

IN THE MATTER OF a Proceeding under
the *Certified General Accountants Act, 2010*

IN THE MATTER OF a Complaint against Manny Gaspar, CGA

BETWEEN:

The Discipline Committee of The Certified General Accountants Association of Ontario

-and-

Manny Gaspar, CGA

DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL

Members of the Professional Conduct Tribunal Panel:

John J Biancucci CGA, Chair
Jane Bennie CGA,
Betty Kuchta, Public Representative

Pursuant to section 9, Article 9 of By-Law Four, the Professional Conduct Tribunal Panel has reviewed the Statement of Facts and Resolution proposed by the parties in this matter, signed by the Chair of the Discipline Committee Pierre Bocti, on the 19th of May, 2010 and signed by Manny Gaspar on the 2nd of July, 2010. The Professional Conduct Tribunal Panel accepts the attached proposal as set out by the parties.

The attached proposal is hereby ratified.

Dated this 7th day of December, 2010

I, John J Biancucci, sign this Decision as Chair of the Panel of the Professional Conduct Tribunal on behalf of the members of the Panel that heard this matter.


John J Biancucci, CGA

STATEMENT OF FACTS AND RESOLUTION

A. AGREED UPON STATEMENT OF FACTS

Representations to CGA Ontario

1. I have been in public practice for over 20 years.
2. The Association relies on its members to accurately and honestly self-report the nature of their practice to the Association.
3. In 2003 I had approximately 160 compilation clients, five review clients and 0 audit clients. I advised the Association of the engagements on my Public Practice Registration Form.
4. In 2004 I had approximately 170 compilations clients, six review clients and 0 audits clients. I advised the Association of the engagements on my Public Practice Registration Form.
5. In 2005 I advised the Association on my Public Practice Registration Form that I had completed 0 compilations, 0 reviews and 0 audits.
6. Contrary to my representation to the Association, I had prepared 165 compilations and six review engagement reports in 2005.
7. In 2006 I advised the Association on my Public Practice Registration Form that I had completed 0 compilations, 0 reviews and 0 audits.
8. Contrary to my representation to the Association, I had prepared 168 compilation engagements and six review engagement reports in 2006.
9. In 2007 I advised the Association on my Public Practice Registration Form that I had completed 0 compilations, 0 reviews and 0 audits.
10. Contrary to my representation to the Association, I had prepared 163 compilation engagements and six review engagement reports in 2007.
11. In 2008 I advised the Association on my Public Practice Registration Form that I had completed 0 compilations, 0 reviews and 0 audits.
12. Contrary to my representation to the Association, I had prepared 161 compilation engagements and six review engagement reports in 2008.
13. I erroneously copied the 0 from the previous year's returns into each subsequent return.

Review Engagement Reports

14. During my most recent practice inspection of June 3, 2009 I was asked if I had prepared Management Review Engagements and I answered YES.
15. I also disclosed to the reviewer the following:

On or about 30 August 2008 I delivered a review engagement letter to the management of 1180043 Ontario Ltd. operating as Lansdowne Excavating Grading and Sodding ("Lansdowne") (the "Lansdowne Review Engagement Letter").
16. In the Lansdowne Review Engagement Letter I confirmed that I would be providing a Review Engagement Report as a "management accountant". I indicated that the statements were intended for management's use within the company and noted "However, if copies are provided to any outside party, they must include a copy of the Review Engagement Report."
17. On or about 30 August 2008 I signed a Review Engagement Report to the management of Lansdowne (the "Lansdowne Review Engagement Report"). In the Lansdowne Review Engagement Report I advised that "In my capacity as your management accountant and for use within your company, I have prepared and reviewed the balance sheet of [Lansdowne] as at April 30, 2008 and the statements of income, retained earnings and cash flows for the period then ended."
18. In the Lansdowne Review Engagement Report, I opined that "based on my review, nothing has come to my attention that causes me to believe that these financial statements are not, in all material respects in accordance with Canadian generally accepted accounting principles."
19. Each of the four review engagements that I carried out for Lansdowne for the years 2005, 2006, 2007 and 2008 was substantially the same in form and content as the Lansdowne Review Engagement Report and each Review Engagement Letter was substantially the same in form and content as the Lansdowne Review Engagement Letter.
20. Each of the review engagements letters and review engagements reports that I prepared in 2005, 2006, 2007 and 2008 for each of my five other review clients was substantially the same in form and content as the Lansdowne Review Engagement Letter and the Lansdowne Review Engagement Report.

Information from the Association

21. In October 2005 the chair of the professional standards and competence committee of 2004/2005 sent a memo to all practitioners with the subject line: Ontario Section of Public Practice Manual. It provided the definition of public accounting services as provided in section 2(1) of Bill 94.

2. (1) For the purposes of this Act and subject to any limitations that are prescribed, the practice of public accounting means providing, on a basis that is independent of the person for whom the services are being provided, either of the following services:

1. Assurance engagements, including an audit or a review engagement, conducted with respect to the correctness, fairness, completeness or reasonableness of a financial statement or any part of a financial statement or any statement attached to a financial statement, if it can reasonably be expected that the services will be relied upon or used by a third party.

Furthermore, the memo asked practitioners to "Please go through the above definition in detail and verify if any financial statement engagement that you are taking on fits within file definition. If it does fit, a licensed accountant must perform the engagement. If it does not fit, an un-licensed CGA can perform the engagement."

