

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

IN THE MATTER OF a Complaint against Naotoshi Seko

BETWEEN:

The Discipline Committee of the CGAO

- and -

Naotoshi Seko

Decision of the Professional Conduct Tribunal

Members of the Tribunal panel:

Donn Martinson
Beverley Wozniuk
David Handley

Counsel:

Karen Jolley, for the Discipline Committee
Nadia Liva, for Naotoshi Seko
Cynthia Petersen, for the Tribunal

Hearing date:

August 21, 2008

A. INTRODUCTION

1. By Notice of Hearing dated June 23, 2008, the Professional Conduct Tribunal of the Certified General Accountants of Ontario advised the parties that a hearing would be conducted with respect to certain charges against Naotoshi Seko under the CGAO's *Code of Ethical Principles and Rules of Conduct (CEPROC)*.

2. Specifically, the Discipline Committee charged Mr. Seko with breaches of the following rules of CEPROC:

R101 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.

R102 Unlawful Activity

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.

R202 Independence

Independence requires:

(a) Independence of Mind

The state of mind that permits the provision of an opinion without being affected by the influences that compromise professional judgement, allowing an individual to act with integrity, and exercise objectivity and professional scepticism; and

(b) Independence in Appearance

The avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would reasonably conclude a member, firm, or a member of the assurance team's integrity, objectivity or professional scepticism had been compromised.

R202.1 Independence in Assurance or Specified Auditing Procedures Engagements

In accordance with the CGA Independence Standard, a member shall be free of any interest, influence or relationship in respect of the client's affairs which impairs the member's professional judgment or objectivity, or which, in the view of a reasonable observer, may have that effect.

A member shall comply with the requirements set out in the CGA Independence Standard:

(a) Communication

A member shall not issue a communication in an assurance engagement or specified auditing procedures engagement unless the member has identified any threats to independence and evaluated the significance of those threats. If the threats are other than insignificant, the member shall either eliminate those threats, apply safeguards to reduce those threats to an acceptable level, or decline to accept or continue the engagement.

(b) Prohibitions

A member shall comply with the prohibitions set out in the CGA Independence Standard. Prohibitions are denoted within the Standard by italics.

Prohibitions are not limited to those specifically identified in the Standard, but must be determined by the member's application of professional judgment in assessing the situation in accordance with the framework contained in the Standard.

(c) Compliance of the Firm

A member shall ensure that staff of the firm remain free of any interest, influence or relationship that would preclude the firm from performing the engagement pursuant to subsections (a) and (b) of this Rule and Rule R202.2.

(d) Documentation

A member shall document all threats to independence and either the decision to continue the engagement with the appropriate safeguards or the decision to decline the engagement.

(e) Requirement to Disclose Prohibited Interest, Influence and Relationships

A member who has an interest, influence or relationship that is precluded by this Rule shall advise the firm in writing of the interest, influence and relationship.

R303 Adherence to Acknowledged Principles and Standards

Members shall adhere to acknowledged principles and standards of professional practice. In addition, all licensees shall be required to establish, maintain and uphold policies and procedures to ensure that all public accounting services are performed in accordance with generally accepted standards of practice of public accounting. The phrase "acknowledged principles and standards" expresses a wide meaning; namely, that body of principles and practices that have been generally adopted by the profession and that are applied in the preparation of financial statements and any tax related matter, taken together with the requirements of any governing statutes, subject to (f) below. That is, a member shall adhere to:

