

STEVEN SCOTT BROWN: Summary, as Published in *CheckMark*

Steven Scott Brown, of Toronto, was found guilty of one charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, and two charges under Rule 205 of associating himself with financial representations which he knew were false or misleading. In the course of providing professional services to a client, Mr. Brown misappropriated and lost, through unauthorized investments, monies entrusted to his care in the approximate amount of \$1 million, and then embarked on a scheme to conceal the loss from his client. Mr. Brown was fined \$7,000 and expelled from the Institute. It was also ordered that notice of his misconduct be published in The Globe and Mail as well as in CheckMark.

CHARGE(S) LAID re STEVEN SCOTT BROWN

The Professional Conduct Committee hereby makes the following charges against Steven Scott Brown, CA, a member of the Institute:

1. THAT, the said Steven Scott Brown, CA, in or about the period September 1, 1993 through October 31, 1998, in the course of providing professional services to his client, William John Kelly, failed 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 that;
 - a) he misappropriated approximately \$1,000,000.00 entrusted to him by his client, William John Kelly and;
 - b) having lost approximately \$1,000,000.00 entrusted to him by his client, William John Kelly, through unauthorized investments, he embarked upon a scheme to conceal the loss from his client.
2. THAT, the said Steven Scott Brown, CA, in or about the period September 1, 1993 through October 31, 1998, in the course of providing professional services to William John Kelly, failed to handle with due care approximately \$1,000,000.00 entrusted to him by William John Kelly, contrary to Rule 212.2 of the rules of professional conduct.
3. THAT, the said Steven Scott Brown, CA, in or about the period November 30, 1997 through October 31, 1998, associated himself with a trial balance for Underhill Investments Ltd. as at November 30, 1997, which he knew was false or misleading, contrary to Rule 205 of the rules of professional conduct.
4. THAT, the said Steven Scott Brown, CA, in or about the period June 30, 1998 through October 31, 1998, associated himself with a trial balance for Underhill Investments Ltd. as at June 30, 1998, which he knew was false or misleading, contrary to Rule 205 of the rules of professional conduct.

Dated at Niagara-on-the-Lake this 26th day of April, 2000.

DOUGLAS BOUFFORD, CA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Steven Scott Brown

DECISION AND ORDER IN THE MATTER OF: Charges against STEVEN SCOTT BROWN, a suspended member of the Institute, under Rules 201.1, 205 and 212.2 of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE SEPTEMBER 26, 2000

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, 3 and 4, charge No. 2 having been withdrawn, the Discipline Committee finds Steven Scott Brown guilty of charges Nos. 1, 3 and 4.

ORDER

IT IS ORDERED in respect of charges Nos. 1, 3 and 4:

1. THAT Mr. Brown be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Brown be and he is hereby fined the sum of \$7,000, to be remitted to the Institute within one (1) year from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Brown be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Brown'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;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Globe and Mail*.
5. THAT Mr. Brown surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the hearing date.

DATED AT TORONTO THIS 28TH DAY OF SEPTEMBER, 2000
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Steven Scott Brown

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against STEVEN SCOTT BROWN, a suspended member of the Institute, under Rules 201.1, 205 and 212.2 of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE SEPTEMBER 26, 2000

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on September 26, 2000 to hear evidence concerning charges brought by the professional conduct committee against Steven Scott Brown.

The professional conduct committee was represented by Ms. Deborah McPhadden. Mr. Brown was present at the hearing and was represented by his counsel, Mr. George Callahan.

Mr. Brown was found guilty of professional misconduct, and this decision was made known at the hearing on September 26. The formal decision and order was sent to Mr. Brown on September 28. These reasons, issued in writing pursuant to Bylaw 574, include the panel's decision and order, and the charges laid by the professional conduct committee.

