

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **YOUNG I. HYUN**, a suspended member of the Institute, under **Rules 201.1 and 204.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Young I. Hyun
182 Willowdale Avenue, Suite 200
North York, ON M2N 4Y8

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order Made July 28, 2008)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on July 28, 2008, to hear charges of professional misconduct against Young I. Hyun, a suspended member of the Institute.
2. Alexandra Hersak appeared on behalf of the Professional Conduct Committee. She was accompanied by Scott Porter, CA, the investigator appointed by the Professional Conduct Committee. Mr. Hyun was in attendance, and was not represented by counsel. Mr. Hyun confirmed that he had been advised of the right to be represented by counsel and that he understood and waived that right.
3. The decision of the panel was made known at the conclusion of the hearing on July 28, 2008. The written Decision and Order was sent to the parties on July 30, 2008. These reasons, given pursuant to Bylaw 574, include the charges, the decision, the order, and the reasons of the panel for its decision and order.

CHARGES

4. The following charges were laid against Mr. Hyun on December 14, 2007:
 1. THAT, the said Young I. Hyun, in or about the period March 15, 2007 through March 31, 2007, 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, contrary to his signed agreement and undertaking given to a Practice Supervisor appointed pursuant to a Discipline Committee Order dated June 22, 2006, he signed and released a Review Engagement Report attached to the financial statements of ****737 Ontario Inc. without having the Supervisor review the file and sign off the Practice Supervisor's checklist for file review, contrary to Rule 201.1 of the Rules of Professional Conduct.

2. THAT, the said Young I. Hyun, in or about the period July 1, 2005 through May 2, 2006, while engaged to perform the audit of the financial statements of "TF Canada Inc." for the year ended December 31, 2005, failed to remain independent and free of any influence, interest or relationship which, in respect of the engagement, impaired his professional judgment or objectivity or would be seen by a reasonable observer to impair his professional judgment or objectivity, contrary to Rule 204.1 of the Rules of Professional Conduct as amended, in that:
 - i) In or about July 2005 he received, as a loan or investment, money in the approximate amount of \$100,000 US from "DC", a minority shareholder and President of T.F. Canada Inc., which loan or investment remained outstanding, in whole or in part, during the period he audited the financial statements.

PLEA

5. Mr. Hyun entered a plea of guilty to each of the charges. He said he understood that on the basis of his plea of guilty and on that basis alone, he could be found guilty of the charges.

PROCEEDINGS

6. The case for the Professional Conduct Committee consisted of a Document Brief (Exhibit 13) upon which Mr. Porter gave evidence. He also introduced a document, which he described as a high level summary of Mr. Hyun's assets and liabilities (Exhibit 14). Mr. Hyun did not have questions by way of cross-examination for Mr. Porter. Mr. Hyun did not call evidence or testify with respect to the charges.

7. Ms. Hersak made submissions with respect to the charges. Mr. Hyun made written submissions (Exhibit 15) in which he acknowledged that the allegations set out in the charges were true and that he had breached the rules as charged.

Facts

Charge No. 1

8. On June 22, 2006, the Discipline Committee found Mr. Hyun guilty of professional misconduct. A term of that order stipulated that Mr. Hyun's practice was to be supervised for a period of three years. Mr. Hyun was required to submit a plan of supervision, including the name of the proposed supervisor, to the Director of Standards Enforcement for approval.

9. Mr. Hyun submitted a supervision practice plan and the agreement he had entered into with the supervisor to the Director of Standards Enforcement. Both were approved (Exhibit 13, Tabs 2 and 3).

10. It was part of the supervision practice plan and the agreement with the supervisor that Mr. Hyun would not release any assurance reports until the supervisor had reviewed and signed off on the file.

11. On March 15, 2007, under pressure from his client, Mr. Hyun issued a review engagement report for the year ending December 31, 2006. He did so without having the file reviewed by the supervisor, contrary to the order of the Discipline Committee of June 2006 and the supervision practice plan and agreement with the supervisor.

12. This review engagement was apparently the only assurance engagement which Mr. Hyun had after June 2006. The supervisor did not review any of Mr. Hyun's assurance engagement files.

