

Woldemar Kroeker: Summary, as Published in *CheckMark*

Woldemar Kroeker, of St. Catharines, was found guilty of four charges under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest. While acting as either a receiver or trustee in bankruptcy, Mr. Kroeker improperly removed funds in excess of \$690,000 from various trust accounts, and converted them to his own use. The funds were returned to the various trust accounts prior to the hearing. He was fined \$10,000 and expelled from the Institute.

CHARGE(S) LAID re Woldemar Kroeker

The Professional Conduct Committee hereby makes the following charges against Woldemar Kroeker, CA, a member of the Institute:

1. THAT, the said Woldemar Koeker, in or about the period January 9, 1989 to June 25, 1991, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that, while acting as a receiver for ABI Leisure Inc., he improperly removed from the receivership bank account funds in the approximate amount of \$288,500 and converted those funds to his own use, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT, the said Woldemar Koeker, in or about December 1993, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that, while acting as a trustee in bankruptcy, he improperly removed from his consolidated trust account funds in the approximate amount of \$235,000 and deposited those funds to the receivership account of ABI Leisure Inc. as reimbursement for funds he had previously improperly removed from that account, contrary to Rule 201.1 of the rules of professional conduct
3. THAT, the said Woldemar Koeker, in or about the period January 1992 to March 1994, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that, while acting as a trustee in bankruptcy, he improperly removed from his consolidated trust account funds in the approximate amount of \$313,000 and converted those funds to his own use, contrary to Rule 201.1 of the rules of professional conduct.
4. THAT, the said Woldemar Koeker, in or about the period December 1991 to May 1994, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that, while acting as a trustee in bankruptcy, he improperly removed from his general trust account funds in the approximate amount of \$145,000 and converted those funds to his own use, contrary to Rule 201.1 of the rules of professional conduct.

Dated at Ottawa this 23 day of February, 1998

MICHAEL T. CONNOLLY, FCA – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Woldemar Kroeker

DECISION AND ORDER IN THE MATTER OF: Charges against **WOLDEMAR KROEKER, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE OCTOBER 6, 1998

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, 2, 3 and 4, the Discipline Committee finds Woldemar Kroeker guilty of charges Nos. 1, 2, 3 and 4.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Kroeker be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Kroeker be and he is hereby fined the sum of \$10,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Kroeker be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Kroeker'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 St. Catharines Standard*.
5. THAT Mr. Kroeker 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.

DATED AT TORONTO THIS 13TH DAY OF OCTOBER, 1998
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE RE Woldemar Kroeker

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **WOLDEMAR KROEKER, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

REASONS FOR DECISION AND ORDER MADE OCTOBER 6, 1998

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on October 6, 1998.

Ms. Deborah McPhadden attended on behalf of the professional conduct committee, and Mr. Kroeker was present and represented by his legal counsel, Mr. Harry Fogul.

DECISION ON THE CHARGES

Four charges had been laid against Mr. Kroeker, all pursuant to Rule 201.1 of the rules of professional conduct. The charges alleged that Mr. Kroeker failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that, while acting as receiver or trustee in bankruptcy, he improperly removed funds from various trust accounts, and converted the funds to his own use.

Mr. Kroeker pleaded guilty to the charges, and confirmed that he understood that, upon a plea of guilty and upon that basis alone, he could be found guilty of the charges by the discipline committee.

Neither counsel called evidence, referring instead to an agreed statement of facts and a document brief filed as exhibits.

Based on the evidence filed, and Mr. Kroeker's plea of guilty, the discipline committee found Mr. Kroeker guilty of the charges laid against him by the professional conduct committee.

ORDER AS TO SANCTION

The hearing then moved on to a determination of the appropriate sanction. Neither party called evidence with respect to sanction, but counsel for both parties made submissions.

Counsel did not disagree on the general principles which govern the imposition of a sanction by the discipline committee, namely general deterrence, specific deterrence and rehabilitation. They did disagree, however, on what the result of the deliberations should be.

Ms. McPhadden submitted that the appropriate order would include expulsion, and a fine in the range of \$5,000 to \$10,000. She pointed out that the misconduct was of a very serious nature, and that this was not the first time Mr. Kroeker had been found guilty of professional misconduct by the discipline committee.

Mr. Fogul submitted that the appropriate order, having regard to Mr. Kroeker's age, status in the community, and financial obligations, would be to permit Mr. Kroeker to resign from the Institute,

without publicity, thereby allowing him to keep his job. He also submitted that any fine should reflect the member's present limited resources, and should be no greater than \$5,000.

After deliberation, the panel made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Kroeker be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Kroeker be and he is hereby fined the sum of \$10,000, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Kroeker be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Kroeker'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 St. Catharines Standard*.
5. THAT Mr. Kroeker 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.

Reprimand

The discipline committee believes that a reprimand in writing from the chair of the hearing is necessary as a specific deterrent to the member, to stress to him the serious nature of the offense and the unacceptability of his conduct as a chartered accountant.

Fine

Notwithstanding the submission of counsel for Mr. Kroeker, that because of his client's present economic status a lower fine would be reasonable, the panel felt that a strong message had to be sent to like-minded members, and as a demonstration to the public of the profession's intolerance of the type of misconduct engaged in by Mr. Kroeker. The panel concluded that a \$10,000 fine would be appropriate in this case.

