

**THE CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
and
THE CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO**

***CHARTERED ACCOUNTANTS ACT, 2010
CERTIFIED MANAGEMENT ACCOUNTANTS ACT, 2010***

TO: DAVID T. HO, (Suspended)

AND TO: The Discipline Committee of CPA Ontario
AND TO: The Discipline Committee of CMA Ontario

The Professional Conduct Committees of CPA Ontario and CMA Ontario hereby make the following Allegation against David T. Ho, a suspended member of CPA Ontario and CMA Ontario:

1. THAT the said David T. Ho, in or about the period October 25, 2016 to November 30, 2016, failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.2(a) of the CPA Code of Professional Conduct, in that he failed to promptly reply in writing to communications from CPA Ontario to which a written reply is specifically required, namely letters dated October 4 and October 26, 2016, from Ms. Theresa Tonelli, CPA, CA, Director of Standards Enforcement at CPA Ontario.

Dated at Toronto, this 8th day of February, 2017.



**P.P. FARKAS, CPA, CA, CBV, CIRP, DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE**

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

DISCIPLINE COMMITTEE

IN THE MATTER OF: An allegation against **DAVID T. HO**, a suspended member, under **Rule 104.2(a)** of the CPA Code of Professional Conduct of the Chartered Professional Accountants of Ontario.

TO: David T. Ho

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE JULY 6, 2017

DECISION

The Discipline Committee, having determined to proceed with the hearing in the absence of David T. Ho (Mr. Ho), being satisfied that he had proper notice of the hearing, and having seen and considered the evidence, finds:

THAT the allegation has been established;

THAT Rule 104.2(a) has been breached; and

THAT Mr. Ho has thereby committed professional misconduct.

IT IS ORDERED in respect of the Allegation:

1. THAT Mr. Ho be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Ho be and he is hereby fined the sum of \$3,500, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within three (3) months from the date this Decision and Order is made.
3. THAT Mr. Ho be and he is hereby required to cooperate with the Professional Conduct Committee by responding to the letters dated October 4, 2016 and October 26, 2016 from the Director of Standards Enforcement within twenty (20) days from the date this Decision and Order is made.
4. THAT notice of this Decision and Order, disclosing Mr. Ho's name, be given in the form and manner determined by the Discipline Committee:
 - a) to all members of CPA Ontario,
 - b) to all provincial bodies,and shall be made available to the public.
5. THAT in the event Mr. Ho fails to comply with the requirements of this Order, he shall be suspended from membership in CPA Ontario until such time as he does comply,

provided that he complies within twenty (20) days from the date of his suspension. In the event he does not comply within the twenty (20) day period, his membership in CPA Ontario shall thereupon be revoked, and notice of the revocation of his membership, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Ho's practice, residence or employment. All costs associated with this publication shall be borne by Mr. Ho and shall be in addition to any other costs ordered by the Committee.

IT IS FURTHER ORDERED:

6. THAT Mr. Ho be and he is hereby charged costs fixed at \$3,500, to be remitted to CPA Ontario within three (3) months from the date this Decision and Order is made.

DATED AT TORONTO THIS 11th DAY OF JULY, 2017
BY ORDER OF THE DISCIPLINE COMMITTEE



DIANE WILLIAMSON
ADJUDICATIVE TRIBUNALS SECRETARY

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

DISCIPLINE COMMITTEE

IN THE MATTER OF: An allegation against **DAVID T. HO**, a suspended member, under **Rule 104.2(a)** of the CPA Code of Professional Conduct of the Chartered Professional Accountants of Ontario.

TO: David T. Ho

AND TO: The Professional Conduct Committee

REASONS
(Decision and Order made July 6, 2017)

1. This tribunal of the Discipline Committee met on July 6, 2017 to hear an allegation of professional misconduct brought by the Professional Conduct Committee (PCC) against David T. Ho, a suspended member.

2. Ms. Melissa Gentili appeared on behalf of the PCC. Mr. Ho was not represented by counsel and did not attend. Ms. Lisa Braverman attended the hearing as counsel to the Discipline Committee.

Proceeding in Mr. Ho's absence

3. Ms. Gentili filed the Chair's Order made April 11, 2017 (Exhibit 1) for substituted service by electronic mail to Mr. Ho's email address of record with CPA Ontario.

