

**IN THE MATTER OF a Proceeding under  
the *Certified General Accountants of Ontario Act, 1983***

**IN THE MATTER OF a Complaint against Joseph Nagy**

**BETWEEN:**

The Discipline Committee of the CGAO

- and -

Joseph Nagy

**Decision of the Professional Conduct Tribunal**

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Members of the Tribunal:     Donn Martinson, chairperson  
                                      Roseline Brennan  
                                      David Handley

Appearances:                 Karen Jolley, counsel for the Discipline Committee  
                                      Joseph Nagy, self-represented  
                                      Cynthia Petersen, counsel for the Tribunal

Hearing Date:                 January 8, 2008

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**Introduction**

1.     By Notice of Hearing dated November 9, 2008, Mr. Joseph Nagy was advised that the Professional Conduct Tribunal would be conducting a hearing into certain charges made against him by the Discipline Committee of the CGAO.

2. The charges against Mr. Nagy are that he violated the following Rules under the CGAO *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 108 – Conduct Unbecoming**

It shall be unethical for a member, while acting in a professional capacity or otherwise, to engage in misconduct of a reprehensible or serious nature which reflects on the member's or student's honesty, integrity, or trustworthiness or, is relevant to the person's suitability as a member of the profession.

**Rule 610 – 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.

**Rule 611 – Assistance to the Board**

A member shall, when required, comply with the request of the board or its committee 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 104.2, 104.3 and 201.

3. A hearing with respect to these charges was conducted by the Tribunal in Toronto on January 8, 2008, commencing at 10:00 a.m., pursuant to the Notice that had been served upon the parties.

4. Mr. Nagy attended the hearing unrepresented. At the outset of the proceeding, he acknowledged that he was aware of his right to counsel and confirmed that he was electing to proceed without a lawyer.

5. Mr. Nagy also advised the Tribunal that he would be remaining only until 10:45 a.m., as he wanted to catch the 11:00 a.m. bus to Hamilton. The chair of the Tribunal advised him that there was no time restriction on the hearing and that the proceeding would continue for as long as it took to complete.

6. Mr. Nagy did not provide any information to the Tribunal about why he needed to depart on the 11:00 am bus. He did not request an adjournment of the proceeding. At approximately 10:45 a.m., he left the hearing room, indicating to the panel that the Tribunal should simply continue in his absence. At that stage, both parties had completed their submissions and evidence with respect to the merits of the charges against Mr. Nagy, but neither party had made submissions with respect to penalty. Ms. Jolley, counsel for the Discipline Committee, completed her submissions with respect to penalty after Mr. Nagy had left the hearing.

### **Facts**

7. Based on the evidence presented by the Discipline Committee at the hearing, the Tribunal has made the following findings of fact.

8. Mr. Nagy is a retired member of the CGAO.

9. He is a shareholder in a real-estate co-op in Hamilton. He has accused some of the past directors of the co-op of financial mismanagement. On or about December 8, 2006, he commenced a civil action in the Ontario Superior Court of Justice against two past directors, including June Gartley. The litigation is ongoing. Mr. Nagy is claiming payment for (among other things) "audit services" rendered by him, in the sum of \$4,500.

10. Mr. Nagy is not registered with the CGAO for public practice and is therefore not authorized to perform audits.

11. The CGAO received a complaint against Mr. Nagy from June Gartley on January 10, 2007. The complaint disclosed the law suit commenced by Mr. Nagy and also alleged that he had engaged in unprofessional behaviour. The particulars of the allegations in the complaint are not relevant to this proceeding and therefore will not be recited here.

12. On February 1, 2007, the CGAO wrote to Mr. Nagy, provided him with a copy of Ms. Gartley's complaint, and asked him to respond to it.

13. Mr. Nagy responded by letter dated February 6, 2007, but stated that the Discipline Committee could not send his response to the complainant because of the ongoing litigation between him and the complainant.

14. On April 2, 2007, the CGAO wrote to Mr. Nagy, citing the Association's by-law, which provides for the exchange of information and materials between members and complainants when a complaint is being investigated. The CGAO asked Mr. Nagy to indicate which of his documents could be produced to the complainant and to provide a supporting rationale for the portions of his response that he wished to remain confidential.

15. On April 13, 2007, Mr. Nagy replied to the CGAO, indicating that "ANY information by CGA to June Gartley WOULD prejudice my rights to the Superior Court of Justice." He advised that he would not consent to the release of any information or documents to the complainant.

16. The CGAO's Discipline Committee retained an investigator, Robert Forsyth, to investigate certain aspects of Ms. Gartley's complaint.

