

Shiraz Mustapha: Summary, as Published in *CheckMark*

Shiraz Mustapha, of North York, was found guilty of one charge under Rule 104 of failing to promptly reply in writing to letters from the Institute, and one charge under Rule 203.2 of failing to cooperate in a practice inspection. Mr. Mustapha failed to respond to correspondence from the practice inspection area, and failed to provide working paper files requested by practice inspection. He also failed to attend his discipline hearing. Mr. Mustapha was fined \$3,000, charged costs of \$4,000, and ordered to submit the requested working paper files to practice inspection within 10 days of the discipline committee's decision and order becoming final. As a result of his failure to provide the requested documentation to practice inspection as ordered, Mr. Mustapha was expelled from membership in the Institute.

CHARGE(S) LAID re Shiraz Mustapha

The Professional Conduct Committee hereby makes the following charges against Shiraz Mustapha, a member of the Institute:

1. THAT the said Shiraz Mustapha, in or about the period October 16, 2002 to March 10, 2003 failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.
2. THAT the said Shiraz Mustapha, in or about the period February 4, 2003 to March 10, 2003 failed to promptly reply in writing to letters from the Institute dated January 15, 2003 and February 6, 2003, in which written replies were specifically required, contrary to Rule 104 of the rules of professional conduct.

Dated at Toronto, Ontario this 11th day of March 2003.

R. A. JOHNSTON, FCA - DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Shiraz Mustapha

DECISION AND ORDER IN THE MATTER OF: Charges against **SHIRAZ MUSTAPHA, CA**, a member of the Institute, under **Rules 104 and 203.2** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE SEPTEMBER 9, 2003

DECISION

THAT, having seen and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Mustapha pursuant to Bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to each of the charges, the Discipline Committee finds Shiraz Mustapha guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Mustapha be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Mustapha be and he is hereby fined the sum of \$3,000, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Mustapha be and he is hereby charged costs fixed at \$4,000, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Mustapha submit to the director of practice inspection the working paper files requested in the letter to him from practice inspection dated September 18, 2002, within ten (10) days from the date this Decision and Order becomes final under the bylaws.
5. THAT notice of this Decision and Order, disclosing Mr. Mustapha'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 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. Mustapha fails to comply with any of the requirements of this Order, 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 Toronto Star*.

DATED AT TORONTO THIS 12TH DAY OF SEPTEMBER, 2003
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Shiraz Mustapha

REASONS FOR DECISION AND ORDER IN THE MATTER OF: Charges against **SHIRAZ MUSTAPHA, CA**, a member of the Institute, under **Rules 104 and 203.2** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE SEPTEMBER 9, 2003

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario convened on September 9, 2003 to hear charges of professional misconduct brought against Mr. Shiraz Mustapha, a member of the Institute.
2. The panel's decision and order was made known at the hearing on September 9, 2003. The formal decision and order was signed by the discipline committee secretary and sent to the parties on September 12, 2003. These are the reasons of the discipline committee, given in writing pursuant to Bylaw 574, and include the charges and the decision and order.

PROCEEDING IN THE ABSENCE OF THE MEMBER

3. Mr. Mustapha was not present at the hearing. As a result, the first issue to be dealt with was whether or not the hearing could proceed in his absence pursuant to Bylaw 560.
4. Following a search, the committee secretary advised the panel that Mr. Mustapha was not present in any of the public areas adjacent to the hearing room.
5. Ms. Glendenning informed the panel that by letter dated July 23, 2003, Mr. Mustapha was sent the documents that the professional conduct committee would be relying upon for the hearing. She further stated that she spoke with Mr. Mustapha on August 5, 2003, at which time she discussed the affidavits which were included in the aforementioned July 23 letter. At that time, Mr. Mustapha indicated that he would get back to her with respect to whether or not he wanted to cross-examine Mr. Dickson and/or Ms. Maund on their affidavits. Ms. Glendenning advised that she did not hear further from Mr. Mustapha, even though she left several voicemail messages for him.
6. The panel reviewed the transcript of the assignment hearing of May 6, 2003, at which Mr. Mustapha attended and asked for more time to prepare and deliver to practice inspection the files that had been requested. It was decided to put the matter over to the next ensuing assignment hearing on June 10, 2003, to give Mr. Mustapha time to deliver the files. He did not send in the files, did not attend the June 10 assignment hearing, and did not communicate with Ms. Glendenning about suitable hearing dates. Today's hearing date was set on June 10 in Mr. Mustapha's absence, and, as deposed in the affidavit of service of D. Williamson, Mr. Mustapha was served with notice of today's hearing. The panel concluded that Mr. Mustapha had been given proper notice, and decided that the hearing would proceed in his absence.

DECISION ON THE CHARGES

7. The charges laid by the professional conduct committee against the member dated March 11, 2003, read as follows:

1. THAT the said Shiraz Mustapha, in or about the period October 16, 2002 to March 10, 2003 failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.
2. THAT the said Shiraz Mustapha, in or about the period February 4, 2003 to March 10, 2003 failed to promptly reply in writing to letters from the Institute dated January 15, 2003 and February 6, 2003, in which written replies were specifically required, contrary to Rule 104 of the rules of professional conduct.

8. On behalf of the member, the chair directed that a plea of not guilty be entered to the charges.

9. Counsel for the professional conduct committee filed the affidavit of Mr. Grant Dickson, FCA, director of practice inspection (Exhibit 7), and the affidavit of Ms. Joanna Maund, FCA, director of standards enforcement (Exhibit 8).

