

**The Certified General Accountants
Association of Ontario**

Professional Conduct Tribunal

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

AND THE MATTER OF a complaint concerning Ms. Claudette Phillip, a student in the program of
professional studies of The Certified General Accountants Association of Ontario.

BETWEEN:

**THE DISCIPLINE COMMITTEE OF THE CERTIFIED GENERAL
ACCOUNTANTS ASSOCIATION OF ONTARIO**

AND

CLAUDETTE PHILLIP

MEMBERS OF THE TRIBUNAL;
John M Parker FCGA, Chair
Klass Degroot MBA, CGA
Jack Cayne MBA, CGA

COUNSEL:
Larry Banack, for the Discipline Committee
Cynthia Petersen, for the Professional Conduct Tribunal

COMPLAINANT:
Tony Saccutelli, S.A.R. Gas Services Inc.

COURT REPORTING:
Network Court Reporting Ltd.

WITNESS:
Ralph Palumbo, Director, Government Relations and Legislative Affairs, CGAAO.

CHARGES

Pursuant to a notice of hearing dated August 29th 2003 and admitted as Exhibit 1, Ms Phillip was charged with the following violations of the Code of Ethical Principals and Rules of Conduct:

Rule 102 – Discredit

A member shall not permit the members 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 505 (b) – Takeover

A member shall transfer to the client, or on the client's instruction, to the newly appointed accountant, all books and documents belonging to the client that are in the members possession.

Rule 601 – Compliance

A member shall comply with the By-Law and the *Code of Ethical Principles and Rules of Conduct* of the Association, as amended from time to time, and with any order or resolution of the board of governors or its committees under the By-Law.

Rule 606 – Detrimental Actions

A member shall not participate in any action that is detrimental to the Association or 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 requested.

Rule 611 – Assistance to the Board

A member shall, when required, comply with the request of the board or its committees in the exercise of their duties in matters of the appropriate CGA Act, the By-Law 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 R201, R104.2 and R104.3

PARTICULARS

1. Ms. Phillip failed to transfer to her client, S.A.R. Gas Services Inc. books, accounting records and documents belonging to S.A.R. Gas Services Inc. despite numerous requests to do so by S.A.R., its owner Tony Saccutelli, and CGA Ontario.
2. Ms. Phillip failed to provide financial and accounting information about S.A.R. Gas Services Inc as required by that company and as requested by Mr. Saccutelli on numerous occasions.
3. Ms. Phillip failed to return the books, accounting records and documents belonging to S.A.R. Gas Services Inc. even though she was aware that they were required to file the company's income tax and other returns and to otherwise comply with requests from the Canadian Custom and Revenue Agency.
4. Ms Phillip failed to respond to a letter dated May 22, 2003, from the Certified General Accountants Association of Ontario .
5. Ms. Phillip failed to cooperate in the investigation of the complaint by S.A.R. Gas Services Inc. by failing to produce to the Association the company's books, accounting records and documents when requested to do so on numerous occasions by CGA Ontario.

HEARING: December 2nd, 2003 at 10.00 am at the Network Court Reporting Office, Toronto.

The Hearing commenced at 10.27am and the Chair noted the absence of the defendant Ms. Phillip and asked for confirmation that she had been informed of the hearing. Mr. Banack responded that an Affidavit of Service served on Ms. Phillip would be introduced into evidence as well as a letter dated July 22nd 2003 from Ms. Phillip indicating that she did not intend to attend.

Mr. Banack commenced with the presentation of the case against Ms. Phillip and asked that the Document Brief be admitted as Exhibit 2.

Mr. Tony Saccutelli, the Complainant was then questioned by Mr. Banack. Mr. Saccutelli testified that he had met Ms. Phillip in 1999 when she had been referred to him through another part-time employee at S.A.R. Ms. Phillip had stated she was working for a large accounting firm at the time and that she was a CGA student and was willing to do the books for S.A.R. Mr. Saccutelli further testified that Ms. Phillip proved to be unreliable either arriving late or not at all to scheduled meetings. It had been suggested by Ms. Phillip that rather than doing the books on the premises, which was proving difficult, that she take them home. Mr. Saccutelli had agreed to this suggestion, however despite many requests to complete the work or return the books, Ms. Phillip offered numerous excuses, but failed to deliver.

Tabs 14, 16, 17, 18, 19, 22 and 28 of Exhibit 2 contain the various correspondence between S.A.R Gas Services Inc. and Ms. Phillip covering letters and e-mails during the period April 3rd and July 23rd, 2003 when Mr. Saccutelli tried to have the books of S.A.R. returned. Mr. Saccutelli also testified that he had not received the computerized accounting data from Ms. Phillip. Mr. Saccutelli estimated that it cost him approximately \$7,500 to have the accounting carried out by another party and it was noted that Ms. Phillip had received no compensation during the time she was retained as Mr. Saccutelli's accountant.

Mr. Palumbo, under questioning from Mr. Banack, stated that he had contacted Ms. Phillip by phone, e-mail, or in writing on at least ten occasions requesting that the books and records be returned to Mr. Saccutelli. The first contact had been made after Mr. Saccutelli had phoned Mr. Palumbo at the C.G.O.O. asking for assistance on January 13th 2003, and further contacts had extended through to June 19th a period of six months. The particulars of these contacts were referenced under tabs 4, 6, 7, 9, 11, 14 and 16 of Exhibit 2.

