

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

**IN THE MATTER OF Marvin Zeavin, 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 -

Marvin Zeavin

DECISION AND REASONS FOR DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL

Members of the Professional Conduct Tribunal Panel:

D. Alan Jones, CGA, Chair
Irwin Pinsky, CGA
Catherine Kenwell, Public Representative

Appearances:

Karen E. Jolley, Counsel for the Discipline Committee
Marvin Zeavin, Member
Lisa Braverman, Independent Legal Counsel to the Professional Conduct Tribunal

Hearing Date:

March 21, 2013, Toronto

OVERVIEW

A panel of the Professional Conduct Tribunal of The Certified General Accountants Association of Ontario (“the Association”) heard this matter on March 21, 2013, 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 January 30, 2013, Exhibit No. 1, and the Affidavit of Service, Exhibit No. 2, relating to the Notice of Hearing.

The allegations against Mr. Zeavin are that he breached the following provisions of the Code of Ethical Principles and Rules of Conduct as stated in the Notice of Hearing:

Rule 514 Registration

For the period 2008 to June 2010:

A member shall, if engaged in a professional practice or the practice of public accounting part-time or full-time, register in accordance with the requirements prescribed by the Association. This rule also shall apply to members who own, operate or control a professional corporation engaged in a professional practice or the practice of public accounting.

For the period June 2010 to present:

A member shall, if engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time, register in accordance with the requirements prescribed by the Association. This rule also shall apply to members who own, operate or control a professional corporation engaged in the practice of public accounting or the preparation of compilation engagements or tax returns.

Rule 515 Practice Inspection Requirements

For the period 2008 to present:

A member shall comply with, and adhere to, the practice inspection requirements of the Association and the standards contained therein.

Rule 516 Professional Liability Insurance

For the period 2008 to June 2010:

A member engaged in a professional practice or the practice of public accounting shall maintain professional liability insurance as specified, and provide evidence as required, by the Association.

For the period June 2010 to present:

A member engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time shall maintain professional liability insurance as specified, and provide evidence as required, by the Association.

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

1. Marvin Zeavin ("Zeavin") became a certified general accountant in 1983.
2. Zeavin's CGA Canada certificate number is 417765.
3. For the period 2008 through 2011, inclusive, Zeavin prepared corporate tax returns for clients when he was not registered with the Association to do so.
4. For the period 2008 to 2011, inclusive, Zeavin prepared personal income tax returns for clients when he was not registered with the Association to do so.
5. For the years 2010 and 2011, Zeavin prepared notices to reader with respect to financial statements he had prepared when he was not registered with the Association to carry on a public accounting practice or the practice of preparation of compilation engagements as required by the *Code of Ethical Principles and Rules of Conduct* (the "Code").
6. In 2011 Zeavin prepared approximately 50 personal income tax returns and five financial statements.

7. By providing compilation services where it could reasonably be expected that they would be relied on or used by a third party and by preparing tax returns, Zeavin was operating a practice that required registration pursuant to Rule 514 of the *Code*.
8. Zeavin did not register his practice.
9. Zeavin earned income from carrying on the practice that he was operating in violation of the *Code*.
10. Rule 515 of the *Code* requires a member to adhere to the practice inspection requirements of the Association.
11. Zeavin did not undergo a practice inspection with the Association as he had not registered his practice as he was required to do.
12. Rule 516 of the *Code* requires a member engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time to maintain professional liability insurance.
13. Zeavin did not maintain insurance for his full time practice for any of the years in question, namely 2008 to 2011, inclusive.
14. The total cost of professional liability insurance for the years 2008 to 2011 inclusive was \$4,349.16 inclusive of tax.
15. Zeavin was required to but did not purchase the Public Practice Manual (the "PPM") or the CICA Handbook (the "Handbook") for the years 2010 and 2011 when he was engaged in the practice of public accounting or the preparation of compilation engagements.
16. The total cost of the PPM and applicable renewals was \$711.90 inclusive of tax for the two years in question.

17. The total cost of the Handbook was \$994.40 inclusive of tax for the two years in question.
18. Zeavin maintained two websites, www.dimarfinanial.com, where he offered to provide "tax returns both personal and professional" and www.kirzeataxrecovery.com, where he advertised obtaining refunds owed for various taxes. On each website he advertised that he had a "C.G.A. Designation" or was "a Certified General Accountant".
19. In February 2012 Zeavin was suspended as a result of his failure to comply with the Association's 2010 continuing professional development requirements.
20. Zeavin's conduct amounted to professional misconduct.

