

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

**IN THE MATTER OF Paul Forgues, a member of
The Certified General Accountants Association of Ontario**

B E T W E E N:

The Discipline Committee of The Certified General Accountants Association of Ontario

- and -

Paul Forgues

DECISION AND REASONS FOR DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL

Members of the Professional Conduct Tribunal Panel:

D. Alan Jones, CGA, Chair
Ramesh Ramotar, CGA
Victoria Corbett, Public Representative

Appearances:

Karen E. Jolley, Counsel for the Discipline Committee
Lisa S. Braverman, Registrar and Independent Legal Counsel to the Professional Conduct Tribunal

Mr. Paul Forgues and his counsel, Mr. Lawrence Greenspon, Exhibit 1, were not present for the hearing.

Hearing Date:

6 December 2011, Toronto

OVERVIEW

A Panel of the Professional Conduct Tribunal (the Tribunal) of The Certified General Accountants Association of Ontario (the Association) heard this matter on 6 December 2011, at Toronto.

ALLEGATIONS

Counsel for the Discipline Committee entered into evidence the Notice of Hearing dated 7 October 2011, Exhibit 2, and the Affidavit of Service, Exhibit 3, relating to the Notice of Hearing.

The allegations against the member are that he breached the following provisions of the Code of Ethical Principles and Rules of Conduct as stated in the Notice of Hearing:

R610 Requirement to Reply in Writing

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

R611 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 matters of the Act, the Bylaws or the *Code of Ethical Principles and Rules of Conduct*, and when required, produce any documents in the member's possession, custody or control, subject to Rules R104.2, R104.3 and R201.

Particulars:

The particulars of the allegations by the Discipline Committee (the Committee) against the member as stated in the Notice of Hearing are as follows:

1. On or about 29 November 2010 the Association received a complaint against you concerning your preparation of income tax returns. The initial materials received by the Association suggested that you had been preparing tax returns since at least 1998. In the course of its investigation, issues arose concerning the scope of your tax practice as you were and are not registered with the Association either in public practice or as having an income tax return preparation practice.
2. By email dated 8 February 2011 the committee asked you to provide by 18 February 2011 a list of your clients *for each of the years* that you offered either public accounting services, preparation of compilation engagements or tax returns part time or full time to the current date and to indicate particulars about the extent and nature of the work performed.

3. By letter dated 15 February 2011 you included business cards for three companies you indicated you were "contracted with". You otherwise did not respond to the committee's request.
4. By follow up email dated 15 March 2011 the committee again requested information from you about your practice and requested a response by 21 March 2011. You did not respond.
5. By email dated 22 March 2011 the committee followed up with you and reminded you of the requirements of Rule 610 and Rule 611 to respond in writing to the committee as requested. You did not respond.
6. By email dated 25 March 2011 you advised that you intended to retain counsel and reply by 1 April 2011.
7. By return email dated 25 March 2011 the committee advised you that it was meeting March 31 and would appreciate your response for that meeting.
8. By email sent the afternoon of March 31 the committee asked you if you would have a response for the evening meeting. You did not respond.
9. By email dated 13 April 2011 the committee again wrote to you and confirmed that it had not received any information from you.
10. By letter dated 19 April 2011 counsel on your behalf advised that you presently had three clients.
11. As you had not provided the information requested for any of the years other than 2011, the committee wrote to you by letter dated 29 June 2011 attaching schedules for each of the years 2005 to date and requesting they be completed and returned by 29 July 2011 with information on the tax return preparation practice and professional services provided.
12. By letter dated 26 July 2011 your counsel advised that you were out of the country until July 29 and would respond upon your return.
13. By email dated 11 August 2011 the committee advised you that, as you had still not responded, the matter would proceed to a hearing.
14. Instead of responding, on or about 20 August 2011 you purported to cancel your membership in the Association.

15. You were advised that pursuant to Article 6, section 20 of the bylaws, your request to cancel your membership would not be effective until the outstanding disciplinary complaints against you were completed and you had fully satisfied any sanctions imposed by a tribunal.

16. At no time have you completed the schedules or otherwise provided the information requested concerning your clients or the nature and extent of the services you render to them.

