

## **Ronald Baker: Summary, as Published in *CheckMark***

**Ronald Baker**, of North York, was found guilty of a charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest. Mr. Baker deposited into his bank accounts cheques that represented funds misappropriated by former members of the Institute previously expelled for fraud, one of whom was his brother-in-law, and then dispersed the funds from his accounts as instructed. Mr. Baker was fined \$3,000 and suspended from membership for six months. The discipline committee took various mitigating factors into account in deciding not to expel Mr. Baker, among them that he received no recompense for the favour he did for his brother-in-law, and that he was not aware of the illegal activities of his brother-in-law and the others

Mr. Baker returned to MEMBERSHIP IN GOOD STANDING on May 11, 1998

## **CHARGE(S) LAID re Ronald Baker**

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

1. THAT, the said Ronald Baker, CA, in or about the period January 1, 1994 through March 31, 1995, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he allowed funds in the approximate amount of \$429,000 to pass through his Canada Trustco Mortgage Company account #324-800275 and his CIBC account #1064932 when he knew or should have known that the monies had been improperly or unlawfully obtained and/or were being improperly or unlawfully dispersed, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT, the said Ronald Baker, CA, in or about the period January 1, 1994 through July 1, 1994, failed to perform his professional services with integrity and due care in that he allowed Allen Berenbaum to direct some 12 transactions in the approximate amount of \$129,700 through his, Ronald Baker's, practice bank account without making proper enquiries as to the source and/or disposition of the funds, contrary to Rule 202 of the rules of professional conduct.

Dated at                this                day of                1997.

JENNIFER L. FISHER, CA - CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re Ronald Baker**

**DECISION AND ORDER IN THE MATTER OF:** Charges against RONALD BAKER, CA, a member of the Institute, under Rules 201.1 and 202 of the Rules of Professional Conduct, as amended.

### **DECISION MADE JUNE 3, 1997 AND ORDER MADE JUNE 4, 1997**

#### DECISION

THAT, having seen, heard and considered the evidence, including the agreed statement of facts, filed, charge No. 2 having been withdrawn, the Discipline Committee finds Ronald Baker guilty of charge No. 1.

#### ORDER

IT IS ORDERED in respect of charge No. 1:

1. THAT Mr. Baker be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Baker be and he is hereby fined the sum of \$3,000, 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. Baker be suspended from the rights and privileges of membership in the Institute for a period of six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Baker'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.
5. THAT Mr. Baker 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, to be held during the period of suspension and thereafter returned to Mr. Baker.
6. THAT in the event Mr. Baker fails to comply with the requirement of paragraph 2 of this Order, his suspension pursuant to paragraph 3 shall continue for a further period of three (3) months, and in the event he does not comply with the requirement of paragraph 2 within the additional three (3) 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 in paragraph 4 hereof.

DATED AT TORONTO THIS 24TH DAY OF JUNE, 1997  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

## **DISCIPLINE COMMITTEE re Ronald Baker**

**REASONS FOR THE DECISION AND ORDER IN THE MATTER OF:** Charges against RONALD BAKER, CA, a member of the Institute, under Rules 201.1 and 202 of the Rules of Professional Conduct, as amended.

### **REASONS FOR THE DECISION MADE JUNE 3, 1997 AND ORDER MADE JUNE 4, 1997**

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on June 3 and 4, 1997 to hear two charges brought by the professional conduct committee against Mr. Ronald Baker, CA. The charges related to the use of Mr. Baker's personal and business bank accounts as a conduit through which funds were passed:

- when he knew or ought to have known that the monies had been improperly or unlawfully obtained and/or were being improperly dispersed (Charge 1); and
- without making proper enquiries as to the source and/or disposition of the funds (Charge 2).

Mr. Baker pleaded not guilty to both charges.

The professional conduct committee was represented by Mr. Paul Farley. Mr. Baker was represented by Mr. Eric Fournie. Mr. Farley called Mr. Robert Macdonald, CA, the investigator who had acted on behalf of the professional conduct committee, as a witness. Mr. Baker testified on his own behalf.

