

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **BENJAMIN CHU, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rule 201.1** of the CPA Ontario Code of Professional Conduct.

BETWEEN:

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

-and-

Benjamin Chu

APPEARANCES:

For the Professional Conduct Committee: Paul Farley, Counsel

For Mr. Chu: Jakub Schnitzler

Heard: January 14, 2022

Decision and Order effective: January 14, 2022

Release of written reasons: February 7, 2022

REASONS FOR THE DECISION AND ORDER MADE January 14, 2022

I. OVERVIEW

1. The Professional Conduct Committee of the Chartered Professional Accountants of Ontario ("PCC") has alleged that Mr. Chu failed to maintain the good reputation of the profession and serve the public interest in that he misappropriated approximately \$20,000 from his employers between April 2016 and November 2019 by filing false expense reports.

2. The hearing proceeded on January 14, 2022, via videoconference, as enabled by the Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020 which grants the

tribunal wide powers to determine the format of the hearing and is paramount to any other legislation or rules containing provisions to the contrary.

3. The Panel received and reviewed the following materials for the hearing:

- Allegations of Professional Misconduct (not marked as an Exhibit)
- Agreed Statement of Facts (“ASF”), Exhibit 1
- Document Brief in support of the ASF, Exhibit 2
- Schedules in Support of Document Brief, Exhibit 3
- Authorities Brief (not marked as an Exhibit)

4. The onus was on the PCC to show on a balance of probabilities that Mr. Chu’s conduct breached the identified Rule and constituted professional misconduct.

5. Mr. Chu signed the ASF and admitted the Allegations of professional misconduct made by the PCC. The Member confirmed these admissions before the Panel.

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 allegations made by the PCC were established on a balance of probabilities, did they constitute professional misconduct?
- c) If the allegations constitute professional misconduct, should the Panel accept the joint submission on penalty proposed by the parties?

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 allegations constituted a violation of Rule 201.1 and having breached this Rule, Mr. Chu committed professional misconduct.

10. The Panel accepted the joint submission on sanction proposed by the parties.

V. REASONS FOR THE DECISION

11. The facts on which the Panel relied were not in dispute. The evidence in support of the allegations was placed before the Panel through an ASF along with a corresponding Document Brief.

12. The ASF clearly sets out several instances over a three-and-a-half-year period where Mr. Chu misappropriated approximately \$20,000 from his employer by submitting improper expense reports for items that were either not purchased or were for his own personal use.

Mr. Chu's Employment Background

13. On April 15, 2013, Mr. Chu joined Company "A" as the Director of Finance and Corporate Controller. Company "A" was in the business of managing investment funds and portfolios through credit unions and independent financial advisors across Canada. Mr. Chu worked in the Toronto office which employed approximately 70 out of 100 staff employed by the company.

14. On March 31, 2018, Company "A" merged with Company "B", a national integrated financial services company with a head office in Vancouver. Following the merger, Mr. Chu became the Director of Finance and Corporate Controller and reported to the Chief Financial Officer of the company. He was the most senior financial person in the Toronto office of Company "B".

15. In his positions with the Companies, Mr. Chu was responsible for overall oversight of the Companies' expense policy. In that role, he was the individual responsible for reviewing and ensuring general compliance with the Companies' expense policies, including reviewing employee expense reports, and posting them into the accounting system.

16. Mr. Chu resigned on November 5, 2019, after the CFO questioned several items on Mr. Chu's expense reports. It is these expense reports that form the basis of the misconduct before the Panel.

The Companies' Expense Policies

17. The Companies' expense policies required that Mr. Chu submit his personal expense reports to his manager for approval. However, there were occasions where Mr. Chu would approve his own expense reports, or he would have his finance team process them without manager approval under the category of "Processed with Discretion".

18. The Companies provided a corporate American Express Card for business travel and entertainment expenses. Employee credit cards were linked to an automated expense reporting system, SAP Concur ("Concur"), such that all transactions incurred on the corporate credit cards were automatically uploaded into the employees' Concur account.

19. According to the Companies' expense policies, employees were required to submit receipts and back-up payment documentation. These receipts had to be uploaded to Concur and the final report needed to be submitted for approval to the employee's direct manager.

20. Once an employee submitted their expense report, it would be sent to their respective managers for their review. Once the respective manager reviewed and approved the report, it was automatically submitted to the finance team for processing. The finance team then downloaded the expense data from Concur and posted the transactions to the accounting system.

