



NOTICE OF DISCIPLINE - 0239

On September 8, 2006, an Appeal Tribunal varied the findings of a Discipline Tribunal. The Appeal Tribunal found **Member "A"** acting alone or as a representative of a public company and an operating company or as a representative of Company "A" guilty of unprofessional conduct in having:

1. associated himself with a confirmation from a public company dated April 5, 1998 concerning a loan payable of \$189,467 at December 31, 1997 when he knew or ought to have known that the confirmation was false and misleading in that the loan was repaid prior to the issuance of the financial statements; and
2. associated himself with:
 - a. financial statements of an operating company for the three months ended March 31, 1999, and
 - b. financial statements of a public company for the three months ended March 31, 1999

when he knew or ought to have known that the financial statements and/or the financial information were false or misleading.

The Appeal Tribunal varied the decision of the Discipline Tribunal and stated that it did not consider that Member "A"'s actions formed a deliberate course of conduct, intention to mislead or a conscious effort to mislead.

Member "A", was CEO and director of one company, President and Director of another company, one of which was Company "B" and the other an operating company. Company "B" intended to purchase the operating company as its qualifying transaction. Company "B" lent approximately \$189,000 to the operating company, which loan was outstanding at December 31, 1997. Subsequently, legal counsel advised Company "B" that this advance was not allowed under relevant securities rules. Shareholders of the operating company injected loans and it paid amounts to the Company "B" to extinguish the loan. The two companies had different auditors for the December 31, 1997 financial statements. In April, 1998 prior to the issuance of the financial statements of the operating company, **Member "A"** confirmed to the auditor that the amount was outstanding at December 31, 1997 but did not go on to state that it had subsequently been repaid. **Member "A"** acknowledged that at the time he signed the confirmation he knew that the loan had already been repaid.

Member "A" prepared the unaudited financial statements for the operating company for the three month period ending March 31, 1999. The financial statements appeared on **Member "A"** practice letterhead. **Member "A"** did not disclose his direct and/or indirect interest in the company. The March 31, 1999 statements were produced before the finalization and audit of the December 31, 1998 statements. There was a \$155,281 difference between the opening deficit shown in the March 31, 1999 statements and the closing deficit in the final audited December 31, 1998 statements. Adjustments were made to various accounts thereby increasing the deficit in the final audited December 31, 1998 financial statements. **Member "A"** did not ensure that these necessary year-end adjustments were made when preparing the March 31, 1999 statements.



Member “A” prepared the unaudited financial statements for the public company for the three month period ending March 31, 1999. The March 31, 1999 statements were produced before the finalization and audit of the December 31, 1998 statements. There was a \$395,422 difference between the opening deficit shown in the March 31, 1999 statements and the closing deficit in the final audited December 31, 1998 statements. Adjustments were required to various accounts thereby increasing the deficit in the final audited December 31, 1998 financial statements. **Member “A”** did not ensure that the necessary year-end adjustments were made when preparing the March 31, 1999 statements. These unaudited financial statements were filed on SEDAR and were publicly available.

The March 31, 1999 financial statements include an asset amount of \$200,000 relating to a non-monetary sale of two locations of the operating company for \$5,000 and 45% interest in the new companies purchasing the locations. This amount should have been recorded as \$103,000, being the value of the assets sold less the cash payment.

The Appeal Tribunal varied the sanctions of the Discipline Tribunal and ordered **Member “A”**:

- a) be reprimanded in writing by the Chair of the Appeal Tribunal;
- b) be prohibited from being associated in any manner whatsoever with financial statements, reports or other communications of financial information related to public companies for a period of two (2) years commencing September 8, 2006. This would include holding any position as an officer, director, or CFO of a public company;
- c) successfully complete the course “Financial Statements Presentation & Disclosure: A Practitioner Workshop before December 1, 2007;
- d) undergo a practice review conducted on his practice annually for two years at his expense;
- e) pay \$50,000, inclusive of GST, towards the costs of the investigation and discipline hearing and related legal costs, within ninety (90) days of the date of service of the statement of costs; and
- f) pay a fine in the amount of \$3,500.00 within ninety (90) days of the date of service of the statement of costs.

In addition to this notice, the Appeal Tribunal ordered that the decision is to be published as soon as practicable after the decision is issued as follows:

- a) notification of a summary of the Appeal Tribunal’s findings, and any orders made be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda and any other professional organization **Member “A”** belongs to and the Institute is aware of, as of the date of the order;
- b) notification of the Appeal Tribunal’s findings and orders be provided to all provincial institutes to which **Member “A”** applies for membership at any time following the order,
- c) notice of the practice restriction, the nature of the conduct, and orders made be provided to all Chartered Accountants by inclusion in the next general mailing from the Institute of Chartered Accountants of Alberta to Chartered Accountants,
- d) notice of the practice restriction shall be published to all Chartered Accountants by an insertion once in the Membership Activity Report;



- e) notice of the Appeal Tribunal's findings and orders be provided to any member of the public who directs an enquiry to the Institute about the discipline history of **Member "A"**
- f) notice of the Appeal Tribunal's findings, the nature of the conduct and orders made as a result of the findings be provided to all who received notice of the findings and orders of the Discipline Tribunal.

Jude Corrin
Discipline Tribunal Secretary
October 16, 2006