

IN THE MATTER OF a proceeding under the
Certified General Accountants Association of Ontario Act, 1983;

IN THE MATTER OF a complaint against Carolyn Burden,
a student in the program of professional studies of the
Certified General Accountants of Ontario

BETWEEN

The Discipline Committee of the
Certified General Accountants of Ontario

and

Carolyn Burden

Decision of the Professional Conduct Tribunal

Panel: Donn Martinson, chair
 Bev Wozniuk
 David Handley

Hearing date: October 20, 2006 (Toronto)

Appearances: Karen Jolley, counsel for the Discipline Committee
 Frank Mensink, chairperson of the Discipline Committee
 Cynthia Petersen, registrar and counsel for the Tribunal

A. Commencement of Proceeding

1. Pursuant to a Notice of Hearing dated September 12, 2006 and served upon Carolyn Burden by registered mail, Carolyn Burden was advised that she was charged by the Association's Discipline Committee with violating the following Rules of the Association's Code of Ethical Principles and Rules of Conduct:

Rule 101 – Discredit

A member shall not permit the member's firm name or the member's name to be used with, participate in, or knowingly provide services, to any practice, pronouncement or act that would be of a nature to discredit the profession.

Rule 610 – Requirement to Reply in Writing

A member shall reply in writing to any request from the Association in which a written reply is specifically required.

Rule 611 – Assistance to the Board

A member shall, when required, comply with the request of the board or its committees in the exercise of their duties in the matters of the appropriate CGA Act, the By-Law or the Code of Ethical Principles and Rules of Conduct, and when required, produce any documents in the members' possession, custody or control, subject to Rules R201, R104.2 and R.104.3.

B. Non-Attendance at the Hearing

2. The Notice of Hearing advised Ms. Burden that the Tribunal would hear evidence regarding the charges against her at a hearing scheduled for October 20, 2006, commencing at 10:00 a.m. at the Network Court Reporting ("NCR") offices. The Notice also advised her that she had the right to present evidence in her defence, as well as the right to be represented by counsel or an agent at the hearing. It further advised her that, if the Tribunal found her guilty of a contravention of the Code of Ethical Principles

and Rules of Conduct, it could order penalties against her pursuant to the Association's bylaws. Finally, it advised her that, if she failed to appear at the hearing, the Tribunal might conduct the hearing in her absence.

3. Ms. Burden did not attend the hearing, nor did any representative attend on her behalf.

4. Unfortunately, there was an error in the Notice of Hearing regarding the address of the NCR offices where the hearing was to be held. The address provided in the Notice was in the Commerce Court West building in Toronto. The NCR offices moved from Commerce Court West to the First Canadian Place building in Toronto some time ago. This error was noticed by counsel for the Discipline Committee and was brought to the Tribunal Registrar's attention the day before the hearing.

5. At the hearing, we heard representations from counsel for the Discipline Committee and from the Registrar for the Tribunal regarding efforts that had been made to notify Ms. Burden of the correct address for the hearing. The Tribunal's Registrar left a voicemail message for Ms. Burden the day prior to the hearing, sent an email message to her, and had her assistant hand-deliver a letter to her last known address. In addition, the assistant to the Discipline Committee's counsel attended at the NCR's old address on the 13th floor at Commerce Court West from 9:30 a.m. until 10:20 a.m. on the day of the hearing. We were advised that Ms. Burden did not attend at that address during that period of time. At approximately 10:30 a.m. on the morning of the hearing, both Ms. Jolley (counsel for the Committee) and Ms. Petersen (the Tribunal's Registrar) checked their voicemail messages and their respective offices and reported to us that neither had received a message from Ms. Burden. Based on all of this information, we concluded that Ms. Burden's absence from the hearing was not due to the incorrect address in the Notice of Hearing, nor to a failure to communicate the correct address to her. Since she did not appear at either the old address (in the Notice) or the new address (communicated to her via email, voicemail and letter), and

did not contact the Tribunal's Registrar or the Committee's lawyer, we concluded that she had chosen not to attend the hearing. We decided to proceed in her absence, since sufficient notice of the Hearing had been provided to her.

C. Facts and Evidence

6. The hearing proceeded without any testimony from witnesses. Ms. Jolley presented an affidavit of service, establishing that Ms. Burden had been served on September 14, 2006 with a Request to Admit, pursuant to the *Evidence Act*, R.S.O. 1990, c.E.23, as well as a Notice under the *Evidence Act*, advising her that the Discipline Committee intended to rely on certain facts and documents at the hearing. Ms. Burden was advised that she had 20 days to respond to the Request to Admit. She was also advised that, if she failed to respond, she would be deemed to admit the truth of the facts and authenticity of the documents set out therein, for the purposes of the Tribunal proceeding. Ms. Burden did not respond to the Request to Admit at any time.

