

DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act* and in the matter of a complaint regarding the conduct of SERDAR KALAYCIOGLU, P.ENG., a member of the Association of Professional Engineers of Ontario.

This matter was presented for hearing before a panel of the Discipline Committee on February 17, 2009, at the Association of Professional Engineers of Ontario in Toronto.

The association was represented by Neil J. Perrier of Perrier Law Professional Corporation. Serdar Kalaycioglu, P.Eng., was not present and was unrepresented. David P. Jacobs acted as independent legal counsel.

THE ALLEGATIONS

The allegations against Serdar Kalaycioglu, P.Eng. (Kalaycioglu or the member), as stated in the Statement of Allegations dated November 13, 2007, are as follows:

1. Kalaycioglu was, at all times material to these allegations, a member of the Association of Professional Engineers of Ontario.
2. On April 30, 2004, Kalaycioglu was found guilty and convicted of 11 counts of wire fraud and one count of conspiracy to commit wire fraud by the United States district court in the southern district of the state of Florida.
3. Kalaycioglu was sentenced to 324 months of imprisonment plus an order to pay \$6,722,592.29 in restitution. Kalaycioglu appealed the conviction and sentence.
4. On December 11, 2006, the United States Court of Appeals for the Eleventh Circuit substantially affirmed the conviction and sentence of Kalaycioglu.
5. On April 17, 2007, Kalaycioglu filed a petition for a writ of certiorari in the United States Supreme Court.
6. On October 1, 2007, the United States Supreme Court denied Kalaycioglu's petition for a writ of certiorari.
7. From approximately May 2000 until September 2001, Kalaycioglu represented himself as a licensed "trader" for the United States Federal Reserve engaged in the trading of bank instruments and notes between international banks. Kalaycioglu claimed that trading programs sanctioned by the United States Federal Reserve, called "high-yield investment programs," existed and that these programs could yield investors extraordinarily high rates of return. Kalaycioglu persuaded investors in the United States and Canada to place money into allegedly secure trust accounts in Canada to be used for later investment.
8. During the same time period, Kalaycioglu became the CEO of Meridian Investment Bank in Grenada. He convinced members of the public to deposit their money in the bank, saying he would invest the cash in high-yield products. The Grenada government shut down the Meridian Bank in mid-2001.
9. In or about 2001, during the course of an FBI investigation code-named "Bermuda Short," Kalaycioglu offered a \$10-million undisclosed kickback to FBI undercover agents posing as representatives of a fictitious investment fund in return for the fund investing in \$40-million-worth of deposit certificates issued by Meridian Bank.
10. On June 25, 2002, the US federal grand jury returned an indictment charging Kalaycioglu with one count of conspiracy to commit wire fraud and 11 counts of wire fraud.
11. On April 26, 2004, following a trial in Florida, Kalaycioglu was found guilty on all charges and was sentenced to 324 months of imprisonment and ordered to pay \$6,722,592.29 in restitution.

12. It is alleged that Kalaycioglu:
 - (a) was convicted in the United States of America of 11 counts of wire fraud and one count of conspiracy to engage in wire fraud;
 - (b) engaged in the criminal act of wire fraud in Canada and the United States;
 - (c) falsely represented himself as a trader for the United States Federal Reserve for the purpose of defrauding investors of more than \$20 million;
 - (d) attempted to bribe FBI undercover agents;
 - (e) was convicted of an offence relevant to his suitability to practise professional engineering; and
 - (f) acted in a disgraceful, dishonourable and/or unprofessional manner.

13. It is alleged that Kalaycioglu is guilty of professional misconduct as defined in the *Professional Engineers Act*, R.S.O. 1990, c. P-28, as amended.

14. A member may be found guilty of “professional misconduct,” as defined in section 28(2) of the *Professional Engineers Act*, if:
 - (a) “The member or holder has been found guilty of an offence relevant to his suitability to practise, upon proof of such conviction.”
 - (b) “The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.”

15. The section of Regulation 941 made pursuant to the *Professional Engineers Act* and relevant to this misconduct is:

SECTION 72(2)(J): conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional.

PLEA OF THE MEMBER AND/OR HOLDER

The member was not present.

Kalaycioglu advised PEO by letter dated January 28, 2009 that the undertaking of a determination related to the allegations set out in the Statement of Allegations was premature in light of his current appeal to vacate the conviction.

OVERVIEW

The hearing arose as a result of the conviction of Kalaycioglu on 11 counts of wire fraud and one count of conspiracy to commit wire fraud by the United States district court in the southern district of the state of Florida. As well, the hearing arose from the decision on appeal

from the United States Court of Appeals for the Eleventh Circuit, substantially affirming the conviction and sentence in respect of Kalaycioglu.

The United States Court of Appeals for the Eleventh Circuit identified Kalaycioglu “as a naturalized Canadian citizen, a resident of Canada, and an employee of the Canadian Space Agency. Further, that he has a PhD in engineering, specializing in space robotics and satellite technologies.”

As well, in their reasons, the United States Court of Appeals for the Eleventh Circuit stated that Kalaycioglu “claimed to be engaged in investment trading for the Canadian government and to have a mandate from the United States Federal Reserve and World Bank to invest in certain humanitarian programs. To support his claimed connections, Kalaycioglu often flashed his Canadian Space Agency identification and an American Express card issued to him by the Canadian government.”