MEMBER'S PLEA

Mr. Zeavin admitted some of the allegations set out in the Notice of Hearing. The allegations which were admitted by the member became clear when counsel for the Discipline Committee referred to the Request to Admit Facts and Documents and identified which allegations were admitted to by the member in his Response to Request to Admit.

FACTS AND EVIDENCE

Counsel for the Discipline Committee entered the following documents into evidence during the course of the hearing:

<u>Exhibit #</u>	<u>Description</u>
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|----|----------------------|
| 1. | Notice of Hearing |
| 2. | Affidavit of Service |
| 3. | Discipline Brief |

4. Letter from Wires Jolley LLP to Mr. Zeavin dated 5 February 2013 and titled "Complaint with CGA Ontario"
5. Request to Admit Facts and Documents
6. Response to Request to Admit (form only)
7. Notice Under the Evidence Act (Business Records)
8. Affidavit of Service
9. Response to Request to Admit (completed by Mr. Zeavin)
10. Request to Admit Facts and Documents (annotated)
11. Portion of Association Bylaws, Code of Ethical Principles and Rules of Conduct, the Public Accounting Licensing Regulations, and Procedural Rules for Hearings, pages 1 to 7, and pages 28 to 35, as revised on November 24, 2012
12. Portion of Schedule A to By-Law Four, dated April 2010, pages 14 to 16
13. Portion of Association Bylaws, Code of Ethical Principles and Rules of Conduct, the Public Accounting Licensing Regulations, and Procedural Rules for Hearings, pages 1 to 7, and pages 20 to 25, as revised on November 24, 2012.

Counsel for the Discipline Committee presented an Affidavit of Service, Exhibit No. 8, establishing that the member had been served on February 5, 2013 with a Request to Admit Facts and Documents, Exhibit No. 5, as well as a Notice under the Evidence Act (Business Records), Exhibit No. 7. The member was advised that he had 20 days to respond to the Request to Admit Facts and Documents, and that if he failed to respond, he would be deemed to admit the truth of the facts and authenticity of the documents, for the purposes of this proceeding. The member did respond to the Request to Admit Facts and Documents. In

particular, in the member's Response to Request to Admit, Exhibit No. 9, the member admits the truth of facts numbered 2, 4, 5, 6, 7, 9, 13, 14, 15, 17, 18, 19, 20, the member denies the truth of facts numbered 1, 3, 8, 10, 11, 12, 16, 21, and the member admits the authenticity of all documents. Based on the facts and documents admitted by the member at this hearing from the Request to Admit Facts and Documents, the panel makes the following findings of fact:

1. Zeavin's CGA Canada certificate number is 417765.
2. For the period 2008 through 2011 inclusive, Zeavin prepared corporate tax returns for clients when he was not registered with the Association to do so.
3. For the period 2008 to 2011 inclusive, Zeavin prepared personal income tax returns for clients when he was not registered with the Association to do so.
4. For the years 2010 and 2011, Zeavin prepared notices to reader with respect to financial statements he had prepared when he was not registered with the Association to do so.
5. In 2011 Zeavin prepared approximately 50 personal income tax returns and five financial statements.
6. Mr. Zeavin did not register his practice.
7. Rule 516 of the *Code* requires a member engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time to maintain professional liability insurance.
8. Zeavin did not maintain insurance for his full time practice for any of the years in question, namely 2008 to 2011, inclusive.
9. The total cost of professional liability insurance for the years 2008 to 2011 inclusive was \$4,349.16 inclusive of tax.

10. The total cost of PPM and the applicable renewals was \$711.90 inclusive of tax for the two years in question.
11. The total cost of the Handbook was \$994.40 inclusive of tax for the two years in question.
12. Zeavin maintained two websites, www.dimarfinanial.com, where he offered to provide "tax returns both personal and professional" and www.kirzeataxrecovery.com, where he advertised obtaining refunds owed for various taxes. On each website he advertised that he had a "C.G.A. Designation" or was a "Certified General Accountant".
13. In February 2012 Zeavin was suspended as a result of his failure to comply with the 2010 continuing professional development requirements.

Mr. Zeavin did not present any documents on his own behalf.

Witnesses

Mr. Ted Wigdor testified on behalf of the CGA Ontario Discipline Committee, and Mr. Marvin Zeavin testified on his own behalf.

Mr. Ted Wigdor

Mr. Ted Wigdor is the Vice President of Government, Regulatory and Corporate Affairs for CGA Ontario.

Mr. Wigdor explained that he oversees the conduct of all members to ensure that they renew their memberships and adhere to the Code and the Bylaws. He also ensures practitioners meet public practice requirements in the checklist.