7. Based on the facts deemed to be admitted by Ms. Burden and the documents admitted into evidence at the hearing, the Tribunal makes the following findings of fact:

- (a) Ms. Burden was retained by Gordon Brown and Hilcris Creations Inc. to prepare their personal and corporate tax returns, respectively, for 2004, and Brown's T4 for 2004.
- (b) Ms. Burden did not file the personal or corporate tax returns for Mr. Brown or Hilcris with either Canada Revenue Agency or the Minister of Finance, but she represented to Mr. Brown that the tax returns were filed.
- (c) After representing that she had completed and filed the tax returns, Ms. Burden accepted payment from Hilcris in the amount of \$750.00 for her claimed work.

- (d) Despite requests from Mr. Brown, Ms. Burden did not provide him with copies of the tax returns and did not return to him the documents he had delivered to her in connection with the preparation of his T4 and tax returns.
- (e) Ms. Burden neglected to return phone calls and emails from Mr. Brown.
- (f) Mr. Brown was required to retain the services of another accountant to file his 2004 tax returns. His 2004 personal tax return was filed in January 2006. As a result of Ms. Burden's failure to file his tax returns and his consequent late filing, Canada Revenue Agency charged him with penalties in the amount of \$1,033.22, installment interest in the amount of \$263.06, and interest on arrears in the amount of \$569.26.
- (g) Ms. Burden was retained by Ivan Lauc and Pfix Inc. to prepare their personal and corporate tax returns, respectively, for 2004.
- (h) Ms. Burden did not file the personal or corporate tax returns for Mr. Lauc or Pfix with either Canada Revenue Agency or the Minister of Finance, but she represented to Mr. Lauc that the returns were completed and filed.
- (i) Ms. Burden did not provide Mr. Lauc with copies of the tax returns, nor did she return to him the documents he had delivered to her for her to prepare the 2004 tax returns.
- (j) Ms. Burden neglected to return phone calls from Mr. Lauc.

- (k) The Association received written complaints from both Mr. Brown and Mr. Lauc on November 30, 2005 and January 20, 2006 respectively.
- (l) On December 21, 2005, the Association attempted to forward the Brown complaint to Ms. Burden by Purolator. The complaint was returned to CGA Ontario because it was not retrieved by Ms. Burden.
- (m) In early January 2006, the Association sent another copy of the Brown complaint to Ms. Burden by Purolator and regular mail. The Association included a letter, requesting a response to the complaint within 21 days. The Purolator package and mail were not returned to the Association.
- (n) The Association received no response from Ms. Burden concerning the Brown complaint.
- (o) On January 26, 2006, the Association mailed another letter to Ms. Burden, warning her that her failure to respond to the Brown complaint is a breach of the Association's Code of Ethical Principles and Rules of Conduct. The Association enclosed the Lauc complaint and demanded that she respond to both complaints within three weeks. The Association received no response from Ms. Burden.
- (p) Ralph Palumbo of the Association attempted to contact Ms. Burden by telephone on January 26 and February 13, 2006. He left voicemail messages for her. His phone calls were not returned by Ms. Burden.

- (q) On February 22, 2006, the Association retained King Reed and Associates, Investigation Services, to serve further copies of the letters of complaint personally on Ms. Burden and to retrieve from her the books, records and other material that the complainants had requested.

- (r) A King Reed investigator met with Ms. Burden on March 22, 2006. He served her with the complaints. Ms. Burden stated to the investigator that she "had been trying to deal with the CGA for the past three months and had been expecting the documents." She refused to deliver the complainants' records to the investigator until she had spoken to her lawyer. The records were never forwarded to the Association.

- (s) On April 11, 2006, Lana Tom of the Association left a message on Ms. Burden's voicemail, reminding her that a response to the complaints was expected by April 12, 2006, which was 21 days from when the investigator successfully served her on March 22, 2006. Ms. Tom also requested the name of Ms. Burden's lawyer and his/her contact information, as well as a return telephone call to acknowledge receipt of the voicemail message. The telephone call was not returned and the information regarding Ms. Burden's lawyer was not provided.

