

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
(THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO)
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **RONALD CALVIN RUTMAN, CPA, CA**, a Member of CPA Ontario, under **Rule 205** of the Rules of Professional Conduct, as amended.

TO: Mr. Ronald C. Rutman, CPA, CA

AND TO: The Professional Conduct Committee

REASONS

(Decision and Order made January 7, 2016)

1. This tribunal of the Discipline Committee met on January 7, 2016 to hear allegations of professional misconduct brought by the Professional Conduct Committee against Ronald C. Rutman, CPA, CA, a Member of CPA Ontario.

2. Mr. Paul Farley appeared on behalf of the Professional Conduct Committee (PCC), accompanied by the investigator, Ms. Karen Ho James. Mr. Rutman attended with his counsel Mr. Peter Griffin. Mr. Glenn Stuart attended the hearing as counsel to the Discipline Committee.

3. The decision of the tribunal was made known at the conclusion of the hearing on January 7, 2016, and the written Decision and Order was sent to the parties on January 12, 2016. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegations, the decision, the order, and the reasons of the tribunal for its decision and order.

Allegations

4. The following allegations of professional misconduct were made against Mr. Rutman by the Professional Conduct Committee on February 23, 2015:

1. THAT the said Ronald C. Rutman, on or about the 24th day of June, 2005, signed or associated himself with an ACF Registered Charity Information Return for the taxation year ended December 31, 2004 which he knew, or should have known, was false or misleading, in that it contained amounts shown as Qualified Donations when those amounts were not Qualified Donations, contrary to Rule 205 of the Rules of Professional Conduct, to wit:

i) The return contained an amount of \$16,589 shown gifted to NYU which was not a qualified donation.

2. AND THAT the said Ronald C. Rutman, on or about the 29th day of June, 2006, signed or associated himself with an ACF Registered Charity Information Return for the taxation year ended December 31, 2005 which he knew, or should have known, was false or misleading, in that it contained amounts shown as Qualified

Donations when those amounts were not Qualified Donations, contrary to Rule 205 of the Rules of Professional Conduct, to wit:

- i) The return contained an amount of \$36,493 shown gifted to NYU which was not a qualified donation;

5. Mr. Farley, on behalf of the Professional Conduct Committee, withdrew Allegation No. 2(ii) at the outset of the hearing.

Plea

6. Mr. Rutman entered a plea of guilty to Allegation Nos. 1 and 2, as amended.

The case for the PCC

7. Mr. Farley advised the tribunal that the case for the PCC would be presented by way of an Agreed Statement of Facts, and there would be no other evidence submitted by the parties on the issue of professional misconduct. He then filed the Agreed Statement of Facts (Exhibit 1) signed by Mr. Rutman on his own behalf, and by Mr. Farley on behalf of the PCC, as well as a Document Brief (Exhibit 2).

8. In presenting the case for the PCC, Mr. Farley reviewed the Agreed Statement of Facts, which also included references to documents contained in the Document Brief. No other evidence was called on behalf of the PCC.

The relevant facts

9. The relevant facts are fully set out in the Agreed Statement of Facts.

10. Mr. Rutman has been a partner in a public accounting firm since 1977. His professional practice deals with business and management consulting and planning. Mr. Rutman has limited dealings with tax planning which is handled by his firm's tax department.

11. Mr. Rutman's family holding company AHL was an investor and shareholder in a business which sold to discount chains and stores from 1987 to 2007. AHL had been restructured from a previous company AL which was the main Canadian operation of the business of AG.

12. Two full-time salaried employees (R and B) of AG, who had an informal profit sharing arrangement with Mr. Rutman, are the complainants in this matter. Legal conflicts between the employees and Mr. Rutman ultimately led to a separation and litigation.

13. A registered charity ACF was set up with Mr. Rutman, his son and R. In 2006, Mr. Rutman and his son resigned as directors and B became the director of the company renamed ECF. Donations made on behalf of the three directors were taken into account when calculating the sharing of profits.

14. The bookkeeper of AL maintained the accounts of ACF which had its own set of books. All three directors had cheque-signing authority and would instruct the bookkeeper to prepare cheques when a donation was made and the bookkeeper would transfer funds from AL to ACF as needed. AL would deduct these amounts as charitable gifts and received tax deductions, subject to adjustments made by Mr. Rutman for other related entities and personal benefits.

15. In 2004 and 2005, tuition fees payable to a US university in respect of Mr. Rutman's daughter were inappropriately reported as charitable donations on the Registered Charity

Information Returns T3010 for ACF, totaling \$53,082.00 for both years. Mr. Rutman, in his role as director/trustee of ACF signed the returns under the certification that the information was correct, complete and current.