21. Within the Concur system, an employee can select the approver for a particular expense report. For example, if the employee's manager was not available, they could designate another manager to approve their expense report. In addition to a list of managers names that appeared on the Concur system, there was an approver called "Accounts Payable" which was managed by Mr. Chu and his finance team.

22. Expense reports submitted where "Accounts Payable" was the approver were reviewed and approved by Mr. Chu or members of his finance team. This was the system that Mr. Chu used to prepare his own expense reports.

Discovery of Improper Expense Reports

23. On October 17, 2019, the CFO of Company "B" was approached by a finance staff person who told him that Mr. Chu had asked another staff person to approve his expense claims. A direct report does not have the authority to approve a superior's expenses. The CFO became concerned and proceeded to obtain records to review Mr. Chu's past expense claims.

24. On October 28, 2019, the CFO asked Mr. Chu to provide supporting receipts for an expense report he had submitted totalling \$9,972.80. Mr. Chu said that he would provide the receipts but failed to do so. Less than a week later, when the CFO followed up on the missing receipts, Mr. Chu resigned from the company. In doing so, he signed an authorization for deduction from his final paycheck with respect to "...\$9,007.80 for expenses paid by the company with respect to charges I made on my corporate credit card". He also agreed to return a \$500 gift card.

The Improper Expense Claims

25. Following Mr. Chu's resignation, the CFO commenced an internal audit of Mr. Chu's expense claims. At the completion of the audit, counsel for Company "B" wrote to Mr. Chu's counsel enclosing a list of 128 items, totalling \$53,866.68, claimed by Mr. Chu between 2013 and 2019 that had been characterized as "highly unusual and likely inappropriate".

26. Mr. Chu agreed to reimburse the Companies \$51,998.31 which related to 116 items on the list. Including the four items initially questioned by the CFO, Mr. Chu repaid a total of \$61,006.71 and returned two gift cards, each in the amount of \$500.

27. The parties agreed that for the purposes of this proceeding, all 116 items expensed were improperly charged and should not have been claimed as expenses by Mr. Chu. The parties further agreed that 29 of the expensed items, totalling \$20,481.53, were misappropriations.

The Misappropriations

28. The misappropriations were grouped into three categories that were set out in Schedules 1, 2 and 3 of the ASF.

Schedule 1 – Duplicate Expense Claims

29. Schedule 1 reflects Mr. Chu's claims for reimbursements for airfare that were either not purchased or were purchased and previously expensed. The total amount of this misappropriation was \$4,137.49.

30. The first airfare was in an expense report where Mr. Chu claimed that he made a cash payment in the amount of \$1333.21 for a flight to Vancouver. In support of this claim Mr. Chu submitted a receipt for an entirely different flight that was booked and paid for using a company credit card. In fact, Mr. Chu did not pay for this flight but had used a flight pass that was previously paid for by Company "B".

31. The second airfare was in an expense report where Mr. Chu claimed that he made a cash payment in the amount of \$1,434.91 for a flight to Vancouver. In support of this claim, Mr. Chu submitted a price summary from Air Canada that did not provide any payment information or evidence that the airfare was paid for in cash as Mr. Chu had represented. In fact, Mr. Chu did not pay for this flight but had used a flight pass that was previously paid for by Company "B".

32. The third airfare was in an expense report where Mr. Chu claimed that he made a cash payment in the amount of \$1369.37 for a flight to Vancouver. In support of this claim, Mr. Chu submitted a price summary from Air Canada that did not provide any details

relating to flight dates, passenger names or payment details. In fact, Mr. Chu did not pay for this flight but had used a flight pass that was previously paid for by Company “B”.

Schedule 2 – Personal Expenses

33. The second group of improper expenses claimed, and which are reflected in Schedule 2, was for 29 personal expenses. These charges related to the purchase of Apple watches, iPads, cellphones, luggage, gift cards, an airplane drone as well as personal air travel expenses. The total amount of this misappropriation was \$14,188.37.

34. Although all the items in Schedule 2 were personal items, Mr. Chu submitted expense reports that falsely claimed the items were for business purposes.

Schedule 3 – Laptop Bags

35. Schedule 3 lists five laptop bags that Mr. Chu purchased using his corporate credit card. Three of the bags were reported on one expense report while the other two were filed separately. The total amount of this misappropriation was \$2,155.67.