Charge No. 2

13. Mr. Hyun received a bank draft payable to Hyun and Phan Investments Corp. ("Hyun & Phan") dated June 28, 2005, in the amount of US\$90,000. He received another bank draft dated June 28, 2005, payable to FXI FOREX International Corp. ("FXI 4X") (Exhibit 13 Tab 10), in the amount of US\$10,000. The bank drafts were deposited in the accounts of the respective companies the next day, June 29, 2005. Mr. Hyun had an interest in both Hyun & Phan and FXI 4X. Both bank drafts were received from a minority shareholder and President of T.F. Canada Inc. This corporation was an assurance client of Mr. Hyun.

14. Mr. Hyun signed a promissory note on behalf of Hyun & Phan dated July 4, 2005, which promised to repay the US\$100,000 together with \$36,000 in interest on July 4, 2006 (Exhibit 13 Tab 9). The amount owed had not been repaid at the time of the hearing and is apparently the subject of a civil action.

15. Mr. Hyun issued an auditor's report for T.F. Canada Inc. for the year ending December 31, 2005, on May 2, 2006; approximately 10 months after the US\$100,000 had been received.

DECISION

16. Upon deliberation, the panel found that the failure to adhere to the order made by the Discipline Committee and the failure to adhere to the independence or objectivity requirements of the Institute constituted professional misconduct, and made the following decision:

THAT, having seen, heard and considered the evidence, and having heard the plea of guilty to charge Nos. 1 and 2, the Discipline Committee finds Mr. Young I. Hyun guilty of charge Nos. 1 and 2.

SUBMISSIONS ON SANCTION

17. Ms. Hersak, on behalf of the Professional Conduct Committee, filed the reasons of the Discipline Committee, dated August 19, 2003, for a previous finding of professional misconduct against Mr. Hyun (Exhibit 16).

18. Mr. Hyun testified and filed a written statement about his personal affairs, including his financial affairs. This statement (Exhibit 17) was received *in camera*.

19. The Professional Conduct Committee sought a reprimand in writing from the Chair; a fine in the amount of \$10,000; costs in the amount of \$10,000; expulsion from membership in the Institute; revocation of Mr. Hyun's public accounting licence; and publicity in the normal course, including notice to be given in *CheckMark*, to the Public Accountants Council, to CICA, to the other provincial institutes/Ordre and in a local newspaper pursuant to Bylaw 575(3).

20. Ms. Hersak submitted that, as Mr. Hyun was not governable, the principle of rehabilitation was not relevant and he must be expelled from membership in the Institute.

21. The Professional Conduct Committee also sought a fine of \$10,000 as a general deterrent for the breach of the order of the Discipline Committee and the breach of Rule 204.1, one of the pillars of the profession.

22. Ms. Hersak filed a Costs Outline (Exhibit 18) indicating the total costs for the investigation and prosecution exceeded \$21,000. She submitted that, in the circumstances, it would be appropriate for Mr. Hyun, whose misconduct had caused the expense, to indemnify the Institute to the extent of \$10,000.

23. Mr. Hyun referred to the evidence given *in camera* and stated that he no longer did assurance engagements. He asked for time to pay any fine and costs assessed and expressed the hope that he would be allowed to remain a member, as he was no longer doing assurance work.

ORDER

24. After considering the submissions and deliberating, the panel made the following Order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Hyun is reprimanded in writing by the chair of the hearing.
2. THAT Mr. Hyun be and he is hereby fined the sum of \$8,000 to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Hyun be and he is hereby charged costs fixed at \$2,000 to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Hyun be and he is hereby expelled from membership in the Institute.
5. THAT the public accounting licence of Mr. Hyun be and it is hereby revoked.
6. THAT notice of this Decision and Order, disclosing Mr. Hyun'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 all members of the Institute;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to all provincial institutes/Ordre,and shall be made available to the public.

7. THAT notice of the expulsion and revocation of Mr. Hyun's public accounting licence disclosing his name, be given by publication on the Institute's website and in *The Toronto Star*. All costs associated with the publication shall be borne by Mr. Hyun and shall be in addition to any other costs ordered by the committee.
8. THAT Mr. Hyun surrender his certificate of membership in the Institute and public accounting licence to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

REASONS FOR SANCTION

Reprimand

25. The panel ordered Mr. Hyun be reprimanded to stress to him the unacceptable nature of his misconduct.

Expulsion

26. It is apparent from the reasons of the Discipline Committee of August 2003, when Mr. Hyun was found guilty of one charge under Rule 206 and two charges under Rule 201.1, that his assurance work did not meet the required standards of the profession for the period December 31, 1999 to February 27, 2001. The Order of the Discipline Committee of August 2003 provided Mr. Hyun with the opportunity to demonstrate that he could rehabilitate himself and meet the standards of practice of the profession. In addition to being fined and reprimanded, Mr. Hyun was ordered to complete two specified professional development courses and to be reinvestigated by the Professional Conduct Committee, or by a person retained by the Professional Conduct Committee.

