

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **VINOD K. GERA, CA**, a member of the Institute, under **Rules 201.1, 205 and 204.2** of the Rules of Professional Conduct, as amended.

TO: Mr. Vinod K. Gera, CA
21 Amber Street, Unit 6
Markham, ON L3R 4Z3

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision And Order Made May 26, 2005)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on May 26, 2005 to hear charges brought by the Professional Conduct Committee against Mr. Vinod K. Gera, a member of the Institute.
2. The Professional Conduct Committee was represented by Ms. Barbara Glendinning. Mr. John Douglas, CA, the investigator appointed by the Professional Conduct Committee and Ms. Kelly Khalilieh, CA, were at the counsel table with Ms. Glendinning.
3. Mr. Vinod Gera, the member, was present at the hearing and was represented by his counsel, Mr. James Lane. Mrs. Gera and Mr. Gera's business partner, Mr. Sanjay Nirula CA, was also present.
4. The decision and order of the panel were made known at the conclusion of the hearing. The formal, written decision and order was signed by the Registrar of the Institute and sent to the parties on June 6, 2005. The reasons, given in writing pursuant to Bylaw 574, set out the charges, the decision and the order, as well as the reasons of this panel of the Discipline Committee for the decision and order.

THE CHARGES AND THE PLEA

5. When the hearing had been called to order, the Notice of Assignment Hearing and attachments thereto were marked as Exhibit 1, the Notice of Hearing was marked as Exhibit 2, and the Charges were marked as Exhibit 3. The charges, made by the Professional Conduct Committee on November 25, 2004, read as follows:

1. THAT the said Vinod K. Gera, in or about the period June 30, 1999 to October 20, 1999, while engaged as the accountant for V.F.I. Inc., failed

to conduct himself in a manner that will maintain the good reputation of the profession, contrary to Rule 201.1 of the rules of professional conduct, in that he participated in a scheme with his client to improperly evade the payment of taxes properly owing.

2. THAT the said Vinod K. Gera, in or about the period June 30, 1999 to July 29, 1999, while engaged to review the financial statements of V.F.I. Inc., associated himself with the financial statements of the company which he knew or should have known were false or misleading, contrary to Rule 205 of the rules of professional conduct in that he knew to be included in the schedule of expenses on the financial statements \$80,000.00 in fictitious invoices.
3. THAT the said Vinod K. Gera, in or about the period June 30, 1999 to July 29, 1999, while engaged to review the financial statements of V.F.I. Inc. for the year ended June 30, 1999, failed to hold himself free of any influence, interest or relationship which impaired his professional judgment or objectivity or which, in the view of a reasonable observer, would impair his professional judgment or objectivity, contrary to Rule 204.2, in that during the currency of the said engagement his wife held an interest in V.F.I. Inc.
6. Mr. Gera entered a plea of guilty to each of the three Charges and acknowledged that upon the basis of his plea of guilty, and on that basis alone, he could be found guilty of the Charges.

THE CASE FOR THE PROFESSIONAL CONDUCT COMMITTEE

7. Ms. Glendinning made a brief opening statement and filed an Agreed Statement of Facts (Exhibit 4) which she had signed on behalf of the Professional Conduct Committee and Mr. Gera had signed on his own behalf. Ms. Glendinning also filed a Document Brief (Exhibit 5), which contained relevant documents, including documents referred to in the Agreed Statement of Facts.

8. Mr. Gera, who received his CA designation in 1985, has been engaged in the practice of public accounting since he obtained his designation. He formed a proprietorship in 1993 and has practiced as a sole proprietor from that time until 2004 when Mr. Sanjay Nirula, CA, joined the firm as a partner. The firm was known as Gera & Nirula, Chartered Accountants, LLP at the time of the hearing.

CHARGES NOS. 1 & 2

9. Mr. Gera was the accountant for VFI. On reviewing the financial statements for the year ended June 30, 1999, Mr. Gera suggested to his client that the taxes which would otherwise be payable could be reduced as a company owned by Mrs. Gera had almost \$80,000 in accrued losses. Mr. Gera prepared six false and back dated invoices, provided them to his client who recorded them as accounts payable in the books of VFI. Mr. Gera knowingly included the \$80,000 of false management fees as a management expense on VFI's financial statements showing a corresponding \$80,000 liability as an account payable.

