

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **PHILLIP (PHILIP) HAROLD GOODMAN, CA**, a member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

TO: Mr. Phillip H. Goodman

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made November 22, 2011)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario ("the tribunal") met on November 22, 2011 to hear charges of professional misconduct brought by the Professional Conduct Committee (PCC) against Phillip (Philip) Harold Goodman, a member of the Institute.

2. Ms. Alexandra Hersak appeared on behalf of the PCC. Mr. Daniel Kayfetz represented Mr. Goodman, who attended throughout the hearing. Mr. Glenn Stuart 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 22, 2011, and the written Decision and Order sent to the parties on November 23, 2011. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, contain the charges, the decision, the order, and the reasons of the tribunal for its decision and order.

Charges

4. Three charges were laid against Mr. Goodman by the PCC on April 20, 2011. The charges, read as follows:

1. THAT the said Phillip Goodman, in or about the period January 31, 2002 through March 31, 2003, while VP of Operations for "GR" and/or his companies, associated himself with statements and representations which he knew or should have known were false or misleading, contrary to Rule 205 of the Rules of Professional Conduct in that:
 - a. through his company, The Ashton Group, he issued twelve invoices in a total amount of up to \$116,000 which contained false or misleading information, knowing that claims were to be submitted to a federal government agency (the "Agency") for reimbursement, based on those invoices.
2. THAT, the said Phillip Goodman, in or about the period January 31, 2002 through March 31, 2003, failed 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 in that he used his company, The Ashton Group, for the purpose of issuing invoices to facilitate making false claims for reimbursement to

the Agency.

3. THAT, the said Phillip Goodman, in or about the period January 31, 2002 through March 31, 2003, while VP of Operations for "GR" and/or his companies, failed 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 in that he was aware that "GR" and/or his companies were submitting false claims to the Agency for reimbursement but did not take steps to stop those activities or to notify the Agency about the false claims.

Plea

5. Mr. Goodman pleaded guilty to the three charges.

The proceedings

6. Ms. Hersak made an opening statement and explained that the case for the PCC would be presented by way of an Agreed Statement of Facts and a Document Brief. The Agreed Statement of Facts (Exhibit 3) was signed by Mr. Goodman on his own behalf and by Ms. Hersak on behalf of the PCC. The Document Brief (Exhibit 4) contained documents referred to in the Agreed Statement of Facts. Ms. Hersak reviewed the Agreed Statement of Facts and in doing so made reference to the relevant documents from the Document Brief. There was no other evidence called by the PCC or by Mr. Kayfetz.

7. Ms. Hersak submitted that the evidence was clear, cogent and convincing and, as Mr. Goodman acknowledged, both in the Agreed Statement of Facts and by his plea of guilty, he should be found guilty. Mr. Kayfetz agreed with Ms. Hersak's submissions.

The Facts

8. The relevant facts, as the tribunal finds them to be, were not in dispute.

9. The Peel Regional Police conducted an investigation into an alleged fraud against a federal government agency (the "Agency") related to the outsourcing of government services to train and monitor the unemployed.

10. The Agency would outsource projects to Service Providers, also known as sponsors. Service Providers would propose projects to the Agency, and, if accepted, a Contribution Agreement would be signed by both parties. The proposal included a budget representing an estimation of expenses expected to be incurred in carrying out the project. Under the agreement, the Agency was to reimburse the Service Provider for the actual expenses directly related to the project. The funding was not a grant, and the Service Provider was to retain proof of expenses claimed. The Contribution Agreement provided for the Agency to conduct audits of the Service Providers, but there was no clause providing for the Agency to audit subcontractors hired by the Service Providers.

11. The police made a series of arrests leading to various charges following their investigation. GR and the group of companies he controlled (the "Companies") were central to the investigation. The Companies were owned by GR, his wife and sons, and it was alleged by the police that GR had started a scheme to defraud the Agency, inviting others to join the conspiracy including the Agency's own staff members.

12. Mr. Goodman was the VP of Operations of the Companies between February 2002 and December 2003, during the period of the alleged fraud scheme against the Agency. Mr. Goodman was initially charged with conspiracy to commit fraud, but in May 2008, the charges against him were withdrawn at the request of the Crown. Charges were also laid against several other individuals that were withdrawn. Convictions were ultimately obtained with respect to corporate entities controlled by GR.

13. Mr. Goodman ran a management consulting business under the name of Beck Goodman. Mr. Goodman also provided assistance to his wife, a soft skills training developer. His wife was a training consultant for a division of the Peel District School Board. She introduced Mr. Goodman to GR. GR offered Mr. Goodman the role of VP of Operations of the Companies in 2002. Mr. Goodman worked for the Companies until December 2003, continuing to occupy their office space until March 2004. He was paid \$200,000 per annum and had an arrangement whereby he would invoice one of the Companies for his remuneration through his management consulting business.

14. Mr. Goodman spent a nine to five day at the Companies' offices but only 60-80% of his time was spent on Companies' work which he did while performing other consulting work. His role with the Companies was project-oriented with no oversight of the Companies' accounting department, and he did not have cheque signing authority with the Companies. Although he helped to review budgets for the Agency projects, the management of those budgets was the responsibility of the Companies' internal accountant.

