

IN THE MATTER OF a Proceeding under
the *Certified General Accountants Act, 2010*
and the Association's Bylaws

IN THE MATTER OF a Complaint against CR

B E T W E E N:

The Discipline Committee of The Certified General Accountants Association of Ontario

- and -

CR

DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL

Members of the Professional Conduct Tribunal Panel:

Jane Bennie, CGA, Chair

Doug White, CGA

Brian Prendergast, Public Representative

Pursuant to section 25, Article 9 of the Bylaws, 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 Debra Taylor, FCGA, October 29, 2012 and signed by CR, November 1, 2012. The Professional Conduct Tribunal Panel has also reviewed the submissions by Ms. Jolley as contained in an email dated November 2, 2012 and a medical letter dated August 31, 2012. The Professional Conduct Tribunal Panel accepts the attached proposal as set out by the parties. The attached proposal is hereby ratified.

Dated this 28th day of November, 2012

I, Jane Bennie, CGA, 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.


[Jane Bennie, CGA]

**THE CERTIFIED GENERAL ACCOUNTANTS
ASSOCIATION OF ONTARIO**

**IN THE MATTER OF A PROCEEDING UNDER SUBSECTION 36(1)
OF THE CERTIFIED GENERAL ACCOUNTANTS ACT, 2010
AND THE ASSOCIATION'S BYLAWS**

**IN THE MATTER OF R, a member of the
Certified General Accountants Association of Ontario**

STATEMENT OF FACTS AND RESOLUTION

A. AGREED UPON STATEMENT OF FACTS

1. R (the "Member") became a member of CGA Ontario in 2001.
2. The Member holds a CGA Ontario certificate number and a CGA Canada certificate number.

The Parties

3. Company H (the "Company") was incorporated in 2003 for the purpose of purchasing, renovating and re-selling properties. W and J are equal shareholders of the Company.
4. The Company had an accountant, (the "C.A."), who prepared its financial statements and income tax returns from the outset to at least the year ended 31 May 2007.
5. For the period covering the years ended 31 May 2004 and 31 May 2005 RR was the Company's bookkeeper.
6. For some of the period covering the year ended 31 May 2006 and for the year ended 31 May 2007 C was the Company's bookkeeper.

The Engagement

7. In or about mid 2007 the Company engaged the Member to complete an overview of its accounting records for the period June 2004 to May 2007.
8. At the time of the Member's retainer, the Member did not state in writing to the Company the nature and scope of the services to be rendered under the terms of the engagement.

Treatment of finances

9. Rather than advance money to the Company for the Company to pay its creditors, W and J or one of their related companies often directly paid the Company's suppliers and other creditors.
10. W and J entered into agreements of purchase and sale for properties and paid deposits for those properties personally rather than through the Company.
11. W and J from time to time made payments directly to each other rather than make those payments through the Company as shareholder advances or repayments.
12. Money was moved without being tracked or properly recorded and was indicative of how the Company managed its financial affairs.

The Records

13. The Company's accounting records were poorly maintained.
14. The Company's bank deposit books were missing for a period of time and the Member did not have access to them.
15. RR was responsible for recording shareholder contributions, mortgage financing, property transactions and renovation costs for properties purchased by or on behalf of the Company.
16. RR made erroneous entries into the Company's books.
17. As a result of entries made by RR, the opening balances for 2005 with respect to the shareholder account allocations were incorrect.
18. RR delivered spreadsheets of information, including information on shareholder contributions, to the C.A. who used them in the preparation of the Company's financial statements for the years ended 31 May 2004 and 31 May 2005.
19. RR did not maintain supporting documentation with the cheque payments made for the 2004 and 2005 Company records.
20. In certain instances, expenses related to one property were recorded against a different property.

