

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **WAJDE HASSAN DARWISH**, a suspended member of the Institute, under **Rules 104, 201.1 and 202** of the Rules of Professional Conduct, as amended.

TO: Mr. Wajde Hassan Darwish
200 Albert Street
LONDON, ON N6A 1M1

AND TO: The Professional Conduct Committee, ICAO

REASONS FOR THE DECISION AND ORDER MADE NOVEMBER 26, 2002

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario convened on November 26, 2002 to conduct a hearing into the charges brought by the professional conduct committee against Mr. Wajde Darwish, a suspended member of the Institute.

2. The professional conduct committee was represented by Ms. Barbara Glendinning, who was accompanied by Mr. John Douglas, CA, the investigator appointed by the professional conduct committee. Mr. Darwish attended the hearing, and was represented by his counsel, Mr. John Strung.

3. The panel's formal decision and order was signed by the discipline committee secretary and sent to Mr. Darwish on December 9, 2002. These reasons, given in writing pursuant to Bylaw 574, include the charges, and the decision and order, as well as the reasons of the discipline committee.

DECISION ON THE CHARGES

4. After the hearing had been called to order, and the notice of assignment hearing, notice of hearing and charges had been marked as Exhibits 1, 2 and 3, respectively, Ms. Glendinning advised that the professional conduct committee was withdrawing particular (a) of charge No. 1, and particulars (b) and (m) of charge No. 6; and that she wished to have particular (c) of charge No. 1, charge No. 5, and particular (h) of charge No. 6 amended. The charges were amended on consent.

5. The charges, as amended, read as follows:

Charges Relating to 929641 Ontario Inc., cob as Seven Star Sports:

1. THAT the said Wajde Hassan Darwish, in or about the years 1996 to 1999, while engaged as the accountant for 929641 Ontario Inc., failed to conduct himself in a manner that will 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- a) *Withdrawn*
 - b) he failed to prepare and file a claim for scientific research and experimental development ("SR&ED") tax credits for the 1997 tax year, having been engaged to do so;
 - c) he attached a review engagement report to financial statements for the company for the 1998 year end which showed amounts for "taxes receivable" relating to SR&ED tax credits of \$88,739 and \$72,928 when he knew or should have known that the claim for the SR&ED credits was rejected by Revenue Canada;
 - d) he failed to co-operate with or provide information on his former client, 929641 Ontario Inc., to the successor accountant, Muna Pirbhai, CA, on a timely basis after having been requested to do so.
2. THAT the said Wajde Hassan Darwish, in or about the years 1996 through 1999, in carrying out an engagement with respect to the preparation of financial statements and tax returns for 929641 Ontario Inc., failed to perform his professional services with due care contrary to Rule 202 of the rules of professional conduct in that:
- a) he failed to prepare T2S(8) capital cost allowance schedules for the fiscal years 1996 and 1997 even though the company experienced substantial movement in fixed assets during those periods;
 - b) he failed to prepare and file an application for research and development tax credits on behalf of the company for the 1996 tax year in a timely manner;
 - c) he filed an incomplete application for research and development tax credits for the 1996 tax year;
 - d) he failed to prepare and file corporate tax returns for the 1996 and 1997 tax years in a timely manner;
 - e) he failed to date the Notice to Reader attached to the 1996 financial statements.

Charges Relating to the Potter Family:

3. THAT the said Wajde Hassan Darwish, in or about the years 1995 to 1999, while engaged as the accountant for the Potter family and their trusts and corporations, failed to conduct himself in a manner that will 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) having advised his clients, Dr. and Mrs. Potter, to set up a family trust, and upon receiving their instructions to do so, he failed to prepare and file the necessary trust documents and returns in a timely manner;
 - b) having advised his clients, Dr. and Mrs. Potter, to set up several corporations, he failed to prepare and file federal or provincial corporate tax returns for those corporations, having been engaged to do so;

- c) he failed to respond in a timely manner to communications and requests for information from Dr. Potter;
 - d) he failed to provide on a timely basis books and records, the property of his former clients Dr. Patrick Potter and Mrs. Maureen Potter, to the successor accountants Kime, Mills, Dunlop LLP, after having been requested to do so.
4. THAT the said Wajde Hassan Darwish, in or about the years 1995 to 1999, in carrying out an engagement with respect to the preparation of personal tax returns for Dr. Patrick Potter, Maureen Potter and their three children, failed to perform his professional services with due care contrary to Rule 202 of the rules of professional conduct, in that:
- a) he filed the returns for Maureen Potter and the three children based on estimates of dividend income rather than the actual amounts of dividends declared by the companies;
 - b) he failed to include an RRSP contribution made by Dr. Potter in the amount of \$7,880.00 in Dr. Potter's 1994 personal tax return, and failed to rectify the error once it was brought to his attention.