10. The affidavit of Mr. Dickson makes it clear that Mr. Mustapha did not cooperate in the attempted inspection of his practice, as alleged in charge No. 1.

11. Mr. Mustapha wrote to Mr. Dickson and Mr. Stephenson on June 7, 2003. The letters were marked as Exhibits 1 and 2, respectively, at the assignment hearing of June 10, 2003. Mr. Mustapha said in his letter to Mr. Dickson that he had scheduled some vacation at the end of June to attend to practice-related activities and would be in touch with him at that time. Ms. Glendinning advised the panel that Mr. Mustapha did not contact Mr. Dickson and did not submit the files requested.

12. The affidavit of Ms. Maund makes it clear that Mr. Mustapha did not respond as requested in the two letters referred to in charge No. 2.

13. Upon deliberation, the panel concluded that Mr. Mustapha was guilty of both charges. When the hearing resumed, the chair stated the panel's decision for the record as follows:

DECISION

THAT, having seen and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Mustapha pursuant to Bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to each of the charges, the Discipline Committee finds Shiraz Mustapha guilty of charges Nos. 1 and 2.

ORDER AS TO SANCTION

14. Ms. Glendinning advised that she was instructed by the professional conduct committee to seek an order including the following terms: a reprimand, a fine of \$3,000, costs of \$4,000, a requirement that Mr. Mustapha respond to the practice inspection request for information within a specified time or be expelled, and the usual order as to notice disclosing Mr. Mustapha's name.

15. After deliberation, the hearing reconvened and the chair summarized the terms of the order for the record. The formal order, which was sent to the parties on September 12, 2003, reads as follows:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Mustapha be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Mustapha be and he is hereby fined the sum of \$3,000, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Mustapha be and he is hereby charged costs fixed at \$4,000, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Mustapha submit to the director of practice inspection the working paper files requested in the letter to him from practice inspection dated September 18, 2002, within ten (10) days from the date this Decision and Order becomes final under the bylaws.
5. THAT notice of this Decision and Order, disclosing Mr. Mustapha'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 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. Mustapha fails to comply with any of the requirements of this Order, 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 Toronto Star*.

Reprimand

16. The panel was of the view that a reprimand was necessary as a specific deterrent to the member, to stress to him the importance of maintaining the standards of the profession, and the unacceptability of his conduct as a chartered accountant.

Fine

17. The discipline committee concurred with counsel for the professional conduct committee that a fine serves both as a general and a specific deterrent.

18. The panel thought that Mr. Mustapha's continued failure to cooperate was an aggravating factor, especially in light of the information contained in the transcript of the May 6, 2003 assignment hearing. Specifically, Mr. Mustapha acknowledged his responsibility to cooperate with practice inspection and undertook to provide the requested files, stating that minimal work would be required to do so, but then did nothing to provide the information. Furthermore, as we were satisfied that he had received proper notice, it appears that Mr. Mustapha deliberately chose not to attend his discipline hearing.

19. Though no evidence was available concerning the member's ability to pay a fine and costs, there was evidence indicating that Mr. Mustapha was gainfully employed by the federal government. As a result, the panel ordered a fine of \$3,000 as requested by Ms. Glendinning, payable within 12 months from the date of the order becoming final. The amount of the fine was at the lower end of the range of fines which the panel considered appropriate for the misconduct in this case.

Costs

20. The costs requested consisted of counsel fees of \$1,500 each for counsel to the discipline committee and counsel to the professional conduct committee, plus costs of \$200 for the court reporter, all in respect of a half-day hearing. In addition, costs were requested for the preparation of the professional conduct committee's case in the sum of \$800.

21. The policy with respect to costs approved by the Council of the Institute was filed by Ms. Glendinning. The policy makes it clear that a discipline panel is to exercise its discretion with respect to costs in each particular case, and provides some general guidance with respect to the quantum of costs in the event a panel decides to award costs.

22. This panel was of the view that this hearing could have been easily avoided by Mr. Mustapha's simply providing the files which he openly acknowledged would not be a difficult task. We concluded, as other panels have in the past, that as the member caused the expense of the proceedings the member should bare some of the costs.

23. The costs requested by the professional conduct committee will not fully indemnify the Institute for the costs incurred. The costs requested related only to the minimum steps necessary to deal with Mr. Mustapha's misconduct, and accordingly the panel concluded that it would be appropriate to levy the costs requested by the professional conduct committee. Accordingly, Mr. Mustapha was ordered to pay \$4,000 in costs, and given 12 months within which to do so.

Delivery Of Documentation

24. As a final chance, the panel ordered that Mr. Mustapha submit the working papers specified in the letter from the director of practice inspection dated September 18, 2002, within 10 days of the order becoming final.

Failure To Comply With Order

25. The panel's order would be meaningless without a consequence for failure to comply. Accordingly, the order provides for Mr. Mustapha's expulsion from the Institute for failure to comply with any one of its terms.

Notice

26. The panel ordered notice of its decision and order in the manner prescribed as a specific and general deterrent. The panel considered such notification to also be necessary to demonstrate to the public that the profession is regulating itself, so as to retain the public's confidence in the profession's ability to self-govern.

27. In the event of Mr. Mustapha's expulsion, the panel ordered, in addition to the usual forms of notice, that notice of expulsion be published in *The Toronto Star*.

DATED AT TORONTO THIS 25TH DAY OF NOVEMBER, 2003
BY ORDER OF THE DISCIPLINE COMMITTEE

B.A. TANNENBAUM, FCA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

P.M. CLEVELAND, FCA
R.I. COWAN, CA
D.M. FORTNUM, FCA
B.L. HAYES, CA
D.J. ANDERSON (Public representative)