule 303.2 of the rules of professional conduct.
 6. THAT, the said Michael Brosko, in or about the period January 13, 1998 to June 30, 1998, 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 failed to supply, on a timely basis, reasonable information to the successor accountant Brian Jones, CA, with respect to the engagements for Antonio Ciccone Enterprises Inc., 532723 Ontario Limited, and 532724 Ontario Limited, contrary to Rule 201.1 of the rules of professional conduct.
 7. THAT, the said Michael Brosko, in or about the period December 1, 1994 to January 14, 1998, failed to perform his professional services with due care in that he failed to prepare the 1994 financial statements and corporate tax return for 827691 Ontario Inc., after having been engaged to do so, contrary to Rule 202 of the rules of professional conduct.
 8. THAT, the said Michael Brosko, in or about the period December 1, 1995 to January 14, 1998, failed to perform his professional services with due care in that he failed to prepare the 1995 financial statements and corporate tax return for 827691 Ontario Inc., after having been engaged to do so, contrary to Rule 202 of the rules of professional conduct.
 9. THAT, the said Michael Brosko, in or about the period December 1, 1996 to January 14, 1998, failed to perform his professional services with due care in that he failed to prepare the 1996 financial statements and corporate tax return for 827691 Ontario Inc. after having been engaged to do so, contrary to Rule 202 of the rules of professional conduct.
 10. THAT, the said Michael Brosko, in or about July 1998 through February, 2001, 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 failed to take adequate steps to preserve his working paper files with respect to client engagements or otherwise ensure that his clients' interests were protected contrary to Rule 201.1 of the rules of professional conduct.
10. In presenting the case for the professional conduct committee, Mr. Bellmore stated that the charges fell into three groups. The first set of charges (Nos. 1 to 6) concern three related companies – Antonio Ciccone Enterprises Inc., 532723 Ontario Limited, and 532724 Ontario Limited (collectively, the “Ciccone companies”). Mr. Antonio Ciccone, a businessman in Timmins, Ontario, owns the Ciccone companies.
11. The second set of charges (Nos. 7 to 9) relate to 827691 Ontario Inc., a company owned by the spouse of Dr. Geddes, a chiropractor in Timmins, Ontario.

12. The last charge (No. 10) relates to the preservation of working paper files with respect to client engagements.

13. The professional conduct committee called five witnesses. The first witness was Dr. LaMarche, a chiropractor in Timmins, Ontario. Dr. LaMarche's testimony related primarily to charge No. 10. Dr. LaMarche testified that he was Mr. Brosko's landlord for approximately six months during which time Mr. Brosko did not pay rent, the outstanding rent eventually approximating \$25,000. Dr. LaMarche distrained for non-payment of rent, seized the assets and locked the premises. He testified that he allowed Mr. Brosko to re-enter for the purpose of organizing the files and making sure his clients, many of whom Dr. LaMarche knew, would have their business records. Mr. Brosko took his personal files but left the rest, approximately 200 banker's boxes, on the premises. Dr. LaMarche also testified that ultimately Mr. Jones, a chartered accountant in Timmins and former partner of Mr. Brosko, placed the inactive files of Mr. Brosko in storage.

14. The second witness was Mr. Rokeby, a chartered accountant with a practice in Timmins, Ontario, whose testimony related primarily to charges Nos. 7 to 9. He testified that Dr. and Mrs. Geddes contacted him in January 1998. Mrs. Geddes owns 827691 Ontario Inc. The company owns the building out of which Dr. Geddes practises. Ownership of 827691 Ontario Inc. was transferred to Mrs. Geddes in 1993. From the evidence before the panel, although Mr. Brosko knew about or arranged the transfer as part of a tax plan in 1993, and while he prepared Dr. Geddes' tax returns, he had not prepared any financial statements for the company nor had he filed any corporate tax returns since 1993. Mr. Rokeby, on behalf of the company, filed tax returns with the Ministry of Revenue for the years ended 1993 to 1997 on May 28, 1998. Because of the late filing of the corporate tax returns, the Geddes were required to pay interest and penalties both provincially and federally.

15. The third witness was Mr. Armstrong, the professional conduct committee investigator. Mr. Armstrong testified at some length about his meetings with Mr. Brosko. His testimony related to all charges before the panel.

16. The fourth witness was Mr. Ciccone, the owner of the Ciccone companies. Mr. Ciccone's testimony related primarily to charges Nos. 1 to 4. Mr. Ciccone testified that he had been in business in Timmins for over 60 years and that Mr. Brosko had been his accountant since the early 1980s. Mr. Ciccone said he had a friendly working relationship with Mr. Brosko, on whom he relied completely to file his personal and corporate tax returns and prepare his financial statements. He also testified that when he received business documents in the mail – either from Revenue Canada or elsewhere – his normal practice was to take the unopened documents to Mr. Brosko for him to take care of. Mr. Ciccone's first indication that the corporate tax returns for the Ciccone companies had not been filed was a call from his daughter in 1997, who advised him that his name had appeared in the Timmins newspaper in a listing of court dockets showing that he and the Ciccone companies had been charged under the *Income Tax Act* with failure to file corporate tax returns for the Ciccone companies. The failure by Mr. Brosko to file the corporate tax returns for the Ciccone companies ultimately cost Mr. Ciccone over \$5,000 in legal fees, fines, interest and successor accountant fees. Mr. Brosko filed the corporate tax returns for the Ciccone companies for 1993, 1994 and 1995 after the proceedings in court. The successor accountant, Brian Jones, filed the corporate tax returns for the Ciccone companies for 1996.