36. Mr. Chu inappropriately coded four of the five expenses to ‘general Office Expenses’ and one was coded to “recognition (gifts/awards/incentives)” when, in fact, all of these items were personal to Mr. Chu.

Finding of Professional Misconduct

37. Mr. Chu admitted that his actions as set out in the agreed statement of facts constituted professional misconduct. Having considered all the evidence, and the relevant provisions of the Code of Professional Conduct, the Panel had no difficulty in finding, on a balance of probabilities, that Mr. Chu had engaged in professional misconduct as set out in the ASF.

VI. REASONS FOR DECISION ON SANCTION

Joint Submission on Sanction

38. The PCC and Mr. Chu proposed a joint submission for the Panel’s consideration, including the following:

- (a) That Mr. Chu’s membership with CPA Ontario be revoked.
- (b) A fine in the amount of \$20,000 payable by June 15, 2022.
- (c) A written reprimand.
- (d) The publication of Mr. Chu’s revocation in the Globe and Mail newspaper.

(e) Notice of the terms of the order be given to all members of CPA Ontario on the CPA Ontario website and to all Provincial CPA bodies.

(f) Costs in the amount of \$23,000 payable by June 15, 2022.

39. Having considered all the evidence, the law and the submissions of both parties, the Panel accepted the joint submission on sanction for the reasons set out below.

Principles Applicable to Joint Submissions

40. The Panel recognized that a joint submission was entitled to a high degree of deference. In *Regina v. Anthony-Cook*¹, the Supreme Court of Canada articulated the stringent test to apply to a joint submission on sentencing in a criminal law context. In doing so, the Court emphasized that joint submissions should not be rejected lightly and are to be accepted unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. The Court explained that under this test a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, it is so markedly out of line with the expectation of a responsible person aware of the circumstances of the case such that it would view it as a breakdown in the proper functioning of the criminal justice system:

[A] joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold.

41. The Divisional Court recently confirmed that the high threshold for rejecting a joint submission articulated in *Anthony-Cook* applies to professional discipline. In *Bradley v. Ontario College of Teachers*², the Court held:

Any disciplinary body that rejects a joint submission on penalty must apply the public interest test and must show why the proposed penalty is so “unhinged” from the circumstances of the case that it must be rejected.

The Joint Submission is in the Public Interest

42. In any discipline proceeding, a Panel must consider all principles of sanction including those articulated in the *Chartered Professional Accountants of Ontario Sanction Guidelines*. In applying these principles, the Panel concluded that having regard to the serious misconduct involving a breach of trust, revocation was necessary to protect members of the public, promote public confidence in the profession, deter other members

¹ 2016 SCC 43

² 2021 ONSC 2303

from engaging in misconduct and to maintain the public's confidence in the profession. Indeed, it is the Panel's view that absent significant extenuating or mitigating circumstances, revocation is the only appropriate remedy where, like here, the case involves a misappropriation.

43. The Panel concluded that the multiple breaches of trust Mr. Chu engaged in strike at the integrity of the accounting profession and warrant revocation. Mr. Chu demonstrated a pattern of dishonesty and untrustworthiness that undermines public confidence in the standards of members of CPA Ontario and the effectiveness of the regulatory role of CPA Ontario.

44. Mr. Chu's conduct reflects a lack of integrity, honesty and a total disregard for the accounting profession. Honesty and integrity are the hallmark of the profession. Mr. Chu exhibited neither of these characteristics. Members of the public must be able to trust that their accountants and count on their honesty and competence. They must be able to count on CPA Ontario to firmly discipline any accountant who breaches these most fundamental covenants. As stated in *Re White*:

Any action by a member of the Institute which tarnishes the good reputation of the profession necessarily impairs the profession's ability to serve the public interest, and any action which impairs the profession's ability to serve the public invariably tarnishes the profession's reputation." Having a demonstrably untrustworthy member tarnishes our profession's reputation in the eyes of the public, which in turn hinders the CPA Ontario's ability to govern its members in the public interest. Revocation of membership or deregistration is warranted in this case where the protection of the public interest or reputation of the profession requires that the member be removed from the profession. Revocation or deregistration is the most severe sanction that can be imposed by the Discipline Committee, but the lack of sufficient mitigating factors in this case makes revocation both necessary and appropriate...Misappropriation demonstrates a lack of integrity and is devastating to a profession that exists on its good reputation. It cannot be countenanced by that profession, or by the public the profession serves. Therefore, except in the most rare and exceptional of circumstances, a member who misappropriates must be expelled.

