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

APPEAL COMMITTEE

IN THE MATTER OF: An appeal by **PETROS A. (HOMERIC) ARVANITIS,** a suspended member of the Institute, of the Decision and Order of the Discipline Committee made on June 23, 2004, pursuant to the bylaws of the Institute, as amended.

TO: Mr. Petros A. (Homeric) Arvanitis
2 – 18 Homewood Avenue
HAMILTON, ON L8P 2M2

AND TO: The Professional Conduct Committee, ICAO

REASONS
DECISION MADE JULY 15, 2005

1. This appeal was heard by a panel of the Appeal Committee of the Institute of Chartered Accountants of Ontario on July 15, 2005. Mr. Paul Farley appeared on behalf of the Professional Conduct Committee, and Mr. Arvanitis appeared and represented himself.

2. On March 29, 2004, Mr. Arvanitis was charged with two counts of professional misconduct, as follows (as amended):

> 1. THAT, the said Homeric Arvanitis, in or about the period October 1, 2002 through October 1, 2003, 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 misappropriated from Kathryn Naumetz, money in the approximate amount of $165,000; contrary to Rule 201.1 of the rules of professional conduct.
>
> *AMENDED AT HEARING HELD ON JUNE 23, 2004*
>
> 2. THAT, the said Homeric Arvanitis, in or about the period December 1, 2003 through March 15, 2004, failed to co-operate with an investigator appointed on behalf of the professional conduct committee and with the committee contrary to Rule 203.2 of the rules of professional conduct.

3. The Decision and Order appealed from, dated June 24, 2004, is as follows:

> DECISION
>
> THAT, having seen, heard and considered the evidence, charge No. 1 having been amended, the Discipline Committee finds Petros A. (Homeric) Arvanitis guilty of charges Nos. 1 and 2, as amended.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Arvanitis be reprimanded in writing by the chair of the hearing.

2. THAT Mr. Arvanitis be and he is hereby fined the sum of $20,000, to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.

3. THAT Mr. Arvanitis be and he is hereby charged costs fixed at $9,000, to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.

4. THAT Mr. Arvanitis be and he is hereby expelled from membership in the Institute.

5. THAT notice of this Decision and Order, disclosing Mr. Arvanitis' 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) by publication in *CheckMark*; and
(d) by publication in the local newspapers in Oakville, Hamilton and Burlington.

6. THAT Mr. Arvanitis 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.

4. The relief sought by Mr. Arvanitis is fourfold. He seeks:

- a hearing *de novo;*
- the admission of fresh evidence;
- an overturning of the finding of guilt; and
- an overturning of the sanctions imposed.

Each of these applications was considered by the panel, and, after hearing submissions and deliberating, the panel dismissed the appeal in its entirety. The reasons for doing so follow.

Application For A Hearing **De Novo**

Submissions of Appellant

5. Mr. Arvanitis submitted a document entitled "Application For An Appeal Hearing *De Novo*", dated June 24, 2005 (Exhibit 5), that did not specifically deal with Bylaw 653(2) which stipulates how an application for a hearing *de novo* shall be made. The document did present facts and arguments to support the claim that there has been a denial of natural justice.

6. Mr. Arvanitis indicated that Ms. Naumetz, a lawyer, committed a criminal offence by attempting to obtain the payment of a debt by means of extortion (through threats of criminal prosecution and publicity of the actions of Mr. Arvanitis). He also submitted that Ms. Naumetz is guilty of professional misconduct under Rule 202(4) of the Rules of Professional Conduct of the Law Society of Upper Canada. Mr. Arvanitis further submitted that Mr. Farley violated Rule 6.01(3) of the Rules of Professional Conduct of the Law Society of Upper Canada by not reporting the professional misconduct of Ms. Naumetz and by his continued involvement in the proceedings against Mr. Arvanitis. He argued that Mr. Farley clearly showed bias through his actions.

7. Mr. Arvanitis submitted that, because of the criminal actions and professional misconduct of Ms. Naumetz and the bias demonstrated by Mr. Farley, there has been a denial of natural justice and he should obtain a hearing *de novo*.

Submissions of Respondent

8. By way of preliminary objection, Mr. Farley submitted that a hearing *de novo* is an extraordinary remedy and as such the bylaws must be strictly complied with. Bylaw 653(2) stipulates that an application for a hearing *de novo* shall be made by written notice in the prescribed form delivered to the Secretary of the Appeal Committee within the time for filing an appeal as directed by Bylaw 611. Mr. Farley also referred to the case of *ICAO v. Bogart* which referred to the importance of compliance with Bylaw 653(2). Mr. Arvanitis filed his application for a hearing *de novo* on June 24, 2005, while the last day of the appeal period was January 10, 2005. Accordingly, Mr. Arvanitis was out of time for bringing an application for a hearing *de novo* pursuant to Bylaw 653.

