

**THE CERTIFIED GENERAL ACCOUNTANTS OF ONTARIO
PROFESSIONAL CONDUCT TRIBUNAL**

IN THE MATTER OF the
Certified General Accountants Association of Ontario Act, 1983

AND IN THE MATTER OF Albert Fitchett,
A member of the Certified General Accountants of Ontario

BETWEEN:

THE DISCIPLINE COMMITTEE
OF THE CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF ONTARIO

AND

ALBERT FITCHETT

MEMBERS OF THE TRIBUNAL:

Fred Pritchard CGA, Chair
David Handley
Alexis Perera CGA

COUNSEL:

Karen E. Jolley, for the Discipline Committee
Cynthia Petersen, for the Professional Conduct Tribunal

DATE OF HEARING:

May 4, 2005

DECISION

Pursuant to a Notice of Hearing dated March 16, 2005, Mr. Albert Fitchett was charged with the following violations of the *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 102 – Unlawful Activity

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 reasonably prudent person would believe, to be unlawful.

Rule 606 – Detrimental Actions

- (a) A member shall not participate in any action that is detrimental to the Association or the profession.

Rule 607 – Evidence of Professional Misconduct

A member who has been found guilty or granted an absolute or conditional discharge of any criminal or similar offence, which may cast doubt as to the member's honesty, integrity or professional competency, shall promptly inform the Association of the conviction, finding or guilt or discharge, as the case may be, when the right of appeal has been exhausted or expired. In such cases, the member may be charged with professional misconduct by the member's provincial ethics committee. A certificate of conviction by any competent court shall be sufficient evidence of the conviction and the perpetration of the offence.

Rule 607.1 – Criminal and Similar Offences

Criminal or similar offences include, but are not limited to, the following offences:

- (a) fraud, theft, forgery or income tax evasion
- (b) violation of the provisions of any securities legislation; or
- (c) Any criminal or similar offence for conduct in, or related to, the member's professional capacity or for conduct in circumstances where there was reliance on their membership in, or association with, the Association.

Particulars of the Discipline Committee's charges against Mr. Fitchett are as follows:

On February 8, 2005, at the City of Hamilton, you were convicted of the following criminal offence: That between the 1st day of August 2003 and the 5th day of May 2004, at the City of Hamilton, in the Central South Region, and elsewhere in the Province of Ontario, you and Gary Bergman did conspire and agree the one with the other to commit the indictable offence of fraud over \$5,000 by using a forged Asset Purchase Agreement, contrary to the provision of 380(1)(a) and did thereby commit an offence contrary to the provision of Section 465(1)(c) of the *Criminal Code of Canada*.

As a result of the said conviction you were sentenced to eight (8) months incarceration and were placed on probation for two years. Furthermore, a freestanding restitution order in the amount of \$541,550 was made.

The hearing commenced at 10:30 a.m. on May 4, 2005. Mr. Fitchett did not appear.

At the outset of the hearing, Ms. Jolley submitted into evidence an affidavit of service, proving that Mr. Fitchett was served with the Notice of Hearing and with a copy of the Discipline Committee's Discipline Brief. The Notice of Hearing clearly stipulates the time and place of the hearing and advises Mr. Fitchett as follows: "**TAKE NOTICE** that if you fail to appear at the time and place aforesaid in answer to this Notice, the hearing may be conducted in your absence." The Notice also indicates that an adjournment of the hearing can be granted by the Tribunal if proper cause is shown for the adjournment.

Ms. Jolley also submitted into evidence a copy of a letter from the Discipline Committee to Albert Fitchett dated March 15, 2005, in which the Discipline Committee advises Mr. Fitchett of the penalties sought against him in this proceeding. Ms. Jolley provided evidence that this letter, and a copy of the Discipline Committee's Sentencing Brief, had been delivered to Mr. Fitchett in advance of the hearing by registered mail.