DECISION ON THE CHARGES

After the hearing had been called to order, counsel for the professional conduct committee advised, as a preliminary matter, that the second of four charges laid was being withdrawn. The remaining charges against Mr. Brown read as follows:

1. THAT, the said Steven Scott Brown, CA, in or about the period September 1, 1993 through October 31, 1998, in the course of providing professional services to his client, William John Kelly, failed 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 that;
 - a) he misappropriated approximately \$1,000,000.00 entrusted to him by his client, William John Kelly and;
 - b) having lost approximately \$1,000,000.00 entrusted to him by his client, William John Kelly, through unauthorized investments, he embarked upon a scheme to conceal the loss from his client.
2. THAT, the said Steven Scott Brown, CA, in or about the period November 30, 1997 through October 31, 1998, associated himself with a trial balance for Underhill Investments Ltd. as at November 30, 1997, which he knew was false or misleading, contrary to Rule 205 of the rules of professional conduct.
3. THAT, the said Steven Scott Brown, CA, in or about the period June 30, 1998 through October 31, 1998, associated himself with a trial balance for Underhill Investments Ltd. as at June 30, 1998, which he knew was false or misleading, contrary to Rule 205 of the rules of professional conduct.

Mr. Brown entered a plea of guilty to each of the three charges, and confirmed that he understood that on the basis of his plea alone he could be found guilty of the charges.

Counsel for the professional conduct committee filed as exhibits an agreed statement of facts and a document brief.

The misconduct can be succinctly summarized. Mr. Brown enjoyed the complete trust of one of his clients, William Kelly. He used in excess of \$1,000,000 of this client's money, over which he had control, to cover shortages in his own two brokerage accounts with RBC Dominion Securities.

The details of the transactions leading up to Mr. Brown's pledge of a Treasury Bill in the amount of \$1,000,000 belonging to Mr. Kelly, and his use of that money, are set out in the agreed statement of facts. The relevant documents are contained in the document brief. It is not necessary for our purposes to set out in detail those transactions.

The specific acts of misconduct, which are relevant, occurred over a period of more than four years. Mr. Kelly followed Mr. Brown's advice and had in excess of \$1,000,000 transferred to the Turks and Caicos Islands, to a bank account controlled by Mr. Brown. The \$1,000,000 was used by Mr. Brown to buy a Government of Canada Treasury Bill, which was maintained as an investment at RBC Dominion Securities. Mr. Brown did not tell RBC Dominion Securities that Mr. Kelly was the beneficial owner of the Treasury Bill.

Mr. Brown opened a U.S. dollar margin account and a Canadian dollar margin account, both with RBC Dominion Securities, and used his Canadian dollar margin account to purchase \$400,000 worth of shares. He pledged and used the Treasury Bill to cover margin account shortages, eventually wiping out the \$1,000,000.

Mr. Brown told Mr. Kelly the money was held in trust for Mr. Kelly's benefit. He showed Mr. Kelly trial balances for Underhill Investments Ltd., which were false and misleading. It was only in October 1998, after Mr. Kelly became aware that Mr. Brown was being sought by the police in the Turks and Caicos Islands, that Mr. Brown admitted to Mr. Kelly that all of the money had been used. Mr. Brown has filed a proposal in bankruptcy. Mr. Kelly has recovered less than \$100,000 of his \$1,000,000.

When Ms. McPhadden finished reviewing the agreed statement of facts and document brief, both counsel made brief submissions. After reviewing the relevant evidence, as set out above, the panel concluded that the charges had been proven and that Mr. Brown was guilty of professional misconduct. The decision reads:

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, 3 and 4, charge No. 2 having been withdrawn, the Discipline Committee finds Steven Scott Brown guilty of charges Nos. 1, 3 and 4.

ORDER AS TO SANCTION

On behalf of the professional conduct committee, Ms. McPhadden submitted that the appropriate sanction in this case would be a reprimand, a fine of between \$5,000 and \$7,000, and expulsion from the Institute. She also submitted that it was necessary to give notice of the decision and order to the Public Accountants Council and the Canadian Institute of Chartered Accountants, and to publish notice in *CheckMark* and *The Globe and Mail*.

Mr. Callahan, in making submissions on Mr. Brown's behalf, agreed that expulsion was appropriate,

but submitted that ordering a fine was harsh and uncalled for, and that Mr. Brown should be spared further humiliation by dispensing with newspaper publicity.

