

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

**IN THE MATTER OF Thuy Nguyen, 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 -

Thuy Nguyen

DECISION AND REASONS FOR DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL

Members of the Professional Conduct Tribunal Panel:

Betty Kuchta, Public Representative, Chair
D. Alan Jones, CGA
Doug White, CGA

Appearances:

Karen Jolley, Counsel for the Discipline Committee
Thuy Nguyen, Member
Lisa Braverman, Independent Legal Counsel to the Professional Conduct Tribunal

Hearing Date:

February 7, 2014, Toronto

OVERVIEW

A panel of the Professional Conduct Tribunal of The Certified General Accountants Association of Ontario heard this matter on February 7, 2014, at Toronto. At the conclusion of the hearing, the panel reserved its decision.

ALLEGATIONS

Counsel for the Discipline Committee entered into evidence the Notice of Hearing dated November 18, 2013, Exhibit 1, and the Affidavit of Service, Exhibit 2, relating to the Notice of Hearing.

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

Rule 102 – Unlawful Activity (June 2011 to present language)

A member shall not participate in any activity that the member knows, or which a reasonable and informed third party would believe, to be unlawful.

Rule 102 – Unlawful Activity (2004 to June 2011 language)

A member shall not permit the member's firm name or the member's name to be used with, participate in, or provide services to, any activity that the member knows, or which a reasonably prudent person would believe, to be unlawful.

Rule 108 - Conduct Unbecoming (September 2007 to present language)

It shall be unethical for a member or student, 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.

The particulars of the allegations against the member as stated in the Notice of Hearing are as follows:

1. On 28 July 2010 at the City of Ottawa, you were convicted of the following criminal offences:

That on or about the 14th day of August in the year 2008 at the City of Ottawa in the East/De L'Est Region did break and enter a place, namely business, Make it Green Garden Centre, situated at 5200 Flewellyn and commit therein the indictable offence of Theft, contrary to Section 348, subsection (1), clause (b) of the Criminal Code of Canada ("Break and Enter").

That on or about the 14th day of August in the year 2008 at the City of Ottawa in the East/De L'Est Region did possess landscaping and gardening supplies of a value exceeding five thousand dollars, the property of Make it Green Garden Centre, knowing the said property had been obtained by an offence punishable by indictment, contrary to Section 355, clause (a) of the Criminal Code of Canada ("Possession of Burglar Tools").

That on or about the 14th day of August in the year 2008 at the City of Ottawa in the East/De L'Est Region did, without lawful excuse, possess instruments, namely pliers, shears, gloves and a strap-on light, suitable for the purpose of breaking into a place, under circumstances that give rise to a reasonable inference that the said instruments possessed had been used for such purpose, contrary to Section 351, subsection (1) of the Criminal Code of Canada ("Possession of Stolen Property").

2. As a result of the convictions, on 19 November 2010 you were given a suspended sentence and 12 months' probation.
3. In the course of its judgment, the court found that your evidence was misleading, evasive and untruthful.
4. On or about 26 September 2013 the Court of Appeal dismissed your appeal and upheld the convictions and penalty.

MEMBER'S PLEA

The member denied the allegations set out in the Notice of Hearing.

FACTS AND EVIDENCE

Counsel for the Discipline Committee entered into evidence the following documents:

Exhibit 1, Notice of Hearing dated November 18, 2013;

Exhibit 2, Affidavit of Service dated November 20, 2013 indicating that the member was served with the Notice of Hearing on November 19, 2013;

Exhibit 3, Discipline Brief;

Exhibit 4, Letter to member dated December 4, 2013; and

Exhibit 5, Affidavit of Service dated December 13, 2013 indicating that the member was served with the Discipline Brief and the Sentencing Brief on December 4, 2013.