Mr. Wigdor explained the importance of registration for public practice in Ontario. Any CGA who offers tax returns, financial statements, is required to register.

He pointed out the definitions for some of the words in Rule 514:

Definition number 15: 'Professional Practice' - A proprietorship, partnership, limited liability partnership or professional corporation that provides professional services.

Definition number 16: 'Professional Services' - Any accounting, assurance, taxation services, management advisory or consulting services or other related services as may from time-to-time be recognized by the Association that is performed or offered to be performed by a member for a client or employer, whether or not the member asserts membership in the Association.

Mr. Wigdor stated that the mandate of the Association is the protection of the public. Mr. Wigdor stated that whether a member uses the CGA designation or not, he is still a certified general accountant and must govern himself accordingly including adhering to the rules. He also confirmed that there is no threshold number for compilations before a member is required to register. Whether one or a hundred clients, a member in public practice must be cognizant of the rules, including the Handbook. This is a requirement for all members in public practice so the clients know you have the information and are knowledgeable. Mr. Wigdor stressed that Mr. Zeavin had not registered as a public practitioner from 2008-2011, and consequently there were no practice inspections of Mr. Zeavin, which are predicated on registration.

On the subject of the suspension of a member, Mr. Wigdor stated that given the complaint arose within the 12 month period in this case, the suspension continues until the completion of the complaint procedure. He also stated that the rules of registration apply whether or not the CGA designation is being used. Protection of the public is the primary mandate of the Association.

The panel found Mr. Wigdor to be a highly credible witness given his background and knowledge. The panel found his testimony to be in line with the documentation entered as exhibits at the hearing.

Mr. Marvin Zeavin

Mr. Zeavin was affirmed as a witness in order that a panel member could question him on a document in the case. In response to a question as to why he did not register, Mr. Zeavin simply stated that he was “on his own” and it was very difficult to take courses and to go to seminars.

The panel found Mr. Zeavin to be a credible witness but not much of his evidence was relevant to the case.

Based on the oral evidence heard, the admissions by the member 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:

1. Marvin Zeavin (“Zeavin”) became a certified general accountant in 1983.
2. Zeavin’s CGA Canada certificate number is 417765.
3. For the period 2008 through 2011, inclusive, Zeavin prepared corporate tax returns for clients when he was not registered with the Association to do so.
4. For the period 2008 to 2011, inclusive, Zeavin prepared personal income tax returns for clients when he was not registered with the Association to do so.
5. For the years 2010 and 2011, Zeavin prepared notices to reader with respect to financial statements he had prepared when he was not registered with the Association to carry on a public accounting practice or the practice of preparation of compilation

engagements as required by the *Code of Ethical Principles and Rules of Conduct* (the "*Code*").

6. In 2011 Zeavin prepared approximately 50 personal income tax returns and five financial statements.
7. By providing compilation services where it could reasonably be expected that they would be relied on or used by a third party and by preparing tax returns, Zeavin was operating a practice that required registration pursuant to Rule 514 of the *Code*.
8. Zeavin did not register his practice.
9. Zeavin earned income from carrying on the practice that he was operating in violation of the *Code*.
10. Rule 515 of the *Code* requires a member to adhere to the practice inspection requirements of the Association.
11. Zeavin did not undergo a practice inspection with the Association as he had not registered his practice as he was required to do.
12. Rule 516 of the *Code* requires a member engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time to maintain professional liability insurance.
13. Zeavin did not maintain insurance for his full time practice for any of the years in question, namely 2008 to 2011 inclusive.
14. The total cost of professional liability insurance for the years 2008 to 2011 inclusive was \$4,349.16 inclusive of tax.
15. Zeavin was required to but did not purchase the Public Practice Manual (the "PPM") or the CICA Handbook (the "Handbook") for the years 2010 and 2011 when he was

engaged in the practice of public accounting or the preparation of compilation engagements.

16. The total cost of the PPM and the applicable renewals was \$711.90 inclusive of tax for the two years in question.

17. The total cost of the Handbook was \$994.40 inclusive of tax for the two years in question.

18. Zeavin maintained two websites, www.dimarfinanial.com, where he offered to provide "tax returns both personal and professional" and www.kirzeataxrecovery.com, where he advertised obtaining refunds owed for various taxes. On each website he advertised that he had a "C.G.A. Designation" or was "a Certified General Accountant".

19. In February 2012, Zeavin was suspended as a result of his failure to comply with the Association's 2010 continuing professional development requirements.

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 admissions made by the member, 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 514 Registration

For the period 2008 to June 2010:

A member shall, if engaged in a professional practice or the practice of public accounting part-time or full-time, register in accordance with the requirements prescribed by the Association. This rule also shall apply to members who own, operate or control a professional corporation engaged in a professional practice or the practice of public accounting.