- (t) On April 21, 2006, Lana Tom of the Association sent Ms. Burden a further letter by email, courier and regular mail, advising her that, if the Association did not hear from her by May 3, 2006, the matter would be referred to the Discipline Committee, which would likely refer it to a Professional Conduct Tribunal. Enclosed was a prior decision of the Tribunal in a similar case, in which the Tribunal

expelled the student in question from the program of professional studies for failing to respond to letters from the Association and refusing to return documents belonging to a complainant.

- (u) By email to Lana Tom on May 8, 2006, Ms. Burden queried whether the Association had received her letter. Ms. Tom responded by email that the Association had not received any response from her to either complaint.
- (v) On June 14, 2006, Ms. Tom emailed Ms. Burden to advise her that the Discipline Committee was scheduled to meet on June 22, 2006 to review the complaints against her.
- (w) Ms. Burden responded by email on June 14, 2006, indicating that she had sent two requests to confirm that the Association had received her response, but had not received any confirmation from the Association. She also indicated that she would be "happy to attend" the Discipline Committee meeting and requested information concerning the time and location of the meeting.
- (x) Ms. Tom replied by email that same day, advising Ms. Burden that she had received only one email from Ms. Burden on May 8, 2006, to which she had responded that the Association had received no response to either complaint. Ms. Tom advised Ms. Burden that, if she still wished to respond to the allegations contained in the two complaints, she should do so in writing.
- (y) At 7:02 p.m. on June 21, 2006, Ms. Burden emailed Ms. Tom, inquiring about the time of the meeting. She stated that she would like to deliver her response. Ms. Tom responded by email the next

morning, indicating that the Discipline Committee would be meeting that evening and advising Ms. Burden: "If you are sending in a reply, you must do so before 4 p.m. today."

- (z) At 9:36 p.m. on June 22, 2006, Ms. Burden emailed Ms. Tom indicating that "I will send a hardcopy of my response but would prefer to present it" and inquiring about whether a special meeting of the Discipline Committee could be arranged.
- (aa) Ms. Tom responded on June 23, 2006, that the Committee had already met the night before and that its decision would be communicated to her shortly. Ms. Burden then requested the contact information for the "Head of the Discipline Committee". Ms. Tom replied, reiterating that Ms. Burden would be advised shortly of the Committee's decision.
- (bb) On July 12, 2006, Ms. Burden emailed Janice Charko, then Chair of the Discipline Committee, indicating that she had wanted to attend the Committee meeting to present her response to the complaints but was not provided information about the location and time of the meeting. She stated that she was "trying to respond to two complaints received by the CGA" and that her "first package didn't seem to make it" to the Association's office. She further wrote that "There is a significant amount of highly sensitive information and I don't think it unreasonable to want to deliver it in person. It completely addresses the complaints and will ensure that they are unfounded." Finally, she requested that email "be the method to forward the correspondence part and/or [that she] be allowed to present the rest of the information in person."

- (cc) Ms. Charko replied to Ms. Burden by email that same day, indicating that Ms. Burden should respond directly to the Association's legal counsel, Karen Jolley. Ms. Charko provided Ms. Jolley's email address.
- (dd) No written response to the substance of the complaints was ever received by the Association or the Association's counsel, either by email or otherwise.
- (ee) By regular mail and email on July 12, 2006, Ms. Jolley forwarded to Ms. Burden a proposed resolution to the complaints and requested a response by July 31, 2006. Ms. Jolley advised Ms. Burden that a failure to respond would be treated as a rejection of the proposal and the complaint would then be sent to the Professional Conduct Tribunal for a hearing.
- (ff) By email on July 12, 2006, Ms. Burden responded to Ms. Jolley, confirming receipt of the proposal. She indicated that she would respond "in entirety" by July 31, 2006. She further indicated that "there is a significant amount of information that will completely dispute the complaints."
- (gg) In August 2006, Ms. Burden returned the Association's July 12, 2006 proposal, marked "I reject the proposed resolution" and signed by her on July 31, 2006. No response to the substance of the allegations was included.
- (hh) The Association never received any response to the substance of the complaints from Ms. Burden.

D. Submissions

8. Ms. Jolley submitted that Ms. Burden had made false representations to clients, claiming that she had done work that in fact was not completed, and accepting payment for work she had not done. Ms. Jolley further argued that Ms. Burden's conduct reflected poorly upon her, the Association and the profession, since Ms. Burden is affiliated with the Association through her enrolment in the program of professional studies. Ms. Jolley noted that Ms. Burden's unprofessional conduct resulted in two client complaints. She urged us to find that Ms. Burden's refusal to return documents to her clients and her neglect of the clients generally were unprofessional and contrary to the requirements of the Association's Code of Ethical Principles and Rules of Conduct.

