

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **RONALD NORMAN PERRYMAN, CA**, a member of the Institute, under **Rules 201.1, 202 and 205** of the Rules of Professional Conduct, as amended.

TO: Mr. Ronald N. Perryman, CA
227 Indian Road Crescent
Toronto, ON M6P 2G6

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order Made March 29, 2007)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on March 29, 2007, to hear charges of professional misconduct brought against Ronald Norman Perryman, CA, a member of the Institute.

2. Mr. Brian Bellmore appeared on behalf of the Professional Conduct Committee. He was accompanied by Mr. Ken Froese, CA, and Ms. Grace Lau, CA, the investigators appointed by the Professional Conduct Committee in this matter. Mr. Perryman attended and was represented by his counsel, Mr. James Lane.

3. The decision of the panel was made known at the conclusion of the hearing and the written Decision and Order sent to the parties on April 11, 2007. These reasons, given pursuant to Bylaw 574, include the charges, the decision, the order, and the reasons of the panel for its decision and order.

CHARGES

4. The following charges, as amended at the outset of the hearing on consent of the parties, were laid against Mr. Perryman by the Professional Conduct Committee on November 14, 2006:

1. THAT the said Ronald Perryman, in or about the period June 30, 2002 through June 30, 2003, while employed as Vice-President of Finance of "ACS Holdings Inc.", associated himself with reports, 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) He prepared compliance certificates dated August 27, 2002, September 28, 2002, March 3, 2003 and May 30, 2003 to lenders that contained false or misleading information with respect to intercompany debt knowing that they were to be signed by management and sent to lenders.

- b) He signed a representation letter to the auditors dated February 19, 2003 that stated that "ACS Income Trust" had complied with all of its loan covenants in relation to its 2002 financial statements when the loan covenants had been breached in a material respect.
2. THAT the said Ronald Perryman, in or about the period June 30, 2002 through June 30, 2003, while employed as Vice-President of Finance of "ACS Holdings Inc.", failed to 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:
- a) He participated in a scheme whereby at quarter end cheques from an unrestricted subsidiary "Supply Chain" were issued to "ACS Holdings Inc." knowing that "Supply Chain" had insufficient funds to cover the cheques, in order to reduce the intercompany debt to meet bank covenants agreed to by "ACS Holdings Inc." knowing that at the beginning of the next month cheques in like amount would be issued to "Supply Chain" from "ACS Holdings Inc."
3. THAT the said Ronald Perryman, in or about the period January 1, 2001 through June 30, 2003, while employed as Vice-President of Finance of "ACS Holdings Inc.", associated himself with reports, 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) He acquiesced in the release of consolidated financial statements of "ACS Income Trust" **"FOR THE YEAR ENDED DECEMBER 31, 2002"** without ensuring the disclosure of a breach in the loan covenants between "ACS Holdings Inc." and related entities and its lenders, which would cause the consolidated financial statements of "ACS Income Trust" to be materially misleading.
4. THAT the said Ronald Perryman, in or about the period January 1, 2001 through June 30, 2003, while employed as Vice-President of Finance of "ACS Holdings Inc.", failed to perform his professional services with due care contrary to Rule 202 of the rules of professional conduct in that:
- a) He acquiesced in the release of consolidated financial statements of "ACS Income Trust" **"FOR THE YEAR ENDED DECEMBER 31, 2002"** without ensuring the disclosure of a breach in the loan covenants between "ACS Income Trust" and related entities and its lenders, which would cause the consolidated financial statements of "ACS Income Trust" to be materially misleading;
 - b) He acquiesced in the release of consolidated financial statements of "ACS Income Trust" **"FOR THE YEAR ENDED DECEMBER 31, 2002"** without ensuring that the capitalization of certain expenditures of "ACS Holdings Inc." and related entities was appropriate in the circumstances;
 - c) He acquiesced in the release of consolidated financial statements of "ACS Income Trust" **"FOR THE YEAR ENDED DECEMBER 31, 2002"** without

ensuring that refund payments related to the acquisition of ~~“Supply Chain”~~ **“TCT”** assets were properly accounted for as reductions in capital assets and that the purchase price of ~~“Supply Chain”~~ **“TCT”** was properly disclosed in the notes to the financial statements.