The determination and sanctions imposed were made known at the hearing. These are the written reasons for the decision and order that has already been sent to the parties.

### **DECISION ON THE CHARGES**

#### **Facts**

Counsel filed an agreed statement of facts and a document brief, since there was no disagreement about the facts which were the foundation of the charges. Basically, Mr. Baker deposited in his bank accounts, cheques that represented funds misappropriated by Allen Berenbaum, Michael Bank or Ronald Torch from the chartered accountancy firm Doane Raymond. Subsequent to the deposit of each cheque, Mr. Baker dispersed the funds to individuals or companies as instructed by Mr. Berenbaum. Messrs. Berenbaum, Bank and Torch were expelled from the Institute effective October 30, 1996, by order of the discipline committee, following a hearing held by the committee on July 4, 1996.

The agreed statement indicated that:

- Mr. Baker and Mr. Berenbaum were brothers-in-law, Mr. Berenbaum being the brother of Mr. Baker's wife, who has since died.

- Mr. Berenbaum approached Mrs. Baker and asked her to move some money around for him, an action in which Mr. Baker agreed to participate after asking his wife to confirm with Berenbaum that everything is proper, which she apparently did and received the requested assurance.
- Between January 26, 1994 and February 25, 1995, at the request of Mr. Berenbaum, approximately \$429,000 was deposited into and dispersed from Mr. Baker's accounts in a series of some 47 transactions.
- Mr. Baker did not receive any financial benefit from assisting Berenbaum.

#### Mr. Macdonald's Testimony

Mr. Macdonald testified that he and a colleague had met with Mr. Baker, at Mr. Baker's office. A copy of Mr. MacDonald's notes of that meeting, annotated by Mr. Baker, was filed. Mr. Macdonald stated, either orally or by way of the notes, that:

- Mr. Baker's purpose in accepting and dispersing the funds was to help Mr. Berenbaum and that while he (Baker) did not understand the reasons for the transactions, he accepted them because he trusted Berenbaum.
- Mr. Baker did not record the flow of the cash through his books and records.
- Mr. Baker cooperated freely and openly with Mr. Macdonald's investigation.

#### Mr. Baker's Testimony

Mr. Baker's testimony, either orally or through the notes of his meeting with Mr. Macdonald, was that his actions were the result of:

- his trust in Mr. Berenbaum as a family member and a respected member of the community; and
- significant events in his personal life, in that his wife, Berenbaum's sister, was diagnosed with cancer in late November 1993, and died on February 15, 1995.

Mr. Baker stated that he would not have acceded to a request by a client for similar assistance. He also indicated that he had given every possible assistance to Doane Raymond during the firm's investigation into Mr. Berenbaum's actions, and that neither Doane Raymond nor the police had charged him with any wrongdoing as a result of his assistance to Mr. Berenbaum.

#### Conclusion

The panel noted that there was no dispute that the funds were improperly obtained and dispersed. The issue was whether Mr. Baker knew this or ought to have known it.

The panel concluded that Mr. Baker ought to have known it, in view of facts such as:

- the request made of Mr. Baker was to help in moving money around, a statement that on its own is suggestive of improper or suspicious financial activities;
- Mr. Baker made no direct inquiries either of Mr. Berenbaum or of anyone else at Doane Raymond or Merit Truck Brokers, the primary sources of the funds, although he had at

one time been a partner at Doane Raymond and knew Mr. Buchwalter at Merit, so that he could have easily asked why cheques were being made out to him when neither business owed him any money; and

- neither the receipts nor disbursements were recorded in Mr. Baker's books and records.

The panel therefore found Mr. Baker guilty of failing to conduct himself in a manner that would 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 light of the panel's finding on charge 1, counsel for the professional conduct committee withdrew charge 2. Mr. Baker's counsel, on his behalf, concurred with the withdrawal.

## **SANCTIONS ORDER**

Mr. Baker's counsel called Mr. Baker as a witness on his own behalf for a second time prior to the panel's deliberation on sanctions.

