

## **Randall Keive Starr: Summary, as Published in *CheckMark***

**Randall Keive Starr**, of North York, was found guilty of two charges under Rule 202 of failing to perform his professional services with due care, and one charge under Rule 202 of failing to perform his professional services with due care and integrity. While engaged to prepare personal tax returns for a client, Mr. Starr failed to include as income, or included as income in the wrong taxation year, taxable dividends, bonuses and self-employed income received by his client, and failed to give proper tax advice relating to a share sale. While engaged to compile financial statements for a client company, Mr. Starr failed to segregate and disclose in the company's financial statements the consideration given by it for its purchase of the shares of another company. Mr. Starr was fined \$1,500, and ordered to complete three specified professional development courses and thereafter be reinvestigated by the professional conduct committee.

## **CHARGE(S) LAID re Randall Starr, CA**

The Professional Conduct Committee hereby makes the following charges against Randall Starr, CA, a member of the Institute:

1. THAT, the said Randall Starr, in or about April 1998, while engaged to prepare the personal tax return for David Laws for the taxation years 1995 through 1997, inclusive, failed to perform his professional services with due care contrary to Rule 202 of the rules of professional conduct, in that:
  - (a) he did not include as income for the 1995 taxation year any of the taxpayer's selfemployment income earned between February 1, 1995 and December 31, 1995;
  - (b) He improperly included in income for the 1996 taxation year the taxpayer's self employment income earned between February 1, 1995 and December 31, 1995;
  - (c) He failed to take appropriate steps to meet the needs of his client resulting from changes to income tax legislation that required businesses with a non-calendar year end to change to a calendar year end or include a special income addition if they elected to continue the non-calendar fiscal year, in that he did not file an 'alternative election' or establish a reserve to recognize the additional income over ten years as provided by the Income Tax Act.
  - (d) He did not include as income a bonus of \$20,000 paid and allocated to the taxpayer in 1996 on the 1996 tax return;
  - (e) He included on the taxpayers 1997 income tax return a bonus of \$20,000 that had been paid in the previous year;
  - (f) He did not include as income a bonus paid to the taxpayer in 1997 in the amount of \$102,500 on the 1997 income tax return.
2. THAT, the said Randall Starr, in or about March 1999, while he was engaged to prepare the personal tax return for David Laws for the 1998 taxation year, failed to perform his professional services with due care contrary to Rule 202 of the rules of professional conduct, in that:
  - (a) he did not include as income a bonus of \$36,000 paid to the taxpayer in 1998;
  - (b) he did not include as income a taxable dividend of \$262,425 that arose from the sale by the taxpayer of shares in Laws International Inc. to Miramar Management Services Inc. for which the taxpayer received non-share consideration;
  - (c) he did not advise the taxpayer that he could structure the sale of the shares in Laws International Inc. in a more tax effective manner by receiving share consideration rather than a promissory note; and
  - (d) he did not take adequate steps to determine whether the taxpayer sold shares in Laws International Inc. to Ycor Enterprises Inc. thereby requiring the inclusion in the taxpayer's income of a capital gain of \$104,970 that he had reason to believe arose from the purported sale.

3. THAT, the said Randall Starr, in or about July to November 1998, while he was engaged to compile the financial statements of Miramar Management Services Inc. for the period ended July 31, 1998, failed to perform his professional services with due care and integrity contrary to Rule 202 of the rules of professional conduct, in that:
  - (a) he failed to disclose in the notes to the financial statements the consideration given by Miramar Management Services Inc. for the shares it bought in Laws International Inc.;
  - (b) he did not segregate on the balance sheet or the statement of changes in financial position the promissory note issued to David Laws in the amount of \$209,999 for the purchase of shares in Laws International Inc.

Dated at Toronto this 6th day of March, 2001.

RICHARD JOHNSTON, FCA – DEPUTY CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re RANDALL KEIVE STARR**

**DECISION AND ORDER IN THE MATTER OF:** Charges against **RANDALL KEIVE STARR**, a member of the Institute, under **Rule 202** of the Rules of Professional Conduct, as amended.

