

## **Stanley Sheldon Neinstein: Summary, as Posted in *CheckMark***

**Stanley Sheldon Neinstein**, of Markham, was found guilty of two charges of professional misconduct under Rules 201 and 204.2, for failing to maintain the good reputation of the profession and its ability to serve the public interest, and for failing to maintain his objectivity in conducting a review engagement. He received and deposited to his firm's account a Revenue Canada refund cheque payable to a client, without the client's knowledge or consent, and applied the proceeds towards payment of various accounts outstanding from the client and from corporations in which the client had an interest. The member failed to comply with the client's subsequent demand for return of the proceeds of the cheque. In an unrelated matter, Mr. Neinstein prepared and issued a review engagement report for a condominium corporation, while a director and officer of the corporation, and while holding an interest in the developer of the corporation. His membership was suspended for three months. Appeals filed by Mr. Neinstein and by the professional conduct committee were both dismissed by the appeal committee.

Mr. Neinstein returned to MEMBERSHIP IN GOOD STANDING on September 17, 1994

## **CHARGE(S) LAID re Stanley S. Neinstein**

The Professional Conduct Committee hereby makes the following charges against Stanley S. Neinstein, CA, a member of the Institute:

1. THAT, the said Stanley Neinstein, in or about the period February 1991 through April, 1991, while a partner with the firm Neinstein & Co., Chartered Accountants, and more particularly the member responsible for the preparation and issuance of a review engagement report attached to the financial statements of York Region Condominium Corporation No. 751 as at January 31, 1991, failed to hold himself free of any influence, interest or relationship which, in respect of the engagement, impaired his professional judgement or objectivity or which, in the view of a reasonable observer would impair his professional judgement or objectivity, contrary to Rule 204.2 of the Rules of Professional conduct, in that:
  - (a) during the course of the said engagement, he was a director and officer of the condominium corporation; and
  - (b) during the course of the said engagement, he held an interest in Noble Acadia Developments Inc., the developer of York Region Condominium Corporation No. 751.
2. THAT, the said Stanley Neinstein, in or about the month of August, 1991, 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 deposited a cheque from Revenue Canada Taxation payable to his client, Frumi Tenser, in the approximate amount of \$28,004.64 to the account of Neinstein & Co. and applied the proceeds towards payment of outstanding accounts without the knowledge or consent of Frumi Tenser, contrary to Rule 201 of the Rules of Professional Conduct.
3. THAT, the said Stanley Neinstein, in or about the period September, 1991 through February, 1993, 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 received from the Government of Canada a taxation refund cheque in the amount of \$1,608.90, payable to his client, Excalibur Management Group Inc., and he failed to remit the refund cheque to his client, contrary to Rule 201 of the Rules of Professional Conduct.
4. THAT, the said Stanley Neinstein, in or about the period September, 1991 through February, 1993, 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 received from the Government of Canada a taxation refund cheque in the amount of \$33,281.59, payable to his client, Govan Azzalino Architect Inc., and he failed to remit the refund cheque to his client, contrary to Rule 201 of the Rules of Professional Conduct.

DATED at Toronto this 8<sup>th</sup> day of March 1993.

B.G. BROOKS, CA – DEPUTY CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re Stanley Sheldon Neinstein**

**DECISION AND ORDER IN THE MATTER OF:** Charges against **STANLEY SHELDON NEINSTEIN, CA**, a member of the Institute, under **Rules 201 and 204.2** of the Rules of Professional Conduct, as amended.

**DECISION AND ORDER MADE OCTOBER 27, 1993**

### **DECISION**

THAT, having seen, heard and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charge No. 1, THE DISCIPLINE COMMITTEE FINDS Stanley Sheldon Neinstein not guilty of charges Nos. 3 and 4, and guilty of charges Nos. 1 and 2.

### **ORDER**

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

1. THAT Mr. Neinstein be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Neinstein be suspended from the rights and privileges of membership in the Institute for a period of three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Neinstein'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.
4. THAT Mr. Neinstein surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held by the registrar during the period of suspension and thereafter returned to Mr. Neinstein.
5. THAT in the event Mr. Neinstein fails to surrender his certificate of membership as required pursuant to paragraph 4 hereof, he shall thereupon be expelled from the rights and privileges of membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 3 hereof.

DATED AT TORONTO, THIS 2ND DAY OF NOVEMBER, 1993  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

## **DISCIPLINE COMMITTEE re Stanley Sheldon Neinstein**

**REASONS FOR THE DECISION AND ORDER IN THE MATTER OF:** Charges against **STANLEY SHELDON NEINSTEIN, CA**, a member of the Institute, under **Rules 201 and 204.2** of the Rules of Professional Conduct, as amended.

### **WRITTEN REASONS FOR THE DECISION AND ORDER MADE OCTOBER 27, 1993**

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on July 29, and reconvened on October 27, 1993.

