

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

TO: Frank Fragale, CPA, CMA

AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee of CPA Ontario hereby makes the following Allegation of professional misconduct against Frank Fragale, CPA, CMA, a member of CPA Ontario:

1. THAT the said Frank Fragale, in or about the period February 1, 2017 to November 30, 2017 failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.1 of the CPA Code of Professional Conduct, in that:
 - a. he failed to provide documents or other information when requested to do so by the Professional Conduct Committee through its investigator and staff of CPA Ontario; and
 - b. he failed to attend an interview as requested by the investigator appointed by the Professional Conduct Committee.

Dated at Brampton, Ontario, this 3rd day of July, 2018.



T. J. SOKIC, CPA, CA, 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 **FRANK FRAGALE**, a suspended member of the Chartered Professional Accountants of Ontario, under **Rule 104.1** of the CPA Rules of Professional Conduct, as amended.

TO: Mr. Frank Fragale

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE OCTOBER 18, 2018

DECISION

THAT having heard Mr. Fragale's counsel enter a plea of guilty to the Allegation on behalf of Mr. Fragale, and having seen and considered the Agreed Statement of Fact from both parties, and submissions from both parties, the Discipline Committee found Frank Fragale guilty of the Allegation under Rule 104.1 of the CPA Rules of Professional Conduct and that he has thereby committed professional misconduct.

ORDER

IT IS ORDERED in respect of the Allegations:

1. THAT Mr. Fragale be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Fragale shall pay a fine in the sum of \$3,500, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within twelve months from the date this Decision and Order is made.
3. THAT Mr. Fragale fully co-operate with the Professional Conduct Committee by attending an interview within 30 days of this Order.
4. THAT notice of this Decision and Order, disclosing Mr. Fragale'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. Fragale fails to comply with the requirements of this Order, his membership in CPA Ontario shall thereupon be revoked, and notice of his membership revocation, disclosing his name, shall be given in the manner specified above and in his geographical area newspaper. All costs associated with the publication shall be borne by Mr. Fragale and shall be in addition to any other costs ordered by the Committee.

IT IS FURTHER ORDERED:

6. THAT Mr. Fragale shall pay costs fixed at \$5,000, to be remitted to CPA Ontario within twelve months from the date this Decision and Order is made.

DATED at Toronto this 18^h day of October, 2018

A handwritten signature in blue ink, appearing to read "N. Jane Rivers". The signature is stylized and cursive.

N. Jane Rivers, CPA, CGA
Discipline Committee – Acting Chair

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **FRANK FRAGALE**, a suspended member of the Chartered Professional Accountants of Ontario, under **Rule 104.1** of the CPA Rules of Professional Conduct.

BETWEEN:

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

-and-

Mr. Frank Fragale

APPEARANCES:

For the Professional Conduct Committee:	Julia McNabb, Counsel Tamara Center, Counsel
For Mr. Fragale:	Carlo Di Carlo, Counsel
Heard:	October 18, 2018
Decision and Order effective:	October 18, 2018
Release of written reasons:	February 20, 2019

REASONS FOR THE DECISION AND ORDER MADE OCTOBER 18, 2018

I. OVERVIEW

- [1] This hearing is about whether the allegations that Mr. Fragale failed to co-operate with the regulatory process of the Chartered Professional Accountants of Ontario (“CPA Ontario”) contrary to Rule 104.1 of the CPA Rules of Professional Conduct have been established on a balance of probabilities, amounting to professional misconduct.
- [2] Mr. Fragale obtained his CMA designation in 1999. He was hired in 2013 by the Ontario Tire Stewardship (“OTS”) initially as the Financial Controller, and he was later promoted to Director, Field Audit.
- [3] Mr. Fragale first came to the attention of CPA Ontario as a result of articles published in the Toronto Star and Metro News on January 11, 2017 relating to an alleged theft at OTS. The articles indicated that Mr. Fragale was facing a regulatory charge under the *Waste Diversion Act* (“WDA”) in relation to his role in the alleged theft.

