

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **BRIAN A. KUMAR**, a suspended member, under **section 3.4(b)** of the Professional Misconduct and Code of Professional Ethics Regulation of the Certified Management Accountants of Ontario and **Rule 201.1** of the Rules of Professional Conduct of the Chartered Professional Accountants of Ontario.

TO: Brian A. Kumar

AND TO: The Professional Conduct Committee

REASONS

(Decision and Order made August 22, 2017)

1. This tribunal of the Discipline Committee met on August 22, 2017 to hear allegations of professional misconduct brought by the Professional Conduct Committee (PCC) against Brian A. Kumar, a suspended member.

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

Proceeding in Mr. Kumar's absence

3. Ms. Gentili filed the Affidavit of Service of Mervyn Archdall, a process server (Exhibit 1), who stated that he had served the letter from PCC Counsel, the allegations, the outline of procedure at hearings and the Settlement Agreement between the Investment Industry Regulatory Organization of Canada (IRROC) and Brian Anish Kumar, (Schedule "A" to the allegations) by leaving the documents, which were attached as Exhibits "A", "B", "C" and "D" respectively to his affidavit, with Brian A. Kumar at his address of record on March 27, 2017. Mr. Kumar had identified himself to Mr. Archdall.

4. Ms. Gentili also filed the Affidavit of Diane Williamson, the Adjudicative Tribunals Secretary (Exhibit 2) who stated that a letter requesting hearing date availability had been mailed and emailed to Mr. Kumar on May 18, 2017; a delivery confirmation of the email was received on May 18, 2017. The letter sent by regular mail was not returned by Canada Post. A covering letter and the Notice of Hearing had been mailed and emailed to Mr. Kumar on June 5, 2017 by Kristen Couch, the Adjudicative Tribunals Assistant Secretary; a delivery confirmation of the email was received on June 5, 2017. The letter sent by regular mail was not returned by Canada Post. Both letters were mailed and emailed to Mr. Kumar's mailing and email address of record with CPA Ontario.

5. Ms. Gentili submitted that Mr. Kumar had received proper deemed service of the documents under Rule 8 of the Rules of Practice and Procedure. Mr. Kumar had been personally served and signed for the disclosure package.

6. The tribunal determined, in light of the affidavits, that Mr. Kumar 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 August 22, 2017, and the written Decision and Order was sent to the parties on August 24, 2017. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegations, the decision, the order, and the reasons of the tribunal for its decision and order.

Allegation

8. The following allegations were made against Mr. Kumar by the Professional Conduct Committee on March 17, 2017:

The Professional Conduct Committee of CMA Ontario hereby makes the following Allegation against Brian A. Kumar, a suspended member of CPA Ontario and CMA Ontario:

1. THAT, the said Brian A. Kumar, in or about the period February 11, 2013 to March 31, 2014, while registered as a Registered Representative with NBF Ltd. committed acts discreditable to the profession, contrary to section 3.4(b) of the Professional Misconduct and Code of Professional Ethics Regulation of CMA Ontario, in that:
 - a. he made improper use of \$1,203,980 in client funds by transferring these funds from the brokerage accounts of clients OA, TM and VM, CF, and JN and DN into his own personal brokerage account without the clients' consent or authorization, as described in the Settlement Agreement attached as "Schedule A"; and
 - b. he forged copies of cheques and client signatures to facilitate the unauthorized transfer of client funds into his own personal brokerage account, as described in the Settlement Agreement attached as "Schedule A".

The Professional Conduct Committees of CPA Ontario and CMA Ontario hereby make the following Allegation against Brian A. Kumar, a suspended member of CPA Ontario and CMA Ontario:

2. THAT, the said Brian A. Kumar, in or about the period April 1, 2014 to May 1, 2014, while registered as a Registered Representative with NBF Ltd. failed to maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the Rules of Professional Conduct, in that:
 - a. he made improper use of \$247,000 in client funds by transferring these funds from the brokerage accounts of clients TM and VM into his own personal brokerage account without the clients' consent or authorization, as described in the Settlement Agreement attached as "Schedule A";
 - b. he forged copies of cheques to facilitate the unauthorized transfer of client funds into his own personal brokerage account, as described in the Settlement Agreement attached as "Schedule A"; and
 - c. he created and provided to TM and VM a fictitious account statement on NBF Ltd. letterhead showing a purchase of approximately \$247,000 in TM and VM's NBF account, as described in the Settlement Agreement attached as "Schedule A".