### **DECISION AND ORDER MADE JUNE 22, 2001**

#### **DECISION**

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1, 2 and 3, the Discipline Committee finds Randall Keive Starr guilty of charges Nos. 1, 2 and 3.

#### **ORDER**

IT IS ORDERED in respect of the charges:

1. THAT Mr. Starr be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Starr be and he is hereby fined the sum of \$1,500, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Starr be and he is hereby required to complete, by paying for and attending in their entirety, on or before June 30, 2002, the following professional development courses made available through the Institute:
  1. Income Tax Refresher – Corporate;
  2. Income Tax Refresher – Personal; and
  3. Financial Statement Presentation & Disclosure,or, in the event a course listed above becomes unavailable, the successor course which takes its place.
4. THAT Mr. Starr be reinvestigated by the professional conduct committee, or by a person retained by the professional conduct committee, on one occasion, between 18 and 24 months from the date this Decision and Order becomes final under the bylaws, the cost of the reinvestigation, up to \$2,000, to be paid by Mr. Starr within thirty (30) days of receiving notification of the cost of the reinvestigation.
5. THAT notice of this Decision and Order, disclosing Mr. Starr's name, be given after this Decision and Order becomes final under the bylaws:
  - (a) to the Public Accountants Council for the Province of Ontario;
  - (b) to the Canadian Institute of Chartered Accountants; and
  - (c) by publication in *CheckMark*.

6. THAT in the event Mr. Starr fails to comply with the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within six (6) months from the date of his suspension, and in the event he does not comply within this six month period, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in *The Globe and Mail*.

DATED AT TORONTO THIS 27TH DAY OF JUNE, 2001  
BY ORDER OF THE DISCIPLINE COMMITTEE

BRYAN W. STEPHENSON, BA, LLB  
SECRETARY – DISCIPLINE COMMITTEE

## **DISCIPLINE COMMITTEE re RANDALL KEIVE STARR**

**REASONS FOR THE DECISION AND ORDER IN THE MATTER OF:** Charges against **RANDALL KEIVE STARR**, a member of the Institute, under **Rule 202** of the Rules of Professional Conduct, as amended.

### **REASONS FOR THE DECISION AND ORDER MADE JUNE 22, 2001**

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on June 22, 2001 to hear evidence concerning charges brought by the professional conduct committee against Randall Keive Starr (the "member").
2. Mr. Paul Farley represented the professional conduct committee. The member was present at the hearing and was represented by Mr. J. Falconeri.
3. The panel's decision and order was issued on June 27, 2001. These reasons, issued in writing pursuant to Bylaw 574, contain the panel's decision and order, and the charges laid by the professional conduct committee, as well as the reasons of the panel.

### **DECISION ON THE CHARGES**

4. The notice of hearing and charges were entered as exhibits to the hearing. The charges laid against the member by the professional conduct committee read as follows:
  1. THAT, the said Randall Starr, in or about April 1998, while engaged to prepare the personal tax return for David Laws for the taxation years 1995 through 1997, inclusive, failed to perform his professional services with due care contrary to Rule 202 of the rules of professional conduct, in that:
    - (a) he did not include as income for the 1995 taxation year any of the taxpayer's self-employment income earned between February 1, 1995 and December 31, 1995;
    - (b) He improperly included in income for the 1996 taxation year the taxpayer's self employment income earned between February 1, 1995 and December 31, 1995;
    - (c) He failed to take appropriate steps to meet the needs of his client resulting from changes to income tax legislation that required businesses with a non-calendar year end to change to a calendar year end or include a special income addition if they elected to continue the non-calendar fiscal year, in that he did not file an 'alternative election' or establish a reserve to recognize the additional income over ten years as provided by the Income Tax Act.
    - (d) He did not include as income a bonus of \$20,000 paid and allocated to the taxpayer in 1996 on the 1996 tax return;

- (e) He included on the taxpayers 1997 income tax return a bonus of \$20,000 that had been paid in the previous year;
- (f) He did not include as income a bonus paid to the taxpayer in 1997 in the amount of \$102,500 on the 1997 income tax return.