Charges Relating to TR Holdings Inc.:

5. THAT the said Wajde Hassan Darwish, in or about the years 1997 to 1999, while engaged as the accountant for TR Encoder Solutions Inc., 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 failed to prepare and file corporate tax returns for TR Encoder Solutions Inc. for the 1997 and 1998 tax years, having been engaged to do so, contrary to Rule 201.1 of the rules of professional conduct;
6. THAT the said Wajde Hassan Darwish, in or about the years 1993 through 1999, while engaged to prepare financial statements and tax returns for Trac Rail Inc. ("Trac Rail"), TR Research Inc. ("TR Research") and TR Controls Incorporated ("TR Controls"), three companies in a group of companies known collectively as "TR Holdings Inc.", failed to perform his professional services with due care contrary to Rule 202 of the rules of professional conduct in that:
- a) he failed to prepare and file federal and provincial tax returns for Trac Rail in a timely manner;
 - b) *Withdrawn*
 - c) he failed to respond to communications and requests for further information from Revenue Canada with respect to claims by Trac Rail for SR&ED tax credits in a timely manner;
 - d) he failed to disclose the details of related party transactions between TR Controls and Trac Rail in the financial statements of each company in the fiscal years 1996 to 1998;
 - e) he did not maintain documentation of analytical procedures in his working paper

- files for the TR Group of companies;
- f) he failed to provide adequate information in support of Trac Rail's claims for SR&ED tax credits for the years 1992, 1993, 1994, 1995, 1997, and 1998;
 - g) he failed to file Trac Rail's claim for SR&ED tax credits for 1996 within the allowable time frame;
 - h) he reflected a loss of \$49,287 on the 1996 corporate tax returns for Trac Rail, when the company had earned income of \$178,472, as reflected on the financial statements for that year which were attached to the return;
 - i) he failed to include in income investment tax credits of \$241,119 in the 1997 financial statements and corporate tax returns for Trac Rail;
 - j) he failed to claim any Ontario Innovation Tax Credits or R&D "super-allowance" for Trac Rail for any of the tax years 1993 through 1998 when it was appropriate to do so;
 - k) he failed to date his Review Engagement Reports for Trac Rail for the fiscal years 1996 and 1997;
 - l) he failed to date his Review Engagement Report for TR Controls for the fiscal year 1996;
 - m) *Withdrawn*

6. Mr. Darwish entered a plea of guilty to the charges, as amended, and confirmed his understanding that on the basis of his plea, and on that basis alone, he could be found guilty of the charges.

7. Ms. Glendinning gave a brief overview of the case for the professional conduct committee, and filed a combined agreed statement of facts and document brief. The latter contained:

- documents relating to 929641 Ontario Inc., the client in respect of which charges Nos. 1 and 2 were laid;
- documents relating to the Potter family, the clients in respect of whom charges Nos. 3 and 4 were laid; and
- documents relating TR Holdings Inc., the client in respect of which charges Nos. 5 and 6 were laid.

8. The essence of the misconduct alleged against Mr. Darwish was that he failed to conduct himself in a manner so as to maintain the good reputation of the profession and its ability to serve the public interest, and that he failed to perform his professional services with due care.

9. Mr. Darwish started his own general practice as a sole practitioner in 1993. In 1997 he began to remove himself from public accounting to concentrate on various entrepreneurial business ventures. Though he began telling his clients that he was getting out of public practice, he did not set up a good transitional plan to ensure that his clients' interests would continue to be served. The charges of lack of due care under Rule 202 were largely due to Mr. Darwish simply being too busy with his other ventures to see to it that his accounting clients were properly taken care of.

10. Mr. Strung did not call evidence on behalf of the member, nor make submissions on the charges.
11. Upon deliberation, the panel concluded that the charges had been proven and that Mr. Darwish was guilty of professional misconduct.
12. When the hearing reconvened, the chair read the following decision into the record:

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed; particular (a) of charge No. 1 and particulars (b) and (m) of charge No. 6 having been withdrawn by the professional conduct committee; and particular (c) of charge No. 1, charge No. 5 and particular (h) of charge No. 6 having been amended at the hearing; and having heard the plea of guilty to charges Nos. 1, 2, 3, 4, 5 and 6, as amended; the Discipline Committee finds Wadje Hassan Darwish guilty of charges Nos. 1, 2, 3, 4, 5 and 6, as amended.

