

IN THE MATTER OF a Proceeding under
the *Certified General Accountants of Ontario Act, 1983*

IN THE MATTER OF a Complaint against [REDACTED]

BETWEEN:

The Discipline Committee of the CGAO

- and -

[REDACTED]

Decision of the Professional Conduct Tribunal

Members of the Tribunal panel:

Alexis Perera
Betty Kuchta
Dave Laventure

Counsel:

Karen Jolley, for the Discipline Committee
[REDACTED], for Mr. [REDACTED]
Cynthia Petersen, for the Tribunal

Hearing date:

July 18, 2008

1. By Notice of Hearing dated April 3, 2008, the Professional Conduct Tribunal advised the parties that a hearing would be conducted with respect to charges against Mr. [REDACTED] under the CGAO's *Code of Ethical Principles and Rules of Professional Conduct*.
2. The original hearing date of May 20, 2008 was adjourned upon conditions agreed to by the parties. The hearing was rescheduled to July 18, 2008.
3. At the hearing, the parties presented a joint statement of facts (based on a Request to Admit that was served upon Mr. [REDACTED] by the Discipline Committee on April 9, 2008) and joint submission with respect to findings and penalty.

B. FACTS

4. The agreed facts are as follows:

- (a) Mr. [REDACTED] is a member of the CGAO.
- (b) A complaint was received by the CGAO from [REDACTED] ([REDACTED]) regarding Mr. [REDACTED] ([REDACTED]).
- (c) [REDACTED] is a shareholder in [REDACTED] ([REDACTED]) and a partner in [REDACTED] ([REDACTED]).
- (d) [REDACTED] ([REDACTED]), [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]) are the remaining shareholders and partners in [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]).
- (e) [REDACTED] ([REDACTED]) is the solicitor for [REDACTED] ([REDACTED]).
- (f) [REDACTED] ([REDACTED]) is the solicitor for [REDACTED] ([REDACTED]).

- (g) [REDACTED] (" [REDACTED] ") is the accountant for [REDACTED]
- (h) In February 2001, or thereabouts, [REDACTED] employment with [REDACTED] ended. On October 8, 2003 [REDACTED] resigned as an officer and director of [REDACTED].
- (i) The shareholders of [REDACTED] were unable to come to an agreement on the value of [REDACTED] interest in [REDACTED] and [REDACTED]
- (j) By letter dated 22 November 2005 (the "Retainer Letter"), [REDACTED] wrote to [REDACTED] indicated that he acted for [REDACTED]. He retained [REDACTED] to contact [REDACTED] to arrange for a calculation of [REDACTED] interest.
- (k) [REDACTED] instructed [REDACTED] as follows:
- "You and [REDACTED] are to value Mr. [REDACTED] interest in the company..... You are to provide Mr. [REDACTED] with full and complete disclosure. If there are any other documentation that is required, please do not hesitate to contact me or Mr. [REDACTED]... In the event that you and Mr. [REDACTED] cannot agree, I would suggest that perhaps you could prepare a report along with Mr. [REDACTED] outlining those areas where there is agreement and those areas where there is no agreement. I enclose a copy of a letter from Mr. [REDACTED] dated November 14th, 2005. Please strive to have this completed by November 25th, 2005. In the interim please confirm in writing that you have contacted Mr. [REDACTED] and that you and he will be actively working to prepare this report."
- (l) [REDACTED] copied the Retainer Letter to [REDACTED] and [REDACTED]
- (m) There is no other written retainer or outline of [REDACTED] services to [REDACTED] aside from the Retainer Letter.
- (n) [REDACTED] prepared no specific retainer letter to [REDACTED] or to [REDACTED]

- (o) ██████ did not respond to the Retainer Letter.
- (p) ██████ did not contact ██████ as instructed in the Retainer Letter.
- (q) ██████ did not provide ██████ with full and complete – or any – disclosure – as instructed in the Retainer Letter.
- (r) ██████ did not prepare a report with ██████ outlining the areas of agreement or disagreement between him and ██████ as instructed in the Retainer Letter.
- (s) ██████ did not confirm in writing that he had contacted ██████ and that he and ██████ were actively working to prepare the report requested, as instructed in the Retainer Letter.
- (t) ██████ verbally advised ██████ that ██████ was to determine ██████ fair share and not a cent more and that ██████ was not to act as a negotiator.
- (u) Contrary to what was instructed in the Retainer Letter, ██████ advised ██████ that he was to limit ██████ involvement to only a review and comment on the final report.
- (v) ██████ did not advise ██████ that he had received these contrary instructions from ██████
- (w) ██████ did not advise ██████ or ██████ that he had received these contrary instructions from ██████
- (x) ██████ had no direct involvement with ██████ in valuing ██████ interest.

