

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

IN THE MATTER OF a Complaint against Stephen McCune, CGA

BETWEEN:

The Discipline Committee of The Certified General Accountants Association of Ontario

- and -

Stephen McCune, CGA

DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL

Members of the Professional Conduct Tribunal Panel:

Robert C. Haliburton, CGA, Chair
Douglas White, CGA
Dan Iggers, Public Representative

Pursuant to section 25, Article 9 of the Bylaws, the Professional Conduct Tribunal Panel has reviewed the Statement of Facts and Resolution proposed by the parties in this matter, signed by the Chair of the Discipline Committee Pierre Bockt, FCGA dated April 28, 2011 and signed by Stephen McCune, CGA, dated May 09, 2011. The Professional Conduct Tribunal Panel accepts the attached proposal as set out by the parties. The attached proposal is hereby ratified.

Dated this *17* day of June, 2011

I, Robert C. Haliburton, CGA, sign this Decision as Chair of the Panel of the Professional Conduct Tribunal on behalf of the members of the Panel that heard this matter.



Robert C. Haliburton, CGA

**THE CERTIFIED GENERAL ACCOUNTANTS
ASSOCIATION OF ONTARIO**

**IN THE MATTER OF Stephen McCune, a member of the
Certified General Accountants Association of Ontario**

STATEMENT OF FACTS AND RESOLUTION

A. AGREED UPON STATEMENT OF FACTS

1. You became a member of CGA Ontario in 1979.
2. You were retained by Diane Sawyer ("Sawyer") in or about February 2008 to complete her 2007 income taxes.
3. Shortly thereafter Sawyer also retained you to respond to a notice of re-assessment dated 1 February 2008 that she had received from Canada Revenue Agency ("CRA") for the years 2004 and 2005 and a further notice of re-assessment dated 20 March 2008 for the 2006 year.
4. Despite her numerous follow ups with you throughout 2008 and 2009, Sawyer was advised by CRA that no Notice of Objection or other response had been received to the notices of assessment.
5. While you indicated in the course of the complaint investigation that you filed an Objection on Sawyer's behalf in March 2008, CRA never received a copy. You never provided a copy to Sawyer and CRA continued to send Sawyer notices for payment of her income tax arrears.
6. Sawyer arranged a meeting with you for 10 September 2008 which you cancelled that morning.
7. Sawyer arranged a meeting with you for 12 January 2009 which you cancelled that morning as having been double booked. By email to you that same day, Sawyer expressed the urgency in getting her response sent to CRA.
8. By email to you dated 2 February 2009 Sawyer advised that she wished to get her tax matters dealt with before you got busy with 2008 taxes. You did not advise Sawyer that you had already filed the Objection so she need not worry.
9. By email to you dated 24 April 2009 Sawyer requested from you a contact name or phone number for whomever you were dealing with at CRA and advising that "after all this time, they still have no record of any pending adjustment, and my credit rating has been compromised." Her email further stated: "You mentioned I should just pay the bill, that I would get credited. However, if there was some

substantiated note on my file, this would not be in the hands of the Collections Division of Revenue Canada. Please help me here.” Sawyer also requested return of her files.