9. With respect to the merits of the application, Mr. Farley submitted that Mr. Arvanitis has failed to establish any evidentiary basis for a finding there had been a denial of natural justice, a prerequisite for obtaining a hearing *de novo* under the bylaws.

Ruling On The Application

10. The panel reserved on the preliminary objection made by the Respondent and invited further submission from both parties on the merits of the application.

11. The panel notes that, at the Assignment Hearing held on March 11, 2005, Mr. Arvanitis was advised by both the Chair and counsel to the Appeal Committee that he should seriously consider retaining legal counsel due to his expressed desire to bring an application for the admission of fresh evidence, and the procedural requirements for such an application. Mr. Arvanitis did not do so. Nor did Mr. Arvanitis indicate, prior to his materials of June 24, 2005, that he intended to bring an application for a hearing *de novo*.

12. The panel finds in favour of the preliminary objection raised by the Respondent. The application is out of time, pursuant to Bylaw 653(2), and is denied on that basis. A hearing *de novo* is an extraordinary measure and compliance with the bylaws is mandatory. The panel notes with approval the decision in the *Bogart* case that a party seeking a hearing *de novo* must do so within the time specified in the bylaws for the filing of an appeal or cross-appeal, as the case may be.

13. Had the panel not disposed of the application for failing to comply with Bylaw 653(2), it would have dismissed the application on its merits. Mr. Arvanitis failed to satisfy the test for granting a hearing *de novo* as enunciated in Bylaw 653(3). The panel finds that the evidence submitted by Mr. Arvanitis does not support a claim of denial of natural justice, a prerequisite for obtaining a hearing *de novo* under the bylaws.

Application To Admit Fresh Evidence

Submissions Of Appellant

14. Mr. Arvanitis submitted that specific documents in his "Application For An Appeal Hearing *De novo"*, dated June 24, 2005 (Exhibit 5) should be admitted as fresh evidence by the panel. The specific documents are a letter from Mr. Arvanitis to the Secretary of the Appeal Committee dated June 24, 2005, stating that " both my counsel and I are looking forward to receiving additional disclosure and information [from the Crown] that we feel confident will assist in proving my innocence in not only the criminal proceedings but also the Appeal Hearing", and the documents indicated as Tab #1 through Tab #7, inclusive. These documents are five letters dated in September 2003, one letter dated in November 2003, and an announcement by The Canadian Institute of Chartered Business Valuators, dated March 5, 2004.

Submissions Of Respondent

15. Mr. Farley submitted that the information presented as fresh evidence includes letters and documents that were in existence and available to Mr. Arvanitis prior to the discipline hearing, but were not put before that panel and do not form a part of the record of that hearing. Mr. Farley also submitted that these documents have been presented with no proper factual foundation in place to permit this panel to consider them.

16. Mr. Farley further submitted that the courts have provided very clear guidance relating to the criteria for the admissibility of fresh evidence. Mr. Farley compared the facts of this case to the specific tests established in *Ryan v. Law Society of New Brunswick* and *R. v. Palmer* as well as *ICAO v. Bogart*, and indicated that neither the three criteria set out in *Palmer* nor the suggested guidelines set out by the panel of the Appeal Committee in *Bogart* have been met.

Reply

17. Mr. Arvanitis replied that he was provided with poor legal counsel and that this fresh evidence should have been introduced at the discipline hearing. He provided no evidence in support of this submission.

Ruling on the Application

18. The committee notes that all of the documents sought to be admitted as fresh evidence are dated prior to June 23, 2004, the date of the discipline hearing. Although the criteria for admission of fresh evidence articulated in *Bogart* are not binding, the panel accepts and applies those guidelines as well as the tests set out in *Ryan* and *Palmer.* With respect to the guidelines, there has been no written notice of an application for fresh evidence, despite the urgings of the Chair and counsel at the Assignment Hearing. With respect to the criteria, there is no evidence before the panel that the evidence, with reasonable diligence, could not have been discovered prior to the hearing. Rather, the opposite is apparent on the face of the documents. There is also no evidence before this panel that the proposed evidence, had it been admitted at the discipline hearing, could have impacted on an issue or the result in that hearing. Accordingly, the application is denied.

