

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **PHILIP SPENSIERI**, a suspended member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Philip Spensieri
The Alternative Board - York Region
178 Main Street, Suite 204
UNIONVILLE, ON L3R 2G9

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made September 16, 2009)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on September 16, 2009, to hear a charge of professional misconduct brought by the Professional Conduct Committee against Philip Spensieri, a suspended member of the Institute.

2. Alexandra Hersak appeared on behalf of the Professional Conduct Committee. Mr. Spensieri attended and was unrepresented. He acknowledged that he understood he was entitled to be represented by counsel, and that he was waiving that right.

3. The decision of the panel was made known at the conclusion of the hearing on September 16, 2009 and the written Decision and Order sent to the parties on September 17, 2009. 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. Spensieri by the Professional Conduct Committee on July 30, 2008:

1. THAT, the said Philip Spensieri, on or about the 20th day of August, 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. Mr. Spensieri entered a plea of guilty to the charge and acknowledged that he understood that, on the basis of the plea of guilty and on that basis alone, he could be found guilty of the charge.

EVIDENCE

6. The evidence of the Professional Conduct Committee consisted of a Document Brief (Exhibit 3) and a certified Certificate of Conviction (Exhibit 4). Mr. Spensieri called no evidence, and made no submissions with respect to the evidence of the Professional Conduct Committee.

7. On August 20, 2007, Mr. Spensieri pleaded guilty in the Ontario Court of Justice to one count of fraud exceeding \$5,000. He was convicted and, on September 21, 2007, he was sentenced to a period of 2 years less a day conditional imprisonment.

8. While employed by a reporting issuer as the Chief Operating Officer, Mr. Spensieri became aware the company was falsely reporting sales figures in its quarterly filings. He participated in the creation of false invoices and weigh bills to support the sales figures, and provided fraudulent back-up documentation to the company's external auditors, which was relied on in the preparation of the annual financial statements.

9. Mr. Spensieri was also aware of an unrecorded loan to the company, and did not disclose this information to the auditors.

10. When the company became aware of the fraud, it asked that trading in its stock be halted, and stated publicly it would be restating its financial statements. As a result, a number of creditors called their loans. The company was unable to meet its financial obligations, and declared bankruptcy. The assets of the company were sold, leaving a shortfall of approximately \$1.1 million.

11. Rules 201.2 and 102.1 of the *Rules of Professional Conduct* create a rebuttable presumption that a conviction for fraud is proof of the failure to maintain the good reputation of the profession and its ability to serve the public interest.

12. Ms. Hersak submitted that nothing in the evidence displaced that presumption. Mr. Spensieri conceded he was guilty of professional misconduct.

DECISION

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

THAT, having heard the plea of guilty to the charge and having seen and considered the evidence, the Discipline Committee finds Mr. Philip Spensieri guilty of the charge.

SANCTION

14. Counsel for the Professional Conduct Committee submitted that a sanction of: a reprimand in writing by the chair of the panel; a fine in the amount of \$15,000; expulsion; and publicity in the normal course would be appropriate. She also sought costs of the investigation and hearing in the amount of \$2,500.

15. Ms. Hersak characterized the offence as a serious breach of trust, and noted the member conspired to commit a fraud on the public. His actions damaged the reputation of the profession and every member of that profession. As the offence was one of serious moral turpitude, the principle of rehabilitation had to cede to that of deterrence.

16. In mitigation, Ms. Hersak noted that Mr. Spensieri had pleaded guilty at an early opportunity in both the disciplinary and criminal proceedings; he has demonstrated true remorse; he has cooperated with the authorities in a timely, courteous, professional, exemplary manner; he has no previous discipline history; and he has served a significant criminal sentence for his acts.

17. In aggravation, she submitted that he was instrumental in perpetrating a fraud on the public; he held a position of significant trust at the company while taking actions that led to its bankruptcy; he misled the auditors, professional colleagues and members of his own profession; and he took part in a deliberate, well thought out and lengthy scheme.

18. Mr. Spensieri testified on his own behalf at the sanction phase of the hearing, and provided insight into his financial circumstances, and the impact of his actions on his professional and personal life. He stated that he should be expelled, as he did not deserve to remain as a member of the profession. He also agreed that notice should be given to the public and membership of his expulsion.

19. Mr. Spensieri did ask for leniency with respect to the financial aspect of the sanction. He testified he had lost \$40,000 to the company for a loan made to it, and that he had spent significant funds to address the criminal charges. He has not used his designation since 2006, and his income has been significantly reduced, due both to that decision and to the terms of his incarceration. Consequently, he is in debt and currently unable to reduce that debt.

ORDER

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

IT IS ORDERED in respect of the charge:

1. THAT Mr. Spensieri be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Spensieri be and he is hereby fined the sum of \$15,000 to be remitted to the Institute as follows:
 - (a) \$2,500 on July 1, 2010; and
 - (b) \$2,500 every six months thereafter, until a total of \$15,000 has been remitted.

3. THAT Mr. Spensieri be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Spensieri's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to all members of the Institute; and
 - (b) to all provincial institutes/Ordre, and shall be made available to the public.
5. THAT notice of the expulsion, disclosing Mr. Spensieri's name, be given by publication on the Institute's website, and in *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Spensieri and shall be in addition to any other costs ordered by the Discipline Committee.
6. THAT Mr. Spensieri 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.

AND IT IS FURTHER ORDERED:

7. THAT Mr. Spensieri be and he is hereby charged costs fixed at \$2,500 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.

REASONS FOR SANCTION

21. This is not the largest, most complex, nor most sophisticated fraud perpetrated on the public. That is not relevant. Mr. Spensieri, while holding a senior management position at a public company, was part of a conspiracy to deceive creditors, shareholders, and the public. That conduct is not acceptable for a member of the profession, and must be denounced by the profession in the strongest possible terms. Mr. Spensieri lacks the integrity of a chartered accountant, an integrity the public relies upon. His actions have damaged the reputations of each and every chartered accountant. He has sown distrust in the public mind. He cannot remain a member.

22. To retain the privilege of self-regulation, it is critical not only that the profession regulate itself in the public interest but that it be seen to so do. Only by informing the public of the condemnation of Mr. Spensieri's conduct can public trust be retained. Further, informing the profession both educates and deters other members. It is only in the rarest of circumstances that the Discipline Committee would consider not publicizing the matter, and no such circumstances have been brought to its attention.

23. The panel has heard and considered the evidence of Mr. Spensieri's straitened finances, and is mindful of its obligation not to impose a sanction of disproportionate severity to the member. However, the quantum sought by the Professional Conduct Committee is moderate for the nature of the conduct, and any untoward effect on Mr. Spensieri can be ameliorated by the provision of terms of payment over a period of time.

24. Mr. Spensieri has indicated to this panel that he never intends to re-apply for readmission to the Institute. We make no comment on his stated intention. We do note that his conduct which led to both criminal and discipline charges was egregious, demonstrated an appalling want of judgment, and was harmful to all. We also note that he was not the original architect of the scheme, and that his actions since show a mature insight, true remorse, and a desire to rectify his wrongs.

DATED AT TORONTO THIS 2ND DAY OF OCTOBER, 2009

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

MEMBERS OF THE PANEL:
R.H. CARRINGTON (PUBLIC REPRESENTATIVE)
M.S. LEIDERMAN, CA