22. I represented to the Association that on 11 May 2006 I attended a Town Hall Seminar entitled Public Accounting Act, 2004 Update.
23. At that seminar, the Association reiterated that members required a licence to conduct public accounting and advised that review engagement reports to management were not permitted under the Act.
24. In December 2007 the Association sent correspondence to all public practitioners, the opening sentence of which stated: "I am contacting you to explain that under the Public Accounting Act, 2004 audit or review engagements of financial statements (including Management Reviews) can only be performed by a licensed accountant where it can be reasonably expected that the financial statements will be used or relied upon by a third party Consequently, CGA practitioners who are not licensed are not allowed to perform audit or review engagements of financial statements (including Management Reviews)."
25. I registered for a seminar held 20 March 2008 entitled What It Will Take to Get a Public Accounting Licence in Ontario.
26. At that seminar, the Association reiterated that members could not issue review engagement reports until they had a licence.
27. In the spring of 2008 the Association sent all members a brochure entitled "In High Gear: CGAs in the Public Accounting Field." That brochure stated, in part: "Management reviews must not be used under any circumstances. The former Public Accountancy Act did not define management accounting, but it did contain a provision that provided an exemption from the definition of licensed public accounting.... The Public Accounting Act, 2004, added clarity as the Ontario Courts had recommended. As a result, it is no longer appropriate or lawful for CGAs to prepare management reviews without a public accounting licence."

Actions in Violation of the Public Accounting Act

28. After the Association's memo sent out in October 2005 and after attending the town hall meeting in May 2006, and in the course of receiving additional information from the Association on the prohibition against management reviews, I prepared 12 further Review Engagement Reports and 12 Review Engagements Letters, six in 2007 and six in 2008.
29. At the time I prepared these 12 Review Engagement Reports, I knew or ought to have known that Ontario law required persons who practise public accounting to be licensed in accordance with the Public Accounting Act (the "Act").
30. The practice of public accounting is defined in the Act to include assurance engagements, including review engagements conducted with respect to the correctness, fairness, completeness or reasonableness of a financial statement or any part of a financial statement or any statement attached to a financial statement, if it can reasonably be expected that the services will be relied upon or used by a third party.
31. I did not hold a licence to practise public accounting when I prepared any of these 12 Review Engagement Reports.
32. In preparing the 12 Review Engagement Reports without a licence, I violated the Act.
33. I have now arranged for a licensed public accountant to perform the assurance engagement work required for my clients.
34. Rule 102 of the Association's Code of Ethical Principles and Rules of Conduct (the "Code") provides that "a member shall not permit the member's firm name or the member's name to be used with, participate in, or provide services to, any activity that the member knows, or which a reasonable and informed third party, would believe, to be unlawful."
35. Rule 606(a) of the Code provides that "a member shall not participate in any action that is detrimental to the Association or the profession."
36. Rule 606Co) of the Code provides that "a member shall, subject to Rules R105 and R201 report to the Association any situation of which the member has sufficient personal knowledge and that the member thinks may be detrimental to the Association or the profession."
37. The Code's Ethical Principle relating to Deceptive Information provides that "members shall not be associated with any information that the member knows, or ought to know, to be false or misleading, whether by statement or omission."

AGREED UPON RESOLUTION

1. I agree that in issuing the 12 review engagement reports in 2007 and 2008 without a public accounting licence, I was in violation of the Act. As such, I was engaged in unlawful activity contrary to Rule 102.
2. I agree that once I knew or ought to have known that I was not permitted to do review engagements, I was obliged to advise the Association that I had already issued 12 review engagement reports contrary to the Act. In not reporting this situation that could have been detrimental to the Association, I was in violation of Rule 606(b).
3. I did not accurately self-report the nature of my practice to the Association.
4. I agree that in advising the Association that I had not done reviews in 2005, 2006, 2007 or 2008, I was associated with information that was or could have been misleading contrary to the Principle on Deceptive Information.
5. I agree that my violations of the Act and my failure to respond accurately to the Association about the nature of my practice were actions that had the potential to be detrimental to the Association or the profession and, as such, were a violation of Rule 606(a).
6. I recognize that if I had been charged with an offence under the Act and found guilty, I could have been fined by the court up to \$25,000 for the first offence and up to \$50,000 for every subsequent offence.
7. I accept a fine of \$5,000 from the Association as a result of my breaches of the Code.
8. I accept a reprimand from the Association as a result of my breaches of the Code.
9. I agree to undergo a practice inspection on or after May 2011 on a date to be arranged by the Association.
10. I understand that the committee is not seeking any costs payable from me. However, I understand that if I do not accept this resolution, the committee will be seeking costs, including the costs of a hearing before the Professional Conduct Tribunal.
11. I understand that, as required by By-Law Four, the terms of the resolution and the reprimand will be published in Statements.
12. I understand that, after a ten day waiting period from the date of acceptance of this proposed resolution, the Committee will present this proposed agreed resolution of this complaint to the Professional Conduct Tribunal. The Tribunal may accept or reject the resolution. If it accepts the resolution of the complaint, this ratification shall be the final disposition of the complaint. Where the Tribunal refuses to accept the proposed resolution, it may grant this committee an opportunity to return before it within 10 days or such other reasonable time as shall be stipulated by the Tribunal, with an amended proposed agreed resolution. Where the Tribunal refuses to ratify a proposed resolution and does not grant the committee an opportunity to return before it with an amended proposed agreed resolution, a Professional Conduct Tribunal panel of three members shall be appointed to conduct a formal hearing pursuant to sections 9 and 12 of Article 9

of By-Law Four.

13. I further understand that if the committee and I are unable to resolve this complaint through an agreed upon resolution process, the matter will be referred to the Professional Conduct Tribunal for a hearing.

I hereby agree to this above statement of facts and resolution.

Date of Offer: ~~Shirley Tom, CGA~~ Pierre Bacti, FCGA

19 May 2010

For Pierre Bacti
Chair, Discipline Committee

Date of Acceptance

July 2-2010

Name:

Manny Gaspar, CGA