Appeal of Finding and Sanctions

Submissions of Appellant

19. Mr. Arvanitis submitted that the findings of the panel of the Discipline Committee should be vacated or, alternatively, that the sanctions should be vacated and more reasonable sanctions be substituted. Specifically, he submitted that:

- Unlike all the other cases referred to at the discipline hearing, what distinguishes his case from the others is a promissory note.
- There was absolutely no objective evidence of the unfounded allegation of a premeditated scheme to misappropriate a very large sum of money.
- Ms. Naumetz's numerous allegations lack objective documentary support. Many of her statements and allegations are not true (supported by an example).

20. With respect to the finding that he had failed to cooperate in the investigation, Mr. Arvanitis submitted that he had done so on the advice of his criminal counsel.

Submissions of Respondent

21. Mr. Farley submitted that the panel correctly identified the factual issues and found facts which were supported by the evidence, including a letter from Mr. Arvanitis to Ms. Naumetz stating that "your $165,000 was not invested as I originally stated to you. It was used to repay a debt to a family member that was in dire straits".

22. Mr. Farley submitted that the standard of proof to be applied in disciplinary proceedings is that of proof on a balance of probabilities based on clear, cogent, and convincing evidence and that it is clear in the reasons of the panel of the Discipline Committee that the panel applied the appropriate standard of proof. He also submitted that, during the discipline hearing, Mr. Arvanitis did not dispute the evidence relating to the misappropriation of $165,000.

23. With respect to the charge of failing to cooperate, Mr. Farley submitted that a concern regarding the use to which the Professional Conduct Committee's investigation might be put by other entities was not an excuse for not cooperating with the investigation, and that the panel of the Discipline Committee had so found.

24. With respect to sanction, Mr. Farley submitted that a panel of the Appeal Committee should not disturb the sanction imposed at a discipline hearing unless there has been an error in principle, or the sanction imposed is not within the appropriate range of sanctions suitable to the misconduct and consistent with previous similar cases. He provided authority for this position, including the *Bogart* case.

25. Mr. Farley further submitted that the overwhelming weight of authority in the Institute's disciplinary process is to the effect that misappropriation of money will result in expulsion from membership with full publicity and a substantial fine. He also provided authority for this proposition.

26. Mr. Farley asked that the appeal be dismissed, with costs payable to the Professional Conduct Committee in the amount of $6,300.

Ruling on the Appeal

27. The panel notes the evidence relating to the misappropriation of $165,000 and the fact that, during the discipline hearing, Mr. Arvanitis did not dispute the fact that the $165,000 had been misappropriated. The penalty imposed in this case is consistent with the penalty imposed by Discipline and Appeal Committees in other cases involving moral turpitude, misappropriation of funds and breach of trust.

28. Further, the evidence at the discipline hearing was that Mr. Arvanitis, without lawful excuse, failed to cooperate with the investigation.

29. There is nothing before this panel that could lead to the conclusion that the panel of the Discipline Committee did not review and carefully consider the evidence before it and the precedents referred to by both counsel for the appellant and counsel for the Professional Conduct Committee. There is no basis upon which to overturn the decision of the panel of the Discipline Committee with respect to the guilt of Mr. Arvanitis on both charges or with respect to the sanctions imposed.

30. The panel has also considered the request by the Professional Conduct Committee for costs. The panel, in the circumstances of this matter, declines to award any costs.

DATED AT TORONTO, THIS 30TH DAY OF AUGUST, 2005
BY ORDER OF THE APPEAL COMMITTEE

E.W. SLAVENS, FCA – CHAIR
APPEAL COMMITTEE

MEMBERS OF THE PANEL:

A.D. BOSSIN, CA
R.D. DAWE, CA
J.J. LONG, CA
B.A. YOUNG (Public representative)

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **PETROS A. (HOMERIC) ARVANITIS, CA**, a member of the Institute, under **Rules 201 and 203.2** of the Rules of Professional Conduct, as amended.

TO: Mr. Petros A. Arvanitis
2025 Guelph Line, P.O. Box 208
BURLINGTON, ON L7P 4X4

AND TO: The Professional Conduct Committee, ICAO

REASONS FOR THE DECISION AND ORDER MADE JUNE 23, 2004

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on June 23, 2004 to hear evidence concerning charges brought by the professional conduct committee against Mr. Petros (Homeric) Arvanitis.