The member entered into evidence the following documents:

Exhibit 6, Documents as follows: letter from member dated October 7, 2013 to the Committee of the Certified General Accountants Association of Ontario; letter undated to Certified General Accountants of

Ontario, Ottawa Chapter from Dr. Steven E. Zhang and Julie E. Bourdeau; letter dated October 8, 2013 to whom it may concern from Cathy Steele, Corporate Controller, Colonnade Development Inc.; letter dated December 9, 2013 to whom it may concern from Garth Steele, Partner, Welch LLP; Government of Canada Security Screening Certificate And Briefing Form dated July 17, 2013; and letter dated November 13, 2013 with no addressee from Andrew Tanenbaum, Program Director, Pardons Canada.

The member appeared as a witness, giving oral evidence.

Ms. Nguyen indicated she wanted to tell the other side of the story related to her conviction. She stated that on the day of the incident she was the driver of the van, and remained in the van while it was being loaded. She stated she was not aware of stolen property and that the tools in the van were not break and enter tools but were tools for doing yard work at her house. She stated that she was wrongfully convicted, that the trial judge decided not to believe her testimony and that her evidence and that of other witnesses was considered not reliable. She stated that she appealed the conviction and that she lost the appeal as she could not afford a good lawyer.

The member stated she has learned a great lesson, that the incident has caused a lot of pressure on her and her family. She noted that she wants to lead by example, that she is an honest person, that she is raising a great family, that she has great references, and that she would like to maintain a good record in society. The member referred to the documents filed as Exhibit 6. For example, she noted the letter to Lana Tom of the Certified General Accountants Association of Ontario dated October 7, 2013 where she explained the circumstances of the conviction and its impact, and her interest in maintaining her good character.

The panel determined that the witness was not credible and that her testimony was not credible. The witness appeared fragile during her testimony; however, this did not influence the panel's finding of credibility one way or the other. The witness attempted to lead contradictory evidence to the findings in the trial judge's reasons for decision when a court made findings against her, after a lengthy trial. Her evidence was not probable and it did not make sense. Her testimony centred on her opinion that she was wrongfully convicted. Given the fact of the conviction, the panel determined that her testimony was her opinion only and that it does not constitute credible testimony.

The panel gave little or no weight to the documents filed as Exhibit 6. The panel determined that the documents were not relevant. They lacked sufficient detail to be of any relevance.

Based on the oral evidence heard and the documents entered as exhibits at this hearing, the panel of the Professional Conduct Tribunal makes the following findings of facts from the particulars in the Notice of Hearing:

On 28 July 2010 at the City of Ottawa, the member was convicted of the following criminal offences:

That on or about the 14th day of August in the year 2008 at the City of Ottawa in the East/De L'Est Region did break and enter a place, namely business, Make it Green Garden Centre, situated at 5200 Flewellyn and commit therein the indictable offence of Theft, contrary to Section 348, subsection (1), clause (b) of the Criminal Code of Canada ("Break and Enter").

That on or about the 14th day of August in the year 2008 at the City of Ottawa in the East/De L'Est Region did possess landscaping and gardening supplies of a value exceeding five thousand dollars, the property of Make it Green Garden Centre, knowing the said property had been obtained by an offence punishable by indictment, contrary

to Section 355, clause (a) of the Criminal Code of Canada ("Possession of Stolen Property").

That on or about the 14th day of August in the year 2008 at the City of Ottawa in the East/De L'Est Region did, without lawful excuse, possess instruments, namely pliers, shears, gloves and a strap-on light, suitable for the purpose of breaking into a place, under circumstances that give rise to a reasonable inference that the said instruments possessed had been used for such purpose, contrary to Section 351, subsection (1) of the Criminal Code of Canada ("Possession of Burglar Tools").

As a result of the convictions, on 19 November 2010 the member was given a suspended sentence and 12 months' probation.

In the course of its judgment, the court found that the member's evidence was misleading, evasive and untruthful.

On or about 26 September 2013 the Court of Appeal dismissed the member's appeal and upheld the convictions and penalty.