- (a) generally accepted accounting principles in financial reporting unless departure from these principles is fully disclosed;
- (b) generally accepted auditing standards;
- (c) accounting and auditing practices and standards recommended by the Association, including those found in:
 - (i) the CGA program of professional studies;
 - (ii) seminars offered by the Association;
 - (iii) the CGA Canada Public Practice Manual;
 - (iv) the CGA Independence Standard;
 - (v) the CICA Handbook – Accounting; and
 - (vi) the CICA Handbook – Assurance.
- (d) accounting and auditing practices that differ from those recommended by the Association, provided that there is substantial authoritative support for the alternative treatment and the departure from the Association's recommendations is disclosed;
- (e) accounting and auditing practices not specifically dealt with by the Association, but which are otherwise generally accepted; and
- (f) requirements of any governing act or regulation, or those pertaining to a securities regulator such as the Ontario Securities Commission and the Securities and Exchange Commission, providing; however, in the event that there is a conflict between the accounting and auditing standards of the profession and a specific statutory or regulatory requirement, the member shall make appropriate qualification in the report.

R401 Communication Issued in Connection with Financial Information

A member shall not issue a communication on any financial information, whether for publication or not, when the information is prepared in a manner that may have a tendency to be misleading.

3. The particulars of the charges against Mr. Seko, as set out in the Notice of Hearing, were as follows:

Conduct Unbecoming and Unlawful Activity – Rules 101 and 102

On or about 8 March 2005 you signed a “Notice to Readers” in respect of the balance sheet, statement of revenues and expenses and retained earnings for 1371333 Ontario Inc. (“137”) as at 31 December 2004.

The “Notice to Readers” stated:

We have reviewed the Balance Sheet of 1371333 Ontario Inc. as at December 31, 2004 and the Statement of Revenues and Expenses and Retained Earnings for the year then ended. With the exception that there is no provision for income taxes nor amortization nor depreciation, these financial statements have been prepared in accordance with Generally Accepted Accounting Principles and present fairly the financial position and the results of its operations for the year then ended.”
[emphasis added]

Readers are however cautioned that these financial statements have not been audited and as such may not be suitable for their intended purposes.

*Nao Seko
Certified General Accountant*

The *Public Accountancy Act*, 1990, R.S.O. 1990, c.P-37 (the “Act”), then in force, made it an offence for a person who was not licensed under the *Act* to practise as a public accountant. Such an offence was punishable on conviction by a fine of not more than \$10,000 for a first offence and a fine of not more than \$25,000 for any subsequent offence.

The Act defined "public accountant" as

a person who either alone or in partnership engages for reward in public practice involving,

(a) the performance of services which include causing to be prepared, signed, delivered or issued any financial, accounting or related statement, or

(b) the issue of any written opinion, report or certificate concerning any such statement,

where by reason of the circumstances or of the signature, stationery or wording employed, it is indicated that such person or partnership acts or purports to act in relation to such statement, opinion, report or certificate as an independent accountant or auditor or as a person or partnership having or purporting to have expert knowledge in accounting or auditing matters, but does not include a person who engages only in bookkeeping or cost accounting or in the installation of bookkeeping, business or cost systems or who performs accounting or auditing functions exclusively in respect of,

(c) any public authority or any commission, committee or emanation thereof, including a Crown company,

(d) any bank, loan or trust company,

(e) any transportation company incorporated by Act of the Parliament of Canada, or

(f) any other publicly-owned or publicly-controlled public utility organization ("computable public")

You knew that 137 intended to and did provide the "Notice to Readers" to Robbins Feed and Fuels Limited, a third party, in support of a line of credit with Robbins Fuels for the purchase of fuel.

You were not licensed to practise public accounting under the Act.

Rule 202 and 202.1 – Independence

You prepared the “Notice to Readers” in respect of 137. At the time you prepared the Notice to Readers, you controlled 137. As such you were not free of any interest, influence or relationship with respect to 137 that might impair your professional judgment or objectivity or which, in the view of a reasonable observer, might have that effect.

You did not disclose your relationship with 137 in the “Notice to Readers”, or in the notes to the financial statements, nor did you evaluate the significance of that threat to your independence.

Rules 303 and 401 – Competence and Misleading Statements

The financial statements you prepared and upon which you signed a “Notice to Readers” did not take into account income tax, depreciation or amortization. Without consideration of income tax, depreciation or amortization, the statements are inappropriate and/or misleading.