PRELIMINARY MATTER

5. Prior to the commencement of the hearing, a question arose as to whether a member of the panel had a perceived conflict of interest or reasonable apprehension of bias arising from a prior professional relationship with the counsel for the Professional Conduct Committee. The matter was disclosed to both parties, who each indicated they had no objection to the member sitting on the panel.

PLEA

6. Mr. Perryman, through his counsel, declined to enter a plea to the charges before the panel. A plea of not guilty was entered on his behalf by the Chair of the panel.

EVIDENCE

7. Much of the evidence in this matter was called by way of an Agreed Statement of Facts and accompanying Document Brief (three volumes) (Exhibits 3 and 4). This was supplemented by *viva voce* evidence from Mr. Froese, the investigator, and Mr. Perryman.

8. From the evidence, Mr. Perryman commenced his employment with Atlas Cold Storage Holdings Inc. (“Atlas Holdings”) as Vice-President of Finance in 2000. At all relevant times, he reported directly to Andrew Peters, CMA, Executive Vice-President and Chief Financial Officer. Mr. Perryman was responsible for the preparation of the consolidated financial statements for Atlas Holdings, and was the principal contact with the auditors for the 2001 and 2002 year end audits.

9. As the result of an anonymous letter sent to the Ontario Securities Commission, the audit committee of Atlas Holdings authorized a forensic audit, which was conducted in mid 2003. As a result of that audit, Atlas Holdings restated its financial statements for 2001 and 2002. Atlas Holdings’ stated net income for 2002 of \$24 million was restated to a loss of \$16 million, and its net income for 2001 of \$13 million to an income of \$5.6 million.

10. The senior management at Atlas Holdings, including Mr. Perryman, was terminated, and the Institute commenced an investigation of both the management and the auditors of the company. As a result of that investigation, charges of professional misconduct were laid against Mr. Perryman.

11. The facts are set out in the Agreed Statement of Facts, and are only summarized briefly in these reasons. Atlas Holdings had an unrestricted subsidiary, Supply Chain. Under the terms of a loan agreement with a lender syndicate, Atlas Holdings was prohibited from lending in excess of \$500,000 to any unrestricted subsidiary.

12. Supply Chain experienced financial difficulties and, during Q2, Q3, Q4 of 2002 and Q1 of 2003, Atlas Holdings advanced funds to Supply Chain in excess of the \$500,000 limit. Mr. Perryman prepared compliance certificates to the lender syndicate for each of those quarters stating that Atlas Holdings had complied with its covenants when it had not. Mr. Perryman did not sign or deliver the compliance certificates, but he knew they were required pursuant to the obligations under the loan agreement.

13. Mr. Perryman participated in a scheme whereby Supply Chain wrote a cheque to Atlas Holdings at the end of each quarter to bring its indebtedness to Atlas Holdings below \$500,000, and Atlas Holdings immediately provided Supply Chain with a cheque in a like amount. Supply Chain, at the time it provided the cheques, did not have sufficient funds for those cheques to be honoured, and the purpose of the scheme was to ensure that Supply Chain's indebtedness to Atlas Holdings was less than \$500,000 as of the end of each quarter.

14. For the end of Q4 2002, Mr. Perryman arranged to record a sale and leaseback of tractors and trailers from Supply Chain to Atlas Holdings of \$3 million. Mr. Perryman instructed in-house counsel to formalize the transaction; however, no formal agreements or vehicle transfers were executed and no lease payments ever received.

15. Mr. Perryman signed the management representation letters to the auditors for the 2001 and 2002 fiscal years, without disclosing to the auditors the breach of the loan covenant by Supply Chain, or the crossing of the cheques with that subsidiary. He was also responsible for drafting the financial statements and the disclosure notes for those years, and failed to include those activities in those statements, or to object to the release of the statements without that disclosure.

16. For the fiscal years 2001 and 2002, Mr. Perryman was instructed by the President and CEO of Atlas Holdings to look for further opportunities to capitalize expenses. Mr. Perryman did so, resulting in a significantly improved level of quarterly and yearly earnings. Mr. Perryman only capitalized expenditures he believed were appropriate, however, approximately \$3.6 million of the capitalizations were identified as inappropriate for the 2002 year.

17. In 2002, Supply Chain purchased assets from the receiver for TCT. It rejected some of the assets, and received a refund from the receivers. Part of the refund was used to off-set expenses in a restructuring account, part was applied as a refund against expenses and the rest recognized as income. These allocations were inappropriate. Mr. Perryman was aware of the allocations and acquiesced in the release of the 2002 financial statements without ensuring the allocations were corrected.

