

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Charges against **MICHAEL ANTHONY DI TOMASO, CA**, a member of the Institute, under **Rules 104 and 203.2(a)** of the Rules of Professional Conduct, as amended.

**TO:** Mr. Michael A. Di Tomaso, CA

**AND TO:** The Professional Conduct Committee, ICAO

**REASONS**  
**(Decision and Order made September 17, 2010)**

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on September 17, 2010, to hear charges of professional misconduct brought by the Professional Conduct Committee against Michael Anthony Di Tomaso, a member of the Institute.
2. Ms. Alexandra Hersak appeared on behalf of the Professional Conduct Committee. Mr. Di Tomaso attended, and was represented by counsel, Mr. John Brunner.
3. The decision of the panel was made known at the conclusion of the hearing on September 17, 2010, and the written Decision and Order sent to the parties on September 23, 2010. 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, as amended at the hearing, were laid against Mr. Di Tomaso by the Professional Conduct Committee on May 5, 2010:
  1. THAT the said Michael Di Tomaso, in or about the period February 5, 2010 to April 13, 2010, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct a practice inspection, contrary to Rule 203.2(a) of the Rules of Professional Conduct.
  2. THAT the said Michael Di Tomaso, in or about the period January 5, 2009 **2010** to April 13, 2010, failed to promptly reply in writing to a letter from the Institute to which a written reply is specifically required, in that he failed to reply to letters dated November 19, 2009 and December 11, 2009 from Ms. Tatiana Rabinovitch, CA, Associate Director of Standards Enforcement at the Institute, contrary to Rule 104 of the Rules of Professional Conduct.

**PLEA**

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

**EVIDENCE**

6. The evidence in this matter was presented by way of an Agreed Statement of Facts (Exhibit 1) and an accompanying Document Brief (Exhibit 2). Neither party called any further evidence.

7. The facts are not in dispute and may be stated briefly. Mr. Di Tomaso's practice was selected for practice inspection, and he failed to provide his quality control manual, certain client working paper files, and a copy of his continuing professional development (CPD) log as required by Practice Inspection.

8. Practice Inspection referred the matter to the Professional Conduct Committee for investigation, and Mr. Di Tomaso failed to reply to letters sent by the Associate Director of Standards Enforcement during the course of that investigation.

**FINDING**

9. The *Rules of Professional Conduct* and, in particular, Rule 203.2(a), require Mr. Di Tomaso to cooperate with a practice inspection. His continued failure to provide the documents necessary for that inspection is professional misconduct.

11. The Rules and, specifically, Rule 104, require Mr. Di Tomaso to respond in writing to letters sent on behalf of the Institute. He failed to do so. This was not a momentary lapse or brief delay in replying. Mr. Di Tomaso's failure to comply with the requirements of the Institute constitutes professional misconduct.

**DECISION**

10. 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 having heard the plea of guilty to the charges, as amended, and having seen and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee finds Michael Anthony Di Tomaso guilty of the charges.

**SANCTION**

11. The Professional Conduct Committee called no evidence on sanction.

12. Mr. Di Tomaso testified that there had been no problems with his three previous practice inspections. Personal problems and family illness had resulted in his inability to work full-time and deal with completion of client files. During this time, his behaviour was not typical and he did not deal with matters properly. On the day prior to the hearing, Mr. Di Tomaso provided the CPD logs and client files to the Coordinator of Practice Inspection (Exhibit 3). Mr. Di Tomaso stated that all files have now been provided with the exception of a review engagement which is expected to be completed once the client provides required information.

13. Ms. Hersak, 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 \$3,000; an order that Mr. Di Tomaso cooperate with Practice Inspection within 10 days; and the usual order with respect to publicity. It also sought costs of the investigation and hearing on a partial indemnity basis, and filed a Costs Outline (Exhibit 4).