Mr. Callahan referred to the fact that Mr. Brown had lost his marriage, his home and his profession as a result of the actions which brought him before the discipline committee. He also stated that his client already had an obligation to raise \$110,000 over the next two years under the proposal he had made in bankruptcy. Mr. Callahan submitted that it would not serve the public interest for the Institute to fine Mr. Brown an amount of money which could otherwise be used to pay his creditors.

Both counsel agreed that the breach of trust, the misappropriation of the substantial amount of money, and the misrepresentation which followed it, were aggravating factors. Mr. Callahan emphasized as mitigating factors Mr. Brown's cooperation with the professional conduct committee, and the fact that he had been candid with Mr. Kelly in October 1998 when he told his client that the money was all gone. Ms. McPhadden agreed that Mr. Brown had cooperated with the professional conduct committee, but pointed out that he had only been candid with Mr. Kelly after all of the money was gone, a fact that Mr. Kelly would soon have discovered on his own.

The parties agreed that when Mr. Brown advised Mr. Kelly what to do with his money in 1993, he had not intended to misappropriate it. Mr. Brown had control of the Treasury Bill for over two years before he pledged it to cover his own margin accounts, and it was almost two more years before he used the balance which remained to cover the shortfall in his U.S. dollar margin account. The essence of Mr. Brown's misconduct was not that he put together a scheme intending to defraud Mr. Kelly of his money, but that he pledged the Treasury Bill purchased with Mr. Kelly's money as security for his personal investments, and used this security to cover his investments when they turned bad.

After counsel had finished their submissions, the panel deliberated and reached the following order, which it made known to the parties:

ORDER

IT IS ORDERED in respect of charges Nos. 1, 3 and 4:

1. THAT Mr. Brown be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Brown be and he is hereby fined the sum of \$7,000, to be remitted to the Institute within one (1) year from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Brown be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Brown'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;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Globe and Mail*.
5. THAT Mr. Brown surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the hearing date.

The panel considered the three general principles which are applicable when imposing a sanction, namely rehabilitation, specific deterrence and general deterrence. In this case we concluded that general deterrence was the principle of paramount importance.

Reprimand

The panel believes that a reprimand in writing from the chair of the hearing stresses to Mr. Brown the unacceptability of his conduct as a chartered accountant.

Fine

Given Mr. Brown's circumstances, a fine of \$7,000 is a significant amount of money, and we think the fine should be significant to be an effective general deterrent. It is not our intention to humiliate Mr. Brown, or complicate the lives of his creditors. But we do think it is important that both the profession and the public know that misconduct of the kind demonstrated in this case will result in expulsion and a significant fine.

Expulsion

The profession will not tolerate misappropriation or misrepresentation. Members of the Institute must understand that if they breach the trust of their clients and misappropriate clients' money for their own use, they face expulsion from membership.

Notice

Publication of the decision and order, including Mr. Brown's name, is, in the opinion of the discipline committee, a general deterrent. Members of the profession must have notice of the order if it is to be a general deterrent. Also, it is important to demonstrate to the public that the profession is regulating itself, and to let the public know that failure on the part of members to comply with the rules of professional conduct will result in the imposition of serious sanctions.

Certificate

As in all cases of expulsion, it is important that Mr. Brown surrender his certificate of membership in the Institute, to which he is no longer entitled.

Immediate Suspension

Bylaw 583 provides that, subject to committee discretion, when the discipline committee orders a member expelled, the member's rights and privileges of membership in the Institute become suspended from the time the expulsion order is pronounced. The panel concluded that there was no reason why Bylaw 583 should not apply in this case.

DATED AT TORONTO THIS 27TH DAY OF NOVEMBER, 2000
BY ORDER OF THE DISCIPLINE COMMITTEE

L. P. BOOKMAN, CA - DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.I. COWAN, CA

D.W. DAFOE, FCA
G.R. PEALL, CA
B.A. TANNENBAUM, FCA
G. BECK (Public representative)