

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

**IN THE MATTER OF a Complaint against Charlotte Whitbread**

BETWEEN:

The Discipline Committee of the CGAO

- and -

Charlotte Whitbread

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**DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL**

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Members of the Tribunal Panel:

Ramesh Ramotar, CGA Chair  
Robert Haliburton, CGA  
Betty Kuchta, Public Representative

Pursuant to section 9, Article 9 of By-Law Four, the Professional Conduct Tribunal has reviewed the Statement of Facts and the Resolution proposed by the parties in this matter (signed by Charlotte Whitbread and forwarded by the Discipline Committee on August 19, 2009). The Tribunal accepts the proposal as set out by the parties, the proposal is hereby ratified.

Dated this 14<sup>th</sup> day of September, 2009



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Ramesh Ramotar  
(for the Tribunal)

## STATEMENT OF FACTS AND RESOLUTION

### A. AGREED UPON STATEMENT OF FACTS

1. In or about August 2003 I was retained by Comprehensive Care International ("CCI") as a consultant in relation to its development of a hospital [REDACTED] (the "client"). From 2003 to mid 2008, I was retained in various capacities by CCI with respect to the project.
2. Most recently, in or about April 2007 my consulting vehicle Whitbread Enterprises signed a Consulting Services Agreement with CCI (the "Agreement"). The Agreement contained the following key terms and conditions:
  - a. The Consultant represents, warrants and agrees that all Services (as defined) to be provided under the Agreement shall be performed in a professional, diligent, competent, and timely manner, in accordance with the generally accepted standards of its profession. (1(b));
  - b. During the term of the Agreement, the Consultant will acquire information (the "Confidential/Proprietary Information") about certain matters which are confidential to the Corporation [CCI] and acknowledges and agrees that all rights, title, interest in and to the Confidential/Proprietary Information will be and remain the exclusive property of the Corporation. Confidential/Proprietary Information includes confidential information belonging to third parties which the Corporation has an obligation to hold in confidence. Such Confidential/Proprietary Information includes, but is not limited to any information that relates to the Corporation's inventions, technological developments and processes, "know-how", operational methods, ideas, discoveries, techniques, processes, trade secrets, research, data, software, lists of present and prospective customers and buying habits, pricing and training strategies and concepts, financial information, business plans, forecasts, market strategies, business relationship, plans for future developments, purchasing, accounting, merchandising or licensing, computer software and databases, programming, scripts and applets, as well as every document, computer disk, computer program, e-mail, notation, record, diary, memorandum, or other tangible material containing such information whether or not marked as "confidential".

All materials whatsoever, including without limitation all documents, notes, data, tapes, memoranda, records, diskettes and other materials in any way relating to any of the Confidential/Proprietary Information, to the Corporation's business, or to the Project produced by the Consultant or coming into its possession, shall belong exclusively to the Corporation and the Consultant agrees to turn over to the Corporation all copies of any

such materials in its possession or under its control, forthwith, at the request of the Corporation, or in the absence of a request, at the termination of this Agreement. [section 8]

- c. Schedule "B" to the Agreement attached CCI's Policies and Procedures Manual which contained the following:

*Code of Conduct*

1. CCI representatives shall be loyal to CCI and its mission and objectives.
2. CCI representatives shall maintain confidentiality as per policy. [.04]

*Confidentiality*

A CCI representative shall not discuss the financial or clinical affairs of any client or any other information gained from association with the client through CCI, with any person outside CCI, except for the appropriate officials of the client itself, without appropriate business reasons and with the permission of the client and CCI.

3. In my capacity as a consultant to CCI, I was privy to confidential information belonging to CCI.
4. It is a term of CGA Ontario's Code of Ethical Principles and Rules of Conduct (the "Code") that members shall act in the interests of their clients, employers and interested third parties, and shall be prepared to sacrifice their self-interest to do so. Members shall honour the trust bestowed on them by others, and shall not use their privileged position without their principal's knowledge and consent.
5. Between October 2007 and June 2008 I took a medical leave of absence from my professional practice.
6. In February 2008, I was contacted by the client and as a result I sent an email to certain contacts at the client concerning reconciliation of the CCI contract in the context of negotiations for a contract extension. The email stated as follows:

*From: Charlotte Whitbread, Whitbread Enterprises*

*To: " [REDACTED] " < [REDACTED] >*

*>Mr. [REDACTED]*

*Subject: Reconciliation of CCI Contract*

*Good morning to you both. I have split out the spreadsheets into two different ones. [REDACTED] you will see where I have improved the last spreadsheet to say what it*

would look like if there was a consistent percentage held back for repayment of the advance and a consistent percentage held back for retention -- you will note that this is again a very different number and shows that CCI would only get \$27,757 for Phase 1 and \$369 for Phase 2 which is only just over \$28K so it is important that you challenge CCI on this.

Therefore I am suggesting that you send to Christine the above two spreadsheets as follows. Notice that I have left on the spreadsheet that shows how much money you think there should still be available to [REDACTED] for assistance -- If I were you I would let that stay as it might let Christine think that you are looking at the fact that you should have more money available to you and therefore she might think that CCI has a chance of getting a contract for some of that work -- hell this is business and you want her to cooperate and while you are not directly misleading her it is certainly skating close to the line, but if you think of the amount of time I have spent on this on your behalf never mind the time you have spent on it, you might feel it is reasonable to lead her on like that. So here goes:

Dear Christine, I received all of the spreadsheets that you sent me and passed them on to be analyzed. Mr. [REDACTED] and I have spent a lot of time reviewing the results and met again yesterday and today. There are still questions. The information has been looked at two ways.