SUBMISSIONS

18. On behalf of the Professional Conduct Committee, Mr. Bellmore submitted that all the charges had been proven. While Mr. Perryman did not instigate much of the deception, he was aware of it and acquiesced in it. His actions facilitated the inappropriate accounting, and his explanations were not capable of belief.

19. In particular, Mr. Bellmore pointed to the booking of transactions which the company intended to get to, rather than ones that had occurred, and to the cheque-crossing scheme, which would have been unnecessary had the bank been truly "on side" as asserted.

20. Mr. Lane, on behalf of Mr. Perryman, submitted that Mr. Perryman acknowledges he has made mistakes but that, as Mr. Perryman had not entered a plea, he would leave it in the hands of the panel to decide whether the evidence had made out the charges.

DECISION

21. After considering the evidence and submissions, and deliberating, the panel was satisfied that the charges had been made out on clear, cogent and compelling evidence, and made the following decision:

THAT, having seen, heard and considered the evidence, including the agreed statement of facts, filed, and charge Nos. 3 and 4 having been amended at the hearing, the Discipline Committee finds Ronald N. Perryman not guilty of charge No. 4(a) and guilty of charge Nos. 1, 2, 3, 4(b) and 4(c).

REASONS FOR THE DECISION

22. The panel found this a difficult case, particularly with respect to particular 3(a). Mr. Perryman was not acting alone, but as part of a group. He reported and was subordinate to others in that group, others who instructed him to take the courses of action he did. The consolidated statements eliminated the effect of much of the inappropriate accounting.

23. However, Mr. Perryman was a professional, and knew what he was being asked to do. He withheld information from the auditors. He acted as he was instructed, rather than as he ought. He has admitted culpability in the Agreed Statement of Facts.

24. On this basis we have found Mr. Perryman guilty of the charges. We have found him not guilty of particular 4(a) as it is duplicative of particular 3(a), and the member should not be found guilty twice for the same conduct in the same manner.

SANCTION

25. The Professional Conduct Committee called Mr. Froese, the investigator, to give evidence on the matter of sanctions, who testified as to the involvement of other persons in the matter. Mr. Perryman testified on his own behalf as to his history and the effect this matter has had on him.

26. The Professional Conduct Committee has sought an order which includes: a reprimand; a fine in the range of \$10,000 to \$15,000; a suspension of 6 to 12 months; and full publicity. It also sought costs of \$40,000 or more, and filed a Costs Outline (Exhibit 8) showing the costs to be \$71,316.44.

27. Mr. Bellmore submitted that Mr. Perryman fell into a company culture of dishonesty and improprieties, which led him to fail in his obligations. He has acted as a responsible member of the profession since the matters were uncovered. While expulsion would be appropriate for the misconduct, the circumstances of the member mitigate against that sanction, and it is not sought by the Professional Conduct Committee. However, the conduct is very serious, and the sanction must reflect the principles of specific deterrence, general deterrence and rehabilitation, in the context of that gravity.

28. Mr. Lane took issue with the extent of the evidence called by the Professional Conduct Committee, taking the position that the evidence went far beyond what had been agreed to in the submitted facts, and asked the panel to bear that in mind when assessing Mr. Perryman's intent and state of mind.

29. With respect to the sanction sought by the Professional Conduct Committee, Mr. Lane submitted that the fine and suspension should be at the low end of the range, as Mr. Perryman has already paid and will continue to pay a large personal and professional price for his actions. Professionally, he was terminated 3 ½ years ago and will never regain the professional stature he then had. Financially, charges before the Ontario Securities Commission resulted in a settlement that included a payment of \$20,000 and a prohibition against being an officer or director of any publicly traded company for a period of ten years.

30. Mr. Lane further noted Mr. Perryman's cooperation, the fact he did not personally benefit from the misconduct, and the personal and emotional toll the matter has taken on him. He submitted that there was every reason to believe Mr. Perryman would be rehabilitated into the profession, and that too harsh a sanction would impede that rehabilitation.

31. With respect to the issue of costs, Mr. Lane submitted that the cost of the investigation was excessive, and that the hearing costs were not in line with the length of the hearing itself, and submitted, based on precedent, that the costs awarded should be in the range of \$10,000 to \$20,000.