Mr. Paul Farley attended on behalf of the professional conduct committee, and Mr. Neinstein attended with his counsel, Mr. Theodor Kerzner.

Four charges had been laid against Mr. Neinstein by the professional conduct committee, as follows:

1. *THAT, the said Stanley Neinstein, in or about the period February 1991 through April, 1991, while a partner with the firm Neinstein & Co., Chartered Accountants, and more particularly the member responsible for the preparation and issuance of a review engagement report attached to the financial statements of York Region Condominium Corporation No. 751 as at January 31, 1991, failed to hold himself free of any influence, interest or relationship which, in respect of the engagement, impaired his professional judgement or objectivity or which, in the view of a reasonable observer would impair his professional judgement or objectivity, contrary to Rule 204.2 of the Rules of Professional conduct [sic], in that:*
  - (a) *during the course of the said engagement, he was a director and officer of the condominium corporation; and*
  - (b) *during the course of the said engagement, he held an interest in Noble Acadia Developments Inc., the developer of York Region Condominium Corporation No. 751.*
2. *THAT, the said Stanley Neinstein, in or about the month of August, 1991, 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 deposited a cheque from Revenue Canada Taxation payable to his client, Frumi Tenser, in the approximate amount of \$28,004.64 to the account of Neinstein & Co. and applied the proceeds towards payment of outstanding accounts without the knowledge or consent of Frumi Tenser, contrary to Rule 201 of the Rules of Professional Conduct.*
3. *THAT, the said Stanley Neinstein, in or about the period September, 1991 through February, 1993, 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 received from the Government of Canada a taxation refund cheque in the amount of \$1,608.90, payable to his client, Excalibur Management Group Inc., and he failed to remit the refund cheque to his client, contrary to Rule 201 of the Rules of Professional Conduct.*

4. *THAT, the said Stanley Neinstein, in or about the period September, 1991 through February, 1993, 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 received from the Government of Canada a taxation refund cheque in the amount of \$33,281.59, payable to his client, Govan Azzalino Architect Inc., and he failed to remit the refund cheque to his client, contrary to Rule 201 of the Rules of Professional Conduct.*

Mr. Neinstein pleaded guilty to charge No. 1 and not guilty to charges Nos. 2, 3 and 4. The member confirmed that he understood that upon his plea of guilty, and upon that basis alone, he could be found guilty of charge No. 1.

After hearing and considering all the evidence presented, the committee found Mr. Neinstein not guilty of charges Nos. 3 and 4, and guilty of charges Nos. 1 and 2.

Based on the evidence presented, and Mr. Neinstein's plea of guilty to charge No. 1, the committee found the member guilty of the charge. Counsel for Mr. Neinstein argued that his client was only guilty of this charge in a technical sense, as all that the *Condominium Act* at the time required as financial statements for a condominium corporation were "plain paper statements", and under the pressure of time Mr. Neinstein simply erred and attached his name to the financial statements when he should not have and was not required to. The committee discounted Mr. Kerzner's argument that Mr. Neinstein's only failure was to use his name on the financial statements. A chartered accountant is associated with a financial statement if he or she performs services in respect of the information, regardless of the presentation. Mr. Neinstein prepared the financial statements and was, therefore, associated with them and responsible for them.

As to charges Nos. 2, 3 and 4, the committee drew a distinction between them on the basis that the cheque referred to in charge No. 2 was deposited to the account of Mr. Neinstein, whereas the cheques referred to in charges Nos. 3 and 4 were forwarded to Mr. Neinstein's lawyer to be held for future disposition, pending resolution of a dispute as to fees.

Mr. Neinstein's argument in respect of the cheques referred to in charges Nos. 2, 3 and 4 was that, on the basis of legal advice obtained prior to taking any action in respect of the cheques, he was exercising a lien on the cheques from Revenue Canada for payment of outstanding fees owed to him by his clients Frumi Tenser, William Azzalino, and various related companies.

While the committee did not feel obliged to declare or define standards concerning accountant's liens, if, in fact, such liens exist, the committee felt that any lien rights that may have existed in this case could only have extended to the right to withhold the physical cheques themselves, and not to the right to convert the proceeds of the cheques to Mr. Neinstein's personal use. It is upon this basis that the committee drew a distinction between charge No. 2 and charges Nos. 3 and 4, and found Mr. Neinstein not guilty of the latter two charges.

As to the charge No. 2, the evidence indicated that:

- Frumi Tenser, also known as Frumi Azzalino, and her husband William Azzalino, and various corporations in which they had an interest, were all clients of Mr. Neinstein;
- there were fees owing to Mr. Neinstein from the Azzalinos and from some of the corporations with which they were associated, and there was a dispute ongoing as to the work done in respect of the fees billed;

- The Azzalinos had previously made it known to Mr. Neinstein that they did not assume personal responsibility for amounts owing by the companies;
- Mr. Neinstein received a Revenue Canada refund cheque payable to Frumi Tenser, endorsed the cheque to his own account, and applied the amount of the cheque to payment of his various accounts outstanding from the Azzalinos and from the companies. He then wrote a letter to the Azzalinos acknowledging receipt of the cheque in partial payment of the accounts, and demanding payment of the balance owing, failing which he would refer the files to his lawyers. He did not advise the Azzalinos that he was exercising a lien;
- Mr. Neinstein had no prior agreement with the Azzalinos that tax refund cheques received by him payable to them could be used to pay his outstanding accounts;
- upon discovering that Mr. Neinstein had cashed her cheque, Frumi Tenser demanded return of her tax refund, but the member failed to comply with this demand.

