

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** An Allegation against **ALAN GUTMAN, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rule 104.2(a)** of the CPA Ontario Code of Professional Conduct.

**BETWEEN:**

**Chartered Professional Accountants of Ontario  
Professional Conduct Committee**

**-and-**

**Alan Gutman**

**APPEARANCES:**

**For the Professional Conduct Committee:** Julia McNabb, Counsel

**For Mr. Gutman:** Jonathan Solomon

Heard: October 29, 2021

Decision and Order effective: October 29, 2021

Release of written reasons: December 13, 2021

**REASONS FOR THE DECISION AND ORDER MADE October 29, 2021**

**I. OVERVIEW**

[1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario (“PCC”) has alleged that between March 12, 2021 and June 2, 2021, Mr. Gutman failed to cooperate with the regulatory process of the Chartered Professional Accountants of Ontario (“CPA Ontario”) by failing to promptly reply in writing to communications from the Standards Enforcement department of CPA Ontario (“Standards Enforcement”) to which a written reply was specifically required. This hearing was held to determine whether the Allegation was

established and, if so, whether the conduct breached Rule 104.2(a) of the CPA Ontario Code of Professional Conduct and amounted to professional misconduct.

- [2] Mr. Gutman obtained his CPA designation in 1982.
- [3] On February 1, 2021, Standards Enforcement received a complaint about Mr. Gutman from the Director of Practice Direction Inspection on behalf of the Practice Inspection Committee (“the complainant”). Mr. Gutman did not respond to letters sent to him by a Standards Enforcement officer by regular mail, registered mail, service through a process server and email to an address provided by Mr. Gutman to CPA Ontario.
- [4] The onus was on the PCC to demonstrate on a balance of probabilities that Mr. Gutman’s conduct breached Rule 104.2(a) of the CPA Ontario Code of Professional Conduct and constituted professional misconduct.
- [5] Mr. Gutman admitted the Allegation.

## **II. PRELIMINARY ISSUES**

- [6] Both parties agreed that there were no preliminary issues.

## **III. ISSUES AT THE HEARING**

- [7] The issues for this panel to address were the following:
  - a) Did the evidence establish, on a balance of probabilities, the facts on which the Allegation alleged by PCC was based?
  - b) If the Allegation made by the PCC was established on a balance of probabilities, did it constitute professional misconduct?

## **IV. DECISION**

- [8] The panel was satisfied that the evidence established, on a balance of probabilities, the facts set out in the Allegation of professional misconduct.
- [9] The panel was satisfied that the Allegation constituted a violation of section 104.2(a) and, having breached this Rule, Mr. Gutman had committed professional misconduct.

## V. REASONS FOR THE DECISION

- [10] The evidence in support of the Allegation was placed before the Panel through the affidavit of Andrea Figueira Fadel, a Standards Enforcement Officer with CPA Ontario (Exhibit 1). Supporting documentation to this affidavit was provided through the affidavit of Matthew Kelly (Exhibit 2), the affidavit of Megan O’Leary, sworn July 15, 2021 (Exhibit 3), the supplemental affidavit of Megan O’Leary, sworn July 29, 2021 (Exhibit 4) and the affidavit of Megan O’Leary, sworn September 27, 2021 (Exhibit 5). This evidence was uncontested by Mr. Gutman.
- [11] Ms. Fadel wrote to Mr. Gutman on February 17, 2021 (the “February letter”) to advise him that CPA Ontario had received a complaint from the Practice Inspection Committee. The letter contained a summary of significant deficiencies that had been identified by the complainant to be answered by March 10, 2021, and indicated that failure to respond may result in an allegation of professional misconduct. The letter provided Ms. Fadel’s contact information and asked that Mr. Gutman contact her if he had any questions or concerns. This letter was sent by FileCloud, a secure file sharing program used by Standards Enforcement to correspond and share documents with members of CPA Ontario. A covering email was also sent to Mr. Gutman’s preferred email address on record with CPA Ontario. Mr. Gutman did not respond to this letter.
- [12] On March 15, 2021, Jonathan Chan, a Standards Enforcement Coordinator, called Mr. Gutman at his mobile telephone number on record with CPA Ontario and left a voicemail following up on the February letter. Mr. Gutman did not respond to this message.
- [13] Ms. Fadel wrote a second letter to Mr. Gutman on March 18, 2021, enclosing the original request for information and requiring that Mr. Gutman respond by April 8, 2021. In addition, this second letter set out the provisions of Rule 104 (the requirement to co-operate). The letter provided Ms. Fadel’s contact information and asked that Mr. Gutman contact her if he had any questions or concerns. This letter was sent by FileCloud and a covering email was sent to Mr. Gutman by email. Mr. Gutman did not respond to this letter.
- [14] On April 15, 2021, Mr. Chan called Mr. Gutman and left another voicemail advising him to email Standards Enforcement as soon as possible to advise of his intentions and whether Mr. Gutman had any issues accessing FileCloud. Mr. Gutman did not respond to this message.