EVIDENCE

During the course of this hearing, nine exhibits were received by the panel. All but one of the exhibits were certified copies of US court decisions rendered in respect of criminal charges against Kalaycioglu. The other exhibit related to a document provided by Kalaycioglu requesting that the hearing be delayed until the disposition of the US court’s ruling on his motion to vacate his sentence, but not the conviction.

Bruce Matthews, P.Eng., testified that the legal documents received as exhibits were the actual documents that were received by him in his capacity as manager, complaints and discipline for PEO at the time that the case was under investigation.

In his testimony, Matthews stated that the complaint in this matter came to the attention of PEO as a result of a *National Post* article in which a reference was made to a Canadian engineer found guilty of wire fraud. The assertions in the article were investigated.

Matthews testified that Kalaycioglu was a licensed P.Eng. at all times during the conduct for which he was convicted.

Matthews provided evidence that Kalaycioglu had allowed his licence to lapse in 2006.

DECISION

Having considered the evidence, which the panel finds to be abundantly clear, cogent and convincing, and the onus and standard of proof, the panel finds that Kalaycioglu committed an act of professional misconduct as alleged in paragraphs 13 and 14 of the Statement of Allegations. In particular, the panel found that Kalaycioglu is guilty of professional misconduct as defined in section 28(2) of the

Professional Engineers Act and section 72(2)(j) of Regulation 941 made under the *Professional Engineers Act*.

REASONS FOR DECISION

The panel accepted the proof of conviction provided from the United States district court as evidence that the member was found guilty of an offence relevant to his suitability to practise. Further, the panel considered the evidence and found that the member was guilty of professional misconduct as defined in the regulation.

The panel accepted that the conduct of Kalaycioglu, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional based on the following evidence:

Kalaycioglu:

- was, at all material times, a member of the Association of Professional Engineers of Ontario;
- was an employee of the Canadian Space Agency;
- holds a PhD in engineering, specializing in space robotics and satellite technologies;
- utilized his Canadian Space Agency credentials to support fraudulent claimed connections that he was approved and licensed by the United States Federal Reserve to engage in the trading of bank instruments that yielded a very high rate of return; and
- was found guilty of 11 counts of wire fraud and one count of conspiracy to commit wire fraud and sentenced to incarceration for 324 months.

PENALTY DECISION

The panel makes the following order as to penalty.

The panel finds as appropriate the penalty of revocation of the member's licence and, further, for the protection of the public, this order has immediate effect pursuant to section 29(2) of the *Professional Engineers Act*.

Pursuant to section 28(5) of the *Professional Engineers Act*, the panel directs that the findings of these proceedings be published with names.

REASONS FOR PENALTY DECISION

The reasons for the penalty decision are substantially the same as those for the reasons for decision in respect of the findings discussed above. The panel ordered that the penalty, including revocation, take immediate effect to ensure the protection of the public given the gravity of the offence. The panel reasoned that this will prevent administrative reinstatement of Kalaycioglu's licence under section 51.1 of Regulation 941, if there was a stay during an appeal of this decision.

The written Decision and Reasons were signed by Bruce Clarida, P.Eng., on March 18, 2009, as chair on behalf of

the other members of the discipline panel: Diane Freeman, P.Eng., Aubrey Friedman, P.Eng., Jim Lucey, P.Eng., and Rakesh Shreewastav, P.Eng.

DISCIPLINE HEARING SCHEDULE

This schedule is subject to change without public notice. For further information, contact PEO at 416-224-1100; toll free 800-339-3716.

Any person wishing to attend a hearing should contact the tribunal office at extension 1083.

All hearings commence at 9:30 a.m.

Note: These are allegations only. It is PEO's burden to prove these allegations during the discipline hearing. No adverse inference regarding the status, qualifications or character of the licence or Certificate of Authorization holder should be made based on the allegations listed herein.

AUGUST 10, 2009

THOMAS A. ETCHES, P.ENG., and T.A. ETCHES ENGINEERING LTD.

It is alleged that Etches is incompetent as defined in section 28(3)(a) of the *Professional Engineers Act* and is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

AUGUST 12, 2009

SULI BRAUNSHTEIN, P.ENG.

It is alleged that Braunshtein is incompetent as defined in section 28(3)(a) of the *Professional Engineers Act* and is guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

SEPTEMBER 21, 2009

JENNIFER B. GORRELL, P.ENG., and GORRELL RESOURCE INVESTIGATIONS

It is alleged that Gorrell and Gorrell, carrying on business as Gorrell Resource Investigations, are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

OCTOBER 5, 2009

NELSON VIEIRA COUTO, P.ENG., and NELSON VIEIRA COUTO, P.ENG. o/a INGCON CONSULTANTS

It is alleged that Couto is guilty of breaching the Code of Ethics and/or professional misconduct as defined in the *Professional Engineers Act*.

OCTOBER 19-20, 2009

NORMAN DONALD GARBUTT, P.ENG., and GARBUTT ENGINEERING LTD.

It is alleged that Garbutt is incompetent as defined in section 28(3)(a) of the *Professional Engineers Act* and that Garbutt and Garbutt Engineering Ltd. are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.