

Simon Margel: Summary, as Published in *CheckMark*

Simon Margel, of Toronto, was found guilty under Rules 201.1 and 205, of failing to maintain the good reputation of the profession and its ability to serve the public interest, and of signing or associating himself with financial statements that he knew were false. Mr. Margel was the accountant for a retirement complex in which he had a minor interest. In order to overcome a temporary mortgage financing problem in the start-up phase, a scheme was developed whereby the lender was told that the complex had more rent-paying residents than it actually had. As a participant in the scheme, Mr. Margel associated himself with financial statements which were false. There was no long-term financing problem, and no losses were suffered. Mr. Margel reported his own misconduct. In the circumstances, he was fined \$5,000 and suspended from membership for six months.

CHARGE(S) LAID re Simon Margel

The Professional Conduct Committee hereby makes the following charges against Simon Margel, a fellow of the Institute:

1. THAT, the said Simon Margel, on or about the 30th day of September 1993, while a principal of B.R.L.C. Developments Inc. and the accountant for Briargate Retirement Living Centre Limited Partnership signed or associated himself with a Notice of Reader attached to the financial statements of Briargate Retirement Living Centre Limited Partnership as at June 30, 1993, knowing that the financial statements contained figures with respect to revenue that were false, contrary to Rule 205 of the rules of professional conduct.
2. THAT, the said Simon Margel, in or about the period March 1993 through to December 1993, while a principal of B.R.L.C. Developments Inc. and while acting as the accountant for Briargate Retirement Living Centre Limited Partnership, 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) in an effort to secure mortgage financing for Briargate Retirement Living Centre Limited Partnership he, along with his partner in his chartered accounting firm, Albert A. Title, arranged to meet First National Financial Corporation's required debt service coverage of 1.25, by artificially increasing the revenue of Briargate Retirement Living Centre Limited Partnership through recruiting persons to hold themselves out as residents and pay rent when those persons had no intention of taking up residence and paid the rent only on agreement that they would be fully reimbursed for all rental payments made.

Dated at Belleville this 3rd day of August, 1995.

JENNIFER L. FISHER, CA – CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Simon Margel

DECISION AND ORDER IN THE MATTER OF: Charges against SIMON MARGEL, FCA, a member of the Institute, under Rules 201.1 and 205 of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE NOVEMBER 1, 1995

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 and 2, THE DISCIPLINE COMMITTEE FINDS Simon Margel guilty of the charges.

ORDER

IT IS ORDERED in respect of charges Nos. 1 and 2:

1. THAT Mr. Margel be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Margel be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within ninety (90) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Margel 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. Margel's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
5. THAT Mr. Margel surrender his certificate of membership in the Institute to the secretary of the discipline committee within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held by the secretary during the period of suspension and thereafter returned to Mr. Margel.
6. THAT in the event Mr. Margel fails to pay the fine ordered in paragraph 2 hereof by the time the suspension ordered in paragraph 3 hereof concludes, 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 20TH DAY OF NOVEMBER, 1995
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Simon Margel

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against SIMON MARGEL, FCA, a member of the Institute, under Rules 201.1 and 205 of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE NOVEMBER 1, 1995

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were held on November 1, 1995. Mr. Paul Farley attended on behalf of the professional conduct committee, and Mr. Margel attended with his counsel, Mr. Gavin MacKenzie.

Mr. Margel was charged under Rules 201.1 and 205 of the rules of professional conduct, and he pleaded guilty to the charges. The chair of the discipline panel verified that Mr. Margel understood that he could, solely on the basis of his plea of guilty to the charges, be found guilty of them by the discipline committee.

An agreed statement of facts and document brief were filed by counsel for the professional conduct committee. The evidence indicated the following:

- During the period March through December 1993, Mr. Margel actively participated in a fraudulent scheme to artificially increase the occupancy list of a retirement residence owned by the Briargate Retirement Living Centre Limited Partnership (BRLC), in which he was a partner, so that the rental income associated with the additional tenants would enable BRLC to meet the debt service coverage requirement of its mortgage.
- The "payments" from the people who were not, in fact, tenants of the residence were recorded as revenue, thereby showing the debt service requirement as being met.
- On or about September 30, 1993, Mr. Margel signed for the accounting firm in which he was then a partner, a Notice to Reader communication attached to interim unaudited financial statements for BRLC for the period ended June 30, 1993. These financial statements included the inflated revenue figures based on the fraudulent occupancy list. The Notice to Reader was provided only to the limited partners, and not to the mortgagee.