(*Schedule A is not attached to this document)

The case for the PCC

9. Ms. Gentili advised by way of an opening statement that the case for the PCC would rely on the facts set out in the Settlement Agreement between IIROC and Mr. Kumar and the Reasons for Decision of the IIROC Settlement Approval Hearing panel of August 19, 2015 which were dated the 28th day of September, 2015, contained in the Document Brief (Exhibit 3). Ms. Gentili stated that the allegations had been laid under the legacy CMA Ontario regulations and CPA Ontario rules as the conduct had occurred before and after unification. This matter came to the attention of Standards Enforcement through receipt of notices of IIROC cases.

10. Ms. Gentili then reviewed in detail the Settlement Agreement and the Reasons of the IIROC panel and specifically referred to the facts set out in paragraphs 11, 12, 13 and 14 below.

11. Beginning in February 2013, Mr. Kumar had transferred a total of \$1,450,980 from four brokerage accounts of clients, without the clients' authorization or consent. Mr. Kumar forged cheques by replacing the client's account number with his own account number on the void cheque provided by the client. Mr. Kumar falsified letters of authorization to transfer funds from the clients' brokerage accounts into his own personal bank accounts. He then transferred the funds into his personal brokerage account at Interactive Brokers Group Inc. (IB). The monies transferred from the clients' accounts represented a significant portion of the clients' funds. Mr. Kumar used the funds to invest in a trading strategy with a variety of securities, exchange traded funds and foreign exchange contracts. Mr. Kumar did not have the requisite credentials to allow him to perform these trades in client accounts. Therefore he reverted to activity that constituted breach of trust, misappropriation of funds, forgery of documents and theft for the purpose of the removal of funds from their accounts into his personal account. His scheme put his clients at risk for a total of \$1,450,980 without their knowledge or consent. In at least one instance, he created a falsified portfolio statement which he provided to one of the clients.

12. The last unauthorized transfer took place in April 2014. In May 2014, prior to the investigation by IIROC, Mr. Kumar began repaying his clients for the monies taken. By May 2015, more than one year after the last unauthorized removal of funds took place and eight months after a client complained to NBF Ltd. about the withdrawal from their account, the four clients had been repaid the full amount along with returns of 2% to 35% which Mr. Kumar said had been generated by trading in his personal broker account.

13. The hearing panel of IIROC considered the principles and standards to be applied and accepted the Settlement Agreement. Mr. Kumar agreed to pay a fine of \$50,000, costs of \$5,000 and a permanent prohibition on IIROC registration.

14. All of the misconduct took place while Mr. Kumar was a registered representative with NBF Ltd., an IIROC dealer member. In September 2014, a client questioned an April 2014 withdrawal and provided a copy of the fictitious statement to NBF Ltd. which led to an investigation into Mr. Kumar's conduct and identified additional unauthorized transfers of clients' funds. Mr. Kumar had advised the IIROC investigators that his clients were dissatisfied with their brokerage returns and although he was not professionally qualified to conduct the types of trades that he performed in his own account within his clients' accounts, he wanted to improve their returns.

15. Ms. Gentili submitted that Mr. Kumar's conduct is contrary to Rule 201.1 of the CPA Ontario Rules of Professional Conduct and Section 3.4(b) of the Professional Misconduct and Code of Professional Ethics regulation of CMA Ontario. Ms. Gentili stated that the evidence is

clear, cogent and convincing that Mr. Kumar acted in a manner discreditable to the profession. Mr. Kumar, while in a position of trust, deliberately and deceitfully forged cheques and made improper use of his clients' funds, showing a lack of integrity. The fact that he eventually returned the money does not change his behavior or mitigate the betrayal of trust to his clients and his employer. Mr. Kumar has breached the rules and has committed professional misconduct.

