

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **PAUL ROBERT HUMPHREYS, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Paul R. Humphreys
c/o Ms. Kylie Humphreys
89 Durie Lane
THORNHILL, ON L3T 5H4

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made March 19, 2008)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on March 19, 2008, to hear a charge of professional misconduct laid by the Professional Conduct Committee against Paul Robert Humphreys, CA, a member of the Institute.

2. Ms. Alexandra Hersak appeared on behalf of the Professional Conduct Committee. Mr. Humphreys did not attend, but was represented by a fully instructed and authorized agent, Ms. Kylie Humphreys. Ms. Humphreys acknowledged that both she and Mr. Humphreys were aware he had the right to be represented by counsel and were waiving that right.

3. The decision of the panel was made known at the conclusion of the hearing, and the written Decision and Order sent to the parties on March 25, 2008. These reasons, given pursuant to Bylaw 574, contain the charge, the decision, the order, and the reasons of the panel for its decision and order.

CHARGE

4. The following charge was laid against Mr. Humphreys on December 18, 2007:

THAT the said Paul R. Humphreys, on or about the 8th day of November 2007, was convicted of the offences of fraud as set out in Schedule "A" attached to this charge and did thereby fail to act in a manner which 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

PLEA

5. On behalf of Mr. Humphreys, and as instructed by him, Ms. Humphreys entered a plea of guilty to the charge. She acknowledged that both she and Mr. Humphreys understood that, on the basis of the plea of guilty and on that basis alone, Mr. Humphreys could be found guilty of the charge.

EVIDENCE

6. The Professional Conduct Committee filed the certificate of judgment in a criminal case of Mr. Humphreys, showing Mr. Humphreys was convicted in the United States District Court, Southern District of New York on his plea of guilty on November 8, 2007 to attempted securities fraud, securities fraud, and bank fraud and sentenced to 70 months in prison (Exhibit 4). They also filed a copy of the indictment, setting out the details of the charges, and a transcript of Mr. Humphreys' court attendance for sentencing (Exhibit 5).

7. In brief, the evidence of the Professional Conduct Committee is that Mr. Humphreys, while the Senior Vice-President and Chief Financial Officer of Safety-Kleen, a publicly traded company, made improper and undisclosed adjustments to the revenue and liabilities of the company, altering its financial position by approximately \$250 million, and assisted in the issuing of false and misleading financial statements.

8. Ms. Humphreys presented no evidence and made no submissions on behalf of Mr. Humphreys.

DECISION

9. After deliberating, the panel made the following decision:

THAT, having seen and considered the evidence, and having heard the plea of guilty to charge No. 1, the Discipline Committee finds Mr. Paul R. Humphreys guilty of charge No. 1.

REASONS FOR THE DECISION

10. By virtue of Rule 201.2, there is a rebuttable presumption that a member convicted of an offence of fraud is guilty of professional misconduct. Mr. Humphreys called no evidence and made no submissions to displace that presumption and, that, in and of itself, would be sufficient for a finding of guilt.

11. The evidence also showed that Mr. Humphreys participated in a massive scheme to falsify the financial statements of the company and conceal its true financial situation from regulators, investors and the public. Such a fraud cannot be anything but professional misconduct.

SUBMISSIONS ON SANCTION

12. The Professional Conduct Committee submitted that a sanction of: a written reprimand; a fine in the amount of \$20,000; expulsion from membership; and full publicity, would be appropriate given the nature of the misconduct. They also sought recovery of a portion of the costs of the investigation, prosecution and hearing, in the amount of \$2,500.

13. Ms. Hersak, on behalf of the Professional Conduct Committee, noted that Mr. Humphreys committed a sophisticated fraud over an extended period of time while he was in a position of trust. She urged the panel to consider deterrence, and particularly general deterrence, as of primary importance and noted that behaviour such as Mr. Humphreys' is easy to rationalize as an attempt to salvage a foundering company, and must be clearly denounced as wrong. As the SEC filings were false, there was an enormous breach of the public trust.