- (y) When [REDACTED] did not respond to the Retainer Letter for four months, [REDACTED] sent him a follow up letter dated 21 March 2006 asking for an update on the progress of the report to calculate [REDACTED] interest.
- (z) [REDACTED] did not respond to the follow up letter. He did not advise [REDACTED] that he had contrary instructions from [REDACTED]. He did not advise [REDACTED] that he did not intend to carry out the tasks for which he had been retained on behalf of [REDACTED]
- (aa) When he did not respond to the follow up letter, [REDACTED] sent him a further letter dated 28 March 2006, requesting an update.
- (bb) [REDACTED] did not respond to this second follow up letter.
- (cc) When he did not respond to this second follow up letter [REDACTED] sent him a third letter dated 24 April 2006, requesting an update.
- (dd) [REDACTED] did not respond to this third follow up letter.
- (ee) When he did not respond to this third follow up letter, [REDACTED] wrote him a fourth and final letter dated 4 July 2006, advising that his client would have to consider retaining someone else to complete the valuation of [REDACTED] interest.
- (ff) By letter dated 21 August 2006, [REDACTED] advised [REDACTED] that [REDACTED] had not been co-operating with [REDACTED] with respect to the [REDACTED] valuation, that [REDACTED] had not heard from [REDACTED] concerning whether [REDACTED] had started the report and suggested that [REDACTED] hire someone else to carry out the valuation.

- (gg) ██████ discussed the four follow up letters from ██████ with ██████ when he received them, but did not discuss them with ██████ himself.
- (hh) ██████ telephoned ██████ on 8 December 2005 to start work on the report. ██████ did not return his call.
- (ii) ██████ telephoned ██████ on 14 December 2005 and ██████ advised him that a draft would not be ready until 2006.
- (jj) ██████ telephoned Hutton on 13 June 2006. ██████ did not return his call.
- (kk) ██████ telephoned Hutton on 14 June 2006. ██████ not return his call.
- (ll) ██████ telephoned Hutton on 18 July 2006. ██████ did not return his call.
- (mm) ██████ telephoned Hutton on 20 July 2006. ██████ did not return his call.
- (nn) At no time did ██████ tell ██████ that he would not follow the instructions ██████ had given him.
- (oo) On 10 November 2006, ██████ wrote to ██████ requesting information and access to ██████ books and records, so that he could properly assess ██████ interest. ██████ did not respond to the letter.
- (pp) ██████ telephoned ██████ in December 2005 and ██████ advised him that ██████ could not start work on the report until January 2006.
- (qq) ██████ telephoned ██████ in January 2006 and left a message. ██████ did not return his call.

- (rr) ██████████ telephoned ██████████ in February 2006 and ██████████ advised him that ██████████ would start working on the report in March 2006.
- (ss) ██████████ telephoned ██████████ on 14 March 2006. ██████████ did not return his call.
- (tt) ██████████ telephoned ██████████ on 15 March 2006. ██████████ did not return his call.
- (uu) ██████████ telephoned ██████████ on 24 March 2006 and advised that he would speak to his lawyer if ██████████ did not return his call. ██████████ returned his call and advised that he could not work on his report until May 2006.
- (vv) Mrs. ██████████ telephoned ██████████ on 19 June 2006 and asked ██████████ to call her. ██████████ did not return her call.
- (ww) Mrs. ██████████ telephoned ██████████ on 20 June 2006 and left a message asking ██████████ to return ██████████ telephone calls.
- (xx) ██████████ telephoned ██████████ on 27 June 2006. ██████████ did not return his call.
- (yy) ██████████ telephoned ██████████ on 30 June 2006. ██████████ did not return his call.
- (zz) ██████████ telephoned ██████████ on 20 July 2006. ██████████ did not return his call.
- (aaa) The process outlined for ██████████ to follow in the Retainer Letter was a different valuation process than that contemplated in the parties'

memorandum of agreement/shareholders' agreement and in their partnership agreement.

(bbb) ██████ did not advise ██████, ██████, ██████ or ██████ that he would not follow the terms of the Retainer Letter due to its inconsistency with the memorandum of agreement or partnership agreement.