9. Ms. Jolley further argued that Ms. Burden's failure to provide a response to the Association, when it served her with the client complaints, amounts to further unprofessional conduct, contrary to the Code. She asserted that Ms. Burden's email messages constituted "disingenuous attempts" to respond to the complaints. She urged us to find that Ms. Burden had, in fact, made no effort to respond to the complaints, despite being provided with numerous opportunities to do so.

10. Ms. Jolley argued that Ms. Burden's conduct was sufficiently serious to warrant expulsion from the program of professional studies. She relied on two prior decisions of this Tribunal in similar cases involving students, where expulsion orders were made: *CGAO Discipline Committee v. Claudette Phillip* (Parker; December 22, 2003) and *CGAO Discipline Committee v. Thomas Richards* (Page; May 10, 2006).

11. In addition to expulsion, Ms. Jolley asked that we order Ms. Burden to pay \$750 to Hilcris Creations (representing reimbursement of the sum paid to her for work she did not complete), \$1,865.54 to Mr. Brown (to compensate him for the tax penalties and interest charged he incurred), and a \$2,700 fine (including \$700 to reimburse CGAO for the fees of King Reed in connection with this matter). Finally, Ms. Jolley asked for an order for the Association's costs in the amount of \$2,000.

E. Conclusion

12. Ms. Burden's conduct constitutes a significant breach of her obligations under the Association's Code of Ethical Principles and Rules of Conduct. She misled her clients by making dishonest misrepresentations. She acted unprofessionally by neglecting to respond to their calls and inquiries, and by refusing to return their documents to them upon request. She thereby violated Rule 101 of the Code.

13. She also violated Rules 610 and 611 by failing to respond to the Association's correspondence and, in particular, failing to provide a response to the two client complaints.

14. We agree with Ms. Jolley's submission that expulsion is warranted in the circumstances of this case. Ms. Burden demonstrated a disregard for the Association and its responsibilities as a professional regulator. She engaged in dishonest conduct with clients. The facts in this case establish breaches of professional conduct that are at least as serious as those found in the *Phillip* and *Richards* cases cited by Ms. Jolley, where students were expelled from the program of professional studies.

15. We agree that Mr. Brown should be compensated for the tax penalties and interest charges that he incurred as a result of his late filing. Had Ms. Burden completed the work for which she was retained, he (and his company) would not have incurred those expenses. Hilcris Creations is also entitled to be reimbursed for the money paid to Ms. Burden, since she did not complete the work.

16. As noted above, the Association requested that we order Ms. Burden to pay a fine in the amount of \$2,700, including \$700 for the cost of retaining King Reed investigators. It is not, in our view, appropriate to include the investigative costs in the amount of the fine levied. The purpose of a fine is to convey to the member, to other members, and to the public, the seriousness with which the Association views the member's misconduct, not to compensate the Association for costs incurred in the

discipline process. The amount of the fine should be commensurate with the seriousness of the breach. It should be sufficient to serve the goals of specific and general deterrence, yet not so high as to be disproportionately harsh.

17. We note that in the aforementioned *Phillips* case, the Association sought a fine in the amount of \$5,000, which the Tribunal found to be excessive. The student in question was ultimately fined \$1,000. Similarly, in the *Richards* case, the Association sought a fine in the amount of \$5,000, but the Tribunal concluded that, given the conduct at issue in that case, expulsion was sufficient to protect the public interest and to serve the goal of general deterrence. Consequently, no fine was imposed.

18. In this case, we have concluded that a fine is appropriate, as it is necessary to fulfill the important objective of general deterrence. We find that a \$2,000 fine is reasonable in the circumstances of this case.

19. Finally, with respect to costs, we find that the Association is entitled to recover the \$700 paid to retain King Reed investigators, as well as a portion of its legal costs in connection with the hearing. We conclude that the \$2,000 requested by the Association is a reasonable amount for legal costs.

F. Conclusion

20. Based on all of the above, we make the following orders:

- (a) that Ms. Burden pay to Hilcris Creations Inc. the sum of \$750;
- (b) that Ms. Burden pay to Gordon Brown the sum of \$1,865.54;
- (c) that Ms. Burden pay a fine of \$2,000 to the Association;
- (d) that Ms. Burden be expelled from the Association's program of professional studies; and

- (e) that Ms. Burden pay the Association's costs in the amount of \$2,700.

Dated this 1st day of NOVEMBER, 2006,



Donn Martinson, chair
for 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. The Notice of Appeal must be in writing, addressed to the Secretary of the Association (Certified General Accountants 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.