ORDER

32. After considering the submissions, the circumstances of the misconduct and the circumstances of the member, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Perryman be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Perryman be and he is hereby fined the sum of \$15,000 to be remitted to the Institute as follows:
 - (a) \$5,000 minimum within each six (6) month period from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Perryman be and he is hereby charged costs fixed at \$20,000 to be remitted to the Institute as follows:
 - (a) \$5,000 minimum within each six (6) month period, the first period to commence eighteen (18) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Perryman be suspended from the rights and privileges of membership in the Institute for a period of one (1) year from the date this Decision and Order becomes final under the bylaws.
5. THAT Mr. Perryman 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. Perryman.

6. THAT notice of this Decision and Order, disclosing Mr. Perryman's 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 all members of the Institute;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to all provincial institutes/Ordre, and shall be made available to the public.
7. THAT in the event Mr. Perryman fails to comply with any of 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 three (3) months from the date of his suspension, and in the event he does not comply within the three 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 a newspaper distributed in the geographic area of Mr. Perryman's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Perryman and shall be in addition to any other costs ordered by the committee.

REASONS FOR THE ORDER

33. The misconduct in this matter is extremely serious and could well have resulted in an expulsion. While the panel has been persuaded, by reason of the member's circumstances, not to impose such a sanction, general deterrence must remain of paramount importance, and a message must be sent to all members of the profession, including those in industry, that there is no excuse for failing to uphold the requirements of the profession, no matter how pressing the situation.

Reprimand

34. A reprimand is necessary to express to Mr. Perryman the extent and depth of the misconduct, and its consequences for him, the profession and the public.

Fine and Suspension

35. While the panel wishes to encourage Mr. Perryman's rehabilitation, and believes he can once again be an asset to the profession, it cannot lose sight of the nature of the misconduct, or the fact that general deterrence must be stressed. Both the fine and suspension must be sufficiently severe to make the profession aware of the gravity of the misconduct, and its results. Bearing in mind Mr. Perryman's financial circumstances and the consequences he has already suffered, and weighing that against the nature of the misconduct and the fact that it could have resulted in expulsion, the panel has found that a fine of \$15,000 and a suspension of one year is mandated.

Notice

36. In all but the most rare and unusual of circumstances will the member's name and conduct be made public. Indeed, Mr. Perryman does not argue that such publication should not be made. However, the Professional Conduct Committee urges the panel to order newspaper notices, a sanction usually reserved for cases of expulsion, on the basis that the public has a heightened interest in this matter and so that step is appropriate. With all due respect, we cannot agree that such further publicity is required in this case. There has been significant publicity already, to which the newspaper notice is unlikely to add. We also note that there are a number of civil actions anticipated, which will generate their own publicity, and believe the further publicity would be contrary to the principle of rehabilitation.

Costs

37. The costs sought by the Professional Conduct Committee in this matter are substantial. While Mr. Lane, on behalf of Mr. Perryman, does not contest that a portion of those costs should be borne by Mr. Perryman, as opposed to the membership as a whole, he has urged us to assign a smaller proportion to Mr. Perryman, on the basis that much of the investigation was unnecessary.

38. This was a complex matter, and required the investigator to examine the conduct of a number of persons, only some of whom were chartered accountants. That charges were laid against only Mr. Perryman does not mean that the areas of the investigation focused on others were unnecessary. It is neither possible nor desirable to parse the investigation in that manner. The investigator was tasked with determining how it was that the financial statements came to be prepared as they were, and who was responsible for the misstatements and other problems uncovered. He did so. It is clear that Mr. Perryman did not act alone, nor, for many matters, was he the ultimate decision-maker. However, he is a member of this Institute, and owes a professional responsibility to his profession which transcends company loyalty. The investigation which was conducted was necessitated by his misconduct.

39. The panel is also cognizant of the financial burden of the other sanctions imposed, both in this process and others, and of Mr. Perryman's ability to pay the costs sought. There is no mathematical formula used in determining costs; rather, taking all the factors into account, we have determined that \$20,000 is an appropriate amount.

DATED AT TORONTO THIS 6th DAY OF NOVEMBER, 2007.
BY ORDER OF THE DISCIPLINE COMMITTEE

H.B. BERNSTEIN, CA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.J. ADAMKOWSKI, CA
A.D. NICHOLS, FCA
S.B. WALKER (PUBLIC REPRESENTATIVE)