

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: An allegation against **NINA DE LUCA-FORD, CPA, CA**, a member of the Institute, under **Rule 104.1** of the Rules of Professional Conduct, as amended.

TO: Ms. Nina De Luca-Ford, CPA, CA

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made November 14, 2012)

1. This tribunal of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on November 14, 2012, to hear an allegation of professional misconduct brought by the Professional Conduct Committee against Nina De Luca-Ford, a member of the Institute.

2. The Professional Conduct Committee (PCC) was represented by Ms. Alexandra Hersak. Ms. Nina De Luca-Ford attended and was represented by her counsel, Mr. Nicholas Tibollo. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee.

3. The decision of the tribunal was made known at the conclusion of the hearing on November 14, 2012. The written Decision and Order was sent to the parties on November 15, 2012. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegation, the decision, the order, and the reasons of the tribunal for its decision and order.

THE ALLEGATION

4. The following allegation was laid against Ms. De Luca-Ford by the Professional Conduct Committee on June 8, 2012:

1. THAT the said Nina DeLuca-Ford, in or about the period July 18, 2011 to May 8, 2012, failed to co-operate with the regulatory process of the Institute contrary to Rule 104.1 of the Rules of Professional Conduct, in that she failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct a practice inspection.

THE PLEA

5. Ms. De Luca-Ford entered a plea of guilty to the allegation.

THE PROCEEDINGS

6. Ms. Hersak made a brief opening statement and said that the evidence of the PCC

would be provided by the testimony of two witnesses. Ms. Hersak called as witnesses Mr. Grant Dickson, FCPA, FCA, the Director of Practice Inspection and Ms. Theresa Tonelli, CPA, CA, Director of Standards Enforcement. Ms. Hersak filed a Document Brief (Exhibit 1) to which Mr. Dickson and Ms. Tonelli referred in the course of their evidence.

7. Mr. Tibollo called Ms. De Luca-Ford to testify and filed a letter from her doctor (Exhibit 2). Ms. De Luca-Ford was cross-examined by Ms. Hersak and also answered questions from the tribunal.

FACTS

8. Ms. De Luca-Ford confirmed the essential points made by Ms. Hersak. The relevant facts, as found by the tribunal, are set out in paragraphs 9 to 20 below.

9. Ms. De Luca-Ford, a sole practitioner, was advised by letter dated January 31, 2011 that her practice had been scheduled for reinspection in May 2011 with respect to audit engagements, as well as quality control policies and procedures. She was asked to complete the appropriate forms, which requested a list of the most recently completely inspection-ready files, by not later than March 4, 2011. She did not do so and was then advised by registered letter that she was required to complete and return her practice inspection forms on or before March 31, 2011. She was also told that if she failed to do so the matter would be referred to the PCC. Subsequent to the deadline, Ms. De Luca-Ford advised that her office had tried to fax the forms to the Coordinator of Practice Inspection but were unable to get through. The forms were subsequently provided via e-mail.

10. In a letter dated May 10, 2011, Ms. De Luca-Ford was given details of what documents were to be submitted by July 18, 2011. The documents were not received by the deadline date and an email was received from Ms. De Luca-Ford on July 25, 2011 advising that due to unexpected circumstances she had been unable to provide the files. Ms. De Luca-Ford requested an extension which was granted in a letter dated July 25, 2011, advising her that if the files were not provided by August 5, 2011 the matter would be referred to the PCC.

11. In August Ms. De Luca-Ford requested further extensions to the deadline. The reason given was a file requested was no longer a client nor was the alternative file requested in its place and she was unable to effectively deal with these issues as she was out of town or ill. Ultimately an extension was given until September 6, 2011. It was made clear to Ms. De Luca-Ford that if she failed to provide the requested files and supporting documents as requested by the deadline the matter would be referred to the PCC.

12. On September 13, 2011, Ms. De Luca-Ford emailed that she had been ill and her staff had been absent. She asked for an additional one-week extension to submit the files as she expected to return to the office on September 19, 2011.

13. On November 3, 2011, Mr. Dickson referred the matter to the PCC advising that as of November 2, 2011, Ms. De Luca-Ford had not complied with the request to submit the files and other documentation. Mr. Dickson stated that the files were received from Ms. De Luca-Ford in July 2012, subsequent to the allegation of misconduct being served.

14. The Director of Standards Enforcement, Ms. Tonelli, CA, wrote to Ms. De Luca-Ford on November 11, 2011 advising her of a complaint and asking her to respond to the complaint on or before November 25, 2011. Ms. De Luca-Ford responded on November 25, 2011 advising

that due to ongoing medical problems combined with staffing issues, she was unable to forward the required information on a timely basis. Her response indicated that she had now assembled all the information requested by Practice Inspection and had forwarded it to their office for receipt by November 28, 2011.

15. Ms. Tonelli advised Ms. De Luca-Ford that she would contact Mr. Dickson and the matter would be reviewed by a subcommittee of the PCC. Ms. De Luca-Ford responded on November 30, 2011 stating that she had had another staffing problem and the files would be forwarded for delivery by December 2, 2011.