- [15] On April 28, 2021, Mr. Chan called Mr. Gutman at the business number on record with CPA Ontario and was told by the receptionist that Mr. Gutman no longer worked there. Mr. Chan then called Mr. Gutman on his mobile number and left a voicemail advising Mr. Gutman to email Standards Enforcement as soon as possible to advise of his intentions and to advise whether he was having any issues accessing FileCloud. Mr. Gutman did not respond to this message.
- [16] On June 12, 2021, the PCC made an Allegation of professional misconduct against Mr. Gutman for his failure to co-operate. Personal service of the Allegation was attempted at Mr. Gutman's home on June 17, 18, 19, 22, and 23. However, the process server was unable to personally serve Mr. Gutman.
- [17] On June 29, 2021, counsel for the PCC attempted to send another letter to Mr. Gutman advising him to contact the process server in order to obtain private and confidential documents from CPA Ontario. Attempts to personally serve Mr. Gutman with this letter were again unsuccessful. On June 30, 2021, following these unsuccessful attempts at personal service, the process server left the letter from PCC in a bin marked "For Alan Gutman CA/CPA Drop OFF" which was located at the front door of Mr. Gutman's home. Mr. Gutman did not respond to this letter.
- [18] On July 22, 2021, the PCC obtained an order of substituted service. PCC sent this order via regular mail and email to Mr. Gutman on July 28, 2021.
- [19] On July 29, 2021, PCC sent an email to Mr. Gutman enclosing the Allegation of professional misconduct. That same day, PCC sent an email to the Tribunals Office, copied to Mr. Gutman, attaching the Allegation and order of substituted service. Mr. Gutman did not respond to these emails.
- [20] On August 4, 2021, the Tribunals Office sent an email to Mr. Gutman acknowledging receipt of the Allegation of professional misconduct and requesting that Mr. Gutman provide his availability for a hearing by August 30, 2021. Further, that a hearing date may be set in his absence should he fail to respond. Mr. Gutman did not respond to this email.
- [21] On September 1, 2021, the Tribunals Office sent an email to counsel for PCC and Mr. Gutman to hold September 21-23 for a hearing. The Tribunals office requested that Mr. Gutman provide his availability for a hearing by September 3, 2021, and that a hearing would be set in his absence if he did not respond. Mr. Gutman did not respond to this email.

- [22] On September 15, 2021, the Tribunals office sent an email to PCC counsel and Mr. Gutman attaching a Notice of Hearing for September 22, 2021.
- [23] As of September 19, 2021, the Investigations and Prosecutions department of CPA Ontario had not received any communication from Mr. Gutman.
- [24] On September 20, 2021, counsel for Mr. Gutman sent an email to PCC counsel and the Tribunals Office advising that he had been retained and requesting an adjournment of the hearing scheduled for September 22, 2021. PCC counsel did not oppose the request for an adjournment. On September 21, 2021, the Tribunals Office granted the adjournment pursuant to Rule 14.02.
- [25] The panel was advised that on October 26, 2021, Mr. Gutman provided a response to the letters written by Standards Enforcement with respect to the concerns expressed in its complaint of February 1, 2021.
- [26] Through his counsel, Mr. Gutman admitted the Allegation. Although counsel referenced the fact that Mr. Gutman had limited technological abilities, he acknowledged that Mr. Gutman had, in fact, received all the correspondence and messages from CPA Ontario.

***Finding of Professional Misconduct***

- [27] Mr. Gutman admitted that these facts constitute professional misconduct in relation to the allegation of failing to comply with Rule 104.2(a) of the Code of Professional Conduct.
- [28] The Panel was satisfied that the evidence constituted clear, cogent and convincing evidence that Mr. Gutman's failure to respond to the February and March letters from CPA Ontario constituted a failure to cooperate with the regulatory process of CPA Ontario and was a breach of Rule 104.2(a) of the Code.

