

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 1956

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **OLIVER CONRAD NOE, CA**, a member of the Institute, under **Rule 201** of the Rules of Professional Conduct, as amended.

TO: Mr. Oliver Conrad Noe
P.O. Box 2015
PRESCOTT, ON KOE 1T0

AND TO: The Professional Conduct Committee, ICAO

REASONS FOR THE DECISION AND ORDER GIVEN FEBRUARY 4, 2005

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on February 4, 2005 to hear the charge brought by the professional conduct committee against Mr. Oliver C. Noe, a member of the Institute.

2. The professional conduct committee was represented by Mr. Paul Farley, who was accompanied by the investigator appointed by the professional conduct committee, Mr. Bruce Armstrong, CA. Mr. Noe was present without counsel. He confirmed for the record that he understood he had the right to be represented by counsel.

3. The decision and order of the discipline committee were made known at the conclusion of the hearing on February 4, 2005. The written decision and order signed by the secretary on February 23, 2005 was sent to the parties that day. These reasons, given pursuant to Bylaw 574, include the charge, the decision and the order, as well as the reasons of this panel of the discipline committee.

4. After the hearing was called to order, the panel and the parties were introduced and the three documents in the file, the notice of assignment hearing dated November 11, 2004, together with the procedural outline of the discipline bylaws; the notice of hearing dated December 14, 2004; and the charge dated November 9, 2004 were marked as Exhibit Nos. 1, 2 and 3, respectively. The parties advised that there were no preliminary matters to be dealt with and accordingly Mr. Noe was asked to enter a plea to the charge.

THE CHARGE AND THE PLEA

5. The charge, made by the professional conduct committee, on November 9, 2004, reads as follows:

1. THAT, the said Oliver Noe, in or about the period January 2003 through May 2004, 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, while the controller of C.D.C.J. Limited, he misappropriated money from C.D.C.J. Limited in the approximate amount of \$1,800,000; contrary to Rule 201 of the rules of professional conduct.

6. Mr. Noe entered a plea of guilty to the charge and confirmed for the record that on the basis of his plea, and on that basis alone, he could be found guilty of professional misconduct.

CASE FOR THE PROFESSIONAL CONDUCT COMMITTEE

7. Mr. Farley outlined the case for the professional conduct committee and filed an agreed statement of facts and document brief both of which were marked as exhibits.

8. Mr. Farley and Mr. Noe both indicated that they would not make submissions when the panel had finished reviewing the document brief and agreed statement of facts. The parties withdrew and the panel reviewed the evidence.

9. When we had finished reviewing the evidence, as we had no questions, we deliberated and made our finding. We concluded that the allegations had been proven and Mr. Noe was guilty of the charge. There was no question that the misappropriation of \$1.8 million from his employer was professional misconduct.

10. The hearing was called to order, and the parties returned to the Council chamber and the chair set out for the record the decision of the committee. The written decision, as set out above, was sent to the parties on February 23, 2005. The decision reads:

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to the charge, the Discipline Committee finds Oliver Conrad Noe guilty of the charge.

SANCTION

11. The professional conduct committee did not call evidence with respect to sanction. Mr. Noe did not give *viva voce* evidence, but did file with the committee a statement of his net worth, which was marked as Exhibit No. 6.

12. Mr. Farley said that his instructions from the professional conduct committee were to seek an order which included a reprimand; a fine of \$25,000; expulsion from membership in the Institute; full publicity in the usual course including a notice to be published in *CheckMark*; the *Ottawa Citizen* and *The Globe and Mail*; as well as notice to be given to the Public Accountants Council for the Province of Ontario and the Canadian Institute of Chartered Accountants. Mr. Farley said that he was also instructed to ask for costs in the amount of \$15,000.

13. Mr. Farley made submissions with respect to the appropriateness of the order sought and in particular, he submitted that in the circumstances, the principal of general deterrence was of primary importance in this case. He outlined the mitigating and aggravating circumstances and made reference to a number of cases which specifically

dealt with the issues of expulsion, fine and publication of the notice.