DECISION

The Discipline Committee has the onus of proving the allegations in the Notice of Hearing in accordance with the civil standard of proof. The standard of proof applied by the panel of the Professional Conduct Tribunal was a balance of probabilities based on clear, convincing and cogent evidence.

Having considered the evidence and the submissions of the parties, and the onus and standard of proof, 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:

Rule 102 – Unlawful Activity (June 2011 to present language)

A member shall not participate in any activity that the member knows, or which a reasonable and informed third party would believe, to be unlawful.

Rule 102 – Unlawful Activity (2004 to June 2011 language)

A member shall not permit the member's firm name or the member's name to be used with, participate in, or provide services to, any activity that the member knows, or which a reasonably prudent person would believe, to be unlawful.

Rule 108 - Conduct Unbecoming (September 2007 to present language)

It shall be unethical for a member or student, 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.

The panel of the Professional Conduct Tribunal also finds the member guilty of conduct unbecoming.

REASONS FOR DECISION

By virtue of the convictions, the panel has determined that the member participated in unlawful activity and henceforth breached Rule 102. The evidence is clear and unequivocal. According to Rule 607.1 a

certificate of conviction is sufficient evidence of the conviction and the perpetration of the offence. Ms. Jolley indicated that a certificate of conviction was provided as proof of conviction and proof of the facts relating to the offences that have been committed. Further, this evidence cannot be contested. Besides considering the testimony of the witness to lack credibility and the witness herself to lack credibility, the panel was unable to rely on her testimony with respect to her wrongful conviction in the face of the certificate of conviction and Rule 607.1. The panel relied on the certificate of conviction to find that the member breached Rule 102.

The panel considers the conduct of the member which led to the convictions to be serious and reprehensible in nature which reflects on the member's honesty, integrity and trustworthiness. She was convicted of three offences - break and enter, possession of stolen property over \$5,000.00 and possession of burglar tools. Therefore, the panel finds that the member breached Rule 108.

The panel has determined that the member's criminal conduct without a doubt constitutes conduct unbecoming for a profession which demands honesty, integrity and trustworthiness. The criminal conduct of which the member was convicted was serious and reprehensible, namely she was convicted of three offences - break and enter, possession of stolen property over \$5,000.00 and possession of burglar tools. The mere acts themselves, committed by the member, indicate that she is dishonest, untrustworthy and lacks integrity.

The criminal conduct of the member is relevant to her suitability as a member of the profession. In addition, in the course of his judgement, the trial judge in the case did not consider the witness or her testimony credible – he considered her explanation laughable. The panel wishes to note that honesty is a key attribute for the profession. Findings from the trial judge alone are sufficient to find the member's

conduct unbecoming. In the course of his judgement, the trial judge found the member's evidence was misleading, evasive and untruthful.

PENALTY SUBMISSIONS

In terms of penalty, counsel for the Discipline Committee submitted that the panel should make the following penalty order:

1. Revocation of membership
2. Publication in Statements, on-line on Association's website, and in a local newspaper
3. Fine of \$2,000.00, being \$1,000.00 for each breach of the Code
4. Costs of \$2,000.00
5. Return of CGAO membership certificate 21415 and CGAC membership certificate 364197.

In contrast, the member made the following submissions on the penalty order:

1. Suspension of membership, not revocation of membership
2. No publication
3. No fines
4. No costs.

The member stated that a fine or costs would cause hardship as she has two children in University and a sick mother for whom she is caring. The member stated that publication would have a negative impact on her and her family.

PENALTY DECISION

The panel deliberated and considered the Discipline Committee's submissions in terms of penalty and the member's submissions in terms of penalty. Accordingly, the panel orders the following penalty:

1. Ms. Nguyen's membership in the Association is revoked
2. Publication in Statements, on-line on Association's website, and in a local newspaper in Ottawa
3. Ms. Nguyen pays a fine of \$2,000.00, consisting of a \$1,000.00 fine for each breach of the Code
4. Ms. Nguyen pays costs of \$2,000.00
5. Ms. Nguyen must return her CGA Ontario (21415) and CGA Canada (364197) certificates of membership to the Association.