Upon these facts, the committee found Mr. Neinstein guilty of charge No. 2. Whether or not any lien rights may have existed for the member, in the committee's view his cashing of a cheque payable to someone else without permission, and then his failing to return the proceeds upon demand, was clearly conduct that fails to maintain the good reputation of the profession and its ability to serve the public interest, in violation of Rule of Professional Conduct 201.

As to the issue of Mr. Neinstein's having obtained legal advice before dealing with any of the cheques, the committee felt that a chartered accountant cannot escape responsibility for compliance with the rules of professional conduct on the basis of having followed someone else's advice, whether legal advice or that of some other expert.

After finding the member guilty of charges Nos. 1 and 2, the committee heard submissions on sanction in respect of those charges, and, upon deliberation, made the following order:

## **ORDER**

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

1. THAT Mr. Neinstein be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Neinstein be suspended from the rights and privileges of membership in the Institute for a period of three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Neinstein'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.
4. THAT Mr. Neinstein surrender his certificate of membership in the Institute to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held by the registrar during the period of suspension and thereafter returned to Mr. Neinstein.



5. THAT in the event Mr. Neinstein fails to surrender his certificate of membership as required pursuant to paragraph 4 hereof, he shall thereupon be expelled from the rights and privileges of membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 3 hereof.

The reasons for the committee's sanctions are set out below.

## **Reprimand**

The committee is of the view that a reprimand is necessary as a specific deterrent to the member, to stress to him the unacceptability of his conduct as a chartered accountant.

## **Fine and suspension**

The professional conduct committee sought to have a fine of \$5,000 to \$7,000 levied against Mr. Neinstein, together with a three-month suspension from membership in the Institute. Counsel for Mr. Neinstein argued against both a fine and suspension, submitting that a reprimand and publicity were appropriate and sufficient sanctions. The committee's deliberations focused on fine and suspension together, taking into consideration the principles of specific and general deterrence. The committee felt that to levy a fine, considering the cost to the member of a suspension, was unnecessary in this case, and that the principle of general deterrence would be best served by imposing a suspension on Mr. Neinstein. The committee was of the opinion that a suspension would also act as a specific deterrent to Mr. Neinstein, whereas a fine would not necessarily have this effect.

The committee felt that the suspension ordered would demonstrate, for the benefit of Mr. Neinstein, the general membership, and the public, that the conduct of this member is considered to be unacceptable conduct for a chartered accountant.

## **Notice**

Publication of a decision and order, disclosing a member's name, is one of the most effective general deterrents available. Notification of the Institute's efforts in disciplining those in breach of its bylaws and rules of professional conduct is an important function of a self-governing profession in preserving its integrity.

## **Adjournment request**

Though having no effect on the outcome of this hearing, the committee would like to address a matter of procedure that arose at the hearing.

The evidence in respect of the charges was presented on July 29. As only one day had originally been scheduled for the hearing, and as the committee was unable to complete its deliberations on that day, the hearing was adjourned to a date to be fixed. The date later scheduled was October 27. Upon the rendering of the committee's decision in respect of the charges on October 27, the member's counsel made application for an adjournment of the hearing to enable him to prepare submissions on sanction in respect of charge No. 2. Mr. Kerzner explained that, while he had been prepared to make submissions on sanction in respect of charge No. 1, as Mr. Neinstein had pleaded guilty to this charge, and had, therefore, been fully expecting to be found guilty, he was not prepared to make submissions in respect of charge No. 2, to which his client had pleaded not guilty but been found guilty, and would first need to see the committee's written reasons for its finding of guilty on this charge.

After hearing submissions from both parties on the issue, the committee denied the adjournment request. In the usual course it is the procedure of this committee, and the member was so advised prior to the hearing, that, in the event a member is found guilty of a charge, immediately following that finding he or she is called upon to make submissions in respect of sanction. The committee did not consider there to have been made on behalf of Mr. Neinstein

any persuasive argument to depart from this procedure, as the member was not being prejudiced in any way.

DATED AT TORONTO, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 19  
BY ORDER OF THE DISCIPLINE COMMITTEE

D.P. SETTERINGTON, CA - DEPUTY CHAIR  
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

L.P. BOOKMAN, CA  
P.J. FITZPATRICK, CA  
J.J. LONG, CA  
V.G. STAFL (Public representative)