ORDER AS TO SANCTION

13. On behalf of the professional conduct committee, Ms. Glendinning submitted that the appropriate order would include a reprimand, a fine in the amount of \$15,000, an order that Mr. Darwish be allowed to resign from membership in the Institute upon his undertaking never to make application for readmission, and notice to the CICA and the Public Accountants Council, as well as by way of publication in *CheckMark* disclosing the member's name.
14. Ms. Glendinning advised that the professional conduct committee was originally going to seek an order that Mr. Darwish be suspended for 18 months, and be required to take a number of professional development courses and successfully complete the CA Reciprocity Examination (CARE). She indicated, however, that after extensive discussions with Mr. Strung it became clear that Mr. Darwish had not been practising public accounting for some years and had no intention of returning to it, as a result of which the taking of courses and the passing of the CARE would be a largely meaningless sanction for this member. Accordingly, she advised, upon the basis of Mr. Darwish's undertaking to resign and never reapply, the professional conduct committee had changed its recommendation on sanction to that which she was now putting forward for consideration.
15. In supporting the order requested by Ms. Glendinning, Mr. Strung submitted that Mr. Darwish's offer to resign from the Institute forever amounted to his acceptance of a penalty greater than that which the professional conduct committee was originally planning to propose. He stated that the sentencing principles of specific deterrence and rehabilitation were satisfied by his client's resignation, and that taking into account the mitigating circumstances in this case the order sought satisfied the principle of general deterrence. The mitigating factors cited included that this was the member's first offence, that he did not profit from his misconduct, and that he has made substantial restitution. Mr. Strung also submitted that even though Mr. Darwish had been found guilty of six charges, the charges all arose out of the same basic shortcoming of failing to adequately look out for his clients' interests during the time in which he was attempting to extricate himself from public practice. Mr. Strung stated that the discipline committee should encourage guilty pleas and the making of restitution by allowing members to resign in circumstances similar to those in this case.

16. Counsel for the professional conduct committee submitted that if the panel were to decide to make an order allowing Mr. Darwish to resign, the resignation should be made contingent upon his first fulfilling the other terms of the order.

17. After hearing the parties' submissions, the panel deliberated and made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Darwish be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Darwish be and he is hereby fined the sum of \$15,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Darwish 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.
4. THAT Mr. Darwish provide to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws his signed undertaking that he will not apply for readmission to membership in the Institute, and that he will not hold himself out to be a chartered accountant.
5. THAT in the event Mr. Darwish complies fully with paragraphs 2, 3 and 4 of this Order, he shall thereupon be permitted to resign from membership in the Institute.
6. THAT notice of this Decision and Order, disclosing Mr. Darwish'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 in the event Mr. Darwish 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 London Free Press*.

Reprimand

18. The panel ordered that Mr. Darwish be reprimanded in writing by the chair of the hearing in order to stress to him the unacceptable nature of his conduct as a chartered accountant.

Fine

19. The panel was satisfied that the fine of \$15,000 sought by the professional conduct committee and not opposed by the member was an appropriate amount to serve as both a specific and general deterrent in the circumstances of this case.

Undertaking to Resign, Not Reapply and Not Hold Out as a Chartered Accountant

20. The panel was persuaded by the submissions heard from both counsel that this was an appropriate case in which to accept the member's undertaking to resign from membership in the Institute. At the time of the hearing Mr. Darwish was no longer practising public accounting, but was involved in several business interests in southern Ontario and outside the country. Reiterating that his client's breaches of the rules arose largely out of his mismanaged attempts to get out of public practice, Mr. Strung advised that Mr. Darwish was now too busy with his other ventures to return to such practice and had no interest in doing so. He submitted that Mr. Darwish was trying to be a good citizen and make full restitution to his former clients, and that he had already made restitution to two of the three clients named in the charges in the amount of approximately \$800,000.

21. While persuaded that it was appropriate to allow Mr. Darwish to resign, the panel determined that resignation could only be allowed if he first complied with the other terms of the order, and that if he failed to so comply the penalty would be expulsion.

22. The undertaking required from Mr. Darwish is not only an undertaking to resign from membership in the Institute, but an undertaking never to make application for readmission to membership, and never to falsely hold out as being a chartered accountant. Unless all parts of this undertaking are given by Mr. Darwish, he will be expelled from the Institute pursuant to paragraph 7 of the discipline committee's order.

Notice

23. The giving of notice of its decisions and orders disclosing the names of members found guilty is generally considered by the discipline committee to be an essential part of its process that addresses both the individual issue of specific deterrence and the wider needs of general deterrence and education of the profession at large. As has so often been said in discipline committee reasons, such notice will only be dispensed with in rare and unusual circumstances, none of which were evident in this case. In any event, Mr. Strung made no submissions to the effect that the giving of such notice was inappropriate. Accordingly, the usual order as to notice was made.

24. When the panel asked for the parties' positions on the issue of newspaper publication of Mr. Darwish's resignation, both counsel made submissions against it. Counsel submitted that newspaper publication was not necessary for the protection of the public, given that Mr. Darwish had not practised public accounting since 1999, and in light of his undertaking to resign. It was also pointed out that newspaper publication is generally reserved for cases of expulsion, which was not this case. The panel was persuaded by counsels' submissions and refrained from making the order.

25. Though the panel did not order newspaper publication of Mr. Darwish's resignation, it did make the usual stipulation that failure to comply with its order will result in expulsion with newspaper notice, in this case to be given in *The London Free Press*.

Surrender of Certificate

26. As he will no longer be a chartered accountant upon his resignation from the Institute, the panel ordered that Mr. Darwish surrender his certificate of membership.

DATED AT TORONTO THIS 16TH DAY OF JANUARY, 2006
BY ORDER OF THE DISCIPLINE COMMITTEE

L.P. BOOKMAN, CA – CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

E.R. ARCHIBALD, CA
R.I. COWAN, CA
G.R. PEALL, CA
J.G. SEDGWICK, CA
B. RAMSAY (Public representative)