The financial statements and “Notice to Readers” did not disclose your relationship to 137.

The “Notice to Readers” was not in the prescribed form.

B. EVIDENCE

4. A hearing was held on August 21, 2008.
5. At the commencement of the hearing, counsel for the Discipline Committee advised the Tribunal that the parties had arrived at an agreement with respect to the relevant facts.
6. The parties then presented the Tribunal with a copy of a written statement, which was signed by Mr. Seko to indicate his agreement with its contents. The statement included the following paragraphs:

Personal Facts and Relationship with CGA Ontario

1. [redacted for reasons of confidentiality]
2. You are not and at the material time were not registered in public practice with CGA Ontario.
3. You were not licensed under the *Public Accountancy Act, 1990*, R.S.O. 1990, c.P-37, the Act then in force in 2004 up to and including 1 November 2005, to practise as a public accountant.

CGA Ontario Investigation

4. On or after 4 December 2007 you received a letter from CGA Ontario asking you to respond to a complaint made about you by Crawford Smith & Swallow, forwarded to the Association by the Public Accountants Council (the "Complaint").
5. You provided an initial response to the Association by email dated 4 January 2008.
6. You received a follow up email from the CGA Ontario on 14 January 2008 concerning the status of your response.
7. By letter dated 15 January 2008 you responded to the Association. In your response (the "Response") you indicated that you prepared financial statements for 1371333 Ontario Inc. ("137") and a "Notice to Readers."
8. In the Response, you advised that 137 was a member of the Masami Group of Companies and controlled by you. The company was given over as guarantor to the Supply Agreement between Robbins Fuels and Tru Value Fuels Ltd. You had had a prior business relationship with Robbins Fuels, specifically with Colin Robbins (the principal) and Mr. Clark Peddle (counsel for Robbins Fuels).
9. In the Response, you indicated that the financial statements were provided to Robbins Fuels in order to confirm the equipment held by 137 which Robbins Fuels was interested in obtaining as security for the credit facility.
10. You provided the financial statements and accompanying "Notice to Readers" to Robbins Fuels for the purpose of negotiating the securing of the guarantee from 137 to Robbins Fuels in their agreement with Tru Value

Fuels. You have advised that both Mr. Robbins and Mr. Peddle were aware of your relationship with 137 and were aware that the financial statements were prepared in-house by your company and had been reviewed by you personally. They took no issue with the documents.

11. You prepared this financial statement and "Notice to Readers" for the purpose of expediency given the prior relationship with Robbins Fuels and your belief that the statement was simply for Robbins Fuels and no additional third party.

12. Ultimately, in early October 2005, 137 was released as guarantor to the Supply Agreement with Robbins Fuels and was granted a release by Robbins Fuels by way of a formal Discharge.

13. Your "Notice to Readers" stated as follows:

We have reviewed the Balance Sheet of 1371333 Ontario Inc. as at December 31, 2004 and the Statement of Revenues and Expenses and Retained Earnings for the year then ended. With the exception that there is no provision for income taxes nor amortization nor depreciation, these financial statements have been prepared in accordance with Generally Accepted Accounting Principles and present fairly the financial position and the results of its operations for the year then ended.

Readers are however cautioned that these financial statements have not been audited and as such may not be suitable for their intended purposes.

*Nao Seko
Certified General Accountant
March 8, 2005*

14. The *Public Accountancy Act*, 1990, c.P-37 (the "Act"), then in force, made it an offence for a person who was not licensed under the Act to practise as a public accountant. Such an offence was punishable on conviction by a fine of not more than \$10,000 for a first offence and a fine of not more than \$25,000 for any subsequent offence.