16. Mr. Rutman acknowledges that he either knew, or ought to have known, that the tuition payments were not eligible charitable donations and therefore the information on the form was not correct. Mr. Rutman's explanation was that he had attempted to keep all such tuition amounts, which included tuition/donation amounts on behalf of R and B for their children, in one place for the benefit of profit sharing arrangements. In retrospect, Mr. Rutman acknowledges that this was not appropriate.

17. Mr. Rutman reversed the US university amounts by way of journal entries in AL's books. Despite his attempts to provide supporting documents, due to the passage of time, Mr. Rutman was unable to obtain detail in support of the journal entries that specifically show the reversal of the tuition fees. There was no allegation by the PCC that Mr. Rutman had received any personal tax benefit by including the tuition fees on the 2004 and 2005 returns.

18. Mr. Rutman acknowledges that the conduct was a breach of Rule 205 of the Rules of Professional Conduct.

Submissions

19. Mr. Farley submitted that the admitted facts as set out in the Agreed Statement of Facts and the guilty plea constitute enough evidence to support a finding that Mr. Rutman failed to comply with the rules of professional conduct.

20. Mr. Griffin stated that Mr. Rutman had entered into the Agreed Statement of Facts and that he had no information to add.

Decision

21. After deliberating, the tribunal found, on the uncontested evidence, that the allegations had been proven. The tribunal announced the following decision:

THAT Allegation No. 2 having been amended at the hearing, and having heard the plea of guilty to Allegation Nos. 1 and 2, as amended, and having seen and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee finds Ronald Calvin Rutman guilty of Allegation Nos. 1 and 2 of professional misconduct.

Reasons for Decision

22. As stated in paragraph 15, above, tuition fees for Mr. Rutman's daughter were inappropriately reported as charitable donations on the Registered Charity Information Forms T3010 for each of 2004 and 2005. Mr. Rutman has acknowledged signing the forms in both of these years and has acknowledged in the Agreed Statement of Facts that he either knew or ought to have known that the New York University tuition payments were not eligible charitable donations and that the information on the form that he signed was not correct.

23. The tribunal therefore found that based upon the agreed facts that professional misconduct has been clearly established. The tribunal found that the evidence was clear, cogent and compelling and supported a finding of guilt for both allegations of professional misconduct.

Submissions on Sanction

24. Mr. Farley, on behalf of the PCC, submitted that an appropriate sanction in this matter would be: a written reprimand; a fine in the amount of \$12,000, that Mr. Rutman take the professional development course *Using Values to Build a Better Ethical Culture*, the usual publicity to all Members and the public, and the usual consequences of suspension and ultimately revocation with full publicity if there is failure to comply with the terms of the order. He confirmed that this sanction was being presented to the tribunal as a joint submission of counsel.

25. Mr. Farley submitted that the mitigating factors are that nearly 10 years have passed, Mr. Rutman has no previous history before the Discipline Committee, no clients were involved and he has cooperated fully with the PCC investigation. Mr. Farley stated that there was no personal benefit to Mr. Rutman as a result of his actions. Mr. Rutman has pleaded guilty to the allegations and has proceeded by way of an Agreed Statement of Facts and a joint submission as to sanction, which has saved time and money.

26. Mr. Farley submitted that the aggravating factors included the CRA's reliance on CPAs to provide reliable and truthful filings, and Mr. Rutman's certification that the information was true and correct when, in fact, it was not.

27. Mr. Farley submitted that the sanctions must be significant enough to protect the public interest and address specific and general deterrence. The fine recommended and the publication on the website and to the membership are significant penalties. The professional development course recommended will assist in the rehabilitation of Mr. Rutman.

28. Mr. Farley referred to the CPA Ontario cases of *Ghumman* and *Becker*, which dealt with Rule 205 matters. Mr. Farley submitted that the *Becker* case was more egregious than this case in three respects: there were more occurrences; the transactions involved a client; and the client received funds to which he was not entitled. In the result, the tribunal in *Becker* ordered both a suspension and a fine of \$5,000. Counsel also submitted that breaches in the *Ghumman* case were also more serious than the present case in that there was not only a misrepresentation but a breach of the independence rule. In that case, a fine of \$8,000 was imposed, in addition to other terms similar to those proposed here.

29. Mr. Farley filed an outline of the professional development course *Using Values to Build a Better Ethical Culture* (Exhibit 3), stating that the topics covered in this course would aid in Mr. Rutman's rehabilitation.