10. By further email to you dated 6 May 2009 Sawyer reminded you to bring her files and the name of the contact person at CRA along with any paperwork you had that would escalate resolution of her file. Even after this request, you did not provide her with the Objection that you subsequently said you filed in March 2008.
11. Sawyer sent a further reminder to you by email dated 10 May 2009.
12. When the matter still had not been resolved, by email to you dated 17 October 2009 Sawyer advised that she would like to get the audit finalized, stating: “It has been over 2 years since you started this file and I feel this should now be your priority – above all else. This year’s tax season will be starting soon. This needs to be finalized first. Let’s set up one final meeting for Thursday or Friday this week, let me know how much I owe you. Let’s get this done.”
13. When she did not get a response, Sawyer contacted you again by email on 22 October 2009 stating “Please advise why you are not keeping in touch. I need a contact name that says that this file is being looked at and that I – as you put it – I do NOT owe Revenue Canada any money. Nobody I have talked to at Revenue Canada has your name on my file. They tell me interest is due, that it’s got to be paid immediately. Why can’t you give me a name so I can forward it to the Collections Department so they leave me alone. They say they have no record of Stephen McCune, CGA anywhere on their files. How can this be. I asked that we make an appointment this week. I want to resolve this today. I would like to come to your office and pick up all my files so I can see what you’ve done, what the status is, and why – after you telling me that I should not worry, that I DO NOT OWE THEM ANY MONEY, they took my tax credit from 2008 and applied it against this outstanding debt. Two years is a long time to hold the files and not give me any updates as to who you are dealing with there. Please call me...”
14. By email dated 28 October 2009 you advised Sawyer that the file had not been assigned. You indicated that you would follow up with CRA.
15. In writing this email to Sawyer you intended to hide the fact that you had not filed the Objection with CRA or had any dealings with CRA on her behalf in respect of the re-assessments since your retainer some 18 months earlier.
16. By email dated 18 November 2009 Sawyer advised you that CRA had told her it was now too late to appeal and that she would be at your office in the morning to pick up her files. She further stated: “You have NEVER given me a contact

- name, nor have you shown any kind of good faith that you have done anything at all to help me in over two years.”
17. By responding email dated 18 November 2009 you advised Sawyer that you had no name to give her and that you were unavailable for the balance of the week.
 18. By email dated 27 November 2009 you advised Sawyer that “all filings done as of this morning. Will call you as soon as I speak to CRA.”
 19. It was on or about 27 November 2009 that you purported to “refile” an Objection on behalf of Sawyer with CRA that you said you filed in March 2008.
 20. You advised that you telephoned CRA between March 2008 and 27 November 2009 for an update, but have no notes or records or email reporting to Sawyer on same or letter to support that assertion.
 21. By letter dated 18 December 2009, CRA advised Sawyer that the Objections for 2004, 2005 and 2006 were not filed within the timeframe required and were therefore not accepted.
 22. Further CRA advised that it would not grant an extension to file the Objection as the request for an extension was also out of time.
 23. When the matter was not resolved, Sawyer emailed you on 18 January 2010 asking why she did not have an update and why you had not returned the call of her banker, who had left a message for you, at Sawyer’s request.
 24. By email dated 1 April 2010 you advised Sawyer that you would try to have the letter to CRA done by the next day.
 25. By email dated 2 April 2010 you sent Sawyer the information you intended to send to CRA.
 26. By email dated 3 April 2010 you advised Sawyer that you had faxed information to CRA that morning.
 27. By email dated 10 May 2010 Sawyer reminded you that she was still awaiting the documentation between you and CRA.
 28. When you should have become aware in your purported calls with CRA after March 2008 that CRA had not received your notice of Objection, you did not apply for an extension of time to refile the notice.
 29. No notice of objection was received by CRA until November 2009.

30. By that time all deadlines had passed and any requests for extensions of time were out of time.
31. In your response to the complaint, you indicated that you had not charged Sawyer.
32. Sawyer indicated in her emails to you that she wanted to attend at your office and pay what she owed you for the services you had allegedly rendered.
33. Rule 101 of the Association's Code of Ethical Principles and Rules of Conduct (the "Code") - Discredit - provides that members shall not participate in or provide services to any practice or act that would be of a nature to discredit the profession.
34. In failing to file the Objections but representing to your client that they had been filed, you participated in an act that was of a nature to discredit the profession.
35. Alternatively, in filing the Objections and failing to provide your client with a copy of the Objections, despite her many requests or to advise her when they were filed, you participated in an act that was of a nature to discredit the profession.
36. In failing to obtain an extension when you knew or ought to have known through the conversations you say you had with CRA in March 2008 and following that they had not received the Objections, you participated in an act that was of a nature to discredit the profession.
37. In failing to respond promptly or at all to your client's emails, you participated in an act that was of a nature to discredit the profession.
38. In failing to return your client's files promptly when requested, you participated in an act that was of a nature to discredit the profession.
39. The Code Principle – Trust and Duties - requires members to act in the interest of their clients and to honour the trust bestowed on them by those clients.
40. In failing to file the Objections but representing to your client that they had been filed, you did not act in the interest of Sawyer or honour the trust she bestowed on you.
41. Alternatively, in filing the Objections and failing to provide your client with a copy of the Objections, despite her many requests or to advise her when they were filed, you did not act in the interest of Sawyer or honour the trust she bestowed on you.

