

**IN THE MATTER OF A HEARING BEFORE
THE PROFESSIONAL CONDUCT TRIBUNAL OF THE
CERTIFIED GENERAL ACCOUNTANTS
ASSOCIATION OF ONTARIO**

**In the matter of a complaint against
Barbara Suddard, CGA, a member of the
Certified General Accountants Association of Ontario**

Date of Hearing

January 5, 2004

Tribunal Panel

Donn Martinson, Chair
Robert Haliburton
Dave Laventure

Appearances before the Tribunal

Karen Jolley, counsel for the Discipline Committee
Kristian Bonn, counsel for Barbara Suddard

**DECISION OF THE
PROFESSIONAL CONDUCT TRIBUNAL**

Introduction

The Discipline Committee of the Certified General Accountants Association of Ontario (CGAO) received a complaint from a member of the public, William Withers, regarding one of the CGAO's members, Barbara Suddard. As a result of the complaint, the Discipline Committee made charges against Ms. Suddard under the *Code of Ethical Principles and Rules of Conduct* of the CGAO and referred the charges to the Professional Conduct Tribunal for a hearing.

A Notice of the Hearing was sent to all parties on August 29, 2003, with an original hearing date scheduled for November 11, 2003. An adjournment was subsequently granted by the Tribunal upon the request of counsel for Ms. Suddard and the hearing ultimately proceeded on January 5, 2004. Ms. Suddard did not attend the hearing but was represented by her counsel, Kristian Bonn.

The charges against Ms. Suddard included allegations that she breached Rules 101 (discredit to the profession); Rule 202.2 (disclosure required in compilation engagement report); Rule 205 (use of information for personal advantage without client's consent); Rule 303 (responsibility and control of public accounting practice); Rule 304 (adherence to acknowledged principles and standards of professional practice); and Rule 606 (actions detrimental to the Association or the profession).

Agreed Statement of Facts

At the hearing, the parties submitted to the Tribunal a written agreed statement of fact signed by Ms. Suddard. No witnesses were called to testify and no additional evidence was adduced to supplement the written statement.

The agreed statement of fact reads as follows:

Responsibility and Control

Throughout the period of 1986 to present, Barbara Suddard was a certified general accountant. Throughout the period of 1986 to present, Rodger Suddard was not a certified general accountant, or a professionally designated accountant.

In 1986, Barbara Suddard purchased the client list from an accountant in Napanee, Ontario and opened a small office in Napanee in addition to her main office located in Belleville, Ontario. One of the clients on that list was William Withers. Mr. Withers attended at Ms. Suddard's office in Napanee and requested that Ms. Suddard's firm complete his personal tax return for that year. Rodger Suddard, who was an employee of Ms. Suddard's accounting firm at the time, prepared Mr. Withers' tax return for that year. For the years 1987-1995 Rodger Suddard prepared Mr. Withers' personal tax returns. Eventually, Rodger also provided a number of Mr. Withers' companies, 753300 Ontario Ltd., 843443 Ontario Ltd., 753243 Ontario Ltd., and 753203 Ontario Ltd. with various accounting services while he worked out of Suddard & Co. offices.

There was a time that Ms. Suddard did not personally manage the Suddard & Co. office located in Napanee, Ontario. During this period, the Napanee office was managed by Rodger Suddard. Barbara Suddard operated the Suddard & Co. office located in Belleville, Ontario and over saw the office Napanee. For 1986, Ms. Suddard spent half her time at the Napanee office and half her time at the Belleville office. For 1987 and 1988, the Napanee office hours were reduced and Ms. Suddard spent two half days each week at the Napanee office and the balance of the time at the Belleville office. Thereafter, Ms. Suddard was not normally present in the Napanee office.

Rodger was in charge of running the Napanee office and had one clerical staff member working there. The Napanee office was closed in 1991. Rodger Suddard continued to do accounting work for Mr. Withers and his companies. The work was done at Mr. Withers' premises. Without Ms. Suddard's knowledge, Rodger Suddard used the Suddard & Co. letterhead up to and including 1993 to prepare financial reports for Mr. Withers' businesses.

Barbara did not supervise the activities of Rodger Suddard in his dealings with Mr. Withers and was therefore unaware of the steps being taken by Rodger Suddard on behalf of Mr. Withers or that a business relationship was developing between Rodger Suddard and Mr. Withers.