**VI. DECISION AS TO SANCTION**

- [29] After considering the evidence, the law and the submissions of the parties the panel concluded the appropriate sanction was a written reprimand, a \$5,000 fine payable by April 29, 2022, and an order as to publication of the decision to all members of CPA Ontario in a manner available to members of the public.
- [30] In the event that Mr. Gutman fails to comply with the Order, the Panel ordered that his membership be suspended until such time as he does comply, provided that

he complies within 30 days of the date of the suspension, failing which Mr. Gutman's membership would be revoked.

- [31] The Panel also ordered that in the event that Mr. Gutman's membership is revoked, the fact of the revocation would be published in a newspaper in the geographic region of Mr. Gutman's residence or employment. All costs associated with this publication shall be borne by Mr. Gutman and shall be in addition to any other costs ordered by the Panel.

## **VII. REASONS FOR DECISION AS TO SANCTION**

### ***The Member's Background***

- [32] Mr. Gutman is 68 years old and has been a member of CPA Ontario for 40 years.
- [33] A note that had been prepared by Mr. Gutman's treating psychiatrist in August 2020 (Exhibit 8) indicates that Mr. Gutman suffers from anxiety and that he "is unwell so he cannot fulfill his obligations to the College in a timely manner." Although not referenced in the note, his counsel indicated that Mr. Gutman also suffers from ADHD and PTSD.
- [34] Mr. Gutman has no prior discipline history. However, he had received a prior instance of guidance (Exhibit 6).

### ***Position of the Parties***

- [35] The parties essentially presented a joint submission in that they agreed that the appropriate sanction should include:
- a. A written reprimand by the Chair of the Panel;
  - b. A fine;
  - c. Notice of this Decision and Order is to be given to all members of CPA Ontario, all Provincial bodies and shall be made available to the public;
  - d. If Mr. Gutman fails to comply with the Order, that his membership be suspended until such time as he does comply, provided that he complies within 30 days of the date of the suspension, failing which Mr. Gutman's membership would be revoked.
  - e. Costs in the amount of \$3,300.00

- [36] The only issue of dispute was the quantum of the fine to be imposed. Counsel for PCC submitted that there was no reason to deviate from the typical fines that have recently been imposed for a non-cooperation prosecution, namely \$5,000. In doing so, it was submitted that there were a number of aggravating factors. In particular, that CPA Ontario's time and resources were wasted by Mr. Gutman's failure to cooperate, including those related to the necessity of having to prepare for a hearing. The PCC argued that the only mitigating factor was the absence of any disciplinary history on the part of Mr. Gutman. The PCC emphasized that a message needed to be sent to Mr. Gutman and the profession that members must co-operate and that they cannot simply shirk their responsibilities to their regulator while simultaneously enjoying the benefits of the CPA designation.
- [37] Mr. Gutman argued that a fine of \$3,500 was more appropriate and achieved the necessary principles of sanction. In doing so, he submitted that there were mitigating factors that justified going below the recently imposed fines, including that Mr. Gutman had no prior discipline history, that he suffered from anxiety and PTSD and the fact that Mr. Gutman had limited technological abilities that impacted his ability to co-operate.
- [38] In addition to a lower fine, counsel on behalf of Mr. Gutman suggested that to avoid future issues of non-compliance, the Panel should order, or at least recommend, that Mr. Gutman not be subject to the CPA Ontario FileCloud system and that Standards Enforcement communicate with him through an alternate means.

### ***Decision of the Panel***

- [39] A determination of the appropriate sanction requires that the Panel consider all principles of sanction articulated in the *Chartered Professional Accountants of Ontario Sanction Guidelines*, including general and specific deterrence and rehabilitation. In applying these principles, the Panel concluded that there was no reason to deviate from the standard \$5,000 fine that has recently been imposed as a sanction for failure to cooperate. This fine and the other jointly proposed sanctions were necessary to protect members of the public, promote public confidence in the profession, deter other members from engaging in misconduct and to maintain the public's confidence in the profession.
- [40] In the Panel's view, there were a number of aggravating factors that justified the penalty imposed. These include the length of the unresponsiveness. Not only did Mr. Gutman fail to respond to the letters in February and March, the evidence revealed that he continued to be unresponsive to the many attempts by CPA Ontario to communicate until he decided to retain counsel in late September 2021. The lack of response carried on over a period of almost eight months and reflects a lack of respect and an indifference to his regulating body. Further, the delay has

a real and tangible impact on the ability of CPA Ontario to investigate matters. This impacts the integrity of the investigating process and negatively affects public perception of CPA Ontario's ability to effectively regulate its members