17. On May 22, 2007, Mr. Forsyth wrote to Mr. Nagy, requesting his co-operation in the investigation and reminding him of members' requirement to reply in writing to written requests from the Association (Rule 610) and to provide assistance to the Discipline Committee when requested (Rule 611). In the letter, Mr. Forsyth posed 16 questions to Mr. Nagy, including whether an internal audit of his co-op had been commissioned and if so, by whom, and who was to do the audit; whether he was involved in the audit and if so, whether appropriate working papers were completed by him, what the terms of the engagement were, whether the audit was finished, whether a report was done and whether there was a bill for the audit. The investigator also requested from Mr. Nagy a copy of the audit.

18. By letter dated May 28, 2007, Mr. Nagy wrote to Mr. Forsyth, refusing to respond to any of the questions. He advised:

I am representing myself in the litigation against [the complainant] et al. I am my own solicitor. My solicitor (me) advised the client (me) that NO information be released during the litigation process as it is before the courts. This matter is in the legal arena, NOT the accounting arena, i.e. solicitor/client privilege.

19. By letter dated June 13, 2007, Mr. Forsyth advised Mr. Nagy of the CGAO's position that the fact of ongoing litigation with a complainant did not excuse a member from the obligation to respond to the Committee. The investigator requested that Mr. Nagy respond to the questions put to him by June 29, 2007. His letter was sent to Mr. Nagy by regular mail and by registered mail. The registered mail letter was returned undelivered. Mr. Nagy did not, however, return the letter sent by regular mail. He did not respond to the letter and did not provide the investigator with a copy of the requested audit.

20. Mr. Forsyth wrote to Mr. Nagy again on July 12, 2007, extending the deadline for response to July 30, 2007. He wrote again on August 1, 2007, providing a further

extension of the deadline to August 16, 2007. In that letter, he noted that, "failing your reply, I will report your refusal to the Discipline Committee, together with the evidence that I may have." Mr. Forsyth personally delivered one copy of that letter to Mr. Nagy's residence and put it under Mr. Nagy's door. Another copy of the letter was sent by regular mail. Both copies were returned to the investigator by mail, in one envelope, unopened. No response to the letters was ever received by the investigator or the CGAO.

### **Mr. Nagy's Evidence and Submissions**

21. At the hearing, Mr. Nagy admitted his refusal to respond to Mr. Forsyth's written requests for information and documentation. He stated that the CGAO could not be trusted, claiming that the CGAO had disclosed confidential information provided by him to Ms. Gartley. He did not provide particulars of what information was allegedly shared with Ms. Gartley, other than Mr. Forsyth's name. More importantly, he did not provide any explanation as to how his interests have been or might be prejudiced by the disclosure of information to Ms. Gartley.

22. Mr. Nagy testified that he stopped providing the CGAO with any information, "regardless of the Rules", because the CGAO passed information on to his "opponent" (i.e., the complainant). He further stated that he would not give any information to the CGAO until his litigation against the complainant was concluded. He did not, however, provide the Tribunal with any evidence to support his assertion that he would be prejudiced in his civil action if the information and documentation requested by the investigator were provided to the CGAO and shared with the complainant.

### **Reasons for Decision**

23. Based on all of the evidence presented at the hearing, the Tribunal finds that Mr. Nagy breached Rules 610 and 611 of the Association's *Code of Ethical Principles and Rules of Conduct*.

24. Rule 610 requires members to "reply promptly in writing to any request from the Association in which a written reply is specifically required." Although Mr. Nagy did initially respond promptly to the CGAO's correspondence regarding the complaint against him, he subsequently became uncooperative in the Discipline Committee's investigation, failed to reply to a number of letters from Mr. Forsyth, and refused to respond to numerous written requests for information and documentation from the investigator.

25. Rule 611 requires members to "comply with the request of the board or its committee in the exercise of their duties ... and when required, produce any documents in the member's possession, custody or control." The Discipline Committee, through its

investigator, made repeated requests for information and documentation, and Mr. Nagy refused to comply with those requests.

26. Mr. Nagy's reason for refusing to comply with the CGAO's requests -- namely that he has commenced a civil action against the complainant and does not want his information shared with her while the litigation is pending -- is not a justification for his non-compliance. There is no evidence that the information in question, if shared with the complainant, would prejudice Mr. Nagy's interests in the lawsuit. The issue might be different if a member were involved in a criminal proceeding, in which disclosure of information to the CGAO might undermine the member's constitutional right to remain silent and/or otherwise prejudice the member's defence. In the circumstances of this case, however, Mr. Nagy's pending civil litigation against the complainant is no excuse for his failure to comply with his obligations under the Association's *Code of Ethical Principles and Rules of Conduct*.