Pursuant to the Code of Ethical Principles and Rules of Conduct in effect during this time period, Ms. Suddard was required to personally undertake or delegate to a member of the Association, the charge or management of each public practice office maintained by her. Commencing in 1993, the Rules required Ms. Suddard, because she was engaged in the practice of public accounting with a non-member, Rodger Suddard, to be responsible to the Association for any failure of that non-member to abide by the Code of Ethics or Rules of Professional Conduct of the Association and was required to personally undertake or delegate to a member of the Association, the charge and management of each public accounting office maintained by the firm.

Business Relationship Between Rodger Suddard and Mr. Withers

During the period that Rodger Suddard was preparing Mr. Withers' tax returns, he entered into a business relationship with Mr. Withers. This business relationship was outside his responsibilities at Ms. Suddard's firm. Ms. Suddard was unaware of the business relationship.

In the course of Rodger Suddard's business relationship with Mr. Withers, Rodger Suddard prepared financial statements, compilation reports, engagement letter and provided other accounting services to Mr. Withers and his companies. Many of the documents, including the engagement letters, were prepared on Ms. Suddard's firm's letterhead. On two occasions, Rodger Suddard forged Ms. Suddard's signature on two engagement letters that were sent to Mr. Withers. Ms. Suddard was not aware of these activities being taken by Rodger Suddard.

In addition to the accounting services provided to Mr. Withers, Rodger Suddard also entered into several business transactions with Mr. Withers and/or his companies. At one point, in conjunction with a real estate transaction involving 753300 Ontario Ltd., a Withers' company, Rodger

Suddard delivered a promissory note from him as trustee and personally in the amount of \$60,000 payable to the wife of Mr. Withers, Patricia Ouellet. The note was payable with interest at 10 percent per annum. In or about March 1999, Rodger Suddard declared bankruptcy and the note to Ms. Ouellet and the accumulated interest went unpaid.

On or about 7 May 1990 Hastings Household Sales Ltd., a company in which Rodger Suddard had an interest, purchased property from 753203 Ontario Ltd., a company owned by Mr. Withers. As part of the purchase price for that transaction, Rodger Suddard signed a promissory note in the amount of \$2,400 in favour of Mr. Withers' company, Hastings Household Sale Ltd. also obtained a vendor take-back mortgage on this property in the amount of \$70,000. Rodger Suddard subsequently repaid the promissory note in full.

Using the Suddard & Co. letterhead, Rodger Suddard prepared the compilation report and financial statements for 753203 Ontario Ltd. Neither the compilation report nor the notes to the financial statements disclosed that the preparer of the statements or a party related to the preparer of the statements was indebted to the company.

Using Suddard & Co. letterhead, Rodger Suddard prepared the notice to reader and financial statements for 753300 Ontario Ltd. for the year ended 30 June 1992. Neither the notice to reader nor the notes to the financial statements disclosed that the preparer of the statements or a third party related to the preparer of the statements was indebted to a party related to the company.

Rodger Suddard was unaware of the requirement to disclose his debtor relationship to the principal of the companies and his resultant apparent lack of independence on the financial statements prepared by Suddard & Co.

Rodger Suddard offset professional fees owing by Mr. Withers and his companies to him for personal purposes related to the properties that Rodger Suddard purchased from the Withers' companies. Rodger Suddard had recorded the fees owing to him as owing to Suddard & Co. and used Suddard & Co. letterhead for the invoices.

Adherence to Acknowledged Principles and Standards

For the period 1986 to 1993 Rodger Suddard prepared the tax returns for Mr. Withers and his companies. For the period 1988 to 1993 Mr. Withers earned income from his business. That income was designated as "director's fees" based on his discussions with Rodger Suddard. Throughout that period, no CPP was deducted and remitted from the director's fees. The provisions of

the Income Tax Act and the Canadian Pension Plan legislation required that CPP be deducted from director's fees.

On the understanding from the local Revenue Canada office that this provision would not be enforced, Ms. Suddard's firm provided clients with the choice to either deduct or not to deduct CPP from director's fees. CPP was not deducted from Mr. Withers' director's fees.