14. Mr. Noe did make submissions with respect to sanction. In particular, he said that he did not see any reason why he should keep his CA, that as he had held himself out as a chartered accountant, it was appropriate that there be publication of the fact that he was no longer a chartered accountant. Mr. Noe referred to the fact that chartered accountants have high standards and that he had not met those standards. He said he thought it was appropriate that he be held accountable for his failure to do so.

15. There were two mitigating circumstances which should be mentioned. Mr. Noe had acknowledged his misconduct and co-operated with the investigation and prosecution of this matter. He had also provided some restitution, and was selling other assets which would also be used to provide restitution. Further, Mr. Noe said he intended to pay back the rest of the misappropriated money, an amount he estimated would be between \$200,000 and \$300,000, which could take him ten years.

16. With respect to the issue of fine and costs, Mr. Noe said that he did not know what the appropriate quantum of a fine would be, nor could he make detailed submissions with respect to costs. He asked for time to pay because he did not want the obligation to pay a fine and costs to interfere with his ability to make restitution. In reply, Mr. Farley submitted that there had been orders which allowed for up to five years to pay the required fine and costs and that might be appropriate in this case.

17. There was a recess and the parties left the Council chamber so that the panel could deliberate. At the conclusion of our deliberations, the hearing resumed and the chair set out on the record the essential terms of the order. The written order, as said above, was sent to the parties on February 23, 2005. The order reads:

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Noe be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Noe be and he is hereby fined the sum of \$25,000, to be remitted to the Institute within five (5) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Noe be and he is hereby charged costs fixed at \$15,000, to be remitted to the Institute within five (5) years from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Noe be and he is hereby expelled from membership in the Institute.
5. THAT notice of this Decision and Order, disclosing Mr. Noe'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 the Public Accountants Council for the Province of Ontario;
- (b) to the Canadian Institute of Chartered Accountants;
- (c) to The Society of Management Accountants of Ontario;
- (d) by publication in *CheckMark*; and
- (e) by publication in *The Globe and Mail* and the *Ottawa Citizen*.

6. THAT Mr. Noe 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

18. We concluded that a reprimand was necessary to emphasize to Mr. Noe that his conduct was unacceptable.

FINE AND EXPULSION

19. The CA profession cannot and will not tolerate members who misconduct themselves as Mr. Noe did. He enjoyed a position of trust in part because he was a chartered accountant. In that position, over a period of eighteen months in 68 separate fraudulent transactions, he misappropriated in excess of \$1.8 million. His repeated, planned, intentional misappropriations only stopped when he was caught. His misconduct involved manipulating the books and records of the company for whom he worked; removing cheques which were paid to companies which he owned or in which he had an interest, and on three occasions, forging signatures.

20. Mr. Noe was a minority shareholder in two corporations in which the majority shareholder was also the majority shareholder of his employer. Thus, Mr. Noe abused the trust of his employer and a business associate. The misappropriated funds went to three different corporations. Mr. Noe had a majority interest in one corporation, a fifty percent interest in another corporation and a controlling interest in the third corporation.

21. In the circumstances of this case, we concluded that expulsion and a fine of \$25,000 were required as a general deterrent to any similarly minded members of the Institute, as well as a specific deterrent to Mr. Noe.

NOTICE OF EXPULSION

22. Notice disclosing Mr. Noe's name is required as a general deterrent to other members. Notice to the public is required so that it will be known that Mr. Noe is no longer a chartered accountant. Notice to the public is also intended to make it clear that the Institute does not tolerate misconduct by its members.

COSTS

23. The panel concluded that Mr. Noe should be ordered to partially indemnify the Institute for the costs it spent as a result of his misconduct. We thought an amount of \$15,000 was appropriate. As with the fine, we provided that Mr. Noe should pay the costs within five years.

CERTIFICATE OF MEMBERSHIP

24. As Mr. Noe is no longer a member of the Institute, he should return the certificate of membership.

DATED AT TORONTO THIS 4th DAY OF JULY, 2005
BY ORDER OF THE DISCIPLINE COMMITTEE

B.L. HAYES, CA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.I. COWAN, CA
A. HANSON, CA
A.D. NICHOLS, FCA
P. MCBURNEY (Public representative)