For the period June 2010 to present:

A member shall, if engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time, register in accordance with the requirements prescribed by the Association. This rule also shall apply to members who own, operate or control a professional corporation engaged in the practice of public accounting or the preparation of compilation engagements or tax returns.

Rule 515 Practice Inspection Requirements

For the period 2008 to present:

A member shall comply with, and adhere to, the practice inspection requirements of the Association and the standards contained therein.

Rule 516 Professional Liability Insurance

For the period 2008 to June 2010:

A member engaged in a professional practice or the practice of public accounting shall maintain professional liability insurance as specified, and provide evidence as required, by the Association.

For the period June 2010 to present:

A member engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time shall maintain professional liability insurance as specified, and provide evidence as required, by the Association.

The panel of the Professional Conduct Tribunal also finds the member guilty of professional misconduct.

REASONS FOR DECISION

Rule 514 Registration

Mr. Zeavin was engaged in a professional practice or the practice of public accounting but he did not register in accordance with the requirements prescribed by the Association. In the period 2008 to 2011 inclusive, he had prepared corporate and personal income tax returns, including approximately 50 personal income tax returns in 2011, and in 2011, five financial statements.

The panel of the Professional Conduct Tribunal was unanimous in determining that Mr. Zeavin was subject to Rule 514 in the period under consideration, and that he should have registered his practice. Therefore, the panel found that he breached Rule 514.

Rule 515 Practice Inspection Requirements

Since Mr. Zeavin did not register his practice with the Association, as required to do so, he did not undergo a practice inspection.

Mr. Wigdor confirmed that, since Mr. Zeavin had not registered as a public practitioner in the 2008-2011 period under review, there had been no practice inspections of Mr. Zeavin, which are predicated on registration.

The panel of the Professional Conduct Tribunal was unanimous in determining that since Mr. Zeavin had not registered, he had not undergone the necessary practice inspection and he was therefore in breach of Rule 515.

Rule 516 Professional Liability Insurance

Mr. Zeavin had not maintained professional liability insurance for the period 2008-2011.

Consequently, the panel of the Professional Conduct Tribunal unanimously concluded that Mr. Zeavin had breached Rule 516.

Finally, Mr. Zeavin did not purchase the Public Practice Manual or the CICA Handbook, even though he was required to do so, and by not doing so, he breached this requirement.

The panel of the Professional Conduct Tribunal found the member guilty of professional misconduct because he breached Rule 514 Registration, Rule 515 Practice Inspection Requirements, and Rule 516 Professional Liability Insurance.

PENALTY SUBMISSIONS

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

1. A reprimand
2. Three months suspension to take place at the conclusion of the administrative suspension
3. A fine of \$3,000, \$1,000 for each of the three Code breaches
4. A fine of \$6,055.46, for payment of insurance (\$4,349.16), the Handbook (\$994.40), and the Public Practice Manual (\$711.90)
5. Contribution to the costs of the hearing of \$1,500

Mr. Zeavin said that he considered the proposed suspension of three months to be redundant.

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. Mr. Zeavin is reprimanded by the Association as a result of his breaches of Rule 514, Rule 515, and Rule 516 of the Code of Ethical Principles and Rules of Conduct
2. Mr. Zeavin's membership in the Association is suspended for 3 months to take place at the conclusion of the administrative suspension
3. Mr. Zeavin pays a \$3,000 fine, \$1,000 for each of the 3 Code of Ethical Principles and Rules of Conduct breaches
4. Mr. Zeavin pays a \$6,055.46 fine as the costs of insurance, the Handbook and the Public Practice Manual
5. Mr. Zeavin pays \$1,500 in costs
6. Publication in "Statements"

REASONS FOR PENALTY DECISION

The panel of the Professional Conduct Tribunal of the Certified General Accountants Association of Ontario reviewed the information provided by Ms. Jolley, counsel for the Discipline Committee as well as the information provided by Mr. Zeavin. The panel also reviewed similar cases involving CGA Ontario members, provided by Ms. Jolley. The panel is satisfied that the penalty proposed by the Discipline Committee is consistent with the cases provided by counsel for the Discipline Committee.

The panel has ordered publication in "Statements" in accordance with the practice in Professional Conduct Tribunal decisions.

The penalty ordered by the panel was imposed to protect the public, to deter members of the CGA profession from engaging in similar misconduct, and to deter Mr. Zeavin from engaging in similar misconduct in the future.

Dated this _____ day of _____, 2013

I, D. Alan Jones, 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.

D. Alan Jones

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.