Expulsion

Expulsion from the Institute is often ordered by the discipline committee in cases involving moral turpitude, and the panel determined that the serious nature of this case left it no alternative but to make such an order. The panel concluded that an order allowing Mr. Kroeker to resign would not act as a general deterrent to other members, and that allowing him to quietly resign without publicity would not adequately protect the public, since it appeared from comments made by Mr. Kroeker that he still intended to administer bankruptcy files under an employment contract for a trustee in bankruptcy.

The panel formed the opinion that the conduct of this member so undermined the reputation of the profession that nothing less than expulsion would be an appropriate sanction in this case. The chartered accountancy profession cannot, and will not, tolerate members who gain positions of trust by virtue of their designations, and then use that trust to steal funds for their own benefit.

Notice

Counsel for Mr. Kroeker agreed that his client's name should be published in *CheckMark*, but took exception to the request of the professional conduct committee that notice of expulsion be published in the *St. Catharine's Standard*, pursuant to the Institute Bylaw 575(3). Aware that publication is subject to panel discretion, the panel considered the submission of Mr. Fogul, but concluded that there were no compelling reasons to cause it to exercise its discretion not to publish.

Certificate

The panel concluded that it is important that Mr. Kroeker no longer appear to be a member of the chartered accountancy profession after his expulsion. Accordingly, he was ordered to surrender his certificate of membership in the Institute to the secretary of the discipline committee.

DATED AT TORONTO THIS DAY OF JANUARY, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE

D.P. SETTERINGTON, CA – CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

B.M. BYRNE, CA
P.A. GOGGINS, CA
J.M. MULHALL, CA
B.L. STEPHENS, CA
R.W. WARKENTIN (Public representative)

APPEAL COMMITTEE re Woldemar Kroeker

REASON FOR THE DECISION AND ORDER OF THE APPEAL IN THE MATTER OF: An appeal by **WOLDEMAR KROEKER, CA**, a member of the Institute, of the decision and order of the discipline committee made on June 7, 1995, pursuant to the bylaws of the Institute, as amended.

DECISION AND REASONS FOR DECISION MADE JANUARY 9, 1996

DECISION

Having reviewed the order and reasons of the discipline committee, the transcript of the discipline committee hearing and the exhibits filed at the hearing, and having heard the submissions made by the parties, the appeal committee decided:

1. That the appeal of Mr. Kroeker is dismissed; and
2. That the order of the discipline committee, made on the 7th day of June 1995, is confirmed.

REASONS FOR THE DECISION

This appeal was heard by the appeal committee of the Institute of Chartered Accountants of Ontario on January 9, 1996. Mr. Kroeker appealed only paragraph 4 of the discipline committee's order of June 7, 1995, which provides that notice of the discipline committee's decision and order disclose his name.

Ms. Deborah McPhadden attended for the professional conduct committee. Mr. Kroeker attended without counsel, and confirmed for the record that he had been advised of his right to counsel and that he understood that right.

Mr. Kroeker submitted that the disclosure of his name in the publication of the order of the discipline committee was not necessary for the Institute to fulfil its obligation to regulate its members. He stated that he was 64 years of age, and was winding down and attempting to sell his practice. He also stated that the publicity associated with the order of the discipline committee could have a detrimental effect on the sale of his practice. In these circumstances and in accordance with the bylaws, he submitted, the appeal committee should exercise its discretionary power to withhold the publication of his name.

Ms. McPhadden submitted that the appeal committee should only consider amending the order of the discipline committee if it was persuaded that an error had been made by the discipline committee in applying accepted principles of sentencing. She cited the decision of R. v. Basha et al (1979), 23 Nfld. & P.E.I.R. and 61 A.P.R. 286 (Nfld. C.A.), which states at p. 299:

... a court of appeal should only interfere with a trial judge's discretionary powers as to sentencing if it is apparent that the judge has misapplied one or other of the accepted principles of sentencing, in all the circumstances of the case, with the result that the sentence imposed is outside the range of sentencing for that type of offence.

Ms. McPhadden cited a number of precedents to support the inclusion of a member's name in the publication of an order of the discipline committee. She also submitted that such an order should only be reversed in rare and unusual circumstances, and that the circumstances outlined by Mr. Kroeker, which were known to the discipline committee at the time it reached its decision, were neither rare nor unusual.

The appeal committee concluded that

- X there was no basis upon which to find that the discipline committee had made an error in reaching its decision;
- X there had been no misapplication of accepted principles of sentencing;
and
- X there were no rare or unusual circumstances which could be considered as a basis for allowing Mr. Kroeker's appeal.

Accordingly, Mr. Kroeker's appeal was dismissed.

DATED AT TORONTO, THIS _____ DAY OF _____, 1996
BY ORDER OF THE APPEAL COMMITTEE

R.G. STACKHOUSE, FCA - CHAIR
THE APPEAL COMMITTEE

MEMBERS OF THE PANEL:

W.G. BROWN, FCA
D.J. HERLICK, CA
F.C. HILL, FCA
E. ZAVERSHNIK, CA
GENERAL A. BROWN (Public representative)