21. Further there was evidence that, in or about 2005, significant construction costs related to a project in which the Company did not have an interest were improperly charged against a Company renovation project.
22. Deposit and other funds for a particular property were often attributed to whoever had entered into the agreement of purchase and sale (W or J) regardless of whether that individual was the source of the funds. None of the properties were purchased in the name of the Company. These attributions served as an underlying basis for several incorrect entries to the shareholder loan accounts for W and J.
23. Near the commencement of the engagement, J advised the Member that both J and W deducted personal expenses from their “for your eyes only” shareholders accounts some time earlier.... “Looks to me we are reworking the books that are never, and I SAY never going to reflect the reality.”
24. J acknowledged in J’s email to W of 16 May 2008 that both the Member and the C.A. “are not having accurate info. As we did not entered [sic] the books accurately to start with (re lowering the taxes)”.
25. J acknowledged in J’s email to the Member of 19 May 2008 J’s concern about the accuracy of the Company’s records, stating: “... how can we have accurate books at this point when both of bookkeepers have false start point. I am so ... confused.”
26. J acknowledged in J’s email to the Member on 24 July 2008 that “[the Company’s] books are not accurate and will never reflect true shareholders accounts. We are all aware why.”
27. Throughout 2008 until the Member’s termination in 2009 the Member continued to request supporting documentation from the Company and its shareholders.

September 2004 re-allocation

28. In or about September 2004, the sum of \$108,893.79 was deposited to the Company. There was no supporting documentation as to the source of the funds.
29. RR attributed that deposit to W’s shareholder account.
30. J states that J advised the Member verbally that J was the source of \$100,000 of those funds, which the Member denies, and sought an adjustment to the shareholder accounts of W and J.
31. The Member did not correct the shareholder account as, in the view of the Member, there was no proper support for doing so, even though the Member repeatedly asked for the information.

32. In March 2010 J provided evidence to CGA Ontario and to the liquidator, noted below, that J had advanced \$100,000 of the \$108,893.79 in question to the Company.

January 2005 allocation

33. In or about January 2005 a down payment of \$50,000 was made toward the purchase of property located at M Road.
34. RR did not allocate the \$50,000 to either W or J in the Company records.
35. The bank statements that the Member reviewed for J did not indicate that the funds came from him.
36. Although the Member did not have documentation evidencing that the \$50,000 came from W either, the Member credited the \$50,000 to W's shareholder account as W provided the balance of the closing funds of \$213,346.53.
37. J asked the Member to credit \$50,000 to J's account, which the Member did without supporting documentation.

March 2005 re-allocation

38. In March 2005 RR recorded a credit of \$150,000 to the benefit of W in relation to the purchase of a property.
39. According to J, RR may have credited W with the \$150,000 deposit based on J's information to RR that W was providing the financing for the property purchases and J was providing the design and construction supervision.
40. When the Member became involved, J states that J advised the Member verbally, which the Member denies, that J was directly or indirectly the source of those funds.
41. The Member did not correct the shareholder account as, in the Member's view, there was no real discussion of the issue or proper support for doing so.
42. It was not until November 2009 that J delivered documentation to support J's assertion that J, directly or indirectly, had contributed the \$150,000.

Late 2007 allocation

43. In late 2007 the Member made an adjusting entry of \$50,889.15 to the records for the fiscal year 2005 to the credit of W's shareholder account.

44. At the time of the adjustment, the Member had a bank statement. The Member conducted an investigation and received verbal confirmation from J and W that a payment was made by W directly to the subcontractors. The Member acknowledges, however, that no further supporting documentation was provided.
45. The Member made the entry based on J's advice, which J has later denied, that J believed the funds were for a payment by W to a creditor of the Company.
46. J states that J advised the Member verbally, which the Member denies, that this amount was for a personal expense of W and should not be credited to J's account.
47. Before the Member made the entry, the Member made a notation that the Member still needed to find out the payee of the \$50,889.15. Despite the notation, it is not clear if the Member ever knew who the payee was.
48. Ultimately W acknowledged the expenditure was personal in nature and the adjustment was then made to remove this amount from W's shareholder account.

The Outcome

49. Upon reviewing the findings of the Member, the C.A. amended the prior year's income tax returns that the C.A. had prepared for the Company.
50. In addition the C.A. made a voluntary disclosure to Canada Revenue Agency with respect to the Company's 2005 income tax return.
51. The Member prepared a memo to W and J dated October 2007 entitled "[the Company's] accounting overview" wherein the Member states that the Member had carried out three functions:
 - (a) Review W's shareholder account to identify unrecorded transactions to address concerns that W had not provided all of the necessary documentation for accounting;
 - (b) Confirm correct accounting for all large transactions relating to the purchase and sale of each property and related mortgages for the period June 2004 to May 2007; and
 - (c) Report any significant accounting issues as uncovered.
52. In that memo the Member outlined the issues the Member uncovered concerning the incomplete accounting records of the Company.
53. The Member met with W, J and the C.A. to review the content of the memo and its identified deficiencies and areas of concern.