Mr Withers applied to his private insurance company in 1993 and collected a private disability pension until 1998. In or about 1998, Mr. Withers' private disability pension came to an end and Mr. Withers applied for a CPP disability pension. Mr. Withers was originally rejected as he had not made any contributions to the CPP plan for the last six years that he worked. However, Mr. Withers has recently obtained CPP disability benefits and they were paid retroactively in full to 1998.

Breaches

In taking the position that clients need not remit CPP from director's fees, when the legislation required that CPP be deducted, Ms. Suddard did not act in accordance with acknowledged principles and standards of professional practice and as a result Ms. Suddard violated current Rule 304 (its predecessor versions being Rule 214 for 1986, Rule 215 for 1987-1992/93, and Rule 207 for the period 1994/95). In giving advice that remittance was optional when the law required that CPP be deducted, Barbara Suddard permitted her firm name and her name to be used in connection with an act of a nature to discredit the profession - current Rule 101 (and its predecessor versions and Rule 404 for the period 1986-1992/93).

There was a time that Ms. Suddard did not personally manage the Napanee office and was not normally in attendance at the office. Nor did she delegate the management of the Napanee office to a member of the Association or a professional colleague who was an accountant recognized by statutory authority. As such she violated her obligation of responsibility and control over her practice pursuant to then Rule 701 for the period 1986-1988 and 702 for the period 1989-1991.

Rodger Suddard failed to disclose on the financial statements he prepared under the firm name Suddard & Co. his lack of independence to William Withers and Withers' companies. By the failure of the firm to disclose the relationship, Ms. Suddard violated acknowledged principles and standards - current Rule 304 (and its predecessor versions, as above).

Joint Submission re: Penalty

The parties also made a joint submission to the Tribunal with respect to the appropriate penalties to be imposed in this matter. Specifically, the parties submitted that the Tribunal should:

1. permit Barbara Suddard to resign from the CGAO as a form of discipline;
2. require that Barbara Suddard undertake not to reapply for membership in the CGAO at any time in the future;
3. order Barbara Suddard to pay \$1,000 for the CGAO's costs; and
4. order that this disciplinary action be published in the CGAO's Statements.

Ms. Jolley advised the Tribunal at the hearing that Ms. Suddard had already surrendered both her provincial and her federal certificates.

Conclusion

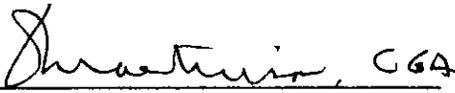
After considering the submissions of both parties with respect to this complaint, and Ms. Suddard's admissions of the breaches of the *Code of Ethical Principles and Rules of Conduct*, the Tribunal concluded that the penalties proposed by the parties are appropriate.

In concluding that a resignation is appropriate, rather than expulsion, the Tribunal took into account the fact that Ms. Suddard has been a member of the CGAO for approximately 20 years, with no prior record of unprofessional or unethical conduct, as well as the fact that the incidents that form the subject of this complaint arose several years ago. It also considered that Ms. Suddard cooperated with the Discipline Committee in preparing an agreed statement of fact, thereby avoiding the need for a lengthy hearing and demonstrating that she accepts responsibility for her actions. Her counsel advised the Tribunal that she was remorseful. He also advised that she is approaching retirement, is winding down her practice, and is not taking on any new clients. The Discipline Committee did not contest any of these facts, all of which were viewed by the Tribunal as mitigating circumstances.

The Tribunal expressed a concern to the parties about the need to give Ms. Suddard's clients notice of the fact of her resignation from the CGAO. It asked the parties to comment on the possibility of publication of Ms. Suddard's resignation in local newspapers in Belleville and Napanee, or the alternative option of requiring Ms. Suddard to provide written notice to all of her clients of her resignation. Both parties submitted that they thought publication in the newspaper was unwarranted in the circumstances of this case and would only result in embarrassment to Ms. Suddard. They also both submitted that written notice to her clients was unnecessary. Mr. Bonn assured the Tribunal that Ms. Suddard was advising her existing clients individually, when she met with them, of her resignation from the CGAO. He also assured us that Ms. Suddard understood that she would no longer be able to use the CGA designation, including on letterhead, in a

telephone directory, and the like. With these assurances, the Tribunal decided not to order publication in the local newspapers or any other condition to provide notice to her clients.

Date this 23 day of January 2004,


Donn Martinson, Chair
for the Tribunal

NOTICE

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