The Decision

16. The tribunal found, on the uncontested evidence, that the allegations 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 Brian A. Kumar (Mr. Kumar), being satisfied that he had proper notice of the hearing, and having seen and considered the evidence, finds:

THAT Allegation Nos. 1 and 2 have been established;

THAT Section 3.4(b) of the Professional Misconduct and Code of Professional Ethics Regulation of the Certified Management Accountants of Ontario and Rule 201.1 of the Rules of Professional Conduct of the Chartered Professional Accountants of Ontario have been breached; and

THAT Mr. Kumar has thereby committed professional misconduct.

Reasons for Decision

17. The Document Brief filed by the PCC included the Settlement Agreement between the IIROC and Brian Kumar dated August 19, 2015. The Document Brief also included the Reasons for Decision of the IIROC Hearing Panel at the Settlement Approval Hearing of August 19, 2015 which was dated September 28, 2015. Mr. Kumar was represented by counsel at the Settlement Approval Hearing and agreed to the facts contained in the agreement.

18. The facts set out in the Settlement Agreement are incorporated into the Reasons for Decision of the Settlement Approval Hearing panel, an adjudicative body. There was no appeal of the IIROC decision and accordingly, pursuant to Rule 18.07 of the Rules of Practice and Procedure of CPA Ontario, the facts set out in the Settlement Agreement and included in the reasons of the Settlement Approval Hearing Panel were properly admitted as evidence before this tribunal on August 22, 2017.

19. Mr. Kumar did not attend the hearing to provide any further context to the IIROC proceedings or to provide any other information that the tribunal should consider.

20. The Settlement Agreement and Reasons for Decision documents (Exhibit 3) with respect to the IIROC investigation into Mr. Kumar's conduct established the facts which the tribunal concluded constitutes professional misconduct. The documents identify that Mr. Kumar: made improper use of \$1,450,980 of client funds; forged copies of cheques and client signatures; falsified letters of authorization; transferred significant amounts of clients' funds from their brokerage account into his personal bank accounts; and, falsified a portfolio statement. In the Settlement Agreement, IIROC referred to his conduct as deceitful and deceptive. In the Reasons for Decision, Mr. Kumar's conduct was referred to as conscious, repeated, planned and deliberate misconduct involving serious documentary deception including the fictitious

copying of cheques, forging of client signatures, providing a false account statement and covering over his misconduct for 14 months. The Hearing Panel for the Settlement Agreement referred to Mr. Kumar's misconduct as having elements of criminal or quasi-criminal activity. The terms and facts set out in the Settlement Agreement were agreed to by Mr. Kumar. He was also represented by counsel at the Settlement Approval Hearing which approved the Settlement Agreement. Mr. Kumar agreed that he contravened IIROC Dealer Member Rule 29.1 as a result of his conduct.

21. 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 allegations that this conduct clearly constitutes professional misconduct.

Sanction

22. Ms. Gentili filed a printout of a website blog of Brian Kumar (Exhibit 4) from December 21, 2015 which is still on the Internet. The CV contained in the blog identifies Mr. Kumar as a CPA, CMA although he has been under an administrative suspension since February 2017. Although Mr. Kumar is not entitled to use the CPA, CMA designation, as far as the public is concerned, according to the blog he is still a member.

23. 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 \$20,000; revocation of membership, and full publicity including newspaper notice in the *Oakville Beaver*. The PCC also sought an order for approximately two-thirds of the costs incurred. Ms. Gentili stated that the PCC would have no objection to giving Mr. Kumar a reasonable time, up to 12 months, to pay the fine and costs.