54. In 2009, J commenced a court application against W and made allegations concerning access to the Company's records, at which point the Member ceased providing services to the Company.
55. Ultimately W brought a court application which resulted in an order of the court winding up the Company and appointing a liquidator over its assets.
56. The liquidator determined that the lists of entries in the Company's books could not be substantiated by source documentation in many cases.
57. After its appointment, J provided the liquidator with a significant amount of additional information and documentation to supplement the Company's books and records.
58. As a result of the state of the Company's records, the liquidator was required to build the Company's general ledger from inception.
59. By late 2010 the liquidator provided a draft report to J and W.
60. However, it was not until two years after its appointment that the liquidator was able to file its first report with the court.
61. The liquidator noted "It appears that the informal manner in which [the Company] carried on business, combined with the undisciplined approach to properly distinguishing who advanced funds to [the Company] and/or made payments on behalf of [the Company], are significant contributing factors to the confusion present in the accounting, and the respective views of the shareholders as to who owes/is owed money with respect to [the Company]."
62. The liquidator confirmed that certain transactions involving shareholder advances in 2004 and 2005 were not booked correctly at the time they occurred.
63. The liquidator noted: "... the convoluted manner in which money was moved without being tracked or properly recorded is indicative of the manner in which [the Company] managed its financial affairs."
64. To the extent that the Member did not properly correct the Company shareholder accounts and created other errors in the Company shareholder accounts, the Member's actions were as a result of the difficulties created by RR whose work was reviewed by the C.A., and were perpetuated by the Company's poor records and the poor record keeping and business methods of its shareholders.
65. Other than as set out below, any other adjustments made by the Member and any other alleged failures to make adjustments to the Company's shareholder accounts did not amount to a breach of the Code.

Rule 304

66. At the material time, Rule 304 – Terms of Engagement – of the Association’s Code of Ethical Principles and Rules of Conduct (the “Code”) stated:

A member clearly shall state in writing to a client the nature and scope of services to be rendered under the terms of the engagement.

67. The Member did not outline the nature and scope of the services to be rendered at the time of the Member’s engagement.
68. The Member did not provide information in writing about the scope of the Member’s services until October 2007.
69. J disagrees with what the Member describes as the scope of the Member’s retainer.
70. Had the Member clearly stated in writing at the time of the retainer the nature and scope of the services the Member was to render, this would have eliminated this area of dispute.

Rule 305

71. At the material time, Rule 305 of the Code stated:

A member shall not permit the firm name or the member’s name to be used with any communication or recommendation concerning financial information, unless the member has considered all of the information required to support such communication and/or recommendation.

72. The Member made the late 2007 adjustment without considering all of the information required to support the adjustment in favour of W.
73. The Member’s conduct amounted to professional misconduct.

B. AGREED UPON RESOLUTION

1. The Member acknowledges that at the time of the retainer, the Member did not state to the Company in writing the nature and scope of the services the Member was retained to render in violation of Rule 304.

2. The Member acknowledges that the Member made the late 2007 adjustment in favour of W without complete supporting documentation and based on verbal information and a bank statement.
3. In recommending and carrying out the late 2007 adjustment with only partial supporting documentation, the Member did not consider all of the information required to support that readjustment, in violation of Rule 305.
4. The Member agrees to pay a fine of \$2,000.00 representing a fine of \$1,000.00 for each Rule breach.
5. The Member understands and agrees that the terms of the resolution will be published in Statements in print and online. Such publication will not identify the Member by name and will identify any other participants by initial only.
6. The Member understands that the committee is not seeking any costs payable from the Member. However, the Member understands that if the Member does not accept this resolution, the matter will proceed to a disciplinary hearing before the Professional Conduct Tribunal and the committee will be seeking costs of that hearing from the Member.
7. The Member understands 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 25 and 28 of Article 9 of the bylaws.
8. The Member further understands that if the committee and the Member 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:

Name:

Debra Taylor, FCGA
Chair, Discipline Committee

Date of Acceptance:

Name:

Member, CGA