2. THAT, the said Randall Starr, in or about March 1999, while he was engaged to prepare the personal tax return for David Laws for the 1998 taxation year, failed to perform his professional services with due care contrary to Rule 202 of the rules of professional conduct, in that:

- (a) he did not include as income a bonus of \$36,000 paid to the taxpayer in 1998;
- (b) he did not include as income a taxable dividend of \$262,425 that arose from the sale by the taxpayer of shares in Laws International Inc. to Miramar Management Services Inc. for which the taxpayer received non-share consideration;
- (c) he did not advise the taxpayer that he could structure the sale of the shares in Laws International Inc. in a more tax effective manner by receiving share consideration rather than a promissory note; and
- (d) he did not take adequate steps to determine whether the taxpayer sold shares in Laws International Inc. to Ycor Enterprises Inc. thereby requiring the inclusion in the taxpayer's income of a capital gain of \$104,970 that he had reason to believe arose from the purported sale.

3. THAT, the said Randall Starr, in or about July to November 1998, while he was engaged to compile the financial statements of Miramar Management Services Inc. for the period ended July 31, 1998, failed to perform his professional services with due care and integrity contrary to Rule 202 of the rules of professional conduct, in that:

- (a) he failed to disclose in the notes to the financial statements the consideration given by Miramar Management Services Inc. for the shares it bought in Laws International Inc.;
- (b) he did not segregate on the balance sheet or the statement of changes in financial position the promissory note issued to David Laws in the amount of \$209,999 for the purchase of shares in Laws International Inc.

5. The member entered a plea of guilty to each of charges Nos. 1, 2 and 3 and confirmed that he understood that on the basis of his pleas alone he could be found guilty of each of charges Nos. 1, 2 and 3.

6. Mr. Farley filed an agreed statement of facts and a document brief with respect to the charges which laid out, in some detail, the evidence against Mr. Starr relating to each of the charges.

7. Mr. Falconeri called no evidence and had no submissions with respect to the charges.

8. On the evidence before the panel, it was clear that the member was guilty of the charges and, accordingly, he was found guilty of each of charges Nos. 1, 2 and 3. 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 charges Nos. 1, 2 and 3, the Discipline Committee finds Randall Keive Starr guilty of charges Nos. 1, 2 and 3.

### **ORDER AS TO SANCTION**

9. Mr. Farley argued that the charges related to the member's competence only and that there was no evidence of moral turpitude. In the situations that resulted in the charges, the member should have retained someone else with more experience in personal and corporate taxation to assist him. As a result, the primary focus of the professional conduct committee's proposed sanction is rehabilitation of the member.

10. The sanction proposed by the professional conduct committee was a reprimand in writing by the chair of the hearing, a fine in the range of \$1,000 to \$2,000, specified professional development courses, reinvestigation of the member's practice within 18 to 24 months (with costs to be borne by the member to a maximum of \$2,000), and normal publication.

11. Mr. Farley referred the panel to a number of helpful precedents that we reviewed in making our determination as to the appropriate sanction.

12. Mr. Farley also noted that the amount of the fine being requested was at the low end of the "normal" range. He argued that this is because the proposed sanction also included a number of professional development courses and a reinvestigation of the member's practice, both of which involved costs to the member.

13. Mr. Farley stated that the professional development courses recommended by the professional conduct committee are intended to help the member identify when he needs help and not to make him an expert in taxation. The reinvestigation of the member's practice is recommended to see if the member has been rehabilitated.

14. Mr. Farley also advised the panel that no significant issues were identified in other files of the member reviewed by the investigator retained by the professional conduct committee.

15. Mr. Falconeri agreed with the proposed sanction recommended by the professional conduct committee except as related to publication. Mr. Falconeri argued that publication of the panel's decision and order in *CheckMark* was not appropriate since the member was experiencing a personal problem around the time that some of the events that resulted in the charges occurred and that the member had made every attempt to correct his mistakes at no charge to his client as soon as he became aware of the mistakes.