16. On December 21, 2011, Ms. Tonelli requested confirmation from Mr. Dickson that the files had been received. Mr. Dickson advised that the files had not been received. On March 29, 2012, after confirming that the documents had not been received, the file was prepared for review by the PCC subcommittee. Ms. Tonelli confirmed to the tribunal that Ms. De Luca-Ford's public accounting licence had expired on November 2, 2011.

17. Ms. De Luca-Ford stated that she has been a member since 1983 and has had no previous discipline issues. She is a sole practitioner who normally employs four staff to assist her. Ms. De Luca-Ford stated that she had staffing problems over the past two years, resulting in the loss of two long-term employees. Ms. De Luca-Ford's medical issues also contributed to the workload stress. She stated that she never intended for things to get to this point and the combination of factors is not an excuse.

18. Ms. De Luca-Ford stated that she pleaded guilty to a breach of the rule since she did not submit the requested documentation on time. Ms. De Luca-Ford confirmed that she has now provided the documents and the Practice Inspection is in process.

19. In respect of the public accounting licence, Ms. De Luca-Ford stated that she was away sick at the time of renewal and as far as she knew, her staff had submitted the form and made the payment. She became aware of the situation when she tried to renew her licence this year and has written a letter to the Registrar, providing what she thought was her renewal form.

20. Ms. De Luca-Ford confirmed that her email to Ms. Tonelli dated November 25, 2011 said the information had been assembled and forwarded to Practice Inspection. She stated she was actually away from the office at that time due to medical reasons and should not have advised Ms. Tonelli that she would be sending the files.

21. Ms. Hersak submitted that as set out in the Allegation, Ms. De Luca-Ford had failed to cooperate with Practice Inspection between July 18, 2011 and May 8, 2012. Practice Inspection had been generous in providing ample time and numerous extensions. The files were not submitted to Practice Inspection until after the Allegation was received by Ms. De Luca-Ford.

22. Mr. Tibollo made no further submissions on behalf of his client.

DECISION

23. After deliberating, the tribunal made the following decision:

THAT, having heard the plea of guilty to the Allegation, and having seen, heard and considered the evidence, the Discipline Committee finds Nina De Luca-Ford guilty of the Allegation.

REASONS FOR THE DECISION

24. In light of the relevant facts which are set out above, the tribunal concluded that the allegation had been proven and that Ms. De Luca-Ford's failure to cooperate with Practice Inspection constituted professional misconduct. Accordingly, the tribunal found her guilty of the allegation.

25. Notwithstanding that the files were finally provided in July 2012, this was twelve months later than the original deadline to deliver the files. The failure of Ms. Luca-Ford to submit her files in a timely manner, her requesting of extensions after not meeting deadlines and her misrepresentation that the files had been compiled and forwarded to Practice Inspection in November 2011 was such a clear failure to cooperate with Practice Inspection that it obviously constitutes professional misconduct.

SANCTION

26. Neither party called evidence with respect to sanction. Ms. Hersak and Mr. Tibollo made submissions to the tribunal.

27. The PCC requested an order which included the following terms: a reprimand in writing by the Chair; a fine of \$3,500; and the usual order with respect to publication. The PCC also asked for an order requiring Ms. De Luca-Ford to pay \$3,000 in costs to reimburse the Institute for approximately half the costs of the proceedings.

28. Ms. Hersak submitted that Ms. De Luca-Ford was given numerous extensions and had many opportunities to provide the files. The files were supposed to be complete and inspection-ready. Approximately one year after the initial request, and only after the allegation was laid against Ms. De Luca-Ford, the files were finally provided. A great deal of time and resources were spent on this matter. Ms. Hersak noted that the Practice Inspection process plays an important role in administering the standards of practice. The fact that this was a reinspection of Ms. De Luca-Ford's audit files made it even more essential that she respond on a timely basis. It was within her power to provide the files but despite many promises, she did not do so.

29. Ms. Hersak acknowledged that the mitigating factors included the fact that Ms. De Luca-Ford has not had previous involvement with the discipline process and that she attended before the tribunal, pleading guilty to the allegation. Ms. De Luca-Ford has now cooperated by providing the files.

30. Ms. Hersak submitted that the reprimand, the fine and the notice of the order were required to specifically deter Ms. De Luca-Ford from failing to cooperate in the future. She also submitted that the fine and notice were required as a general deterrent to dissuade other members from similar misconduct. Ms. Hersak stated that if Ms. De Luca-Ford had not delivered the files, the PCC would have requested that she be ordered to cooperate within a specified period of time.

31. Ms. Hersak submitted that a reprimand reminds members of the seriousness of the matter as it interferes with the Institute's ability to perform its mandate. A fine in the amount of \$3,500 is at the low end of similar cases but must be significant enough to be punitive.