45. There were several aggravating factors that overlapped with one another. The admitted misconduct in this case was extremely serious and pervasive. It involved 39 fraudulent transactions over a three-and-a-half-year period where Mr. Chu exploited his positions with the company for his own benefit. He engaged in a severe breach of trust that was motivated by greed and a desire to fund a more extravagant lifestyle. He acted dishonestly and took advantage of his positions within the company, putting his own interests ahead of that of his employer.

46. In the Panel's view, Mr. Chu's misconduct reflected a completed lack of integrity. He engaged in intentional, prolonged pattern of deceitful conduct that amounted

to the highest level of impropriety and moral turpitude. He had a duty of loyalty towards his employer. He violated that trust and exposed their interests to risk in the process. The misappropriation of funds from an employer and the other examples of dishonesty requires both specific and general deterrence. The Panel must send a strong message that it does not tolerate this type of misconduct.

47. It is also an aggravating consideration that Mr. Chu's misconduct only ended once the CFO confronted Mr. Chu and began making inquiries that ultimately led to an investigation.

48. In the Panel's view, revocation of Mr. Chu's membership was of primary importance as a deterrent to other members considering similar conduct. A substantial penalty was warranted having regard to the dishonesty that pervaded Mr. Chu's actions. Specific and general deterrence are fully served by loss of licence. Public confidence in the profession is maintained by the loss of licence of those who engage in dishonest behaviour.

49. In addition to revocation, the Panel concluded that the fine had to be substantial so that it reflected the seriousness of Mr. Chu's misconduct. The Panel was satisfied that a \$20,000 fine adequately conveyed the professional disapproval of Mr. Chu's sustained and pervasive misconduct.

50. A reprimand is almost always called for in cases of moral turpitude. It is called for here. Finally, publication of the sanction is required in order that the deterrent message is conveyed to other members of CPA Ontario and the public. Without publication, the deterrent value of the Panel's decision would be undermined.

51. Although, rehabilitation is not a penalty objective in this context, the Panel accepted that there were several mitigating factors that needed to be considered. Mr. Chu had been a member of CPA since 2002 and had no discipline history. His counsel advised that Mr. Chu is extremely remorseful for his conduct. This remorse is reflected in the fact that he cooperated with the internal investigation by the companies and provided restitution in the amount of approximately \$60,000 which exceeds the amount of the misappropriation before the Panel. In addition to cooperating with the internal investigation, Mr. Chu cooperated with the PCC investigation. This cooperation culminated in him admitting professional misconduct, signing the agreed statement of facts and offering a joint submission with respect to sanction. His counsel also advised that Mr. Chu has taken some professional development courses relating to ethics. He has also taken steps to address the underlying issues contributing to his misconduct by working with a professionalism and ethics coach.

52. While all these factors should be commended and are important for Mr. Chu's rehabilitation, they do not overcome the substantial and sustained moral turpitude of the

misconduct which justifies the jointly recommended sanction and which the Panel accepts should be imposed.

VIII. COSTS

53. 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 should not bear all the costs of the investigation, prosecution and hearing arising from the member's misconduct.

54. The PCC and Mr. Chu's counsel agreed that the Panel should order costs in the amount of \$23,000, which is less than half of the quantum set out in the Cost Outline (Exhibit 4). Counsel for the PCC explained that although the PCC typically seeks to recover 2/3 of the costs of the investigation and prosecution, it chose not to in this case because much of the investigative costs that had been incurred related to matters that did not result in any discipline action being taken. PCC had calculated that the total cost incurred for the 39 expense claims that formed the subject matter of this proceeding to be approximately \$35,000 and that 2/3 of that amount totalled \$23,000. The Panel accepted the explanation and concluded that the costs were reasonable in the circumstances.

Dated this 7th day of February, 2022

A handwritten signature in black ink, appearing to read "Andrea Mintz", with a stylized, cursive script.

Andrea Mintz, CPA, CA
Discipline Committee – Deputy Chair

Members of the Panel

Veronica Green-Dimitroff, CPA, CMA
Brian Mbesha, CPA, CGA
Olga Wong, CPA, CGA
Catherine Kenwell, Public Representative

Independent Legal Counsel

Seth Weinstein, Barrister and Solicitor