2. The professional conduct committee was represented by Mr. Paul Farley, who was accompanied by the investigator appointed by the professional conduct committee, Mr. Robert Chambers, FCA. Mr. Farley also introduced Ms. Kathryn Naumetz, who he said would be called as a witness. Mr. Arvanitis was present and was represented by his counsel, Mr. Frank Bowman.

3. After hearing the evidence with respect to the charges, the panel deliberated and found Mr. Arvanitis guilty of both charges. Thereafter the panel heard evidence and submissions with respect to sanction, and after deliberating set out on the record the essential terms of the sanctions order. The formal decision and order, signed by the secretary of the discipline committee, was sent to the parties on June 29, 2004.

4. These reasons, issued in writing pursuant to Bylaw 574, contain the charges laid by the professional conduct committee, as well as the decision and order of the panel.

THE CHARGES

5. When the hearing was called to order, the notice of assignment hearing, the notice of hearing, and the charges were marked as Exhibits 1, 2 and 3, respectively. Before the plea to the charges was taken, counsel for the professional conduct committee asked that charge No. 1 be amended in two respects, first by deleting the words “his client,” in the fourth line, and secondly by changing the reference to "Rule 201" in the fifth line to "Rule 201.1". There was no objection to the proposed amendments, and charge No.1 was amended as requested.

6. The charges laid on March 29, 2004, as amended, read:

> 1. THAT, the said Homeric Arvanitis, in or about the period October 1, 2002 through October 1, 2003, 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 misappropriated from Kathryn Naumetz, money

in the approximate amount of $165,000; contrary to Rule 201.1 of the rules of professional conduct.

2. THAT, the said Homeric Arvanitis, in or about the period December 1, 2003 through March 15, 2004, failed to co-operate with an investigator appointed on behalf of the professional conduct committee and with the committee contrary to Rule 203.2 of the rules of professional conduct.

7. Mr. Arvanitis entered a plea of not guilty to both charges.

THE EVIDENCE RE: THE CHARGES

8. Mr. Farley made an opening statement, and advised the panel that he intended to call Ms. Kathryn Naumetz and Mr. Robert Chambers as witnesses.

9. Ms. Naumetz was called as a witness, a document brief with documents relevant to charge No. 1 was filed as Exhibit 4, and Ms. Naumetz gave her evidence, during which she referred to many of the documents in Exhibit 4. At the conclusion of her evidence-in-chief, Mr. Bowman said that he had no questions for her.

10. Mr. Chambers was called as a witness, and a document brief containing documents relevant to charge No. 2 was filed as Exhibit 5. Mr. Chambers testified that while he had tried to interview Mr. Arvanitis, he had been told that on the advice of counsel Mr. Arvanitis would not speak with him. As a result he had not interviewed Mr. Arvanitis.

11. When cross-examined by Mr. Bowman, Mr. Chambers acknowledged that Mr. Arvanitis had promptly responded to his e-mails, and had indicated throughout the investigation that he was prepared to respond to the allegations made against him upon receiving the written undertaking of counsel for the professional conduct committee that his response would not be disclosed to police authorities, and that the professional conduct committee would challenge any attempt by police authorities to compel the production of his response. This position was set out in Mr. Arvanitis' letter of November 24, 2003 to Tatiana Rabinovitch, associate director of standards enforcement of the Institute, which was included in Exhibit 5.

DECISION ON THE CHARGES

12. At the conclusion of the evidence Mr. Farley made submissions on both charges. Mr. Bowman made submissions with respect to charge No. 2.

Re: Charge No. 1

13. The panel concluded on the uncontradicted evidence before it that Mr. Arvanitis received $165,000 to be used for a specific purpose and used it for another purpose. There was no doubt that the $165,000 had been misappropriated.

14. More particularly, Mr. Arvanitis, who came to know Ms. Naumetz professionally after he had been engaged by her as an expert to provide valuation evidence, received $435,000 from Ms. Naumetz on October 4, 2002. Ms. Naumetz provided this money on the understanding that Mr. Arvanitis would use it to invest, together with other money which would total at least one million dollars, in mutual funds in Europe.

15. Ms. Naumetz became uneasy about the investment for a number of reasons, including the fact that Mr. Arvanitis had asked her to make the bank draft payable to him rather than to his firm in trust, and the fact that he did not provide her with incorporation documents she expected.

Acting on what she called a gut instinct, she asked for $272,000 of the money back, which she received in December, 2002.

16. Ms. Naumetz continued to make enquiries with respect to the investment and the incorporating documents, but she never got the information she asked for. Finally in March, 2003 she asked for the rest of her money back. When she had not received it by July, 2003 she demanded that Mr. Arvanitis return the money.