30. Mr. Farley filed a Costs Outline (Exhibit 4), noting that the actual costs were \$23,581.45. The amount of \$13,000 had been agreed to by the parties. Mr. Farley suggested that three months would be an appropriate time period for Mr. Rutman to pay the fine and costs.

31. Mr. Griffin filed a Brief of Ronald Rutman (Exhibit 5) which contained Mr. Rutman's CV and letters from both his partner and the chairman of an organization that Mr. Rutman had served as treasurer. Both individuals stated that his actions 10 years ago are not consistent with their experiences with Mr. Rutman over many years.

32. Mr. Griffin stated that Mr. Rutman had fully cooperated with the PCC and entered into an agreement which had led to a consensual resolution of this matter. Mr. Griffin submitted that the joint submission is within the range of similar cases.

33. Mr. Griffin submitted that the matters giving rise to the allegations relate to Mr. Rutman's role approximately 10 years ago. He noted that Mr. Rutman has no previous history before the Discipline Committee. Mr. Griffin stated that Mr. Rutman had tried to centralize amounts paid by Mr. Rutman, B and R, but there had been no intention to derive a tax or any other financial advantage.

34. Mr. Griffin requested advance notice of the publicity ordered in the CPA Ontario magazine, and Mr. Farley indicated that he had no objection to this request. It was noted that publicity is within the jurisdiction of the Discipline Committee and that there is no provision for input from the Member.

35. The tribunal commenced deliberations but recalled the parties before completing their deliberations. The tribunal advised the parties that it was apparent that the fine requested in this case was significantly higher than had been ordered in either the *Ghumman* or *Becker* cases, while the misconduct was less serious than in either of those cases. The tribunal invited submissions on whether the proposed fine was genuinely in the range for *similar* misconduct, given that the precedents reflected more serious misconduct. The parties were advised that the tribunal was contemplating whether a fine of \$5,000 was more appropriate but required the parties' submissions before reaching its decision.

36. Mr. Farley submitted that the terms of the sanction were carefully considered by both the PCC and the Member's counsel. The PCC had investigated and carefully reviewed this matter in great detail. A fine of \$12,000 would act as a specific and general deterrent. Mr. Farley submitted that the fine does fall within the range for similar cases, noting that in the *Becker* case a suspension was also ordered to address the greater severity there.

37. Mr. Griffin stated that a fine of \$12,000 was part of the elements of the agreement with the PCC. He stated that in reviewing cases, this amount is within the range and this is what has been recommended.

38. Counsel for the tribunal advised the tribunal members that they must consider whether a change in the quantum of the fine, as opposed to the type of sanction, constituted a sanction that was outside the reasonable range for the misconduct. Counsel for the PCC agreed with this advice, and Mr. Rutman's counsel had no further submissions.

Order

39. After deliberating, the tribunal made the following order:

1. THAT Mr. Rutman be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Rutman be and he is hereby fined the sum of \$5,000, to be remitted to the Chartered Professional Accountants of Ontario (registered business name of The Institute of Chartered Accountants of Ontario) ("CPA Ontario") within three (3) months from the date this Decision and Order is made.
3. THAT Mr. Rutman be and he is hereby required to complete, by paying for and attending in its entirety the following professional development course made available through CPA Ontario:
 - Using Values to Build a Better Ethical Cultureor, in the event the course listed above becomes unavailable, the successor course which takes its place.

4. THAT notice of this Decision and Order, disclosing Mr. Rutman's name, be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of CPA Ontario;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to all provincial bodies;and shall be made available to the public.

5. THAT in the event Mr. Rutman fails to comply with the requirements of this Order, he shall be suspended from membership in CPA Ontario and his public accounting licence shall thereupon be suspended until such time as he does comply, provided that he complies within three (3) months from the date of his suspension. In the event he does not comply within the three (3) month period, his membership in CPA Ontario and his licence shall thereupon be revoked, and notice of the suspension of his licence and notice of the revocation of his membership and licence, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Rutman's practice or employment. All costs associated with this publication shall be borne by Mr. Rutman and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

6. THAT Mr. Rutman be and he is hereby charged costs fixed at \$13,000, to be remitted to CPA Ontario within three (3) months from the date this Decision and Order is made.

Reasons for Sanctions

40. The tribunal agreed that sanctions in the form of a reprimand in writing by the Chair of the hearing, a PD course and publicity were appropriate, as it was jointly submitted they were. The sanctions of a reprimand and publicity addressed the principles of deterrence, both general and specific.

41. The written reprimand by the Chair makes it clear that a recurrence of this conduct will not be tolerated.

42. Publication acts as a specific deterrent to Mr. Rutman. Publishing the names of members found guilty of professional misconduct is often the single most significant sanction that may be administered for general deterrence of Members of CPA Ontario and for the protection of the public.