17. In not responding to the Association's many requests, your conduct amounted to professional misconduct.

MEMBER'S PLEA

In the Minutes of Settlement, paragraph 2, signed by his counsel Mr. Greenspon, Exhibit 4, dated 5 December 2011, Forgues admitted the allegations set out in the Notice of Hearing.

FACTS AND EVIDENCE

Counsel for the Discipline Committee presented an Affidavit of Service (Exhibit 8) establishing that the member had been served on 27 October 2011 with a Request to Admit Facts and Documents (Exhibit 6) along with a Notice under the Evidence Act (Business Records) (Exhibit 7). The member was advised that he had 20 days to respond to the Request to Admit Facts and Documents, and that if he failed to respond, he would be deemed to admit the truth of the facts and the authenticity of the documents, for the purpose of this proceeding. The member did not respond to the Request to Admit Facts and Documents. Based on the facts and documents deemed to be admitted by the member at this hearing, the panel makes the following findings of facts as directed to Forgues:

1. Forgues became a member of CGA Ontario in 1988.
2. Forgues' CGA Ontario certificate number is 7596 and his CGA Canada certificate number is 423385.
3. Forgues is not and has not been registered in public practice with CGA Ontario (the "Association").
4. Forgues is not and has not been registered with the Association for the preparation of income tax returns.
5. The Code of Ethical Principles and Rules of Conduct (the "Code") defines a "professional practice" as "a proprietorship, partnership, limited liability partnership or professional corporation that provides professional services."
6. The Code further defines "professional services" as "any accounting, assurance, taxation services, management advisory or consulting services or other related services as may from time to time be recognized by the Association that is performed or offered to be performed by a member for a client or employer, whether or not the member asserts membership in the Association."
7. CGA Ontario received information in 2010 that suggested Forgues had prepared income tax returns, preparation of compilation engagements, public accounting services or other professional services part time or full time when he was not registered to do so.

8. By letter dated 16 December 2010, the Association requested, among other things, a list of Forgues' clients for each of the years that he operated a professional practice to present, with particulars and confirmation that he carried professional liability insurance.
9. Forgues responded by letter dated 6 January 2011 but did not provide the requested client list.
10. By follow up email dated 8 February 2011 CGA Ontario asked Forgues to provide by 18 February 2011 a list of his clients for each of the years that he offered either public accounting services, preparation of compilation engagements or tax returns part time or full time to the current date and to indicate particulars about the extent and nature of the work performed.
11. By letter dated 15 February 2011 Forgues included business cards for three companies he indicated he was "contracted with". Forgues otherwise did not respond to the committee's request.
12. By follow up email dated 15 March 2011 CGA Ontario again requested information from Forgues about his practice and requested a response by 21 March 2011. He did not respond.
13. By email dated 22 March 2011 the committee followed up with Forgues and reminded him of the requirements of Rule 610 and Rule 611 to respond in writing to the committee as requested. He did not respond.
14. By email dated 25 March 2011 Forgues advised that he intended to retain counsel and reply by 1 April 2011.
15. By return email dated 25 March 2011 the committee advised Forgues that it was meeting March 31 and would appreciate his response for that meeting.
16. By email sent the afternoon of March 31 the committee asked Forgues if he would have a response for the evening meeting. He did not respond.
17. By email dated 13 April 2011 the committee again wrote to Forgues and confirmed that it had not received any information from him.
18. By letter dated 19 April 2011, delivered 21 April 2011, counsel on Forgues' behalf advised that he presently had three clients.
19. As Forgues had not provided the information requested for any of the years other than 2011, the committee wrote to him by letter dated 29 June 2011 attaching schedules for each of the years 2005 to date and requesting they be completed and returned by 29 July 2011 with information on the tax return preparation practice and professional services provided.
20. By letter dated 26 July 2011 Forgues' counsel advised that he was out of the country until July 29 and would respond upon his return.
21. By email dated 11 August 2011 the committee advised Forgues that, as he had still not responded, the matter would proceed to a hearing.
22. Instead of responding, on or about 20 August 2011 Forgues purported to cancel his membership in the Association.
23. Forgues was advised that pursuant to Article 6, section 20 of the bylaws, his request to cancel his membership would not be effective until the outstanding disciplinary complaints against him were completed and he had fully satisfied any sanctions imposed by a tribunal.
24. By email dated 30 August 2011 CGA Ontario advised Forgues' counsel that the matter would proceed to a hearing as the Association had not received completed schedules

outlining the work Forgues had done.

