

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

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

AND IN THE MATTER OF a complaint concerning Mr. Anthony Joseph a
member of the Certified General Accountants Association of Ontario

BETWEEN:

THE DISCIPLINE COMMITTEE OF THE CERTIFIED GENERAL
ACCOUNTANTS ASSOCIATION OF ONTARIO

AND

ANTHONY JOSEPH

MEMBERS OF THE TRIBUNAL:

Donald H. Page, FCSI, FCGA, Chair
Janice Charko, CGA, CFP
Doug M. White, CGA

COUNSEL:

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

The Chair called the hearing to order at 2:00 P.M. and introduced the Members of the Tribunal. Notice of this hearing was given to all parties on January 23, 2001. The Chair invited Karen E. Jolley, Counsel for the Discipline Committee to proceed with the opening statements.

This hearing involves a complaint against Mr. Anthony Joseph which the Discipline Committee of the Certified General Accountants Association of Ontario has referred to a Professional Conduct Tribunal. Mr. Joseph and the Discipline Committee were sent notices of this hearing on January 23, 2001 in regard to this case. In the notice of hearing, Mr. Joseph is alleged to have violated Rules 101, 606, 607 and 607.1 of the Certified General Accountants Association Code of Ethical Principles and Rules of Conduct.

Among other things, it is alleged that:

1. While being Area Controller, Canada, Bass Hotels & Resorts (BHR) that on April 10, 2000 Mr. Joseph confessed that he had attempted to defraud BHR of corporate funds totaling \$36,358.53 by converting these funds to personal use by manipulating a fraudulently obtained company issued check, and deposited into his personal checking account.
2. Again on April 1, 2000, two company cheques \$70,629.85 and \$105,432.43 on which the payees had been altered and upon which Mr. Joseph's signature appeared on the reverse side of the cheques, that he had deposited them into a personal account #1491962.

A hearing on this matter was held on February 20, 2001. Karen E. Jolley, Counsel for the Discipline Committee, tabled a Discipline Brief, identified as Exhibit #1 and a Sentencing Brief, identified as Exhibit #2. Mr. Joseph and his Counsel, Cindy R. Wasser, did not plan to attend the hearing as communicated in a letter dated February 19, 2001, and recorded as evidence produced by Counsel and identified as Exhibit #3.

At the beginning of the hearing Counsel for the Discipline Committee referred to the Notice of Hearing document tabled in Exhibit #1, Tab #1. Counsel then referred to the conviction under the Criminal Code of the Ontario Court of Justice on August 30, 2000 in which Mr. Joseph was convicted on two counts of fraud and sentenced as detailed in

Exhibit #1 Tab 3. Counsel then referred to Tab #4 and Tab #5 detailing the fraudulent process used by Mr. Joseph against his employer. At Tab #6 Counsel referred to Tab #6, a copy of a letter, apparently hand written by Mr. Joseph, in which Mr. Joseph acknowledged and apologized for the misappropriation of company funds by cheque in the amount of \$36,358. Counsel then referred to Tab #7, a certified copy of the transcript of the Court proceedings, in which Mr. Joseph was sentenced for two counts of fraud. The Court also acknowledged that Mr. Joseph had a cheque at the time of the hearing in full restitution for the total defrauded amount, namely \$176,062.28.

These facts were recorded in the transcript of the court sentencing on August 30, 2000. Mr. Joseph pleaded guilty and was convicted on two counts of fraud.

Counsel for the Discipline Committee referred to Exhibit #3, being a letter from Cindy R. Wasser, Counsel for the defendant, stating that Mr. Joseph was agreeable to a fine of \$1,000, costs of \$1,500 and that Mr. Joseph did not contest the expulsion from membership sought by the Discipline Committee.

With respect to the proceedings before this Tribunal, Counsel for the Discipline Committee then called upon Mr. Ralph Palumbo, Director of Government Relations and Legislative Affairs for the Certified General Accountants Association of Ontario. Mr. Palumbo was duly sworn in. Mr. Palumbo confirmed that he had contacted Mr. Joseph in writing on two occasions, Exhibit #1, Tab #8&9, to convey the complaint against him and gave him an opportunity to respond, and confirmed that he had not received a response from Mr. Joseph.

Counsel then asked the Tribunal to refer to Exhibit #2 in which was recorded several hearings and related sentences and fines imposed upon professional accountants and lawyers. Counsel briefly reviewed these cases and how they would relate to the

) seriousness of the criminal offense of fraud to which Mr. Joseph committed against his employer amounting to \$176,062.28.