43. At the same time, the requirement to take a professional development course should assist Mr. Rutman with his rehabilitation by providing him with the skills necessary to avoid falling short of the standards expected of CPAs.

44. The tribunal also accepted the submission that a fine of some nature was appropriate as a further element of specific and general deterrence. However, the tribunal did not accept that a fine in the specific amount being sought was commensurate with the seriousness of the misconduct demonstrated by the facts of this case. While the tribunal recognized that significant deference should be given to a joint submission, the tribunal was also aware that its obligation was to consider the appropriateness of the joint submission in light of the range established by other cases and the general principles to be considered by the tribunal in ensuring that the sanction imposed protected the public interest. In the tribunal's view, this

means not only that the sanctions adequately serve as general and specific deterrents, but that they are proportionate to the misconduct.

45. As reflected in the Agreed Statement of Facts, the amounts paid for tuition which appeared on the Registered Charity Information Returns were Mr. Rutman's attempt to keep all tuition amounts, including those of the children of the complainants, in one place so that appropriate profit sharing calculations could be dealt with by Mr. Rutman. The undisputed evidence did not support a conclusion that Mr. Rutman was intentionally misrepresenting information. The Agreed Statement of Facts also indicated that Mr. Rutman's daughter's tuition amounts were reversed but due to the passage of time the records did not exist to allow him to support this statement. Furthermore, there was no evidence that Mr. Rutman received a personal tax benefit as a result of his conduct with respect to the charity filings.

46. It was also common ground between the parties that Mr. Rutman's conduct did not involve clients and that he had no discipline history.

47. Against that backdrop, the tribunal considered the two precedent cases cited before it. The tribunal concluded that Mr. Rutman's conduct was less egregious than the conduct of either Mr. Ghumman or Mr. Becker. While a suspension was also imposed in the *Becker* case, which is a more severe sanction than a fine, the tribunal could not reconcile a fine of \$8,000 on the more serious facts of the *Ghumman* case with the \$12,000 fine proposed on the less serious facts of this case. In the tribunal's view, the misconduct in this case warranted a fine below the benchmark of \$8,000, not above, and concluded that \$5,000 fell within a more appropriate range of penalty.

48. Counsel had advised the tribunal to consider whether the difference in amount of the fine, alone, put the joint submission out of the range. In the tribunal's view, the difference did put the joint submission out of the reasonable range for this misconduct. The tribunal's assessment of the reasonable range of penalty for the misconduct in this case fell below the amount of the fine in the *Ghumman* case. Moreover, the amount considered by the tribunal to be appropriate was less than half of the amount of the joint submission. In the tribunal's view, the proposed fine was disproportionate to the misconduct. For these reasons, the joint submission was outside the reasonable range of penalty, such that to accept the joint submission would be an error in principle.

49. The fine serves as a specific deterrent to reinforce to Mr. Rutman that professional misconduct is not tolerated. It also serves as a general deterrent to other Members that this conduct is unacceptable. A period of three months to pay the fine was jointly proposed by counsel and was considered a reasonable time period by the tribunal.

50. The tribunal concluded that the sanctions imposed by it would emphasize to Mr. Rutman and to CPA Ontario Members that maintaining a high standard of conduct is in the public interest and is critical to maintaining the confidence that the public has placed in the CPA profession as a self-regulatory body.

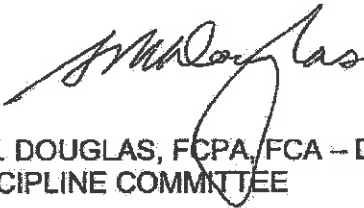
Reasons for Costs

51. The tribunal agreed that the costs of \$13,000 as agreed to by the parties was reasonable and appropriate in the circumstances.

52. CPA Ontario is a self-regulatory body and as such, disciplinary matters are a part of its governing activities. The principle that a Member should bear an appropriate share of the costs, when their misconduct is responsible for the expense of the investigation and prosecution, is

well established. The PCC submitted a bill of costs outlining the expenses of the investigation and hearing, and the tribunal agreed that the costs of \$13,000, representing a portion of the total costs, was appropriate. As with the fine, the tribunal determined that three months was a reasonable time for Mr. Rutman to pay the costs.

DATED AT TORONTO THIS *11TH* DAY OF FEBRUARY, 2016
BY ORDER OF THE DISCIPLINE COMMITTEE



S.M. DOUGLAS, FCPA, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

A.R. DAVIDSON, CPA, CA
T.M. GALVIN, CPA, CA, CMA
C. KENWELL (PUBLIC REPRESENTATIVE)