15. The Act defined "public accountant" as

a person who either alone or in partnership engages for reward in public practice involving,

(a) the performance of services which include causing to be prepared, signed, delivered or issued any financial, accounting or related statement, or

(b) the issue of any written opinion, report or certificate concerning any such statement,

where, by reason of the circumstances or of the signature, stationery or wording employed, it is indicated that such person or partnership acts or purports to act in relation to such statement, opinion, report or certificate as an independent accountant or auditor or as a person or partnership having or purporting to have expert knowledge in accounting or auditing matters, but does not include a person who engages only in bookkeeping or cost accounting or in the installation of bookkeeping, business or cost systems or who performs accounting or auditing functions exclusively in respect of,

(c) any public authority or any commission, committee or emanation thereof, including a Crown company,

(d) any bank, loan or trust company,

(e) any transportation company incorporated by Act of the Parliament of Canada, or

(f) any other publicly-owned or publicly-controlled public utility organization; ("comptable public")

16. You knew that 137 intended to and did provide the "Notice to Readers" and financial statement to Robbins Feed and Fuels Limited, a third party, in support of a line of credit with Robbins Fuels for the purchase of fuel.

17. You prepared the "Notice to Readers" in respect of 137. At the time you prepared the Notice to Reader, you controlled 137. As such you were not free of any interest, influence or relationship with respect to 137 that might impair your professional judgment or objectivity or which, in the view of a reasonable observer, might have that effect.

18. You did not disclose your relationship with 137 in the "Notice to Readers", or in the notes to the financial statements. Despite the previous existing relationship with Robbins Fuels, you failed to clearly state this conflict in writing for any third party reviewing the materials, nor did you evaluate the significance of that threat to your independence.

19. The financial statements you prepared and upon which you clearly stated in the "Notice to Readers" did not take into account income tax, depreciation or amortization. Without consideration of income tax, depreciation or amortization, the statements are inappropriate and/or potentially misleading.

20. The Notice to Reader was not in the prescribed form.

21. It was not prudent and/or lawful for you to prepare a report or financial statement or issue a written opinion concerning a financial statement, where, by reason of the circumstances or of your signature, stationery or wording employed, it is indicated that you acted or purported to act in relation to such statement, opinion, report or certificate as an independent accountant or as a person having or purporting to have expert knowledge in accounting or auditing matters, without being licensed under the Act.

22. As the person who controlled 137, you were not independent of 137 when you prepared its statements and opined as to the presentation of its financial position in the Notice to Reader that you prepared.

23. Despite your previously existing relationship with Robbins Fuels, you did not disclose your relationship with 137 in the notes to the financial statements or the Notice to Reader nor did you consider the potential of a perceived conflict by third parties or evaluate the significance of that threat to your independence.

24. The financial statements you prepared did not take into account income tax, depreciation or amortization. As such they were potentially misleading, incomplete and/or inaccurate.

25. You did not receive remuneration for preparing the financial statements or the Notice to Reader.

7. The parties also jointly submitted an affidavit, sworn by Mr. Seko on August 21, 2008, which states:

I have been a member of the CGA Ontario since 1983.

In 2005, I was one of the principal directors of a number of companies, including 1371333 Ontario Inc.

Financial statements were prepared by my company, and following my review, I provided them to Robbins Fuels with whom I had had a long standing business relationship and who were fully aware of my role in 1371333 Ontario Inc.

Neither I nor my company received any remuneration whatsoever or any other reward for the preparation of the financial statement provided to Robbins Fuels, dated March 8, 2005 or the Notice to Reader that I placed my name on and that accompanied the statement.

The financial statement and Notice to Reader were provided solely for the purpose of confirming the equipment belonging to and improvements made by 1371333 Ontario Inc. which was being given over as a guarantor in a Supply Agreement between Robbins Fuels and Tru Value Fuels Ltd.

I believed that the financial statement was solely for the review of Colin Robbins (principal of Robbins Fuels) and Clark Peddle (counsel for Robbins Fuels).