4. Ms. Gentili filed the Affidavit of Service of Katya Shtrachman, the Coordinator of Professional Standards (Exhibit 2), who had emailed on April 18, 2017 to Mr. Ho a letter from Ms. Gentili, a copy of the Chair's Order for substituted service, the allegation and outline of procedure at hearings. The confirmation of delivery of the email was received by Ms. Shtrachman on April 18, 2017. The documents were emailed to Mr. Ho's email address of record with CPA Ontario.

5. Ms. Gentili filed the Affidavit of Diane Williamson, the Adjudicative Tribunals Secretary (Exhibit 3), who stated that a letter requesting hearing date availability had been emailed to Mr. Ho on May 29, 2017; a delivery confirmation of the email was received on May 29, 2017. A cover letter and the Notice of Hearing had been emailed to Mr. Ho on June 8, 2017; a delivery confirmation of the email was received on June 8, 2017. Both letters and the Notice of Hearing were emailed to Mr. Ho's email address of record with CPA Ontario.

6. The tribunal determined, in light of the Chair's Order and the affidavits, that Mr. Ho had received proper notice of the hearing and decided to proceed in his absence.

7. The decision of the tribunal was made known at the conclusion of the hearing on July 6, 2017, and the written Decision and Order was sent to the parties on July 11, 2017. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegation, the decision, the order, and the reasons of the tribunal for its decision and order.

Allegation

8. The following allegation was made against Mr. Ho by the Professional Conduct Committee on February 8, 2017:

THAT the said David T. Ho, in or about the period October 25, 2016 to November 30, 2016, failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.2(a) of the CPA Code of Professional Conduct, in that he failed to promptly reply in writing to communications from CPA Ontario to which a written reply is specifically required, namely letters dated October 4 and October 26, 2016, from Ms. Theresa Tonelli, CPA, CA, Director of Standards Enforcement at CPA Ontario.

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9. A denial of the allegation was made on Mr. Ho's behalf.

Submissions of the PCC

10. Ms. Gentili submitted that Mr. Ho, a suspended CPA, CMA member, failed to cooperate with the regulatory process of CPA Ontario. The events leading up to the allegation are outlined in the Affidavit of Theresa M. Tonelli, CPA, CA, Director of Standards Enforcement (Exhibit 4). On February 20, 2014, prior to unification of CPA Ontario and CMA Ontario, CMA Ontario staff received a complaint from a client of Mr. Ho alleging that Mr. Ho failed to file the client's business and personal income taxes for the years 2007 to 2010. The CMA Ontario investigator wrote to Mr. Ho on May 7, June 12 and July 29, 2014; the letters were sent by courier and email to Mr. Ho's mailing and email addresses of record. The May 7, 2014 letter was delivered and signed for by "David Ho". The June 12 letter was delivered and signed for by "David" and the July 29 letter was returned "unclaimed". No response from Mr. Ho was contained in the CMA Ontario file.

11. Upon unification, CPA Ontario took carriage of the matter and Ms. Tonelli wrote to Mr. Ho on October 4, 2016 regarding the client complaint, advising that the PCC was now investigating the matter, and requiring a written reply by October 25, 2016. Mr. Ho was cautioned that failure to respond could result in allegations of professional misconduct. The letter sent by regular mail was not returned by Canada Post and the copy sent by registered mail was returned "unclaimed".

12. Mr. Ho did not respond and Ms. Tonelli wrote to him on October 26, 2016 by registered mail and email, requiring a written reply by November 9, 2016 and cautioning him that failure to respond could result in allegations of professional misconduct being made against him. A delivery confirmation was received for the email and the registered letter was returned "unclaimed" by Canada Post.

13. No response was received from Mr. Ho to correspondence dated October 4, 2016 and October 26, 2016. Correspondence was directed to Mr. Ho's mailing address and email address of record with CPA Ontario. Mr. Ho's membership has been under suspension by the Registrar since February 2016 for failure to provide Continuing Professional Development (CPD) information.

