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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO

**IN THE MATTER OF: DRAFT ALLEGATIONS AGAINST DAVID
M. DEN BOER, CPA, CA, A MEMBER OF
THE INSTITUTE, BEFORE THE
DISCIPLINE COMMITTEE**

SETTLEMENT AGREEMENT

*made pursuant Section 34 (1)(c) of the Chartered
Accountants Act, 2010, and to ICAO Regulation 7-1, s. 22.4*

Background

1. The Professional Conduct Committee (“PCC”) approved the drafting of allegations against David **M. Den Boer** (“Den Boer” or “the member”). **Doc 1**
2. Den Boer obtained his CA designation in 1978 while working for Ward Mallette. From 1987 to 1994 he was the Director of Financial Services for the Ontario Alliance of Christian Schools in Hamilton. In 1994 he started the sole proprietorship accounting practice which he continues to this day. Den Boer is 60 years old.
3. Den Boer employs one full-time employee who is a CGA.
4. The references to “**Doc**” numbers are references to documents in the Document Brief attached to the Settlement Agreement.

The Western Project

5. In 2004 Den Boer became aware of the “Western Project” through a member of his Church, Norman M. (“M”). Based on discussions with M he came to understand that there was a large sum of money that had been raised through

criminal activities by an individual known as "WS". He was told that this money had been recovered by police agencies and was being held in trust by the Canadian government. He was also told that the Courts and the Police were going through a process whereby, once the parties who had been victimized were satisfied with settlement agreements, the remaining funds in the several millions of dollars would be released to a Trustee who would be M.

6. M told Den Boer that once the funds were released to the Trustee, they could be distributed to charities and non-profit organizations based on their needs.
7. M told Den Boer that to secure the release of these millions of dollars held by the government, funding was required from persons willing to invest in the project or loan money.
8. Over the period May 2005 to October 2011 Den Boer "loaned" over \$400,000 of his personal funds to M for the Western Project. It was his understanding that these amounts were to be considered short-term loans and to be repaid in a short period of time. None of the money advanced by Den Boer has been repaid.
9. M became a client of Den Boer's accounting practice in the Fall of 2005 after Den Boer began loaning money to M for the Western Project. Den Boer provided tax and accounting services to M and his businesses.
10. On August 28, 2012 M was convicted on criminal charges of fraud over \$5,000 for conduct that took place in the period September 1, 2009 to October 5, 2009. The charges related to M's fraudulently obtaining funds from the Bank of Montreal by way of a loan purportedly for the Western Project M was incarcerated and remains so.

John and Janice B, and Daniel Y

11. John and Janice B (the "Bs" or "John" or "Janice") live in Ontario. In August 2008 Janice's mother passed away and left an inheritance to Janice. Shortly thereafter the Bs retained Daniel Y ("Y"), a certified financial planner, as their financial advisor with respect to the inheritance.

12. In early 2009 Y advised the Bs to remortgage their home and take out a line of credit secured against the home for investment purposes.
13. In April 2009 Y approached the Bs and solicited them to contribute funds to the Western Project. He represented to them that the investment was a unique and safe opportunity. He said that the Canadian government held approximately \$30 million in funds which would be released once the requisite Court applications and other administrative hurdles were completed. He said that a lawyer in Vancouver known only as "Q" was working on the application to the government to have the funds released and he said that himself, M and Ken I who he described as M's right-hand man, as well as Den Boer had each invested their personal money in the Project.
14. Y told the Bs that Den Boer was a Chartered Accountant and was facilitating the investment in the Western Project.
15. Den Boer authorized M to provide to Y and others his accounting practice bank account information to facilitate the transfer of funds from "investors" into his bank account.
16. As a result of Y's representations, the Bs, in the period April 2009 through June 2011, transferred into Den Boer's accounting practice bank account \$476,300. A summary of the Bs' monies flowing through Den Boer's accounting practice account is found in Schedule 1 at Doc 2. The Bs did not meet with nor speak to Den Boer at any time.
17. Over the course of two years Y told the Bs they would earn \$2.25 million in return for their investments. Doc 3

Other Investors in the Western Project

18. M and others solicited funds for the Western Project from individuals in addition to the Bs. As a result of those solicitations Den Boer received additional deposits into his CA bank account of \$361,400 over the period January

2010 through October 2011 from other individuals unrelated to the Bs. Like the Bs, these individuals were not clients of Den Boer and, other than receiving their money into his practice bank account, he had no interaction with them.

19. A summary of other individuals' deposits and transfers to Den Boer's accounting practice account is found in Schedule 2 at Doc 4.
20. Once the transfers were made by the Bs and others, the money was disbursed by Den Boer in accordance with M's instructions. Of the \$476,300 deposited by the Bs, \$305,700 was withdrawn in cash by Den Boer which he gave to M. The balance was given by way of bank transfer, draft or cheque to M, or to other persons M directed receive payments. Den Boer obtained no receipts for any of the monies disbursed.
21. Of the \$361,400 deposited by others, \$222,500 was withdrawn in cash by Den Boer and given to M. The balance was given by way of bank transfer, draft or cheque to M, or to other persons M directed receive payments. Den Boer did not obtain any receipts from M with respect to these funds.
22. Den Boer was told by M that the monies given out were used for legal fees and disbursements, registration fees, airfare and living costs for "WS" who was the alleged fraudster in the first instance and was supposedly helping secure the release of money from the government to M. Den Boer was told that cash was required in most cases because "WS" did not have a bank account because he was a criminal. He said that "WS" had to pay fees to the Courts to obtain Court approval to release funds.
23. In one instance, acting on M's instruction, Den Boer's wife flew to Vancouver and delivered cash to a person identified by M as Russell S. Den Boer's wife provided the cash to S at the airport. No receipts were obtained.