14. As aggravating circumstances, Ms. Hersak noted a number of factors: the false financial statements were of a public company; Mr. Humphreys, as Chief Financial Officer, not only signed the financial statements but directed and concealed the fraud, and directed others to take part; the company filed for bankruptcy protection; the fraud took place over a lengthy period of time, involved vast amounts of money and attracted wide publicity. In mitigation, Ms. Hersak pointed out that Mr. Humphreys had entered an early guilty plea in both these and criminal proceedings, and that he had cooperated fully in the investigations, indicating true remorse. Mr. Humphreys is serving a jail sentence in the United States and has paid \$100,000 in a civil judgment.

15. On behalf of Mr. Humphreys, Ms. Humphreys submitted both a sentencing memorandum prepared for the criminal courts (Exhibit 10) and a series of character references from colleagues and friends of Mr. Humphreys (Exhibit 11). Those documents indicate that the behaviour exhibited by Mr. Humphreys is aberrant to his nature and that he gained no personal benefit from his actions. One of the letters was an offer of employment to Mr. Humphreys from a businessman knowing all the relevant circumstances of his fraud. Ms. Humphreys submitted that Mr. Humphreys is truly remorseful and that he has already paid a high price for his actions.

ORDER

16. After considering the submissions, the circumstances of the misconduct and the circumstances of the member, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Humphreys be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Humphreys be and he is hereby fined the sum of \$20,000 to be remitted to the Institute within seven (7) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Humphreys be and he is hereby charged costs fixed at \$2,500 to be remitted to the Institute within seven (7) years from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Humphreys be and he is hereby expelled from membership in the

Institute.

5. THAT notice of this Decision and Order, disclosing Mr. Humphreys' 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; and
 - (b) to all provincial institutes/Ordre, and shall be made available to the public.
6. THAT notice of the expulsion disclosing Mr. Humphreys' name, be given by publication on the Institute's website and in *The Globe and Mail* (Toronto), the *Calgary Herald*, as well as a New York City newspaper. All costs associated with the publications shall be borne by Mr. Humphreys and shall be in addition to any other costs ordered by the committee.
7. THAT Mr. Humphreys 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.

REASONS FOR THE SANCTION

17. In determining the appropriate sanction, the panel was mindful that the focus of the charge of misconduct was on the criminal conviction rather than on the facts underlying it. However, the extent of the fraud and its effect on the company, the regulators, the investors and the public cannot be ignored. Such conduct by one member brings the reputation of the profession and of every member of that profession into disrepute, and is inexcusable and unacceptable. The bedrock of the profession is integrity and one who has demonstrated such a lack of integrity cannot remain a member of this profession. Mr. Humphreys must be expelled.

18. The fine sought by the Professional Conduct Committee is well within the range of fines for similar conduct. While the panel notes the straitened financial circumstances of the member, the message must clearly go to the profession and the public that this is a matter of the most serious possible nature. Further, the costs sought are reasonable, and acknowledge the assistance provided by Mr. Humphreys. An unusually long period of time to pay the fine and costs has been ordered in recognition of Mr. Humphreys' current incarceration and his obligations on his release.

19. It has often been said that publicity is the most effective deterrent to misconduct. Other members of the profession are made aware of the conduct and its result, and so are both dissuaded from acting in a like manner and educated as to the factors and circumstances of the misconduct. Publicity serves an equally important purpose of ensuring the public is aware the Institute acts to protect the public interest. This was a matter which came to public attention not only in Toronto and Calgary, but in New York. It is appropriate that the public in those places be made aware of the steps taken by the Institute to deal with such egregious conduct.

20. Mr. Humphreys has cooperated with the investigations, both criminal and professional, into his conduct. He is remorseful. He may well be capable of rehabilitation. But his conduct struck at the very heart of this profession, at its integrity, and that is unforgiveable. He cannot continue to be a member of the profession without all its members being tainted with his dishonesty. He has no place as a chartered accountant. His rehabilitation, if any, will have to take place outside the profession.

DATED AT TORONTO THIS 21st DAY OF JULY, 2008
BY ORDER OF THE DISCIPLINE COMMITTEE

A.D. NICHOLS, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

D.M. FORTNUM, FCA
M.S. LEIDERMAN, CA
S.B. WALKER (Public Representative)