- [4] Upon learning of these articles, CPA Ontario contacted Mr. Fragale advising that his written reply was required pursuant to Rule 104 of the CPA Code of Professional Conduct. Mr. Fragale's counsel responded that they had advised Mr. Fragale not to participate pending completion of the proceedings under the *WDA*. Mr. Fragale also refused to participate in an interview with the investigator who had been appointed to investigate the information contained in the media report, on the same advice of counsel. Mr. Fragale was informed that failure to co-operate may result in allegations of professional misconduct.
- [5] As of the date of the hearing, Mr. Fragale had not provided a substantive written response nor met with the investigator.
- [6] At the hearing, the Professional Conduct Committee ("PCC") alleged that Mr. Fragale failed to co-operate with the regulatory process of CPA Ontario from February 1, 2017 to November 30, 2017 contrary to Rule 104.1 of the CPA Rules of Professional Conduct in that he: (a) failed to provide documents when requested to do so by the Professional Conduct Committee; and (b) failed to attend an interview as requested by the investigator.
- [7] Mr. Fragale did not attend the hearing before the Discipline Committee himself, although he had counsel attend on his behalf. Mr. Fragale admitted the allegation against him. He also entered into an Agreed Statement of Facts with the PCC.
- [8] The onus was on the PCC to show on a balance of probabilities that Mr. Fragale's conduct breached the CPA Rules of Professional Conduct, and constituted professional misconduct.

II. ISSUES

- [9] The Tribunal identified the following issues arising from the allegations:
 - a) Did the agreed evidence establish, on a balance of probabilities, the facts on which the particulars alleged by the PCC were based?
 - b) If the particulars alleged by the PCC were established on the evidence on a balance of probabilities, did those particulars constitute professional misconduct?
 - c) If the particulars alleged by the PCC constituted professional misconduct, was it appropriate for the tribunal to accept the joint submission with respect to penalty?

III. DECISION

- [10] The tribunal found that the evidence established, on a balance of probabilities, the particulars set out in the allegation of professional misconduct.
- [11] The tribunal was satisfied that the particulars alleged constituted a breach of Rule 104.1 of the CPA Rules of Professional Conduct, and, having breached this Rule, Mr. Fragale has committed professional misconduct.

IV. REASONS FOR THE DECISION

Findings regarding the conduct of Mr. Fragale

- [12] The tribunal considered the evidence submitted by the PCC and by Mr. Fragale as set out in the Agreed Statement of Facts (Exhibit 1) and the accompanying Document Brief (Exhibit 2) regarding the allegation of Mr. Fragale's failure to co-operate. The Agreed Statement of Facts set out the communications that occurred between CPA Ontario and Mr. Fragale, which can be summarized as follows:
- a) On January 13, 2017, the Director of Standards Enforcement at CPA Ontario wrote to Mr. Fragale to advise him that a matter had been brought to the attention of the PCC and enclosed copies of the media articles. She cautioned him that failure to respond could result in allegations of professional misconduct being made against him. The letter was sent by registered and regular mail to Mr. Fragale's address of record with CPA Ontario.
 - b) On February 3, 2017, counsel for Mr. Fragale responded that due to an ongoing investigation and prosecution under the *WDA*, they had advised Mr. Fragale not to participate in CPA Ontario's investigation until the proceedings have been resolved because of concerns regarding self-incrimination in the other proceedings.
 - c) On February 28, 2017, Professional Standards Counsel at CPA Ontario responded to counsel for Mr. Fragale's letter of February 3, 2017. She explained that the existence of other proceedings did not preclude CPA Ontario from commencing its own investigation, and she requested Mr. Fragale's written response by March 17, 2017. She also advised that under Rule 104 of the CPA Code of Professional Conduct, failing to respond in writing will be referred to the PCC for consideration and may result in allegations of professional misconduct against Mr. Fragale.
 - d) On March 17, 2017, counsel to Mr. Fragale responded to this letter, reiterating that they continue to advise Mr. Fragale not to participate in the investigation, because of concerns regarding self-incrimination.
 - e) On July 17, 2017, Professional Standards Counsel at CPA Ontario wrote to Mr. Fragale and his counsel. Her letter stated that an investigator had been appointed to investigate the information contained in the media reports. She advised that pursuant to the *Chartered Professional Accountants of Ontario Act, 2017* the investigator is authorized to interview Mr. Fragale, and that Mr. Fragale has a professional responsibility to co-operate with the investigation.
 - f) Between October 4, 2017 and October 16, 2017, the investigator exchanged email correspondence with Mr. Fragale and his counsel. The investigator attempted to schedule a meeting with Mr. Fragale. Mr. Fragale's counsel reiterated in his response that, based on counsel's advice, Mr. Fragale continues to decline to participate in the investigation.
 - g) On November 15, 2017, Professional Standards Counsel at CPA Ontario wrote to Mr. Fragale's counsel advising that the investigator would proceed to write her investigation report without the benefit of Mr. Fragale's participation. She advised that the investigation would be referred to the PCC on December 12, 2017. She