- [41] Mr. Gutman provided no explanation for his failure to respond. Although counsel submitted that his lack of response was a result of Mr. Gutman's difficulties with technology, this claim is not supported by the evidence. Indeed, the admitted facts revealed that his lack of response was not limited to material that had been sent to him through FileCloud or through email. He failed to respond when he received hard copy correspondence delivered to his home or when he received telephone voicemail messages. Mr. Gutman's prolonged unresponsiveness to more traditional forms of communication undermines the suggestion that technology played a role in his failure to cooperate. In the Panel's view, there was no compelling evidence or information presented that suggested that technology played any factor in this matter or that it should be considered a mitigating factor.
- [42] The panel is sensitive to the fact that members like Mr. Gutman may have difficulty using cloud sharing software or with newer forms of technology. However, members cannot simply ignore the communications they receive through these different platforms. Rather, in order to seek accommodation, it is incumbent on those members to respond in some way and to communicate difficulties they are experiencing to CPA Ontario. Not only did Mr. Gutman fail to ever seek any accommodation or provide any evidence of his specific challenges, but he also ignored numerous telephone inquiries that CPA Ontario made to assess whether Mr. Gutman was having difficulties.
- [43] Counsel for Mr. Gutman seemed to be suggesting that Mr. Gutman had medical issues that impacted his ability to cooperate. While the Panel is very sympathetic to Mr. Gutman's health challenges, the note provided (Exhibit 8) pre-dated any of Mr. Gutman's conduct in this case. More importantly, no evidence was tendered to suggest that Mr. Gutman had been suffering from these hardships at the time he failed to respond to the letters from CPA Ontario or that these conditions impacted his ability to respond.
- [44] The fine and written reprimand convey to Mr. Gutman the seriousness of his conduct and will help him to consider the steps he must take to rehabilitate his conduct. They will also impress upon Mr. Gutman the importance of responding to correspondence from CPA Ontario and of the need to cooperate in a timely manner. Further, the fine and reprimand will send a message to the profession as a whole that failing to respond to communications from CPA Ontario will be taken seriously.

- [45] Publication of the decision and order serves an important role in achieving specific and general deterrence. This action informs members of the profession that there are consequences when they violate the Code of Conduct.
- [46] With respect to the request that Standards Enforcement communicate with Mr. Gutman through an alternate means, the Panel concluded that it did not have the jurisdiction to dictate to CPA Ontario the methods of communication they should use when communicating with a member. Further, even if there was jurisdiction to make such an order, Mr. Gutman failed to provide a proper evidentiary record to allow the Panel to make a determination on this issue.

### **VIII. COSTS**

- [47] The law is quite clear that an order for costs with respect to the disciplinary proceeding is not a penalty. Costs are intended to indemnify the PCC based on the principle that the profession as a whole should not bear all of the costs of the investigation, prosecution and hearing arising from the member's misconduct.
- [48] The PCC and counsel for Mr. Gutman agreed that Panel should award two thirds of the costs incurred in the prosecution of the matter, as reflected in the Costs outline filed as Exhibit 7. The total costs set out in Exhibit 7 was \$5,982.46. However, the parties agreed to adjust the costs further for the length of the hearing such that the total costs should be \$3,300.00.
- [49] The Panel orders that Mr. Gutman pay costs in the amount of \$3,300 to CPA Ontario by April 29, 2022.

### **Decision of Panel**

- [50] After considering the submissions of counsel and the material filed, the panel ordered that Mr. Gutman be sanctioned as follows:
- f. That a written reprimand be issued by the Chair of the Panel;
  - g. A fine in the amount of \$5,000;
  - h. Notice of this Decision and Order is to be given to all members of CPA Ontario, all Provincial bodies and shall be made available to the public;

- i. In the event that he fails to comply with the terms of this Order, Mr. Gutman's membership in CPA Ontario shall be suspended until such time as he does comply, provided that he complies within 30 days of the date of his suspension. In the event he does not comply within the 30day period, his membership in CPA Ontario shall be revoked, and notice of the revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Gutman's residence or employment. All costs associated with this publication shall be borne by Mr. Gutman and shall be in addition to any other costs ordered by the Panel.
  
- j. That Mr. Gutman pay costs of \$3,300.00

Dated this 13<sup>th</sup> day of December, 2021



Andrea Mintz, CPA, CA  
Discipline Committee – Deputy Chair

Members of the Panel

David Handley, Public Representative  
Peter-John Vaillancourt, CPA, CGA

Independent Legal Counsel

Seth Weinstein, Barrister and Solicitor