10. Mr. Gera acknowledged that no services had been provided for the management services charged, and that he had participated in a scheme with his client to improperly evade the payment of taxes. In furtherance of the scheme, he prepared financial statements which he knew were false and misleading.

CHARGE NO. 3

11. The owner of VFI presented Mr. Gera with a proposal in November 1998 whereby shares of VFI and another company would be sold to Mrs. Gera. The agreements were drawn up and signed in December 1998, and Mrs. Gera paid \$70,000 to the owner of VFI on December 14, 1998. It was part of the agreement that Mrs. Gera would not receive her shares in VFI until July 22, 1999; but there was also a verbal agreement that she would receive a proportionate share of the company profit subsequent to her payment in December 1998.

12. Mr. Gera signed the Review Engagement Report on July 29, 1999, knowing that his wife owned 5% of the shares of VFI. Mr. Gera acknowledged that he had breached Rule 204.2. There was no disclosure, in either the financial statements or Review Engagement Report of Mrs. Gera's interest in the client.

13. James Fulton, CA, who had begun working as the CFO of VFI, discovered the false invoices and the fact that Mrs. Gera owned 5% of VFI in September 1999. Mr. Gera attempted to justify the false invoices as a legitimate expense until Mr. Fulton threatened to call Revenue Canada and the ICAO. Thereafter, Mr. Gera cancelled the false invoices and resigned as the external accountant. Later in 1999, Mrs. Gera sold her shares for a \$10,000 profit.

14. Mr. Fulton wanted to make a complaint to the Institute in late 1999 but his employer prohibited him from doing so. When Mr. Fulton's employment with VFI was terminated in 2004 he did make a complaint to the Institute.

DECISION ON THE CHARGES

15. The panel considered the Agreed Statement of Facts and the documents set out in the Document Brief as well as Mr. Gera's plea of guilty. The panel concluded that there was no doubt the allegations set out in the Charges had been proven and that Mr. Gera was guilty of professional misconduct. He was found guilty of all three Charges.

16. When the hearing reconvened, the chair read the decision of the panel for the record. He said:

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, 2, and 3, the Discipline Committee finds Vinod Gera guilty of charges Nos. 1, 2, and 3.

SANCTION

17. The Professional Conduct Committee did not call evidence with respect to sanction. Ms. Glendinning outlined the sanction sought by the Professional Conduct Committee which included a reprimand; a fine of \$15,000; a suspension of six months; specified professional development courses; and the usual publicity with respect to the decision and order, including a notice in *CheckMark* disclosing Mr. Gera's name. Ms. Glendinning also said that the Professional Conduct Committee sought costs fixed at \$7,500.

18. Mr. Lane said that the recommendation for sanction was a joint recommendation except in one respect, the requested suspension. Mr. Lane submitted that a suspension would disrupt the partnership both externally in its relationship with clients and internally with the professional relationships and responsibilities. He submitted this would complicate and undermine the rehabilitation which was underway and would be unfair to Mr. Nirula. Mr. Lane suggested that if the sanction was not considered serious enough without a suspension, that the panel should consider increasing the amount of the fine.

19. Mr. Lane called three witnesses to give evidence with respect to sanction. Mr. and Mrs. Gera and Mr. Nirula testified. When the examinations and cross-examinations were concluded, both counsel made submissions primarily addressing the issue of suspension.

20. After hearing the submissions from both counsel, the panel deliberated. When the hearing resumed the chair set out, on the record, a summary of terms of the order. The order itself, which was sent to Mr. Gera on June 6, 2005 reads as follows:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Gera be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Gera be and he is hereby fined the sum of \$15,000, to be remitted to the Institute as follows:
 - (a) \$7,500 within six (6) months from the date this Decision and Order becomes final under the bylaws; and
 - (b) a further \$7,500 within one (1) year from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Gera be and he is hereby charged costs fixed at \$7,500, to be remitted to the Institute within nine (9) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Gera 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.