Due Diligence

24. As indicated, Den Boer did not meet or speak with the Bs or any of the other individuals who had deposited money into his practice bank account at any time. He kept no record of the deposits made (other than records typically generated by the bank). In many cases he did not know who deposited funds.
25. Other than speaking with M and carrying out an internet search of the name Wayne S L ("WS") which showed an article in the London Free Press describing Ponzi schemes and a short paragraph that indicated "WS" was involved in a Ponzi scheme, Den Boer did not conduct any due diligence with respect to the Western Project prior to loaning his own funds or prior to allowing his practice bank account to be used as the conduit for flowing funds from others to M or to persons M named.
26. Den Boer saw no Court documents or agreements in connection with the project. He was not provided the name of the lawyer "Q" in Vancouver who was purportedly acting on behalf of the project and he did not speak with that person.
27. In the Fall of 2010 Den Boer became aware that M had been investigated in the 1990s by the Ontario Securities Commission for misleading or untrue financial statements. Den Boer did not ask M for particulars and did not make any further enquiries as to how the matter was disposed of. After learning of the OSC investigation, Den Boer received a further \$22,000 from the Bs and \$22,300 from other individuals into his practice bank account. In addition he loaned a further \$25,200 to M for the Western Project. Den Boer did not alert any of these individuals to what he had learned about the OSC investigation.

Conclusion

28. In total the Bs deposited \$476,300 into Den Boer's practice bank account. Despite promises from M and Y their money has not been returned to them.

29. Individuals besides the Bs deposited into Den Boer's practice bank account a total of \$361,400 which was dispersed in the same fashion as the monies deposited or transferred by the Bs. Like the Bs, it is uncertain if these individuals will ever recoup the monies deposited with Den Boer.
30. The Western Project is a scheme designed by M to obtain money from victims promised high rates of return or from victims, like Den Boer, who were told that their monetary assistance would result in a benefit to unnamed charities. At the present time there is a continuing investigation by the Police into M's conduct with respect to the Western Project. The likelihood of anyone recovering monies given to M through Den Boer is less than remote.
31. It is agreed by the parties that by accepting into his accounting practice bank account, monies from the Bs and others totaling approximately \$837,000 and then disbursing those amounts to others at the direction of M without obtaining receipts and without performing sufficient and appropriate due diligence with respect to the Western Project, he permitted his practice bank account and himself to be used to facilitate the improper use of third parties' monies and thereby 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.

Terms of Settlement

32. Den Boer and the Professional Conduct Committee agree to the following Terms of Settlement:
- a) Den Boer will pay a fine in the amount of \$15,000;
 - b) Den Boer will be suspended for a period of 45 days commencing December 22, 2013;
 - c) Den Boer will pay costs in the amount of \$15,000;
 - d) Den Boer will attend within 12 months, the professional development courses:
 - *Fraud Happens! What to do when you suspect fraud;*

- *Managing Professional Risk in our Practices*; and
 - *The Art of Enquiry*.
- e) Notice of the terms of this Settlement Agreement will be given to all members of the Institute, the Public Accountants' Council, the CICA and to all provincial Institutes;
- f) A failure by Den Boer to pay the fine and costs on or before June 30, 2014 or a failure to comply with the other terms of settlement will result in his suspension from membership in the Institute which suspension will continue until he complies. If his suspension under this section continues for three months he will be expelled from membership with full publicity in accordance with Regulation 7-3(23).
33. Should the Discipline Committee accept this Settlement Agreement, Den Boer agrees to waive his right to a full hearing, judicial review or appeal of the matter subject to the Settlement Agreement. The allegations approved by the Professional Conduct Committee attached to this agreement shall be stayed.

If Settlement Agreement Not Approved

34. If, for any reason, this Settlement Agreement is not approved by the Discipline Committee, then;
- a) This Settlement Agreement and its terms, including all settlement negotiations between the Professional Conduct Committee and Den Boer leading up to its presentation to the Discipline Committee, shall be without prejudice to the Professional Conduct Committee and Den Boer;
- b) The Professional Conduct Committee and Den Boer shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations, or negotiating a new Settlement Agreement, unaffected by this Settlement Agreement or the settlement negotiations;

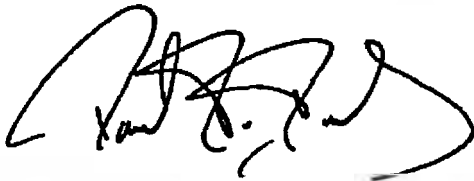
- c) The terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of the Professional Conduct Committee and Den Boer or as may be required by law.

35. Any obligations of confidentiality shall terminate upon approval of the Settlement Agreement by the Discipline Committee.

All of which is agreed to for the purpose of this proceeding alone this 7th day of December, 2013.



DAVID M. DEN BOER, CPA, CA
On his own behalf



PAUL F. FARLEY
SENIOR COUNSEL
PROFESSIONAL CONDUCT COMMITTEE
On behalf of the Committee