32. Ms. Hersak filed a Costs Outline (Exhibit 3) which sets out the costs of the hearing, estimated to take one day, at just under \$6,900. Ms. Hersak stated that the Professional Conduct Committee was seeking \$3,000, less than half of the costs.

33. Ms. Hersak stated that publicity is an effective tool for general deterrence and there are no rare or unusual circumstances that would preclude publication.

34. Ms. Hersak referred to the cases of *Ross*, *Collaton*, *Kloosterman*, *Di Tomaso* and *Zaba* as precedents which involve members in similar circumstances to this case. Ms. De Luca-Ford's misconduct was of a serious nature and falls within the framework of the cases distributed for the tribunal's information.

35. Mr. Tibolla submitted that the mitigating factors to be considered are Ms. De Luca-Ford's medical condition, her admission to the breach, no prior discipline history and her apology to the tribunal. Mr. Tibolla referred to the costs of \$2,000 levied in the *Kloosterman* and *Collaton* cases and asked that the tribunal consider \$2,000 rather than \$3,500 for costs, payable within a 60-day time frame.

36. Ms. Hersak submitted that costs are based on the costs incurred during the investigation and hearing of a case, and the ability of a member to pay should also be taken into consideration.

ORDER

37. After deliberating, the tribunal made the following order:

IT IS ORDERED in respect of the allegation:

1. THAT Ms. De Luca-Ford be reprimanded in writing by the Chair of the hearing.
2. THAT Ms. De Luca-Ford be and she is hereby fined the sum of \$3,500 to be remitted to the Institute within ninety (90) days from the date this Decision and Order is made.
3. THAT notice of this Decision and Order, disclosing Ms. De Luca-Ford's name, be given after this Decision and Order is made:
 - (a) to all members of the Institute; and
 - (b) to all provincial institutes/Ordre;and shall be made available to the public.

IT IS FURTHER ORDERED:

4. THAT Ms. De Luca-Ford be and she is hereby charged costs fixed at \$3,000 to be remitted to the Institute within ninety (90) days from the date this Decision and Order is made.

AND IT IS FURTHER ORDERED

5. THAT in the event Ms. De Luca-Ford fails to comply with any of the requirements of this Order, she shall be suspended from the rights and privileges of

membership in the Institute until such time as she does comply, provided that she complies within thirty (30) days from the date of her suspension, and in the event she does not comply within the thirty (30) day period, her membership in the Institute shall be revoked, and notice of her membership revocation, disclosing her name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Ms. De Luca-Ford's practice, employment and/or residence. All costs associated with the publication shall be borne by Ms. De Luca-Ford and shall be in addition to any other costs ordered by the tribunal.

REASONS FOR THE ORDER

38. The Practice Inspection program was established and is continued in the public interest to ensure that members practising public accounting do so in accordance with the standards of the profession. An effective Practice Inspection program is a basic requirement of a self-regulated body such as the ICAO. To be effective, the program relies on the cooperation of its members. The request for information and files was a standard request and Ms. De Luca-Ford was given more than ample time to respond. She could have easily fulfilled the requests. The sanction should therefore make it clear to Ms. De Luca-Ford and other members of the profession that failure to comply will not be tolerated.

Reprimand

39. The tribunal ordered that Ms. De Luca-Ford be reprimanded to emphasize to her the seriousness of her misconduct and the fact that it was unacceptable.

Fine

40. The tribunal imposed a fine both as a specific deterrent to Ms. De Luca-Ford and as a general deterrent to other members to dissuade them from similar misconduct. The tribunal concluded that the amount of the fine should be \$3,500.

Notice

41. Publishing the names of members found guilty of professional misconduct is often the single most significant sanction that may be imposed on a member and is often the most effective general deterrent. As the notice serves both to inform the membership at large and offers a measure of protection to the public, it is only in the most exceptional circumstances that privacy considerations outweigh the need to inform both the membership and the public. No such circumstances were present in this case and, accordingly, the usual order for publication was made.

Suspension and Revocation for failure to comply

42. An order of the Discipline Committee which did not provide for consequences in the event a member fails to comply with terms of the order would be meaningless. Accordingly, as is usual, this order provides that if the member fails to comply with any of the terms of the order, she shall first be suspended and, if she still does not comply, her membership will be revoked.

Costs

43. Ms. De Luca-Ford, the member responsible for the expense of the proceedings, should herself assume part of the costs. The costs requested by PCC were approximately half of the actual cost of the proceedings. The tribunal concluded that Ms. De Luca-Ford should pay \$3,000 as a partial indemnity.

DATED AT TORONTO THIS *12TH* DAY OF FEBRUARY, 2013
BY ORDER OF THE DISCIPLINE COMMITTEE

A handwritten signature in black ink, appearing to read 'S.F. Dineley', written in a cursive style.

S.F. DINELEY, FCPA, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

R.S. DUSCHEK, CPA, CA
M.I. FELDSTEIN, CPA, CA
S.R. LOWE, CPA, CA
P. McBURNEY (Public Representative)