14. In her closing argument, Ms. Gentili submitted that the evidence is clear, cogent and convincing that Mr. Ho failed to cooperate with the regulatory process, contrary to Rule 104.2(a). Despite attempts to contact him concerning the complaint on two separate occasions, Mr. Ho had not responded to the letters. Mr. Ho may have moved but under Bylaw 4.10, members are under an obligation to provide CPA Ontario with updates or changes to contact information. Mr. Ho's conduct, by not responding to the letters, is contrary to Rule 104.2(a) of the CPA Code of Professional Conduct and he should be found guilty of the allegation of

professional misconduct.

The Decision

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

DECISION

The Discipline Committee, having determined to proceed with the hearing in the absence of David T. Ho (Mr. Ho), being satisfied that he had proper notice of the hearing, and having seen and considered the evidence, finds:

THAT the allegation has been established;

THAT Rule 104.2(a) has been breached; and

THAT Mr. Ho has thereby committed professional misconduct.

Reasons for Decision

16. Having seen and considered the evidence provided on behalf of the PCC by Ms. Gentili, the tribunal concluded that the evidence was clear, cogent and convincing to prove the allegation on a balance of probabilities.

17. The evidence demonstrated that Mr. Ho failed to respond in writing to letters dated October 4, 2016 and October 26, 2016 from Ms. Tonelli, Director of Standards Enforcement at CPA Ontario, both of which required a written reply from Mr. Ho, contrary to Rule 104.2(a) of the CPA Code of Professional Conduct. The tribunal concluded that Mr. Ho's conduct as set out in the allegation constituted professional misconduct.

Sanction

18. Ms. Gentili, on behalf of the PCC, filed the Affidavit of Attempted Service of Mervyn Archdall, process server (Exhibit 5). Mr. Archdall had attempted to serve documents on Mr. Ho from the PCC in February 2017, including a covering letter, the allegation and outline of procedure at hearings. Mr. Archdall attempted service at Mr. Ho's home and business addresses of record. Mr. Archdall learned through subsequent attendances that the home and business locations have been sold to new owners.

19. Mr. Archdall attempted to reach Mr. Ho by calling the home and cell phone numbers of record. The home phone message advised that the number could not receive incoming calls. Mr. Archdall left messages on the cell phone which identified David Ho in the voice message as the owner of that cell phone number. No response to Mr. Archdall's messages has been received.

20. Mr. Archdall successfully sent email messages to Mr. Ho, on three different dates, asking him to contact Mr. Archdall regarding service of documents from CPA Ontario but no response has been received.

21. Ms. Gentili submitted that an appropriate sanction in this matter would be: a written reprimand from the Chair of the tribunal; a fine in the amount of \$3,500; the usual order with respect to publicity and an order that Mr. Ho cooperate by responding to Ms. Tonelli's letters within 20 days; followed by suspension of membership for an additional 20 days and then revocation if Mr. Ho does not cooperate including newspaper publicity. The PCC also sought an order for approximately two-thirds of the costs incurred.

22. The aggravating factors, Ms. Gentili stated, include the fact that the investigator for CMA Ontario had written to Mr. Ho on three occasions with no response, and subsequent attempts by Ms. Tonelli to receive a response from Mr. Ho to the complaint by writing to Mr. Ho on two occasions had elicited no reply. Mr. Ho did not respond to the CMA Ontario investigator or Ms. Tonelli. Mr. Archdall had attempted unsuccessfully to serve documents personally on Mr. Ho at his home and business addresses, and to make contact with Mr. Ho by email and home and cell phone numbers at contact information on record with CPA Ontario. Mr. Ho had failed to update his contact information with CPA Ontario as required under the bylaws. Mr. Ho's conduct has wasted the time and resources of CPA Ontario staff and the PCC, and despite repeated efforts to contact him, the investigation of the original complaint is no further ahead and the PCC's ability to carry out its mandate to inquire into all complaints has been impeded.

23. Ms. Gentili submitted that a mitigating factor is that Mr. Ho has never been before the Discipline Committee of CMA Ontario or CPA Ontario.

24. Ms. Gentili submitted that the sanctions requested will address general and specific deterrence, as well as rehabilitation. Mr. Ho's membership is already under suspension by the Registrar for failing to provide CPD information. Mr. Ho's conduct casts doubt on his governability.