In reaching its conclusions, the panel considered the principles of general deterrence, specific deterrence and rehabilitation. Counsel for the professional conduct committee submitted that the sanctions requested by the professional conduct committee were primarily directed to general deterrence and were:

- a letter of reprimand;
- a fine of between \$3,000 and \$5,000;
- expulsion; and
- the giving of notice of the discipline committee's decision and order.

As justification for requesting Mr. Baker's expulsion from the profession, Mr. Farley stated that Mr. Baker's actions should be characterized as money laundering over a lengthy period of time, involving numerous transactions and a significant sum of money. He submitted that the actions were a serious indication of moral turpitude. Mr. Farley said, however, that he believed the fact that Baker and Berenbaum were brothers-in-law was a mitigating factor. Conversely, Mr. Farley said that he also felt that the aggravating circumstances, such as the number of transactions, the quantum of the funds received and dispersed by Baker, and the length of time that elapsed, should be taken into account.

Mr. Fournie did not disagree with the need for a letter of reprimand. With regard to the other components of the requested sanctions order, however, he indicated that he felt that no fine, suspension or publicity was warranted, although he conceded that limited publicity might be appropriate.

Mr. Fournie submitted that Mr. Baker:

- was not the instigator of the scheme to use his bank accounts, but was used by Mr. Berenbaum in his (Berenbaum's) misappropriation of a larger amount of funds;
- was not motivated by greed but by familial feeling;
- was not a chartered accountant who misused his professional designation, but a person who exercised poor judgment;

- did not try to cover up the flow of funds into and out of his bank accounts, and has actively assisted Doane Raymond and the police in their investigations of Mr. Berenbaum's activities;
- was distracted by the serious personal events happening in his life during the period in question; and
- has not, in the 21 years that he has practised as a chartered accountant, previously appeared before the discipline committee, and will not likely do so again in his career.

### **Conclusion**

The panel decided that a letter of reprimand to Mr. Baker would stress to him the unacceptability of his actions and serve to underline the fact that a chartered accountant has a duty to uphold the good reputation of the profession, regardless of circumstances. The panel identified the letter's purpose as specific deterrence, and ordered that such a letter be prepared by the chair of the panel and sent to Mr. Baker.

The panel rejected the characterization of the actions as money laundering since they did not appear to match the panel's general understanding of this activity. More specifically, based on the evidence submitted, it was logical to conclude that:

- Mr. Baker was not aware of the illegal activities of this brother-in-law and others; and
- Mr. Baker received no recompense for the favour that he did for his brother-in-law.

For this reason, the panel did not consider that Mr. Baker's actions warranted expulsion. However, the panel did conclude that Mr. Baker's actions were the result of lack of due care, and that a suspension of his rights and privileges as a member of the chartered accountancy profession, combined with a fine, would serve to act as both specific and general deterrents. Dishonourable conduct, such as that of Mr. Baker in allowing his bank accounts to be used to move money around, regardless of the rationale given for it, places the good reputation of the profession in jeopardy.

In determining the length of the suspension and the amount of the fine, the panel took the rationale given and the uniqueness of this case into consideration. The panel therefore ordered that Mr. Baker be suspended for a period of six months and pay a fine of \$3,000.

The principle of general deterrence is served by providing notification, including publication, of the panel's decision and order. The panel acknowledges that Mr. Baker may have been influenced by the fact that Berenbaum was family, and that the personal events taking place in Mr. Baker's life at the time may have taken precedence over any other considerations. Nevertheless, the panel considers itself obligated to inform other chartered accountants and the public that there are consequences to actions such as those of Mr. Baker. The panel therefore ordered the usual provision of notice of the discipline committee's decision and order, disclosing Mr. Baker's name, including publication in *CheckMark*.

DATED AT TORONTO THIS                      DAY OF SEPTEMBER, 1997  
BY ORDER OF THE DISCIPLINE COMMITTEE



F.A. DROZD, FCA - CHAIR  
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

P.B.A. CLARKSON, CA  
B.L. HAYES, CA  
B.A. TANNENBAUM, CA  
W.L. WOOD, CA  
B.W. BOWDEN (Public representative)