17. On September 4, 2003 Mr. Arvanitis handed Ms. Naumetz a letter which he had written. In the letter he acknowledged that he could not repay her the full $165,000 at that time, and said that he was prepared to start repaying her immediately in increments with interest at the rate of 10 per cent. For the purposes of these proceedings, the most relevant part of the letter is the paragraph which reads:

> Your $165,000 was not invested as I originally stated to you. It was used to repay a debt to a family member that was in dire straits.

18. Mr. Arvanitis presented Ms. Naumetz with a promissory note dated September 17, 2003, and an amortization schedule based on an interest rate of 10 per cent over a term of 14 years. Mr. Arvanitis made an assignment in bankruptcy on October 1, 2003.

19. Ms. Naumetz has not been repaid the $165,000, and there is ongoing litigation against Mr. Arvanitis (or his trustee-in-bankruptcy) with respect to the $150,000 payment made by Mr. Arvanitis to his father-in-law within twelve months of his assignment in bankruptcy.

Re: Charge No. 2

20. The panel concluded that Mr. Arvanitis had not cooperated as required, and that his concern about the possibility that his statements to the professional conduct committee could be used against him was not a defense to the charge.

21. When the hearing reconvened, the chair read the following decision into the record:

> DECISION
>
> THAT, having seen, heard and considered the evidence, charge No. 1 having been amended, the Discipline Committee finds Petros A. (Homeric) Arvanitis guilty of charges Nos. 1 and 2, as amended.

SANCTION

22. The professional conduct committee did not call evidence with respect to sanction. On behalf of the member, Mr. Bowman called William Stark CA, CBV, who had worked with Mr. Arvanitis and in particular had articled for him in the CBV program. Mr. Stark testified about Mr. Arvanitis' integrity and professionalism. Under cross-examination by Mr. Farley, Mr. Stark acknowledged that he did not know about the missing $165,000. In response to a question put to him by a member of the panel, Mr. Stark acknowledged that he did not know about Mr. Arvanitis' role as an investment advisor.

23. Mr. Bowman filed as an exhibit a letter from Mr. Arvanitis' pastor.

24. Mr. Farley said that the professional conduct committee sought a sanctions order which included a reprimand, expulsion, a fine of $20,000, and full publicity of the decision and order including notice in *CheckMark* and in a newspaper published in the area where Mr. Arvanitis

practised. He indicated that when the sanctions order had been determined he had instructions to speak to the issue of costs.

25. Mr. Farley outlined the aggravating factors, which in his view included the fact that Mr. Arvanitis had abused his position of trust by receiving money for a specified purpose and using it for his own personal purposes, that the sum of money misappropriated was large, that his dishonesty had continued for many months, that he had made no restitution, and that he had failed to cooperate in the professional conduct committee's investigation.

26. Mr. Farley said that he knew of no mitigating circumstances.

27. In his review of precedent cases, Mr. Farley submitted that the decisions in *Silverman, Bank, Berenbaum, Torch, Garside, Bogart and Rasul* were relevant, as they involved misconduct similar to Mr. Arvanitis' misconduct. He submitted that the nature of the misconduct in *Silverman* and *Bogart* was most similar to the misconduct of Mr. Arvanitis, and that accordingly an expulsion and substantial fine were in order in this case just as they were in those cases.

28. Mr. Farley also referred to the *Stinchcombe* and *Messina* cases, which were included in Mr. Bowman's book of authorities. Mr. Farley submitted that both cases were clearly distinguishable from this case.

29. Mr. Bowman submitted that as a result of one mistake Mr. Arvanitis' career and professional status were in tatters, and that his personal life, including his marriage, were under great strain.

30. Mr. Bowman submitted that the fact that Mr. Arvanitis told Ms. Naumetz the truth in his letter of September 4, 2003, the fact that he had cooperated to the extent he could, and the fact that repayment was intended, were all mitigating factors. He also submitted that Mr. Arvanitis had not truly used the money for personal use, as it had been used to repay a debt rather than finance his lifestyle.

31. Mr. Bowman submitted on the member's behalf that the appropriate sanction would include a suspension instead of expulsion, a reprimand, and a fine in an amount significantly reduced from that suggested by the professional conduct committee, mentioning the sum of $5,000 as appropriate. He said that publication was not opposed.

32. Mr. Bowman referred to the cases which Mr. Farley had referred to, and also referred to *Armstrong,* and in particular to *Fiorino*.