42. In failing to obtain an extension when you knew or ought to have known through the conversations you say you had with CRA in March 2008 and following that they had not received the Objections, you did not act in the interest of Sawyer or honour the trust she bestowed on you.
43. In failing to respond promptly or at all to your client's emails, you did not act in the interest of Sawyer or honour the trust she bestowed on you.
44. In failing to return your client's files promptly when requested, you did not act in the interest of Sawyer or honour the trust she bestowed on you.
45. Rule 506 of the Code provides that in the event a member decides to provide his professional services pro bono, the member must still ensure that appropriate time is devoted to the engagement, that the quality of the work is not impaired and that due care is applied to comply with all applicable professional standards, guidelines and quality control procedures in the performance of those services.
46. In the event you were not intending to charge Sawyer for the work she requested of you, you were not excused from devoting appropriate time to the engagement or from meeting the standards otherwise required of you.
47. In either failing to file the Objections, or in filing the Objections but not providing Sawyer with a copy when she requested, in failing to obtain an extension when you should have known that the Objections had not been received, if they had been sent, in failing to respond to Sawyer's emails and in failing to promptly return her files to her when she requested, you did not carry out the engagement with the quality and due care expected of you and did not meet all applicable professional standards, guidelines and quality control procedures as required by Rule 506.
48. Your conduct amounted to professional misconduct and conduct unbecoming a certified general accountant.

B. AGREED UPON RESOLUTION

1. You agree that in either (a) failing to file the notices of Objection but advising your client they had been filed, or alternatively in (b) filing the notices of Objection but failing to provide your client with a copy when she requested; and (c) failing to obtain an extension when you should have known through your purported conversations with CRA that it did not have the notices of Objection, you did not proceed with due care and professional judgment. As such, you violated the Code Principle of Trust and Duties.
2. You agree that your conduct as outlined in paragraph B(1) above was of a nature to discredit the profession in violation of Rule 101.

3. You further agree that your conduct as set out in paragraph A(47) above did not meet the standards required by Rule 506.
4. You accept a reprimand from the Association as a result of your breaches of the Code.
5. Recognizing that you have violated three provisions of the Code, you accept a fine of \$3,000.
6. You understand that the committee is not seeking any costs payable from you. However, you understand that if you do not accept this resolution, the matter will proceed to a disciplinary hearing before the Professional Conduct Tribunal and the committee will be seeking costs of that hearing from you in addition to any other appropriate penalty.
7. You understand that, after a ten day waiting period from the date of acceptance of this proposed resolution, the Committee will present this proposed agreed resolution of this complaint to the Professional Conduct Tribunal. The Tribunal may accept or reject the resolution. If it accepts the resolution of the complaint, this ratification shall be the final disposition of the complaint. Where the Tribunal refuses to accept the proposed resolution, it may grant this committee an opportunity to return before it within 10 days or such other reasonable time as shall be stipulated by the Tribunal, with an amended proposed agreed resolution. Where the Tribunal refuses to ratify a proposed resolution and does not grant the committee an opportunity to return before it with an amended proposed agreed resolution, a Professional Conduct Tribunal panel of three members shall be appointed to conduct a formal hearing pursuant to sections 20 and 29 of Article 9 of the bylaw.
8. You further understand that if the committee and you are unable to resolve this complaint through an agreed upon resolution process, the matter will be referred to the Professional Conduct Tribunal for a hearing.