27. It is apparent from the reasons of the Discipline Committee for the decision of June 2006 that Mr. Hyun's assurance work did not meet the required standards of the profession in early 2005. For a second time, the Order of the Discipline Committee provided Mr. Hyun with the opportunity to demonstrate that he could rehabilitate himself and meet the standards of practice of the profession and, at the same time, with the appointment of the supervisor, there was reason to believe that the public would be protected and the standards of the profession met before any assurance report was provided to a client.

28. Having been given two opportunities by the Discipline Committee to demonstrate he could rehabilitate himself and meet the standards of practice of the profession, Mr. Hyun failed to adhere to one of the fundamental requirements of the profession, the requirement to remain independent, and to appear independent to an objective observer, from the client when performing an assurance engagement. Mr. Hyun ought to have known that he could not undertake an assurance engagement when he or his companies had accepted the US\$100,000. His failure in this respect disclosed a lack of appreciation of what it means to be a chartered accountant. At a minimum, this misconduct suggests that Mr. Hyun is not capable of being governed.

29. In yielding to pressure from a client and providing a review engagement report in contravention of the order of the Discipline Committee, the supervision practice plan and the agreement with the supervisor, Mr. Hyun further showed that he was unwilling to be governed by the Institute.

30. At this hearing, Mr. Hyun acknowledged his misconduct and apologized for it. He appears to respect the Institute and said he was willing to do whatever was necessary to remain a member of the profession, a profession which he clearly holds in high esteem. However, his failure to comply with an Order of the Discipline Committee destroyed any trust, which a panel of the Discipline Committee could have in any undertaking he would give with respect to his practice.

31. The failure to appreciate the fundamental obligation of a chartered accountant to remain independent and the conscious, intentional disregard of an order of the Discipline Committee compelled the panel to conclude that Mr. Hyun is ungovernable and must be expelled. As a consequence of his expulsion, his licence to practise public accounting must be revoked.

Fine

32. The panel concluded that a fine of \$8,000 was required in the circumstances as a general deterrent. The panel concluded a fine of \$8,000 was a very substantial financial penalty for Mr. Hyun. His financial position, which is not robust, was relevant both with respect to the fine and costs, and to the time he was given in which to pay the fine and costs.

Costs

33. It is appropriate that the member charged, rather than the membership as a whole, bear a portion of the costs of the hearing occasioned by his misconduct. The panel concluded that an amount of \$2,000 would be the appropriate amount for Mr. Hyun to reimburse the Institute, given his financial position. Again, he was allowed two years in which to pay the costs.

Certificate of Membership

34. As Mr. Hyun is to be expelled from membership in the Institute he should return the certificate of membership to the Discipline Committee Secretary within ten days from the date this Decision and Order becomes final under the bylaws.

Public Accounting Licence

35. As Mr. Hyun is to be expelled, his public accounting licence must be revoked as provided in the bylaws and he should return his public accounting licence to the Discipline Committee Secretary.

Publication

36. The panel did not find that there were any rare or unusual circumstances, which would make it inappropriate to publish Mr. Hyun's name. As he will be expelled and no longer have a licence to practise public accounting, the public interest and the principle of general deterrence require that notice of his expulsion from membership and the revocation of his public accounting licence should be given to the profession and to the public.

37. The panel concluded that the appropriate newspaper in which the notice of expulsion should appear is the *Toronto Star*. All costs associated with the publication of the notice in the newspaper shall be borne by Mr. Hyun and shall be in addition to any other costs ordered.

DATED AT TORONTO THIS 11th DAY OF DECEMBER, 2008.
BY ORDER OF THE DISCIPLINE COMMITTEE

B.L. HAYES, CA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

S.F. DINELEY, FCA
S.J. HOLTOM, CA
R.H. CARRINGTON (PUBLIC REPRESENTATIVE)