33. Mr. Bowman submitted that Mr. Arvanitis had cooperated to the extent he could given the fact that criminal proceedings were contemplated, and pointed out that the fine for failure to cooperate was often in the neighborhood of $1,000.

The Order

34. After deliberating, the hearing reconvened and the chair set out the essential terms of the order on the record [though not the order as to costs which had not yet then been decided]. The formal order, including the paragraph as to costs, sent to the parties on June 29, 2004, reads as follows:

> ORDER
>
> IT IS ORDERED in respect of the charges:

1. THAT Mr. Arvanitis be reprimanded in writing by the chair of the hearing.

2. THAT Mr. Arvanitis be and he is hereby fined the sum of $20,000, to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Arvanitis be and he is hereby charged costs fixed at $9,000, to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.

4. THAT Mr. Arvanitis be and he is hereby expelled from membership in the Institute.

5. THAT notice of this Decision and Order, disclosing Mr. Arvanitis' 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) by publication in *CheckMark*; and
    (d) by publication in the local newspapers in Oakville, Hamilton and Burlington.

6. THAT Mr. Arvanitis 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.

Expulsion and Fine

35. The panel concluded that the appropriate sanction for the egregious behavior of Mr. Arvanitis was expulsion and a substantial fine.

36. Mr. Arvanitis carried out a premeditated scheme to misappropriate a very substantial amount of money. He covered up his misappropriation for many months. He has not made restitution.

37. The only mitigating factor in Mr. Arvanitis' misconduct is that he told Ms. Naumetz the truth in his letter of September 4, 2003. But this does not justify an order less than expulsion with a substantial fine, as both a specific deterrent to Mr. Arvanitis and a general deterrent to all other members.

38. In light of the fact that Mr. Arvanitis had used $150,000 of the $165,000 received from Ms. Naumetz to pay back money borrowed from a family member, Mr. Bowman's suggestion that Mr. Arvanitis had not really used the money for personal reasons was not persuasive.

39. There were a number of things about the second charge and Mr. Arvanitis' refusal to cooperate which puzzled the panel. Given the fact that Mr. Arvanitis wrote the letter of September 4, 2003 and delivered it to Ms. Naumetz, it was not clear how his silence now would assist him in the criminal courts, albeit the letter says it is "Without Prejudice". It also puzzled the panel that whereas Mr. Arvanitis remained silent during the investigation and refused to acknowledge or confirm his letter of September 4, 2003, his counsel, with Mr. Arvanitis sitting beside him, told this panel that Mr. Arvanitis had told the truth in his letter of September 4, 2003. It was not at all clear to the panel how Mr. Arvanitis and his counsel could have it both ways, ie. have whatever benefit he could gain by remaining silent on legal advice, but also enjoy the benefit of having his counsel confirm that he told the truth in his letter of September 4, 2003.

40. The panel concluded that the essential misconduct in this case was the misappropriation, and that this misconduct required expulsion and a fine of $20,000.

Publication

41. Publication of the panel's decision and order, including publication in *CheckMark* and local newspapers, ordered in the interest of general deterrence, and to alert the profession and the public to the fact that Mr. Arvanitis has been expelled from the Institute.

Costs

42. After setting out on the record the essential terms of the sanctions order, the panel heard submissions with respect to costs.

43. The professional conduct committee filed a bill of costs which totaled more than $25,000. Of this, the cost for the investigation exceeded $18,000.

44. It is the duty of the professional conduct committee to investigate complaints, and it is appropriate that Mr. Arvanitis reimburse the Institute for some of the investigation costs incurred. Given Mr. Arvanitis' letter of September 4, 2003, however, the extent of the investigation surprised the panel. The misconduct seemed to be a clear, straightforward case of misappropriation admitted to by the member. As to the second charge, Mr. Arvanitis minimized the expense involved. While on legal advice he refused to speak to the investigator, and thus failed to cooperate within the meaning of the rules of professional conduct, he was cooperative in the sense that he was forthcoming about his refusal to speak with the investigator, which should have minimized the costs of the investigation by eliminating any doubts as to his position.

45. Considering all of the factors, including Mr. Arvanitis' apparent financial constraints, the panel ordered Mr. Arvanitis to pay costs in the amount of $9,000.

DATED AT TORONTO THIS 29TH DAY OF NOVEMBER, 2004
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

J.G. SEDGWICK, CA
D.O. STIER, CA
H.G. TARADAY, CA
R.A. VICKERS, FCA
D.J. ANDERSON (Public representative)