25. By email dated 14 September 2011 sent to the information email at CGA Ontario, Forgues' counsel delivered incomplete schedules for the years 2007-2010.

26. The schedules delivered do not list all the clients to whom Forgues provided professional services.

27. At no time had Forgues completed the schedules or otherwise provided the information requested concerning his clients or the nature and extent of the services he renders to them.

28. In not responding or not responding completely to the Association's many requests, Forgues' conduct amounted to professional misconduct.

29. Rule 610 of the Code - Requirement to Reply in Writing - provides as follows:

R610 Requirement to Reply in Writing

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

30. In failing to respond honestly or completely to the Association's email of 8 February 2011, in failing to respond to the committee's email of 15 March 2011 and 21 March 2011 and in failing to respond substantively to the Association's email of 22 March 2011, Forgues breached Rule 610.

31. Further by not responding by 1 April 2011 when Forgues indicated he would, by not responding by 31 March 2011 when the discipline committee requested him to do so in its email to him of 25 March 2011 so that the matter could be addressed at its upcoming meeting and by not responding to the committee email of 31 March 2011, he breached Rule 610.

32. By providing only partial information to the committee through Forgues' counsel on 19 April 2011 and by not providing complete schedules as required by the committee's letter to him of 29 June 2011, he breached Rule 610.

33. By not providing an accurate or a complete written response to the Association when one was requested, he breached Rule 610.

34. Rule 611 - Assistance to the Board - provides as follows:

R611 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 matters of the Act, By-Law Four or the Code of Ethical Principles and Rules of Conduct, and when required, produce any documents in the member's possession, custody or control, subject to Rules RJ04.2, RJ04.3 and R201.

35. Rule 611 of the Code requires members to comply with a request of any Association committee and, when required, to produce any documents in the member's possession, custody or control.

36. By not responding to the Association at all or completely, as detailed in paragraphs 28, 29 and 30 above, Forgues breached Rule 611.

Counsel for the Discipline Committee also advised the Panel that an agreement had been reached and introduced Minutes of Settlement (Exhibit 4). The agreed facts part of the Minutes of Settlement provide as follows:

1. Paul Forgues ("Forgues") acknowledges that, despite the request of the discipline committee of CGA Ontario (the "committee"), he did not provide the committee with a schedule of

information satisfactory to the committee concerning his income tax preparation practice for the years 2005 to 2009 and did not provide a schedule of information satisfactory to the committee listing the professional services he performed for the years 2005 to 2009 (the "Schedules").

2. Forgues acknowledges that his failure to provide the Schedules when requested amounted to a breach of Rules 610 and 611 of the Association's Code of Ethical Principles and Rules of Conduct and amounted to professional misconduct.

The Panel accepted as true the agreed facts in the Minutes of Settlement.

DECISION

Having considered the evidence and the submissions, the Panel of the Professional Conduct Tribunal finds that the member breached the following provisions of the Code of Ethical Principles and Rules of Conduct:

R610 Requirement to Reply in Writing

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

R611 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 matters of the Act, the Bylaws or the *Code of Ethical Principles and Rules of Conduct*, and when required, produce any documents in the member's possession, custody or control, subject to Rules R104.2, R104.3 and R201.

The Panel of the Professional Conduct Tribunal also finds the member guilty of professional misconduct.

REASONS FOR DECISION

The applicable provisions of the Code are set out above.

The Panel of the Professional Conduct Tribunal considered the following evidence provided by Ms. Jolley, in determining that Forgues had breached Rule 610 Requirement to Reply in Writing:

1. Forgues failed to respond to the Association's or committee's emails of 8 February 2011, 15 March 2011, and 21 March 2011, and failed to respond substantively to the Association's email of 22 March 2011.
2. Forgues did not respond by 1 April 2011, as he indicated he would, and he did not respond when the discipline committee requested him to do so in its e-mail of 25 March so that the matter could be addressed at its upcoming meeting, and he did not respond to the committee email of 31 March 2011.

3. Forgues only provided partial information to the committee through his counsel on 19 April 2011 and he did not provide schedules as required by the committee's letter to him of 29 June 2011.
4. Forgues did not provide an accurate or complete written response to the Association when such a response was requested.