25. Ms. Gentili stated that a reprimand is intended to highlight the seriousness of the professional misconduct and to deter Mr. Ho. The fine proposed is within the range of the amount ordered in similar cases, and would act as a specific and general deterrent to like-minded members. Publication acts as an effective general and specific deterrent.

26. Ms. Gentili stated that Mr. Ho should be given one more chance to cooperate and show his willingness to be governed; his response would enable the PCC to fulfill its mandate to investigate the complaint. The order to cooperate addresses rehabilitation.

27. Ms. Gentili submitted that only rare and unusual circumstances would justify a member's name not being published, which is not the case here as there are no rare and unusual circumstances.

28. Ms. Gentili distributed a Case Brief containing the cases of *Gunn*, *Titus*, *Cooper* and *Zhu*, cases involving failure to respond to correspondence of CPA Ontario, contrary to Rule 104.2(a).

29. Ms. Gentili filed a Costs Outline (Exhibit 6) showing the costs to be about \$6,550, of which the PCC was seeking partial indemnity costs of \$4,300, approximately two-thirds. The outline provides a breakdown of the costs incurred, noting that an investigator had not been appointed and therefore the investigation costs were zero. Ms. Gentili stated that the costs were calculated on the basis that a full day had been set aside for this hearing which will finish sooner and therefore she suggested that the costs ordered by the tribunal could be reduced. Ms. Gentili stated that costs are considered an indemnification, not a penalty.

Order

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

IT IS ORDERED in respect of the Allegation:

1. THAT Mr. Ho be reprimanded in writing by the Chair of the hearing.

2. THAT Mr. Ho be and he is hereby fined the sum of \$3,500, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within three (3) months from the date this Decision and Order is made.
3. THAT Mr. Ho be and he is hereby required to cooperate with the Professional Conduct Committee by responding to the letters dated October 4, 2016 and October 26, 2016 from the Director of Standards Enforcement within twenty (20) days from the date this Decision and Order is made.
4. THAT notice of this Decision and Order, disclosing Mr. Ho's name, be given in the form and manner determined by the Discipline Committee:
 - a) to all members of CPA Ontario,
 - b) to all provincial bodies,
 and shall be made available to the public.
5. THAT in the event Mr. Ho fails to comply with the requirements of this Order, he shall be suspended from membership in CPA Ontario until such time as he does comply, provided that he complies within twenty (20) days from the date of his suspension. In the event he does not comply within the twenty (20) day period, his membership in CPA Ontario shall thereupon be revoked, and notice of the revocation of his membership, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Ho's practice, residence or employment. All costs associated with this publication shall be borne by Mr. Ho and shall be in addition to any other costs ordered by the Committee.

IT IS FURTHER ORDERED:

6. THAT Mr. Ho be and he is hereby charged costs fixed at \$3,500, to be remitted to CPA Ontario within three (3) months from the date this Decision and Order is made.

Reasons for Sanctions

31. The written reprimand is a way to convey the seriousness of Mr. Ho's conduct and will help motivate the member towards rehabilitation.

32. Mr. Ho was given two opportunities to respond to letters from CPA Ontario but he did not do so. The order providing Mr. Ho with an additional opportunity to comply by responding to the letters within 20 days gives him an opportunity to meet his professional obligation to respond before suspension, and if he still does not comply his membership will be revoked.

33. The fine of \$3,500 is considered to be appropriate given the seriousness of Mr. Ho's conduct, in keeping with the amount of the fine ordered in similar cases (*Gunn, Titus, Cooper and Zhu*) and provides specific and general deterrence.

34. Publication is an important element in achieving specific and general deterrence.

Costs

35. The tribunal determined that the costs set out in the Costs Outline, adjusted to reflect the reduced hearing time, represented a reasonable amount of costs. The tribunal concluded that it was appropriate and reasonable to order Mr. Ho to pay costs of \$3,500.

DATED AT TORONTO THIS 15TH DAY OF SEPTEMBER, 2017
BY ORDER OF THE DISCIPLINE COMMITTEE



J.A. CULLEMORE, FCPA, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

T.M. GALVIN, CPA, CA, CMA

S.R. LOWE, CPA, CA

C. KENWELL (PUBLIC REPRESENTATIVE)