Ms. Phillip, in her responses to these requests, had stated that she had medical problems that had hindered her ability to comply although she had, as early as February 2nd stated in a letter, "...I have created an uncomfortable situation that I intend to end before Monday, February 10th 2003 with the return of the original documents". It was not until the latter half of July that her intent was finally realized.

Mr. Palumbo also testified that the Discipline Committee, in its ongoing attempts to retrieve the books and records of S.A.R Gas Services had hired the services King-Reed & Associates, an investigative company to both locate and serve Ms. Phillip with CGA documents as well as trying to retrieve the books and records. King-Reed were ultimately successful in serving the CGA documents and the cost to CGA00 was \$2 025.92.

Finally, Mr. Saccutelli when asked by Mr. Banack to summarize his dealings with Ms. Phillip, said that he felt betrayed.

Based on these facts the Discipline Committee asked the Tribunal that Ms. Phillip:

1. be found guilty of breaching the Code.
2. be expelled from the CGA Ontario program of professional studies
3. have costs awarded against her for all expenses incurred by the Association in connection with this complaint.
4. be fined in the amount of \$5,000 for failure to comply with the Code
5. that this disciplinary action be published in Statements as well as a local newspaper in Brampton.

DECISION OF THE TRIBUNAL

The Tribunal finds that Ms. Phillip wholly disregarded her responsibilities to both her client and the Association even though she was fully aware of the seriousness of her actions. Regarding the specific rules under which Ms. Phillip is charged, the Tribunal finds as follows:

Rule 102 – Discredit

The Tribunal finds that Ms. Phillip breached this rule by describing herself as a CGA student in order to obtain the work from S.A.R. and then discrediting the Association by failing to complete the work and failing to transfer the books and accounting records to Mr. Saccutelli after repeated requests to do so.

Rule 505 (b) – Takeover

The Tribunal finds that Ms. Phillip breached this rule by failing to transfer back to the client, S.A.R. Gas Services Inc. all books and documents that were in her possession, as requested by her client, Mr. Saccutelli.

Rule 601 – Compliance

The Tribunal finds that Ms Phillip failed to comply with the By-Law and the *Code of Ethical Principles and Rules of Conduct* of the Association, by reason that she did not comply with other rules as covered in this section of the Tribunals findings.

Rule 606 – Detrimental Actions

The Tribunal finds that Ms Phillip actions of non compliance with the directions given to her by both the Association and her client are acts detrimental to the Association and the profession.

Rule 610 – Requirement to Reply in Writing

The Tribunal finds that Ms. Phillip did reply promptly in writing to requests from the Association in which a written reply is specifically requested and is not therefore in breach of this rule.

Rule 611 – Assistance to the Board

The Tribunal finds that Ms. Phillip through her actions, did not comply with the request of the board or its committees in the exercise of their duties in matters of the appropriate CGA Act, the By-Law or the *Code of Ethical Principles and Rules of Conduct*, and when required, did not produce any documents in the member's possession, custody or control, subject to Rules R201, R104.2 and R104.3

Penalty


The Tribunal finds that expulsion from the program of studies is an appropriate penalty in this case, given the length of time that Ms. Phillip failed to return the books to her client (over a year), as well as the number of requests to do so from both Mr. Saccutelli and Mr. Palumbo, and the absence of evidence of any mitigating circumstances. However, the Tribunal is of the view that a fine of \$5,000 is excessive given the nature of the Code breaches and the fact that Ms. Phillip was a student of the program.

The Tribunal is also of the view that publication of our findings in a community newspaper is not appropriate in the circumstances of this case, as it would only serve to embarrass Ms. Phillip. Although it is important for the CGAO discipline process to be accountable to the public, the only member of the public who was adversely affected by Ms Phillip's unprofessional conduct was Mr. Saccutelli and he will be provided with a copy of our decision as he is the complainant in this case. We therefore hold that our findings should only be published in CGAO statements.

The Tribunal finds Ms. Phillip guilty of breaching the Code and therefore orders that Ms. Phillip;

1. be expelled from the CGA Ontario course of professional studies,
2. have costs awarded against her for the expenses incurred by the Association in the amount of \$3,000,
3. be fined the sum of \$1,000 for failure to comply with the Code,
4. that the findings of the Tribunal be published in Statements.

John M. Parker, Chair


Mr. Klass Dégroet concurs

Dated, December 22, 2003

Dissent of Mr. Jack Cayne

I agree with the factual findings of the majority, but I disagree that expulsion is appropriate in this case. The correspondence between Ms. Phillip, Mr. Sacutelli and Mr. Palumbo discloses that Ms. Phillip was experiencing personal problems. Including her health problems, which I view as a mitigating circumstance. I would therefore suspend Ms. Phillip from membership in the program of studies until such time as she could demonstrate to the CGAO that she was fit to participate in the program and able to comply with her professional obligations. I agree with the majority of the Tribunal regarding the other penalties imposed in this case.



Jack Cayne

NOTICE

The decision of the Professional Conduct Tribunal may be appealed to an Appeal Tribunal within sixty (60) days 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 the appeal.