17. The last witness was Brian Jones, a chartered accountant who has been practising in Timmins since the mid-1980s. Mr. Jones was a partner of Mr. Brosko for a number of years until he dissolved the partnership in 1995. During this period of time, Mr. Brosko apparently had serious health and financial problems, compounded by a serious drinking problem. Mr. Jones' testimony related primarily to charges Nos. 5 and 6. Mr. Jones testified that he took a number of steps to obtain the records of the Ciccone companies from Mr. Brosko, including retaining a lawyer to send a letter to Mr. Brosko, before he finally received the requested records in June 1998. Mr. Jones also testified that he made a number of unsuccessful attempts to obtain answers to specific questions with respect to the operations of the Ciccone companies from Mr. Brosko, who did not provide the requested information.

18. On the evidence before the panel, it was clear that the member was guilty of each of the charges and, accordingly, he was found guilty of each of the charges. The decision, which was sent to Mr. Brosko on October 11, 2001, reads:

THAT, having seen, heard and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Brosko pursuant to Institute 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 charges Nos. 1 to 10, inclusive, the Discipline Committee finds Michael Stephen Brosko guilty of charges Nos. 1 to 10, inclusive.

ORDER AS TO SANCTION

19. The professional conduct committee requested that the sanction imposed consist of a reprimand, a suspension of six to twelve months, a fine in the range of \$1,500 to \$3,000, the costs of this hearing, and publication in the normal manner as well as in a newspaper in Timmins. Counsel for the professional conduct committee filed an affidavit with respect to costs, and requested costs of approximately \$14,000. Counsel did not provide the committee with any precedents to consider relating to the proposed sanction.

20. At first glance it did not seem to the panel that the suggested sanction was appropriate.

21. While it is fair to characterize some of Mr. Brosko's misconduct as neglect, his failure to notify Mr. Ciccone of the problem with Revenue Canada, and his refusal to make appropriate arrangements for his clients' files, were conscious decisions by Mr. Brosko. He deliberately disregarded Mr. Ciccone's interest, even though his client was facing a criminal prosecution because of Mr. Brosko's neglect. His refusal to assist his landlord and Mr. Jones with respect to the disposition of the files was evidence of disregard for all his clients' affairs. It was not apparent that the sanction was appropriate for this deliberate misconduct.

22. A more serious problem with the suggested sanction was that it assumed Mr. Brosko could be rehabilitated when there was no evidence to this effect, and there were no terms of the requested order which would facilitate his rehabilitation.

23. After considering the three general principles which apply when a sanction is imposed, namely general deterrence, specific deterrence and rehabilitation, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Brosko be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Brosko be and he is hereby fined the sum of \$5,000, 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. Brosko be suspended from the rights and privileges of membership in the Institute for a period of twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Brosko be and he is hereby required to complete, by paying for and attending in their entirety, by December 31, 2002, the following professional development courses made available through the Institute:
 1. Income Tax Refresher – Corporate;
 2. Income Tax Refresher – Personal;
 3. Financial Statement Presentation & Disclosure;
 4. Staying Out of Trouble; and
 5. Triple Your Memory & Confidence & Halve Your Stress,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. Brosko'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 Timmins *Daily Press*.
6. THAT Mr. Brosko 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, to be held during the period of suspension and thereafter returned to Mr. Brosko.
7. THAT in the event Mr. Brosko fails to comply with the requirements of this Order, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 5 above.

Fine

24. The panel determined that a fine within the range requested by the professional conduct committee would be an insufficient deterrent in the circumstances of this case, and accordingly levied a fine in the higher amount of \$5,000.

Professional Development Courses

25. The panel was given scant evidence that Mr. Brosko's conduct was illness-related or that he could be rehabilitated. But as he was to be suspended for a period of twelve months, and as he had not been in practice for much of the last few years, the panel thought it was important that he take professional development courses before his suspension terminates and he is eligible to commence practice again.

Suspension

26. The panel ultimately determined that a suspension of twelve months was appropriate in this case.

Notice

27. The giving of notice of the discipline committee's decision and order, disclosing the member's name, is in the opinion of the panel a general deterrent. Communication of the fact that the profession views breaches of its bylaws and rules of professional conduct seriously is an important factor in the governance of the profession. Such notification is also necessary to demonstrate to the public that the profession is regulating itself, so as to retain public confidence in the profession's ability to self-govern.

28. In this case, the panel also decided to require publication in a newspaper in the Timmins area as requested by the professional conduct committee. The panel determined that this publication was necessary as a result of the type of misconduct engaged in by Mr. Brosko in a relatively small northern community.

Costs

29. The panel found it appropriate to refrain from making an order as to costs in this case.

Certificate

30. The panel determined that it was appropriate for Mr. Brosko to surrender his certificate of membership for the period of his suspension.

Expulsion for Non-Compliance

31. The order provides that Mr. Brosko be expelled if he does not comply with the terms of the order. The committee concluded that in the event of expulsion there would be no reason to interfere with the application of Bylaw 575(3), and therefore ordered that notice of such expulsion be given in a newspaper distributed in the geographic area of the member's former practice.

DATED AT TORONTO THIS 12TH DAY OF DECEMBER, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

M. BRIDGE, CA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

D.W. DAFOE, FCA
B.L. HAYES, CA
R.D. WHEELER, FCA
B. RAMSAY (Public representative)