further stated if Mr. Fragale's position should change with respect to his participation he should contact the investigator no later than November 17, 2017 to schedule an interview. The letter also referenced Rule 104 and indicated that a failure to cooperate may result in allegations of professional misconduct.

- [13] The Agreed Statement of Facts confirmed that as of October 18, 2018, the date of the hearing, Mr. Fragale had not met with the investigator, nor had he provided a substantive response to the letters dated January 13, 2017, February 28, 2017, July 17, 2017 and November 15, 2017.
- [14] The tribunal considered the evidence and found the facts agreed to by Mr. Fragale in the Agreed Statement of Facts and the accompanying Document Brief to be clear, cogent and convincing proof of the conduct alleged in the particular.

Finding of Professional Misconduct

- [15] The tribunal was of the view that the conduct alleged in the particular constituted a failure to cooperate with the regulatory process of CPA Ontario.
- [16] In the Agreed Statement of Facts, Mr. Fragale acknowledges and admits that he failed to cooperate with the regulatory processes of CPA Ontario between February 1, 2017 and November 30, 2017.
- [17] The tribunal found that Mr. Fragale committed professional misconduct in that he breached Rule 104.1 of the Rules of Professional Conduct.

V. SANCTIONS

Joint Position on Sanction

- [18] The PCC and Mr. Fragale, through his counsel, jointly submitted that an appropriate sanction was comprised of the following: a reprimand in writing, a fine of \$3,500 to be paid within twelve months, publicity of the decision in the ordinary course, and the requirement that Mr. Fragale fully co-operate with the Professional Conduct Committee by attending an interview within 30 days of the Order. The joint submission on sanction provides that failure to comply will result in revocation of Mr. Fragale's membership and publicity of notice of the revocation in the usual manner.

Reasons for the Order on Sanctions

- [19] The tribunal accepted the joint submission on sanctions by the PCC and counsel for Mr. Fragale, as it was not unreasonable or contrary to the public interest and would not bring the administration of justice into disrepute.
- [20] In considering the joint submission, the tribunal had to consider whether the joint submission was within the range of reasonable sanctions for similar misconduct and not contrary to the public interest. The issue for the tribunal was not whether the tribunal would have imposed the same sanction, but whether the joint submission was unreasonable. The tribunal was aware that deference should be given to a joint submission unless the submission was truly unreasonable and not within the range demonstrated by similar cases, such as those reviewed by the PCC in submissions. The

test has also been framed in terms that a joint submission should be accepted unless it would bring the administration of justice into disrepute.

- [21] The tribunal concluded that the proposed sanctions were appropriate given that Mr. Fragale had failed to co-operate for a ten-month period, which actions prevented the PCC from investigating significant allegations which had received media publicity. The tribunal also took into consideration that Mr. Fragale had no history of discipline, and that in this case he had pled guilty, agreed to a statement of facts, and participated in a joint submission on sanction, all of which contributed to the saving of resources.

VI. COSTS

- [22] The parties jointly submitted that an appropriate costs award would be payment by Mr. Fragale of costs in the amount \$5,000, representing approximately two-thirds of the actual costs incurred by the PCC in relation to the hearing. The parties jointly submitted that the costs award should be paid within twelve months. The tribunal found that this costs award was in line with precedents and was appropriate in the circumstances of this case.

DATED at Toronto this 20th day of February, 2019



N. Jane Rivers, CPA, CGA
Discipline Committee – Acting Chair

Members of the Tribunal

Hamid Farooq, CPA, CGA
Anthony Davidson, CPA, CA
David L. Knight, FCPA, FCA
Betty Kuchta (Public Representative)

Independent Legal Counsel

John Dent, Barrister & Solicitor