24. Ms. Gentili submitted that Mr. Kumar's actions put his clients' funds at risk and his actions amounted to misappropriation of funds, another word for theft. In cases of integrity and public trust, rehabilitation must give way to specific and general deterrence. CPA Ontario must be vigilant in regulating the conduct of its members.

25. Ms. Gentili submitted that a mitigating factor is that Mr. Kumar has never been before a discipline tribunal of CMA Ontario or CPA Ontario. Mr. Kumar did co-operate with IIROC and entered into a Settlement Agreement which was relied on by the PCC as the basis of its case. Money and resources were saved as no investigation was needed. Mr. Kumar received no personal return and the monies were repaid to the clients.

26. The aggravating factors, Ms. Gentili stated, include the fact that this is a serious violation of clients' trust. Mr. Kumar's behavior went on for a period of 14 months, involving eight transactions with four clients. Each time, Mr. Kumar had an opportunity to step back and realize the impropriety of his conduct. The magnitude of the misconduct and the amounts of funds misappropriated was substantial. Mr. Kumar took deliberate and deceitful steps to conceal the transfer of funds in risky ventures. Mr. Kumar did not have the proper professional qualifications to deal with such investments, his clients did not give consent and were not made aware of the risks. Ms. Gentili submitted that the aggravating factors far outweigh the mitigating factors of this case.

27. Ms. Gentili stated that a reprimand acts as a specific deterrent and is intended to highlight to Mr. Kumar the deceitfulness of his conduct. The \$20,000 fine proposed is a significant amount and would act as a specific and general deterrent to like-minded members, and show the public that CPA Ontario views such misconduct seriously. This amount is within the range of fines for cases of stealing from clients.

28. Revocation of Mr. Kumar's membership serves as a specific and general deterrent by protecting the public and deterring any member from conducting themselves in an inappropriate manner. Revocation of membership for this serious misconduct protects the reputation of the profession and advises the public that CPA Ontario does not condone this misconduct.

29. Publication is the main key as an effective general and specific deterrent, and lets the public know that CPA Ontario is vigilant in regulating the conduct of its members. Ms. Gentili submitted that only rare and unusual circumstances would warrant a member's name not being published and there is no evidence that such circumstances exist in this case. Ms. Gentili stated that publication in the usual manner on the CPA website, D & A publication and notification to the other CPA provincial bodies is warranted. Publication in a local Oakville newspaper will inform the public that Mr. Kumar is no longer a member of CPA Ontario.

30. Ms. Gentili filed a Costs Outline (Exhibit 5) showing the costs to be just over \$7,000 of which the PCC was seeking partial costs of \$4,700, approximately two-thirds, which is the usual practice. Ms. Gentili stated that costs are an indemnity and Mr. Kumar's misconduct was responsible for incurring these costs. Ms. Gentili noted that there were no investigator costs as the PCC relied on the IIROC Settlement Agreement. The outline provides a breakdown of the costs incurred, including process server and counsel costs.

31. Ms. Gentili distributed a case brief containing *McWilliams, Silverberg, Doutre and Shilson*, matters involving misappropriation resulting in revocation of membership.

Order

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

IT IS ORDERED in respect of the Allegations:

1. THAT Mr. Kumar be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Kumar be and he is hereby fined the sum of \$35,000, 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. Kumar's membership in CPA Ontario be and it is hereby revoked.
4. THAT notice of this Decision and Order, disclosing Mr. Kumar'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 notice of the revocation of membership, disclosing Mr. Kumar's name, be given by publication on the CPA Ontario website and in the *Toronto Star* and in the *Oakville Beaver* newspapers. All costs associated with the publications shall be borne by Mr. Kumar and shall be in addition to any other costs ordered by the committee.
6. THAT Mr. Kumar surrender all certificates issued by CPA Ontario or its predecessor, including any membership certificate granting the Certified

Management Accountant (CMA) and Chartered Professional Accountant (CPA) designation, to the Adjudicative Tribunals Secretary within ten (10) days from the date this Decision and Order is made.

7. THAT Mr. Kumar remove all references to Mr. Kumar as a CPA, CMA on digital and social media, and in any other hard copy documents.