In response to questions from the Tribunal, Ms. Jolley and Ms. Petersen advised that Mr. Fitchett had made no attempt to contact the CGAO, Ms. Jolley or the Tribunal's counsel to request an adjournment of the hearing until such time as he is released from custody.

Based on the above evidence, the Tribunal is confident that Mr. Fitchett was aware of the hearing, of the charges against him, of the penalties sought by the Discipline Committee, and of the consequences of not attending the hearing.

The Discipline Committee's Discipline Brief was admitted into evidence. The Brief contained various documents, including a complaint letter from Alexandre Nikitenko dated October 13 2004 and a certificate of conviction in respect of Mr. Fitchett dated February 11, 2005. The Brief also contained a transcript of the criminal proceedings in the Ontario Court of Justice held February 8, 2005. The transcript reveals that Mr. Fitchett pleaded guilty to conspiracy to commit fraud over \$5,000 and was given a sentence of eight months incarceration, in addition to time already served in custody (four months), plus two years probation. The Court also ordered restitution in the amount of \$541,500.

The transcript of the proceedings demonstrates that Mr. Fitchett defrauded the owner of Nikitenko Auto Technologies of \$541,500, after leading him to believe he was entering into a legitimate business deal for the purchase of motor vehicles. The Court found that co-conspirators Albert Fitchett and Gary Bergman planned this fraud from at least September 2003 using the services of a number of other people to assist them with this deception, as well as presenting the victim with a number of forged documents and contracts.

Ms. Jolley demonstrated, through appropriate documentation, that Mr. Fitchett was a member of the Association at the time that he committed the offence in question. She relied on the transcript of the criminal proceedings and the certificate of conviction as evidence of the Code breaches alleged by the Discipline Committee.

Ms. Jolley argued that the appropriate penalty in this matter would be to expel Mr. Fitchett from membership in the Association and impose a \$2,000 fine. She also requested an order of costs in the amount of \$2,000. She provided the Tribunal with copies of previous Tribunal rulings which dealt with similar matters to support these requests.

Findings

Based on the member's admission of guilt, as outlined in the transcript of the proceedings in the Ontario Court of Justice, and the certificate of conviction for fraud, the Tribunal finds that Mr. Fitchett is guilty of Professional Misconduct, as outlined in Rule 607, and has violated Rules 101, 102 and 606 of the CGAO's *Code of Ethical Principles and Rules of Conduct*.

At the hearing, the Tribunal Chair noted that, while Mr. Fitchett chose not to attend the hearing, the Tribunal would consider the submissions made by Mr. Fitchett's counsel in the criminal proceedings (per the transcript), which outlined Mr. Fitchett's personal situation and some mitigating circumstances.

After reviewing the evidence, we have concluded that an expulsion order is appropriate. The amount of money involved was considerable and Mr. Fitchett's conduct involved a significant breach of trust. Moreover, his actions in this matter were clearly planned and constituted a deliberate act, rather than a momentary or impulsive lapse.

It is our conclusion that an expulsion order is necessary in order to actively protect the public interest and be seen to be protecting the public interest. The Association, in discharging its obligations as a self-regulating profession, must punish this misconduct in a manner that not only ensures that Mr. Fitchett appreciates the significance of his improper actions, but also ensures that other members of the Association will be deterred from any kind of like conduct. The public must be assured that, should members of the Association act inappropriately, such behavior will not be condoned or accepted from any member of this profession.

The Tribunal unanimously accepts the Disciplines Committee's recommendations for penalty as follows:

- 1) Expulsion from the Association
- 2) A fine of \$2,000
- 3) Payment of costs in the amount of \$2,000

Dated this 19 day of May, 2005



Fred Pritchard CGA, Chair
(on behalf of the Tribunal)

NOTICE

According to Article 9 of By Law Four, 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 Association of Ontario, 240 Eglinton Avenue East, Toronto, Ontario, M4P 1K8) and must contain the grounds for the appeal.

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.