5. At the hearing, Mr. ██████ clarified four points:

- (a) that Mr. ██████ considered Mr. ██████ to be his client, and that Mr. ██████ kept Mr. ██████ apprised of progress on the report;
- (b) that Mr. ██████ request for disclosure of information in November 2006 was forwarded by Mr. ██████ to Mr. ██████, who took care of that matter ;
- (c) that the procedure under which Mr. ██████ instructed Mr. ██████ to conduct the valuation (under the shareholders' agreement) included an opportunity for Mr. ██████ and Mr. ██████ to comment on the valuation report; and
- (d) that Mr. ██████ did in fact conduct a valuation and deliver it to his client, Mr. ██████

These additional facts were not contested by the Discipline Committee.

C. SUBMISSIONS

6. At the hearing, Ms. Jolley acknowledged on behalf of the Discipline Committee that Mr. ██████ was caught in an awkward situation wherein his client's representative (Mr. ██████) was giving him instructions that were inconsistent with the client's lawyer's (Mr. ██████) instructions. Ms. Jolley characterized the situation as "unfortunate for all parties". She stressed, however, the importance

of Mr. ██████ professional obligation, in those circumstances, either to disclose the conflicting instructions to the affected parties or to resign from the engagement.

7. Mr. ██████ acknowledged that he ought to have responded to the communications he received from Mr. ██████, Mr. ██████ and Mr. ██████. He also acknowledged that, when he received instructions from Mr. ██████ that conflicted with the instructions he had received from Mr. ██████ he should have communicated that to Mr. ██████ and Mr. ██████, or resigned from the engagement.
8. Mr. ██████ acknowledged that he violated the following Rules of the CGAO's Code:

Responsibilities to the Profession

Members shall always act in accordance with the duties and responsibilities associated with being members of the profession and shall carry on work in a manner that will enhance the image of the profession and the Association.

Rule 105 - Professional Courtesy

A member shall act, in relation to any member, firm or professional colleague with the courtesy and consideration due between professional colleagues.

9. The parties made joint submissions to the Tribunal at the hearing regarding the appropriate penalty in this matter (see below).

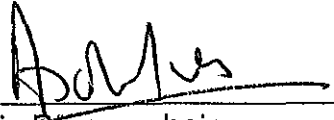
D. FINDINGS AND PENALTY

10. Based on the joint submissions of the parties at the hearing, the Tribunal finds that Mr. ██████ violated the two above-noted Rules (see paragraph 8).

11. After considering all the facts in this matter, and the parties' joint submission with respect to penalty, the Tribunal orders as follows:

- (a) Mr. [REDACTED] is hereby reprimanded by the Tribunal for (1) failing to notify Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] that he had conflicting instructions from Mr. [REDACTED] and Mr. [REDACTED] and (2) failing to respond to the telephone calls and letters that he received from Mr. [REDACTED] and Mr. [REDACTED]
- (b) Mr. [REDACTED] is ordered to pay a fine of \$1,000 before August 18, 2008.
- (c) The Tribunal's sanction and decision will be published on the Association's website. The Association will publish in CGA Statements a summary of the Tribunal's decision, without identifying Mr. [REDACTED] Mr. [REDACTED] or any of the other persons involved in this matter or the location of Mr. [REDACTED] practice.
- (d) Mr. [REDACTED] will contribute to the costs of the CGAO's investigation and legal fees associated with the hearing by paying the CGAO the amount of \$10,000 before January 18, 2009.

Dated this 25th day of July, 2008,



Alexis Perera, chair
(on behalf of the Tribunal)

NOTICE

This decision of the Professional Conduct Tribunal may be appealed to an Appeal Tribunal within thirty (30) days of the sending of this decision.

A Notice of Appeal must be in writing, addressed to the Secretary of the Association (Certified General Accountants Association of Ontario, 240 Eglinton Avenue East, Toronto, Ontario, M4P 1K8) and must contain the grounds for the appeal.

TAKE NOTE THAT, in an appeal, the Appellant bears the onus of obtaining copies of the transcript of the hearing before the Professional Conduct Tribunal for the Appeal Tribunal (4 copies) and for the Respondent (1 copy).

According to Article 9 of By-Law Four, a Notice of Appeal that fails to contain the grounds for the appeal, together with evidence that demonstrates that a transcript of the hearing giving rise to the appeal has been ordered, shall be invalid.