15. The budget for the Agency project HRHS, a project which was held by Beck Goodman, included management fees for Mr. Goodman's services. As Mr. Goodman did not feel comfortable 'invoicing himself' and having determined that there was a need to create distance between the two companies, he registered The Ashton Group as the operating name for Beck Goodman in November 2001 for the purpose of billing the Agency.

16. When Mr. Goodman joined the Companies in 2002, it was his practice to invoice for his services through Beck Goodman, but he issued certain invoices through The Ashton Group. Between January 2002 and March 2003, The Ashton Group issued 12 invoices totaling \$116,000 to the Companies. The payment of these invoices formed part of the \$200,000 annual salary that Mr. Goodman received and was not additional remuneration to him. These 12 invoices facilitated making false claims to the Agency for reimbursement by the Agency to the Companies. These invoices were created to use up available budget room in various Agency contribution agreements held by the Companies. The 12 invoices enabled the Companies to make claims against funding that had been approved and budgeted but that would otherwise not have been paid out. Agency reimbursements were to have been based on actual costs incurred up to the amount of the project's approved budget.

17. Mr. Goodman billed three different Companies through The Ashton Group rather than through Beck Goodman, thereby camouflaging how much work a single Company was doing by distributing the work among the Companies. The Agency did not know of the relationship between The Ashton Group and Beck Goodman.

18. Invoices were prepared by Mr. Goodman for two Companies, describing work that was not performed. Although the work described on the invoices issued to the third Company was performed, it was work done by Mr. Goodman as part of his VP of Operations role and was not specific to the Agency project. The invoices for the third Company should not have been invoiced to this Company for reimbursement to this Company by the Agency.

19. At all material times, Mr. Goodman knew that the 12 invoices which contained false or misleading information would form the basis of claims submitted to the Agency for reimbursement to the Companies. Mr. Goodman received payment for the 12 invoices which did not reflect actual costs incurred related to the respective projects and were therefore not permissible costs to be claimed from the Agency.

20. Although Mr. Goodman was aware that GR and his Companies were submitting false claims to the Agency for reimbursement, he did not take steps to stop those activities or to notify the Agency of the false claims.

Decision

21. After deliberating, the tribunal made the following decision

THAT, having heard the plea of guilty to Charge Nos. 1, 2 and 3, and having seen and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee finds Phillip (Philip) Harold Goodman guilty of the charges.

Reasons for Decision

22. As will be apparent from our findings of the facts as set out above, the allegations made in the charges were proven. The tribunal found the evidence presented, and in particular the details of Mr. Goodman's participation in issuing invoices against the Agency that contained false or misleading information as set out in the Agreed Statement of Facts and Document Brief, constituted clear, cogent and compelling evidence which proved the three charges made against Mr. Goodman.

23. Mr. Goodman's serious professional misconduct can be succinctly described. He was an active participant in a fraud against a Government Agency and knowingly prepared 12 invoices totaling \$116,000, over a 14-month period, which allowed the Companies controlled by GR to be reimbursed for work not performed which was contrary to the Contribution Agreement with the Government Agency. Furthermore, Mr. Goodman did not inform the Agency of the false and misleading information that was presented to them on The Ashton Group invoices. Mr. Goodman made no effort to stop the fraud against the Agency.

24. Mr. Goodman acknowledged in the Agreed Statement of Facts that he provided false invoice descriptions on his invoices that were used as support for a claim under an Agency project by the Companies. He purposely billed three of GR's Companies in order to camouflage how much work a single Company was doing with the Agency. The 12 invoices totaling \$116,000 did not reflect costs incurred related to the respective projects and were therefore not permissible costs to be claimed. Mr. Goodman agreed that he failed to comply with the Rules of Professional Conduct of the Institute, in particular Rules 201.1 and 205 as described in the Charges.

Sanction

25. Neither party initially called evidence with respect to sanction. Ms. Hersak advised, and Mr. Kayfetz confirmed, that the submission she was making with respect to sanction was a joint submission. Mr. Kayfetz advised that Mr. Goodman wished to make a statement to the tribunal, and he did so under oath. Mr. Goodman expressed his apologies for his past activities which had resulted in the lowest day in his life. He admitted that he was caught up in the culture of GR and the Companies, which violated his personal fundamental beliefs.

26. The joint sanction submission proposed an order including: a written reprimand, a fine of \$5,000, suspension from membership in the Institute for a period of 12 months, and the usual order regarding publicity. The PCC also sought an order for partial indemnity for costs of the investigation and hearing in the amount of \$10,000.

27. Ms. Hersak submitted that Mr. Goodman had exhibited a serious lapse in judgment over a period of time. He knowingly participated in a scheme to perpetrate a fraud on a government agency. Mr. Goodman who was in a senior role as the VP of Operations used a separate company name to invoice for 12 transactions over a 14-month period. He took no steps to stop the scheme or alert the Agency to what was taking place. Although Mr. Goodman received no personal monetary benefit, his actions did allow him to retain his job. Ms. Hersak stated that the integrity of chartered accountants is paramount and Mr. Goodman has damaged his own and the profession's reputation.

