

**THE CERTIFIED GENERAL ACCOUNTANTS  
ASSOCIATION OF ONTARIO**

IN THE MATTER OF an unresolved complaint concerning  
Fergus MacNally, a member of the Certified General  
Accountants Association of Ontario;

AND IN THE MATTER of a hearing conducted before a  
Professional Conduct Tribunal on June 18, 1996.

**Members of the Tribunal:**

Louise M. McNeely, CGA, Chairman  
Gillian Andersen, CGA  
Dan Coghlan, CGA

**Counsel:**

Larry Banack, for the Discipline Committee

**Defendant:**

Fergus MacNally

**Complainant:**

Mr. Trevor Byrne

**Discipline Committee:**

Eltrudy Kraker, FCGA

**Court Reporter:**

Network Court Reporters Ltd.

**Witness:**

Ralph Palumbo, Director

**DECISION**

Pursuant to a notice of hearing dated May 17, 1996 (marked Exhibit No. 1); Fergus MacNally was charged with the following violations of the Code of Ethics and Rules of Professional Conduct:

Rule 203 – Due Care: A member shall perform professional services with due care;

Rule 207 – Acknowledged Standards of the Profession: A member shall adhere to the acknowledged standards of the profession;

Rule 218 – Right to Take Cognizance: a member shall respect the right of any client to have access to documents that are an integral part of the client's records and to obtain copies of those documents;

Rule 309 – Assistance to the Board: A member shall assist the Board or its committees in the proper exercise of its duties in an open, honest and forthright manner, in matters of the Code of Ethics and rules of professional Conduct when required, and shall produce any documents in his/her possession, custody or control which may be required from time to time.

The particulars alleged against Mr. MacNally is that he failed to perform professional services with due care, that he did not adhere to acknowledged standards of the profession, that he failed to assist the client and failed to return to them their records and documents.

Mr. MacNally was not in attendance at the Tribunal. There had been oral communication with Mr. MacNally the previous day and he was aware that the matter was to proceed on June 18, 1996. Attempts to contact Mr. MacNally by telephone were made on the morning of this hearing.

Mr. Byrne was affirmed and responded to questions directed to him by counsel, Larry Banack regarding the numerous attempts to contact Mr. MacNally. Mr. Byrne last saw Mr. MacNally on April 30, 1995 when he signed his personal and corporate tax returns. Mr. MacNally had undertaken to deliver the returns to the Revenue Canada offices at 36 Adelaide St., Toronto. Mr. Byrne was not aware of any problem until he and Mrs. Byrne began receiving notices in July regarding the fact that they had not filed tax returns. For many months, Mr. Byrne attempted to contact Mr. MacNally by telephone and by fax. When he received no responses to his messages he engaged the services of a private investigator to try and locate Mr. MacNally. Mr. MacNally had closed down his office and was now working out of his home.

Mr. Byrne had concerns about hiring another accountant to complete the necessary tax returns, as he did not have many of the original source documents that had been provided to Mr. MacNally. A new accountant was engaged, the tax returns were prepared without all of the necessary documentation. The Byrnes have had interest and penalties assessed by Revenue Canada. They have also incurred additional costs in recreating accounting records, in the absence of their original source documents.

The Tribunal was also made aware that Mr. MacNally was currently under suspension from the Association for non-payment of fees.

**Tribunal Ruling:**

The Tribunal unanimously finds that Fergus MacNally is guilty of breach of Rules 203, 207, 218 and 309 by virtue of the testimony given by Trevor Byrne.

**Reasons for the Tribunal decision:**

Mr. MacNally failed to ensure that the tax returns of his clients were properly filed when he had undertaken to do so. Mr. MacNally did not allow access to his client of the client's records. Mr. MacNally failed to respond to the letters of request, which had been sent, from Mr. Masters and Mr. Palumbo. This left the Association in the position of being accountable for the acts of its member but being incapable of assisting the public or resolving the difficulties as between a member and a member of the public.

Mr. MacNally's clients have suffered financially and have been inconvenienced. Had Mr. MacNally continued to perform his duties in a competent and professional manner, this would not have occurred.

**Disciplinary Action directed by the Tribunal:**

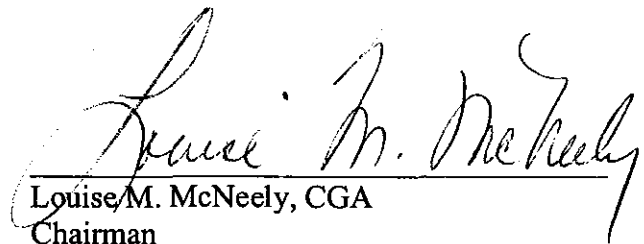
- (1) A letter of reprimand is to be sent to Mr. MacNally by the Chair of the Discipline Committee.
- (2) In view of Mr. MacNally's ongoing suspension, Mr. MacNally is to return his Certificates of Membership to the CGAO office. The CGAO office throughout the suspension period will retain these.
- (3) Mr. MacNally is to compensate his aggrieved clients in this matter, Mr. And Mrs. Byrne and Consumer Centre Inc. for the late filing and interest charges assessed by Revenue Canada. The financial harm caused to his clients is estimated at between \$7,200 and \$9,200. The tribunal orders that Mr. MacNally pay compensation in the amount of \$8,000. Mr. Byrne is to provide a receipt to the CGAO upon receipt of payment.
- (4) Mr. MacNally is fined \$250 for each breach of the Rules for a total of \$1,000.
- (5) Mr. MacNally is to pay costs of \$1,500.
- (6) The outcome of this tribunal is to be published in Statements.
- (7) The outcome of this Tribunal is to be published in a Toronto area newspaper.
- (8) Mr. MacNally's Membership in the Certified General Accountant's Association is suspended for one year; such suspension to begin once the administrative suspension has been satisfied.
- (9) All Payments are to be made before November 1, 1996.

The decision is to be filed in the Ontario Court of Justice in accordance with Section 19 of the statutory Powers Procedure by the Certified General Accountants Association Ontario if enforcement is required.

Dated October 24, 1997

ENTERED AT REGISTRY OF COURTS  
ON/BOUQUET  
LEADERS BY REGISTRY OF

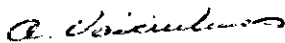
AUG 17 1998



Louise M. McNeely, CGA  
Chairman

Professional Conduct Tribunal

PEB/PAH



Notice of right to Appeal:

The decision of a Professional Conduct Tribunal may be appealed to an Appeal Tribunal provided it is done in writing within sixty (60) days of the Professional Conduct Tribunal's written decision. Appeals must be in writing and addressed to the Executive Director, Certified General Accountant's Association of Ontario, 240 Eglinton Avenue East, Toronto, Ontario M4P 1K8. The notice shall contain grounds for the appeal, which are confined to: error in fact, error in interpretation of the Code, error in procedure or error in sentence.

DISCIPLINE COMMITTEE OF THE CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF ONTARIO v. FERGUS MACNALLY

---

PROFESSIONAL CONDUCT TRIBUNAL  
PROCEEDING COMMENCED AT TORONTO

DECISION OF PROFESSIONAL CONDUCT TRIBUNAL

CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION  
OF ONTARIO  
240 Eglinton Avenue East  
Toronto ON M4P 1K8

RALPH PALUMBO  
Director  
Government Relations  
and Legislative Affairs  
(T) (416) 322-6520, extension 212  
(F) (416) 322-5594