8. A number of additional exhibits were entered into evidence during the hearing, on consent of both parties, including a copy of the financial statement in question, with the "notice to readers".

C. SUBMISSIONS

9. Counsel for the Discipline Committee explained to the Tribunal that, based on the contents of Mr. Seko's affidavit, the Committee was persuaded that Mr. Seko had a valid defence to any charges that could have been brought under the *Public Accountancy Act*, since he did not review and sign the financial statements in question for reward. (Engaging in public practice "for reward" is an essential component of the definition of "public accountant" in the Act, as set out above.)

10. Consequently, the Committee announced that it was withdrawing the charges against Mr. Seko relating to the alleged breaches of Rules 101 and 102 of CEPROC.
11. At the hearing, through a joint submission of the parties, Mr. Seko acknowledged a breach of Rules 202 and 202.1, based on the fact that he signed the Notice to Readers in respect of 1371333 Ontario Inc. at a time when he was one of the principal directors of the company and, as such, he was not independent of the company, yet he did not disclose his relationship with the company in the Notice to Readers or in notes in the financial statements, nor did he consider and evaluate the significance of his lack of independence.
12. Ms. Liva she stressed that Mr. Seko believed the financial statements were solely for review by Mr. Robbins, who was personally aware of Mr. Seko's relationship with the company.
13. Mr. Seko also acknowledged a breach of Rule 303 based on the facts that: (a) he signed the Notice to Readers on financial statements that did not take into account income tax, depreciation, or amortization, and that were therefore potentially misleading; (b) he did not disclose in writing in the financial statements or Notice to Readers his relationship with the company; and (c) the Notice to Readers was not in the prescribed form. As such, he did not adhere to acknowledged principles and standards of professional practice.
14. Finally, Mr. Seko acknowledged a breach of Rule 401, in that he issued financial statements that were potentially misleading. Ms. Liva emphasized, however, that Mr. Seko did not, at any time, intend to mislead anyone. This was not contested by the Discipline Committee

D. RULING

15. Based on the above facts and submissions, the Tribunal accepts Mr. Seko's admissions and finds that he violated Rules 202, 202.1, 303 and 401 of the CEPROC.

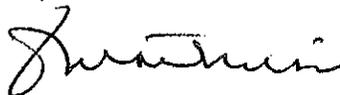
E. PENALTIES

16. The parties made a joint submission to the Tribunal regarding penalties to be imposed on Mr. Seko for the admitted breaches of the Rules of CEPROC.
17. Specifically, the parties proposed that Mr. Seko be reprimanded, that the reprimand be published as required by Article 9, section 21 of the CGAO's By-Law Four, and that he be ordered to pay a fine in the amount of \$2,500. The parties also agreed that he would contribute to the Discipline Committee's costs in the amount of \$1,000, which Ms. Jolley explained was a relatively nominal amount because of Mr. Seko's full and complete cooperation, which had spared the parties a lengthy hearing.
18. Before approving the proposed penalties, the Tribunal confirmed with counsel that Mr. Seko had no prior record of discipline with the CGAO. We also confirmed that the proposed publication of Mr. Seko's reprimand would appear only on the CGAO website and in CGAO Statements, not in any community newspapers.
19. Upon consideration of all the facts, we agreed that the proposed penalties are reasonable and appropriate.
20. We therefore order as follows:
- (i) Mr. Seko is hereby reprimanded for breaching Rules 202, 202.1, 303 and 401 of CEPROC.

- (ii) Mr. Seko is hereby ordered to pay the CGAO a \$2,500 fine.
- (iii) Mr. Seko is hereby ordered to pay the CGAO costs in the amount of \$1,000.

It is understood that the above reprimand will be published in CGAO Statements and on the CGAO website, in accordance with Article 9, section 21 of By-Law Four.

21. Dated this 4th day of September, 2008,



Donn Martinson, chairperson
for the Tribunal panel

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.