14. Ms. Hersak submitted that Practice Inspection has been patient for seven months, giving Mr. Di Tomaso extensions but has been unable to fulfill its mandate. Mr. Di Tomaso's files should have been inspection ready and are still incomplete. Despite numerous requests, Mr. Di Tomaso provided no written response to either Practice Inspection or Standards Enforcement. Regardless of the circumstances, it would not have been onerous for Mr. Di Tomaso to respond. Further, his failure to respond raised concerns about his ability to properly serve his clients.

15. Ms. Hersak also noted a number of factors in mitigation: Mr. Di Tomaso has no discipline history, he pleaded guilty to the charges, signed the agreed statement of facts and has cooperated with Practice Inspection since the charges were laid.

16. Mr. Brunner, on behalf of Mr. Di Tomaso, submitted that there are mitigating factors for his client's behaviour. Many serious family health problems had taken precedence and caused his client to fail to cooperate. While he took no issue with the imposition of a fine or the payment of costs, he asked the panel to consider a fine of \$1,000 rather than \$3,000, as requested by the Professional Conduct Committee. Mr. Brunner undertook, on behalf of his client, that the requested documentation, and payment of the fine and costs, would be submitted within 30 days.

## **ORDER**

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Di Tomaso be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Di Tomaso be and he is hereby fined the sum of \$3,000 to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Di Tomaso cooperate by providing to the Director of Practice Inspection the Quality Control Manual, the client working paper files and Continuing Professional Development (CPD) logs, all of which are referred to in the letter to Mr. Di Tomaso from the Coordinator of Practice Inspection dated September 15, 2009, within ten (10) days from the date this Decision and Order becomes final under the bylaws.

4. THAT notice of this Decision and Order, disclosing Mr. Di Tomaso'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.

IT IS FURTHER ORDERED:

5. THAT Mr. Di Tomaso be and he is hereby charged costs fixed at \$1,600 to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.

AND IT IS FURTHER ORDERED:

6. THAT in the event Mr. Di Tomaso 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 thirty (30) days from the date of his suspension, and in the event he does not comply within the thirty (30) day period, he shall be expelled from membership in the Institute and his public accounting licence shall be revoked, and notice of his expulsion and licence suspension and revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Di Tomaso's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Di Tomaso and shall be in addition to any other costs ordered by the committee.

## REASONS FOR SANCTION

18. With the exception of the quantum of the fine, the parties agreed on the appropriate sanction in this matter. The panel has considered the submissions of counsel and finds the proposed agreed sanction to be consistent with the charges and the circumstances of the conduct in question.

19. With respect to the quantum of the fine, the amount submitted by the Professional Conduct Committee is at the lower end of the range of fines imposed in similar cases. While the panel is very sympathetic to Mr. Di Tomaso's personal circumstances, it also notes that the failure to co-operate spanned many months, and that Mr. Di Tomaso not only failed to comply with requests of Practice Inspection but also regularly failed to communicate on a timely basis. Further, Mr. Di Tomaso's compliance with Practice Inspection's original request was incomplete and made only just prior to this hearing, even though the requests were not onerous.

20. The quantum of the fine imposed by this panel is consistent with the precedents, appropriate for the conduct, and takes into consideration all the mitigating factors. There is no evidence the fine will present a financial hardship to Mr. Di Tomaso.

21. It is essential that the integrity of the practice inspection program be maintained. The program is one of the hallmarks and foundations of an effectively self-regulated profession. It is equally essential that all members of the profession understand the importance of both the program and their requirements to cooperate with the Institute and its processes. Mr. Di Tomaso's circumstances, while engendering sympathy, do not relieve him of his obligations to his governing authority, or that governing authority from its mandate to ensure the public trust is maintained and the public interest protected.

DATED AT TORONTO THIS 9th DAY OF NOVEMBER, 2010  
BY ORDER OF THE DISCIPLINE COMMITTEE

R.J. ADAMKOWSKI, CA – DEPUTY CHAIR  
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

P.A. BUSCH, CA  
G. HINTON (PUBLIC REPRESENTATIVE)  
D.L. KNIGHT, FCA  
B.M. SOLWAY (PUBLIC REPRESENTATIVE)