27. The Tribunal finds that Mr. Nagy did not violate Rules 101 and 108 of the *Code*, as charged. Although Mr. Nagy's refusal to cooperate with the Discipline Committee's requests for information is contrary to his obligations under Rules 610 and 611 of the *Code*, it does not, in our view, amount to such serious unprofessional conduct as to "be of a nature to discredit the profession." Nor does it constitute unethical behaviour "of a reprehensible or serious nature which reflects on [his]... honesty, integrity, or trustworthiness" or "suitability as a member of the profession."

28. A finding of breach of Rules 101 and 108 should be reserved, in our view, for cases in which members engage in more serious unethical or unprofessional behaviour, such as criminal or quasi-criminal conduct, breaches of trust, etc.

### **Submissions with respect to Penalty**

29. The Discipline Committee requested that Mr. Nagy be reprimanded for his behaviour. It also requested that he be suspended for a period of 3 months, directed to return his CGAO membership certificates to the Association, and ordered to comply with the Committee's requests for information and documentation within 3 months, failing which he should be expelled from the Association. The Committee also requested the imposition of a fine in the amount of \$5,000 and an order of costs in the amount of \$2,500.

30. In support of its submissions with respect to penalties, the Discipline Committee cited and relied on a number of decisions of discipline panels of the Law Society of Upper Canada and the Institute of Chartered Accountants, in cases involving similar facts. We found the cases to be helpful. We note that the fines imposed in those cases were generally in the range of \$1,500 to \$2,500. We have concluded that the \$5,000 fine requested by the Committee is outside the usual range and is, in our view, excessive in the circumstances of this case. While we are prepared to impose a fine as part of the

penalties for the breaches committed by Mr. Nagy, we do not accept the Discipline Committee's submission that a \$5,000 fine is warranted. A fine of that magnitude is best reserved for cases involving more serious misconduct, such as fraud, misrepresentation, etc.

31. We agree that the other penalties sought by the Committee (suspension and potential expulsion) are appropriate in the circumstances of this case. Mr. Nagy has proved himself to be ungovernable. Orders are therefore required from this Tribunal to force him to comply with his professional obligations as a member of the Association. A simple reprimand, or a reprimand and a fine, would be insufficient to ensure his compliance and to serve as a general deterrent to other members of the Association.

32. The CGAO governs its members in the public interest and the public interest is jeopardized when a member refuses to cooperate with an investigation into a public complaint. Mr. Nagy's refusal to cooperate has obstructed the Committee's investigation. Appropriate measures therefore need to be taken to ensure his cooperation, failing which he will have to forego his membership in the Association.

33. We believe that the 3 month period proposed by the Discipline Committee to allow Mr. Nagy to respond to the investigator's questions is too lengthy. Given that Mr. Nagy has been in possession of the investigator's questions since May 2007, we are of the view that one month is enough time to allow him to respond. If he does not respond within one month of the date of this Tribunal's decision, he will be expelled from the Association.

### Orders

34. Based on all of the above, we declare that Mr. Nagy did not breach Rules 101 and 108 of the CGAO's *Rules of Conduct*.

35. We declare that Mr. Nagy breached Rules 610 and 611 of the CGAO's *Rules of Conduct*.

36. Mr. Nagy is hereby reprimanded for his failure to respond to Mr. Forsyth's letters and his refusal to comply with the Discipline Committee's requests for information and documentation in connection with their investigation of Ms. Gartley's complaint.

37. We order that Mr. Nagy's membership in the CGAO is immediately suspended for a period of one month.

38. We order Mr. Nagy to return to the Association, forthwith, his CGA Ontario membership certificate number 11235 and his CGA Canada membership certificate

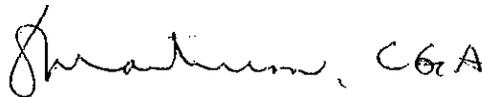
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39. We direct Mr. Nagy to respond to the 16 questions outlined in Mr. Forsyth's letter dated May 22, 2007 and to provide Mr. Forsyth with a copy of the audit (if it exists). Mr. Nagy must reply fully to the request for information as per Mr. Forsyth's correspondence dated May 22, 2007 within one month of the date of this decision, failing which we order that he shall be expelled from the Association.

40. Mr. Nagy is ordered to pay the CGAO a fine in the amount of \$3,000.

41. Mr. Nagy is ordered to pay the Discipline Committee's costs of this proceeding in the amount of \$2,500.

Dated this 25<sup>th</sup> day of January, 2008,



Donn Martinson, chairperson  
for the Professional Conduct Tribunal

## NOTICE

This decision of the Professional Conduct Tribunal may be appealed to an Appeal Tribunal within thirty (30) days of the sending of this decision.

A 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.

**TAKE NOTE THAT, 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.**