After reviewing the evidence, the discipline committee found Simon Margel guilty of the charges. Evidence was then called which was relevant to the issue of sanction. The committee heard from Mr. Margel, and from witnesses who testified to his character. In addition, Mr. Margel's counsel filed character reference letters.

During submissions on sanction, reference was made to Mr. Margel's associate in these circumstances, Mr. Albert Title, who was found guilty of a charge of professional misconduct under Rule 201.1 by a panel of the discipline committee on August 29, 1995. Both counsel agreed that the sanction imposed upon Mr. Title was a very relevant precedent to consider when determining the appropriate sanction for Mr. Margel. The committee also agrees that there should be consistency in sanctioning. It notes, however, that while these two cases are similar,

they are not the same. Whereas Mr. Title was found guilty of one charge under Rule 201.1, Mr. Margel breached Rule 205 as well as Rule 201.1, as he signed financial information that he knew was false. His conduct was more objectionable than the conduct of Mr. Title.

Upon deliberation, the committee made the following order.

ORDER

IT IS ORDERED in respect of charges Nos. 1 and 2:

1. THAT Mr. Margel be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Margel be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within ninety (90) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Margel 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. Margel's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*,
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
5. THAT Mr. Margel surrender his certificate of membership in the Institute to the secretary of the discipline committee within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held by the secretary during the period of suspension and thereafter returned to Mr. Margel.
6. THAT in the event Mr. Margel fails to pay the fine ordered in paragraph 2 hereof by the time his suspension ordered in paragraph 3 hereof concludes, 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.

The principles of specific deterrence and rehabilitation are important in determining appropriate sanction. In this case, however, the committee was satisfied that Mr. Margel did not need to be specifically deterred from similar conduct in the future, and that he did not require rehabilitation. In determining the appropriate sanction, the principle of primary importance to the committee was that of general deterrence.

Reprimand

In the opinion of the committee, a reprimand in writing from the chair of the hearing stresses the unacceptability of Mr. Margel's conduct as a chartered accountant, and serves as a reminder to Mr. Margel that he has failed to live up to the standards of the profession.

Fine and Suspension

Failure to uphold the good reputation of the profession, and signing or associating oneself with false information, are serious breaches of the rules of professional conduct that relate to

"honest", which is one of the hallmarks of the profession. Such misconduct calls for a sanction that is significant enough to act as a general deterrent. The committee did note, however, that Mr. Margel voluntarily reported his breach of the profession's ethical standards, entered a guilty plea to the charges laid against him, and took steps necessary to rectify the situation. In addition, he has had a long and distinguished career in the chartered accountancy profession. Weighing these mitigating factors against the fact that this was a case of moral turpitude, and that Mr. Margel benefited from his actions, though no one apparently suffered any financial loss, the committee ordered that Mr. Margel pay a fine of \$5,000 within ninety days from the date of the decision and order becoming final under the bylaws.

Along with a fine, a suspension is considered by the committee to be a way of sending a message that breaking the rules of professional conduct has significant repercussions. Accordingly, the committee ordered that Mr. Margel be suspended from the rights and privileges of membership in the Institute for six months.

The committee considered removing Mr. Margel's Fellowship designation, as a way of saying to him and to others that his conduct was not consistent with the standards associated with members who have been so honoured. It was concluded, however, that, in view of the other sanctions imposed, no appropriate purpose would be served by removing the designation.

Notice

Publication of the decision and order including Mr. Margel's name will remind the profession that failure to follow the rules of professional conduct can be costly in terms of personal reputation.

The committee was not convinced that withholding Mr. Margel's name from publication would serve as encouragement to others to voluntarily disclose breaches of ethical and professional standards, as was suggested by the member's counsel. Nor did the committee believe that Mr. Margel's case was one involving rare and unusual circumstances that would warrant withholding his name from publication. Accordingly, the committee ordered notice of its decision and order, including disclosure of Mr. Margel's name.

Surrender of Certificate

Mr. Margel was ordered to surrender his certificate of membership in the Institute to the discipline committee secretary, who will hold it until the period of suspension is over, and then return it to Mr. Margel.

DATED AT TORONTO, THIS 8TH DAY OF FEBRUARY, 1996
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

F.J. DUNN, C A
P.A. GOGGINS, CA
S.A. GOODMAN, CA

W.L. WOOD, CA
B.W. BOWDEN, PhD