IT IS FURTHER ORDERED:

8. THAT Mr. Kumar be and he is hereby charged costs fixed at \$4,700, to be remitted to CPA Ontario within three (3) months from the date this Decision and Order is made.

Reasons for Sanctions

33. Mr. Kumar's actions amounted to moral turpitude as he was in a position of trust and he abused this trust expected by his clients of a CPA, CMA. The sanctions imposed on Mr. Kumar need to send a clear message to Mr. Kumar, to the profession and to the public that the profession will not tolerate conduct such as that by Mr. Kumar.

34. The reprimand in writing from the Chair serves as a specific deterrent to Mr. Kumar to emphasize the seriousness of his misconduct and to reinforce the high standard of conduct expected of a member.

35. The tribunal, in its deliberations regarding a fine, considered the program and scheme undertaken by Mr. Kumar to remove funds from his clients, the criminal or quasi-criminal activity noted by IIROC that was carried out by Mr. Kumar, the considerations of IIROC in arriving at their fine of \$50,000, and Mr. Kumar's position of trust not only as a member of CPA Ontario but also his fiduciary duty to his clients. The tribunal concluded that a fine of \$35,000 was appropriate given the serious abuse of the trust of his clients, the elaborate scheme to execute the removal of funds and the steps taken to cover up his activity. He also continued to utilize his designation of CPA, CMA while he was under an administrative suspension. During its deliberations the tribunal recognized the PCC asked for a fine of \$20,000 but considered it inadequate as a deterrent for conduct such as Mr. Kumar's and considered a higher fine than imposed before determining that as a specific and general deterrent the fine of \$35,000 was appropriate. IIROC required that their fine be paid immediately, however the tribunal believed that three months to pay from the date of the Decision and Order was appropriate.

36. The revocation of membership in CPA Ontario was appropriate given the gravity of the misconduct and serves as a specific deterrent to the member and a general deterrent to the membership. The revocation of membership advises the public that CPA Ontario does not condone misconduct such as that of Mr. Kumar.

37. Full publicity including notice of the revocation of membership disclosing Mr. Kumar's name by publication on the CPA Ontario website, the *Oakville Beaver* and the *Toronto Star* is appropriate to protect the interests of the public. There were no rare or unusual circumstances that would support non-publication. The publications will also serve as a notice to members and the public that CPA Ontario is vigilant in maintaining its reputation of integrity.

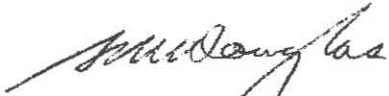
38. The tribunal was provided with documents obtained from Mr. Kumar's website whereby he identified himself as a CPA, CMA. The information provided by counsel for the PCC was obtained on August 21, 2017, the day before the hearing. Mr. Kumar had been put on

administrative suspension since February 2017 which precluded him from using his designation until he complied with the administrative requirements imposed upon him. He had not complied as the date of the hearing, August 22, 2017. The tribunal therefore imposed the requirement that Mr. Kumar remove all references to himself being a CPA, CMA on all digital and social media and from any hard copy documents. This term of the order, made pursuant to the power given to the tribunal in the *Chartered Professional Accountants of Ontario Act, 2017*, s.35 (4) 11, to make any other order that the tribunal thinks is appropriate in the circumstances, was made to protect the interests of the public.

Costs

39. The costs for this proceeding totaled just over \$7,000. The tribunal agreed with the PCC's submission that costs of \$4,700, representing two-thirds of the total, was reasonable and appropriate. As with the fine, the tribunal determined that a three-month period to pay the costs was appropriate.

DATED AT TORONTO THIS 25TH DAY OF OCTOBER, 2017
BY ORDER OF THE DISCIPLINE COMMITTEE



S.M. DOUGLAS, FCPA, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

A.R. DAVIDSON, CPA, CA
C. KENWELL (PUBLIC REPRESENTATIVE)
N.J. RIVERS, CPA, CGA