REASONS FOR PENALTY DECISION

The member has been convicted of three offences – break and enter, possession of stolen property over \$5,000.00 and possession of burglar tools. These are serious and reprehensible matters. The member committed three serious crimes which makes her completely unsuitable for professional designation as a Certified General Accountant, a profession which demands honesty, integrity and trustworthiness.

The mere acts themselves, committed by the member, indicate that she is dishonest, untrustworthy and lacks integrity. She is not suitable to be a Certified General Accountant and revocation is required. The member presented no evidence that she could be rehabilitated. Therefore, in the view of the panel suspension is not an option.

The panel considered factors set out by the Newfoundland Supreme Court in its decision in the case of *Jaswal v. Newfoundland Medical Board*, specifically:

- the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of the profession
- the need to maintain the public's confidence in the integrity of the profession

- the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct
- the range of sentence in other similar cases.

Revocation is essential to maintain the public's confidence in the integrity of the profession. Criminal behavior of such a serious and reprehensible nature absolutely falls outside the range of permitted conduct, not just for certified general accountants but for any person.

The penalty is intended to protect the public. Revocation means that the member is no longer a member and will no longer be able to practise as a certified general accountant. The public, including prospective employers, should expect that a person who is convicted of serious and reprehensible crimes, who is considered by a court of law to be untruthful will not be able to practise as a certified general accountant, and this penalty provides for this assurance.

The penalty will deter members of the profession from engaging in criminal activity. They need to know that criminal activity of this nature will be viewed by the Tribunal as serious, and that in this case, resulting in revocation of membership. It is wholly unacceptable conduct for a member of the profession. Should a member of the profession engage in such conduct, this penalty sends the message that the consequences can be serious including possibly no longer being able to practise as a certified general accountant, compromising their reputation and ability to earn income, with the resultant reputational and financial consequences.

The panel feels it is imperative to publish the decision, in Statements, on the website and in a local newspaper. The public should know of the decision and that Ms. Nguyen's membership has been revoked. The panel has determined that, given that she has been convicted of three serious crimes and given that she is of the opinion that she was wrongfully convicted, the panel is of the opinion that it is highly likely that she will not advise prospective employers and others of the revocation of her membership; accordingly, publication is required in the public interest.

The member's submissions on penalty and the facts of this case do not meet the test for a non-publication order. The Bylaws state that there shall be publication unless it is a) not required in the public interest, and b) unfair to the member. Publication is required in the public interest. The panel determined that the member did not satisfy the panel that she met the two-part test for no publication.

There is no compelling or credible evidence provided by the member that publication would be unfair to the member. In any event, considering the seriousness of the offences, publication is required to protect the public. The panel also takes note of the decision in *CGAO v. Welsford* which references *ICAO v. Adair* where the decision stated that public disclosure affects more than the member but also their families. This decision also noted that the realization by a member that public disclosure can affect not only the member but also their families, is one aspect of general deterrence that the committee is cognizant of and trusts will serve to dissuade members from committing a similar act of misconduct.

The panel relied on decisions provided in the sentencing brief presented by counsel for the Discipline Committee. The panel took note of the decision in *CGAO v. Willman* which outlined previous decisions made in matters before the Professional Conduct Tribunal of the Association. The panel's penalty

decision including the amount of fine and costs ordered is consistent with these decisions and the decisions in the sentencing brief.

Dated this 23rd day of April, 2014

I, Betty Kuchta, 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.

A handwritten signature in blue ink that reads "Betty Kuchta" is written over a horizontal line.

Betty Kuchta

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 vice-president responsible for regulatory affairs 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.