16. Mr. Farley submitted that his was not a rare and unusual case which would justify withholding the member's name from publication in *CheckMark* according to the precedents, and particularly the decision of the appeal committee in the Solmon and Finkelman cases.

17. After deliberating on the evidence and the submissions heard, the committee made the following order:

### ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Starr be reprimanded in writing by the chair of the hearing.
4. THAT Mr. Starr be and he is hereby fined the sum of \$1,500, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Starr be and he is hereby required to complete, by paying for and attending in their entirety, on or before June 30, 2002, the following professional development courses made available through the Institute:
  1. Income Tax Refresher – Corporate;
  2. Income Tax Refresher – Personal; and
  3. Financial Statement Presentation & Disclosure,or, in the event a course listed above becomes unavailable, the successor course which takes its place.
4. THAT Mr. Starr be reinvestigated by the professional conduct committee, or by a person retained by the professional conduct committee, on one occasion, between 18 and 24 months from the date this Decision and Order becomes final under the bylaws, the cost of the reinvestigation, up to \$2,000, to be paid by Mr. Starr within thirty (30) days of receiving notification of the cost of the reinvestigation.
5. THAT notice of this Decision and Order, disclosing Mr. Starr's name, be given after this Decision and Order becomes final under the bylaws:
  - (a) to the Public Accountants Council for the Province of Ontario;
  - (b) to the Canadian Institute of Chartered Accountants; and
  - (c) by publication in *CheckMark*.
6. THAT in the event Mr. Starr fails to comply with the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within six (6) months from the date of his suspension, and in the event he does not comply within this six month period, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in *The Globe and Mail*.

18. In this case, the panel considered the three general principles of sentencing, namely rehabilitation, general deterrence and specific deterrence. The panel concluded that although all three principles apply, the most important principle in this case is rehabilitation.

19. All of the provisions of the order are intended to specifically deter and rehabilitate Mr. Starr. As there will be a reinspection, it is expected his rehabilitation will be confirmed.

### **Reprimand**

20. The panel believes that a reprimand in writing from the chair of the hearing stresses to the member the unacceptability of his conduct as a chartered accountant.

### **Fine**

21. The professional conduct committee submitted that a fine should be levied against the member in the range of \$1,000 to \$2,000. The panel determined that a fine of \$1,500 was appropriate in this case given the other costs imposed on the member by the panel's order.

### **Professional Development Courses**

22. The panel determined that three professional development courses (or their successor courses) were appropriate in this case, namely:

- Income Tax Refresher – Corporate;
- Income Tax Refresher – Personal; and
- Financial Statement Presentation and Disclosure.

23. The panel ordered these three professional development courses in order to assist in the member's rehabilitation.

### **Reinvestigation**

24. Reinvestigation of the member's practice in 18 to 24 months was determined to be appropriate by the panel to determine whether the member had been rehabilitated.

### **Publication**

25. Publication of the notice in *CheckMark* is notice to the members. While it is true the discipline committee can order publication without disclosing the member's name, such notice is not an effective general deterrent.

26. With respect to this issue, the February 1990 decision of the appeal committee in the Finkelman case is an important precedent. Dealing with what was then Bylaw 83(4) and is now Bylaw 575 (4) the committee said:

The appeal committee wishes to make a general comment about Bylaw 83(4). We recognize that as long as the Bylaw provides that the discipline committee or the appeal committee may "otherwise order" some members being disciplined will argue that in the particular circumstances of their case such an order should be made and publication of their name withheld. In light of the principle of general deterrence and the importance of confidence in the openness of the Institute's disciplinary process, this committee is of the view that circumstances which could persuade an appeal committee or the discipline committee not to publish a disciplined member's name will be rare and unusual.

27. This case is not one of the rare and unusual cases that would justify withholding the member's name from the notice in *CheckMark*.

DATED AT TORONTO THIS 19TH DAY OF JULY, 2001.  
BY ORDER OF THE DISCIPLINE COMMITTEE

M. BRIDGE, CA - DEPUTY CHAIR  
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

G.R. PEALL, CA  
S.W. SALTER, CA  
R.D. WHEELER, FCA  
N.C. AGARWAL (Public representative)