The Summary of CCI Contract spreadsheets uses your information from your documents to determine what money will be owed to CCI at the end of the contract. That shows that for Phase 1 CCI will owe \$34,557 to repay the advance, but you will then be owed \$96,992 as holdback monies. For Phase 2 the spreadsheet shows that you will have \$76,771 to pay [REDACTED] back for the advance but there will be an amount of \$98,207 owing to CCI for the holdback. This means that at the end of the contract CCI would be owed a net of \$62,435 based on this information and this is different than what you have on the reconciliation schedule attached to the agreement to proceed.

In looking at all of this Mr. [REDACTED] and I could not understand how the payback of the advance or the holdback was calculated as these are usually standard percentages. So after some checking of the documents you sent me it seems that the repayment of the CCI advance is calculated as 1 and ¼ percent of your invoice amount and then the amount that [REDACTED] held back is 10% of the net of that. So using that kind of logic the [REDACTED] Estimate of Mobilization and Holdback spreadsheet shows a very different picture if those standard percentages was applied - it shows that CCI would only be owed \$27,747 for Phase 1 and \$369 for Phase 2. So you can see the problem this creates for us. When we looked at your documents again we noticed that you have a very high advance amount being repaid in month 8 of Phase 1 - you have \$40+ thousand being repaid on the advance but the invoice totals were only \$70K. Surely there must be some written documentation as to how the advance was to be repaid.

We need to get the remaining work that we agreed on completed and there have been many hours spent on this already. What we want to do is try to sort out as much of this as possible directly with CCI so we are asking that you review the attached work and let us know the following:

*Why are there discrepancies between what is on the CCI reconciliation schedule and the documents you sent me. If we are right your reconciliation schedule shows that CCI would be owed \$114,532 at the end of the contract but using your information we can only arrive at \$62,435.*

*We also want to understand why the advance repayment amounts are not a standard percentage and if not is there a signed schedule to the original contract that said what they would be - can we get that - we need to make sure that we can agree on the amounts owing to CCI at the end of the contract.*

*End of email to Christine*

*You need to be prepared for Christine wanting another teleconference with you, so you need to let her know at that point that given both your schedules and the need for you to be accountable that you want this stuff through email. I was initially thinking of adding something like that to her email, but I thought it would come across too heavy handed right now - you want to come across frustrated and annoyed that this is taking so long, but at the end of the day you want Joanne and Barb down.*

*So [REDACTED] if you agree with all of that you need to do 2 things:*

*One take each of the above spreadsheets and save them to your computer.*

*Two call me so that I can ask you some questions to check that the spreadsheets will not show that they came from my computer.*

*Charlotte Whitbread  
Whitbread Enterprises*

*Telephone: [REDACTED]*

*Fax: [REDACTED]*

*Email: [REDACTED] [emphasis added in bold]*

7. As noted, in the email I advised the client to challenge CCI on retention figures it had presented to the client for payment.
8. To the extent I or the client believed there were discrepancies in the figures, I did not advise CCI of my position or of the client's position. Instead, I advised the client to use this in negotiations with CCI.
9. In the email I advised the client to include information that might lead CCI to believe that it had a chance of getting a contract with the client for additional work, even though I characterized that statement as being close to misleading CCI and recognized that it would lead CCI on.
10. I counseled the client on how to position itself in its negotiations with CCI. My objective was to keep the negotiations going.

11. I revised spreadsheets of the CCI information using my background and the information I had in my role as a consultant for the client's use in its negotiations with CCI.
  12. The client only gave me access to the spreadsheets, pricing information and other background information referenced in the email as a result of my position as a consultant with CCI.
  13. I advised the client to save the spreadsheets to its own computer and then checked the spreadsheets to ensure that they could not be traced to me.
  14. I did not have the permission of CCI to facilitate its negotiations with the client in this manner, even though I believed that, by assisting the client in this way, I was acting in CCI's interest in attempting to have it and the client reach an agreement.
  15. When confronted with this email after the fact, I advised that I prepared the email to the client in the hope that it would result in the client continuing its discussions with CCI to have the contract with CCI extended.
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16. I did not discuss this strategy with CCI or have CCI's authority to implement such a strategy.
  17. While I intended a positive outcome for CCI through my assistance to the client, I did not discuss my involvement or strategy with CCI nor did I have CCI's permission to be involved with the client in this way.
  18. My communications with the client in the context of its negotiations with CCI was not inadvertent but was deliberate.

**B. AGREED UPON RESOLUTION**

1. I acknowledge, and agree to provide a written apology to CCI for, the following conduct:
  - (a) I used my knowledge of CCI to facilitate the negotiations with the client, believing that, by assisting the client in this way, I was acting in CCI's interest in attempting to have it and the client reach an agreement.
  - (b) I did not have the consent of CCI to assist the client in positioning its negotiations with CCI.
  - (c) I did not have CCI's consent to facilitate its negotiations with the client.

- (d) I did not have CCI's approval of the strategy I used to keep the contract discussions alive between the client and CCI.
- (e) It was inappropriate of me to suggest that the client intimate that CCI might have the opportunity for a further contract as part of its negotiating strategy.
- (f) In not advising CCI that I had become involved to facilitate the negotiations and in not advising CCI of my strategy, I did not act openly or fairly toward CCI.

2. I agree that my conduct amounted to a violation of the Code's Principle on Trust and Duties as set out above.
3. I accept a reprimand from in the Association as a result of my breach of the Code.
4. 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.
5. I understand that, as required by By-Law Four, the terms of the resolution and the reprimand will be published in Statements.
6. I understand that 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. If the Tribunal refuses to accept the proposed 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.

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

Date of Offer:

Name:

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 Ronald P. Harvey, CGA  
 Chair, Discipline Committee

Date of Acceptance:

Name:

August 19, 2009

Charlotte Whitbread  
 Charlotte Whitbread, CGA