The Panel of the Professional Conduct Tribunal determined that Forgues breached Rule 611, which requires members to comply with a request of any Association committee and to produce any documents in the member's possession, custody or control, by not responding at all or completely, as detailed in paragraphs 1 to 4 above.

The Panel of the Professional Conduct Tribunal also considered and relied on that in the Minutes of Settlement, Exhibit 4, in paragraph 2, Forgues acknowledged his failure to provide the Schedules when requested amounted to a breach of Rules 610 and 611 of the Association's Code of Ethical Principles and Rules of Conduct, and that this failure amounted to professional misconduct.

PENALTY SUBMISSIONS

Counsel for the Discipline Committee advised the Panel that an agreement had been reached on the penalty. The agreed penalty part of the Minutes of Settlement provides as follows:

1. In the settlement of the matters before the Tribunal, it is agreed that Forgues shall provide the committee with a complete listing of his clients for each of the years 2005-2009 on or before 4 February 2012, as per the attached Schedules.
2. Upon receipt of the completed Schedules, the committee will arrange a date, on five days' notice to Forgues, to have an inspector attend at his premises and review his files against the lists provided.
3. In the event that Forgues does not produce the completed Schedules by 4 February 2012, his membership shall be revoked and he shall be expelled from the Association.
4. Forgues shall pay the Association on or before 6 January 2012 a fine in the amount of \$1,000 in respect of his breaches of the Code and costs in the amount of \$2,000 in respect of the hearing.

Counsel for the Discipline Committee provided the Panel with examples of previous similar cases to that of Forgues. The Panel considered these cases, and was aware of the fact that the agreed penalty is highly dependent on Forgues' compliance with the provision of information to the Association. The agreed penalty reflects these requirements.

PENALTY DECISION

The Panel of the Professional Conduct Tribunal deliberated and accepted the agreed penalty in the Minutes of Settlement dated 5 December 2011 and accordingly orders the following penalty:

1. Forgues shall provide the committee with a complete listing of his clients for each of the years 2005-2009 on or before 4 February 2012, as per the Schedules.
2. Upon receipt of the completed Schedules, the committee will arrange a date, on five days' notice to Forgues, to have an inspector attend at his premises and review the files against the lists provided.
3. In the event that Forgues does not produce the completed Schedules by 4 February 2012, his membership shall be revoked.
4. Forgues shall pay the Association on or before 6 January 2012 a fine in the amount of \$1,000 in respect of his breaches of the Code and costs in the amount of \$2,000 in respect of the hearing.

In respect of penalty, the Panel of the Professional Conduct Tribunal also orders the following:
In the event that Mr. Forgues' membership in the Association is revoked, he shall return his CGA Ontario certificate #7596 and his CGA Canada certificate #423385 to the Association.

REASONS FOR PENALTY DECISION

The Panel of the Professional Conduct Tribunal reviewed the information provided by Ms. Jolley, counsel for the Discipline Committee including a review of Rules 610 and 611 of the Code of Ethical Principles and Rules of Conduct, copies of e-mails and letters to Mr. Forgues, and copies of his replies to the Committee. The Panel also reviewed similar cases involving CGA Ontario members, as well as members of the Law Society of Upper Canada. The Panel is satisfied that the agreed penalty is consistent with the cases provided by the Counsel for the Discipline Committee.

The Panel considered the Minutes of Settlement dated 5 December 2011 between Forgues and the Discipline Committee of the Certified General Accountants Association of Ontario in which Forgues admitted the allegations set out in the Notice of Hearing and agreed to the penalty.

In the circumstances of the Forgues case, the Panel agrees with the Discipline Committee that immediate revocation of Forgues from the Association would not be appropriate, and that Forgues be provided with an opportunity to comply with his obligations and return to good standing in the Association. The decision is based on a strict timeline with which Forgues must comply.

Dated this 23 day of January, 2012

I, D. Alan Jones, sign this Decision and Reasons for Decision as Chair of the panel of the Professional Conduct Tribunal on behalf of the members of the panel that heard this matter.


D. Alan Jones

NOTICE

This decision of the Professional Conduct Tribunal may be appealed to an Appeal Tribunal within thirty (30) days of the date 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 and delivering 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 the Bylaws, 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 void.