28. Ms. Hersak also noted a number of mitigating factors. Mr. Goodman was not the author of the scheme and has expressed remorse for his actions. He acknowledged his misconduct, pleaded guilty to the charges, had no discipline history, cooperated fully with the PCC investigation and signed the Agreed Statement of Facts. Mr. Goodman has expressed his willingness to be rehabilitated. The proposed sanctions would satisfy the specific and general deterrence principles of sentencing and protect the public interest. Suspension for a significant period of time addresses the seriousness of the matter.

29. Ms. Hersak distributed a Case Brief containing five ICAO Discipline Committee cases involving false or misleading activities: *Adair, Becker, Duffield, Gera* and *Lee*. Ms. Hersak reviewed the cases and submitted that the jointly recommended sanction fell within the appropriate range of sanctions imposed for similar misconduct.

30. Ms. Hersak filed a Costs Outline (Exhibit 5) which showed that the costs of the investigation and hearing were approximately \$23,500. The PCC was seeking costs on a partial indemnity basis in the amount of \$10,000, about 50% of the actual costs incurred. Ms. Hersak said the PCC would not object to allowing a reasonable period of time up to 24 months to pay the fine and costs.

31. Mr. Kayfetz filed Income Tax Documents (Exhibit 6 *in camera*) which contained tax returns and personal financial documents of Mr. Goodman. Mr. Kayfetz submitted that Mr. Goodman is ashamed and remorseful and has reassessed his life since his involvement with the police in this matter. He requested that the costs be reduced from \$10,000 to \$5,000 and that Mr. Goodman be given 18 months to pay, noting that his income is now greatly reduced. Ms. Hersak replied that costs are an indemnity or reimbursement for a portion of the costs incurred in an investigation and hearing.

Order

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Goodman be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Goodman be and he is hereby fined the sum of \$5,000 to be remitted to the Institute within eighteen (18) months from the date this Decision and Order was made.

3. THAT Mr. Goodman be suspended from the rights and privileges of membership in the Institute for a period of twelve (12) months from the date this Decision and Order was made.
4. THAT notice of this Decision and Order, disclosing Mr. Goodman's name, be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of the Institute;
 - (b) to all provincial institutes/Ordre;
 and shall be made available to the public.
5. THAT Mr. Goodman surrender his certificate of membership in the Institute to the Discipline Committee Secretary within ten (10) days from the date this Decision and Order was made, to be held during the period of suspension and thereafter returned to Mr. Goodman.

IT IS FURTHER ORDERED:

6. THAT Mr. Goodman be and he is hereby charged costs fixed at \$10,000 to be remitted to the Institute within eighteen (18) months from the date this Decision and Order was made.

AND IT IS FURTHER ORDERED:

7. THAT in the event Mr. Goodman fails to comply with any of the requirements of this Order, he shall be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within thirty (30) days from the date of his suspension, and in the event he does not comply within the thirty (30) day period, his membership in the Institute shall be revoked, and notice of his membership revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Goodman's practice and/or residence. All costs associated with the publication shall be borne by Mr. Goodman and shall be in addition to any other costs ordered by the committee.

Reasons for Sanction

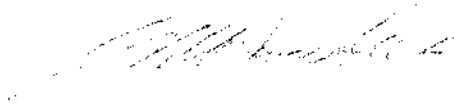
33. The tribunal concluded that the order sought by the PCC, for the reasons advanced by Ms. Hersak, was appropriate.
34. The tribunal concluded that the reprimand, the fine, the notice and suspension from membership satisfied the principle of specific deterrence.
35. The tribunal concluded that the fine, notice and suspension also satisfied the principle of general deterrence.
36. The suspension serves as a specific and general deterrent to demonstrate that the Institute takes matters of professional misconduct very seriously. The tribunal was satisfied that the 12-month suspension fell within the range of appropriate lengths of suspension and clearly demonstrates that there are serious consequences for participation in dishonest and deceitful conduct.

37. Failure to comply with the terms of the Order will result in the revocation of Mr. Goodman's membership in the Institute. Mr. Goodman should only remain a member of the Institute if he complies with the requirements of the Order.

Costs

38. The PCC proposed costs of \$10,000 as a partial indemnity for the costs of the investigation and hearing. Mr. Kayfetz, Mr. Goodman's counsel, requested that the costs be reduced to \$5,000 on the basis of Mr. Goodman's reduced income and his acknowledgement of remorsefulness. The tribunal concluded that the request of the PCC for costs of \$10,000 was within the guidelines for similar cases and furthermore was appropriate given the seriousness of the conduct of Mr. Goodman. The costs ordered represented less than 50% of the actual costs of the investigation and hearing.

DATED AT TORONTO THIS *9TH* DAY OF JANUARY 2012
BY ORDER OF THE DISCIPLINE COMMITTEE.



S.M. DOUGLAS, FCA DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL
B.G. ALLENDORF, CA
R.A. FERNANDES, CA
G. HINTON (PUBLIC REPRESENTATIVE)