The Chair of the Tribunal Hearing then called for a recess to permit the members of the Tribunal to consider the evidence and prepare their decision. Having carefully reviewed the written submissions of Counsel for the Defendant and the evidence and submissions submitted by Counsel for the Discipline Committee, that on the basis of these facts and the Criminal Court sentencing on two counts of fraud, and the fact that there was no evidence of illness or medical reasons for these fraudulent actions by Mr. Joseph, we find that Mr. Joseph violated Rules 101, 606, 607, and 607.1 of the Certified General Accountants Association Code of Ethical Principles and rules of Conduct.

The Chair reconvened the Tribunal Hearing and advised Counsel of the following decision;

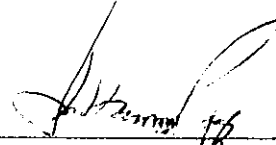
) In considering the appropriate penalty, we find that the seriousness of Mr. Joseph's conduct here is highly unacceptable, considering his action, on two occasions, to defraud his employer of a sizeable sum on money, and especially considering the responsibility of a self regulated professional association, and the importance of maintaining the public's confidence in the profession. Mr. Joseph was in a position of great trust and abused that trust.

WE DIRECT THAT:

1. Mr. Anthony Joseph be expelled from the Certified General Accountants Association of Ontario.
 2. Mr. Anthony Joseph pay the costs of these proceedings in the amount of \$1,500
 3. Mr. Anthony Joseph pay a fine of \$1,000
 4. This decision be published in CGAO Statements
 5. This decision be published in the Mississauga Newspaper
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Dated at Toronto this 12th day of March, 2001.



Donald H. Page, Chair
On Behalf of the Tribunal

NOTICE

The decision of a Professional Conduct Tribunal may be appealed to an Appeal Tribunal within sixty (60) days of the date of the written decision of the Professional Conduct Tribunal. The notice of appeal must be in writing, addressed to the Executive Director, Certified General Accountants Association of Ontario, 240 Eglinton Avenue, East, Toronto, Ontario M4P 1K8. The notice must contain the grounds for appeal.

The Certified General Accountants Association of Ontario

Appeal Tribunal

IN THE MATTER OF Mr. Anthony Joseph CGA

**AND IN THE MATTER OF an appeal to the Certified General Accountants
Association of Ontario (CGAAO) Appeal tribunal**

Present

Members of the Tribunal	Alexis Perera CGA – Chair June Oliver CGA John MacDonald CGA
Counsel	Cindy Wasser – Lawyer for the Appellant (Mr. Joseph) Karen Jolly – Lawyer for the Respondent (Discipline Committee) Cynthia Petersen – Lawyer for the Appeal Tribunal
Appellant	Mr. Anthony Joseph
Discipline Committee	Ralph Palumbo – Director, Government Relations & Legislative Affairs of CGAAO John Biancucci CGA
Court Reporter	Networking Court Reporting Ltd

On the 12th March 2001, the Professional Conduct Tribunal issued a ruling which imposed the following penalties against Mr. Anthony Joseph ;

1. Expulsion from the Association
2. Payment of costs in the amount \$1,500
3. A fine of \$1,000
4. This decision be published in CGAAO Statements
5. This decision be published in the Mississauga Newspaper

In accordance with Clause 12 of Article 9 of By-Law four of CGAAO, Mr. Anthony Joseph has appealed against terms 4 and 5 of the above penalties.

**Appeal Hearing on the 23rd October 2001 at the Network Court Reporting Office,
Toronto at 10.00am**

Ms Cindy Wasser, lawyer for the Appellant, stated that her client's appeal was based on the following grounds ;

1. Terms 4 and 5 were harsh and excessive and were based in part on erroneous findings that the Appellant did not respond to any of Mr. Ralph Palumbo's letters.
2. Prior to the hearing, the Discipline Committee had not requested the publication of the decision in the Mississauga Newspaper.
3. Mr. Joseph decided not to attend the Disciplinary Hearing because he had a certain understanding of what penalties were being sought and he was prepared to consent to those. He did not know that publication of his name would appear in the Statements and in the local newspaper. Because the Discipline Committee had failed to give Mr. Joseph notice of those penalties in advance, he did not have the opportunity to address those penalties at the hearing.
4. By publishing the decision and Mr. Joseph's name both in Statements and in the Mississauga Newspaper, the objectives of deterrence will not be achieved.