5. THAT Mr. Gera be and he is hereby required to complete, by paying for and attending in their entirety, within one (1) year from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute, or, in the event a course listed below becomes unavailable, the successor course which takes its place:
 - (a) *Essentials of Review Engagements*
 - (b) *Income Tax Refresher - Corporate*
 - (c) *Staying Out of Trouble*; and
 - (d) *Basic But Essential Income Tax Issues*.
6. THAT notice of this Decision and Order, disclosing Mr. Gera'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*.
7. THAT Mr. Gera 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. Gera.
8. THAT in the event Mr. Gera fails to comply with the requirements of paragraphs 2, 3 and 5 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 this three (3) 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. Gera's current or former practice, employment and/or residence.

REPRIMAND

21. The panel ordered that Mr. Gera be reprimanded in writing by the chair of the hearing in order to stress the unacceptable nature of his actions.

FINE

22. Ms. Glendinning recommended a fine of \$15,000 which was not objected to by Mr. Lane. This amount was also in the range of fines imposed in similar cases. As Mr.

Gera was an active participant in a fraudulent scheme, a significant monetary penalty was required as both a specific deterrent to Mr. Gera and a general deterrent to other members. Under the circumstances, \$15,000 was considered by the panel to be appropriate. The panel also thought it was reasonable to require one payment of \$7,500 to be made within six months of the order becoming final, and another payment of \$7,500 to be made within one year of the order becoming final.

PROFESSIONAL DEVELOPMENT COURSES

23. To assist Mr. Gera in his rehabilitation, and to upgrade his skills to the standards required of a chartered accountant, the panel agreed with the recommendations that he should take a series of professional development courses.

SUSPENSION

24. Ms. Glendinning pointed out that but for mitigating circumstances this could be a case which warranted expulsion. The scheme to avoid tax was Mr. Gera's idea, and he prepared false invoices, thus actively participating in it. However the Professional Conduct Committee was not seeking expulsion as the misconduct took place a number of years ago, the investigation had not uncovered any repetition of such conduct, or other misconduct, Mr. Gera cooperated completely and the Professional Conduct Committee was satisfied that the misconduct would not be repeated.

25. As outlined above, Mr. Lane requested on behalf of Mr. Gera and his partner, Mr. Nirula, that suspension not be imposed because Mr. Gera is needed in his practice and as mentioned, has cooperated fully.

26. The panel concluded that Mr. Gera's actions represented a serious breach of the rules, and a message needs to be sent that this conduct will not be tolerated. A six month suspension was imposed to serve this purpose. The panel recognized a suspension would have a serious impact on the firm, the professional staff and Mr. Nirula. But the principle of general deterrence required a suspension.

NOTICE

27. Publishing names of members found guilty is the single most effective penalty that can be imposed, which address both the individual issues of specific deterrence and rehabilitation, and the wider needs of general deterrence and education of the membership at large. The panel therefore ordered the normal publication of the decision and order.

COSTS

28. Mr. Gera entered a plea of guilty and signed an Agreed Statement of Facts which reduced the amount of time and expense required for the hearing. As a result the committee felt that costs fixed at \$7,500 would be reasonable, with provision to make payment within nine months.

EXPULSION FOR FAILURE TO COMPLY

29. Orders of the discipline committee must provide a consequence for failure to comply with their terms or else they would be meaningless. Accordingly, the order in this case provides that in the event the member fails to comply with its terms he will be suspended for a period of time, and then ultimately expelled if the failure to comply persists. Should Mr. Gera be expelled, notice of his expulsion will be given to the public by the publication of a notice in a newspaper distributed in the geographic area of his practice or residence.

DATED AT TORONTO THIS 24TH DAY OF JANUARY, 2006
BY ORDER OF THE DISCIPLINE COMMITTEE

H. B. BERNSTEIN, CA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.I. COWAN, CA
M.L. MACKAY BREHM, FCA
A.D. NICHOLS, FCA
B. RAMSAY (Public Representative)