With regard to the first ground, Ms Wasser requested permission from the Tribunal to submit new evidence to prove that Mr. Joseph did indeed reply to Mr. Palumbo's letters. At this point, Ms Karen Jolly, lawyer for the Respondent, objected on the grounds that new evidence could be submitted at an Appeal Tribunal only if material and under exceptional circumstances. The matter was referred to the Tribunal for a decision.

The Tribunal then carefully considered the request and decided against admission of new evidence on the following grounds.

- The issue of Mr. Joseph's response to Mr. Palumbo's letters did not appear to be a factor in the decision of the Professional Conduct Tribunal
- The issue of Mr. Joseph's response would not be a relevant factor in the outcome of the issues on appeal.

Ms. Wasser made submissions on 2nd and 3rd grounds for appeal and the Tribunal suggested that she focus more on the 4th ground of appeal. Ms. Wasser then argued that the publication of the Professional Conduct Tribunal decision and Mr. Joseph's name both in Statements and Mississauga Newspaper would not achieve the objectives of general deterrence.

Ms Wasser cited several disciplinary decisions from CGAAO, Law Society of Upper Canada and the Institute of Chartered Accountants 1) where there were no publication in any newspaper, 2) where there was publication only in Statements and 3) where the names of the accused were not published. Ms Wasser argued that even though criminal cases are often published in the newspapers, people still commit crime and therefore publication does not seem to act as a deterrent. Ms Wasser further stated that her client had admitted his wrongdoing, feels remorse and had made full restitution. Further, Mr. Joseph is working in Mississauga and the publication of his name in the local newspaper would harm his livelihood and embarrass his family.

Ms Jolley for the Respondent, then reviewed several cases where the names of the accused have been published both in Statements and in local newspapers. Ms Jolley argued that Mr. Joseph had committed a very serious crime, a significant breach of trust and was subsequently found guilty in a criminal court . His conduct had tarnished the CGAAO designation and the profession in general. As a self-regulated professional body, CGAAO must exercise its disciplinary obligations in a serious, fair and responsible manner and also must be seen by the public to do so. Therefore, Mr. Joseph's behavior should not be concealed from the public.

Ms Jolley further argued that publication of names of members found guilty of criminal and professional misconduct is the most significant penalty that can be imposed to address issues such as general deterrence and maintenance of public confidence. Only in the most exceptional and rare circumstances that the CGAAO Disciplinary Committee would consider it appropriate to dispense with the publication of the name of the guilty member. Since this is not an exceptional and a rare circumstance, the publication of the Professional Conduct Tribunal decision and Mr. Joseph's name both in the Statements and in the local newspaper, should stand.

The Decision

The Members of the Tribunal carefully considered the arguments of both parties. The Tribunal recognized the fact that Mr. Joseph had acknowledged his wrongdoing, cooperated with the Discipline Committee and had made full restitution, all of which are mitigating factors. However, the Tribunal unanimously agreed that publication in Statements (including the member's name) as a matter of course in all cases of misconduct, except in very rare and exceptional circumstances.

The Tribunal also agreed that although publication of the name in the newspaper is not always warranted, it is appropriate where the offence is of a serious nature and where expulsion has been ordered.

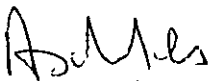
The Tribunal found Ms. Wasser's argument, that publication of names of criminals in the newspapers is not a deterrent, unpersuasive. Just because crime is still being committed does not mean that criminal sanctions have no effect. It could be argued that more crime would be committed without the deterrent effect of criminal sanctions.

The Tribunal also considered why it was important to publish Mr. Joseph's name in the newspaper rather than making an anonymous publication. It felt that an anonymous publication could potentially cast aspersions on other CGAs who practice in the area, who might be wrongly suspected by newspaper readers of being the CGA who was disciplined.

Mr. Joseph had committed a serious crime and breach of trust which were clearly planned and deliberate. In order to promote general deterrence of other members, protect public interest and to maintain public confidence in the accounting profession, CGAAO must impose penalties so as to achieve all these objectives.

The Appeal Tribunal therefore unanimously agrees that the decision of the Professional Conduct Tribunal was fair and just and that the penalties imposed should not be varied.

Dated this 22nd day of November, 2001



Alexis Perera CGA,
Chairman – Appeal Tribunal