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CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

TO: Fulvio A. De Angelis, CPA, CA
AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee of CPA Ontario hereby makes the following Allegations of professional misconduct against Fulvio A. De Angelis, CPA, CA, a member of CPA Ontario:

1. THAT the said Fulvio A. De Angelis, while employed as the Chief Financial Officer of "MC", failed to conduct himself in a manner which would 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 and the CPA Code of Professional Conduct in that he misappropriated funds from "MC" as follows:
 - a. In or about September 2013 to January 2016, he arranged for approximately 22 unauthorized cheques to be written to withdraw cash from MC's bank accounts and deposited up to \$138,050 in unauthorized funds into his personal bank accounts.
 - b. In or about June 2003 to July 2013, he prepared approximately 33 MC cheques written to himself in amounts up to \$63,032 in unauthorized funds; and
 - c. In or about November 2010 to October 2015 he submitted 44 reimbursement claims totalling up to \$1,913 for expenses not personally incurred.
2. THAT the said Fulvio A. De Angelis, in or about February 2013 through June 2016, while employed as the Chief Financial Officer of "MC", failed to conduct himself in a manner which would 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 and the CPA Code of Professional Conduct, in that he manipulated "MC" inventory records which resulted in significantly inflated inventory values in the audited financial statements.
3. THAT the said Fulvio A. De Angelis, in or about February 2013 through June 2016 while employed as the Chief Financial Officer of "MC", associated himself with MC financial information which he knew or should have known was false or misleading, contrary to Rule 205 of the Rules of Professional Conduct and the CPA Code of Professional Conduct, in that he maintained two sets of "MC" financial records that contained inconsistent inventory values as follows:



- a. The January 31, 2014 internal financial records represented approximately \$34.2 million in inventory and the January 31, 2014 audited financial statements listed approximately \$43.9 million in inventory;
 - b. The January 31, 2015 internal financial records represented approximately \$36.4 million in inventory and the January 31, 2015 audited financial statements listed approximately \$50.3 million in inventory; and
 - c. The January 31, 2016 internal financial records represented approximately \$34.4 million in inventory and the January 31, 2016 financial records provided to the auditors represented approximately \$58.5 million in inventory.
4. THAT the said Fulvio A. De Angelis, in or about February 2013 through June 2016 while employed as the Chief Financial Officer of "MC" associated himself with "MC" financial information which he knew or should have known was false or misleading, contrary to Rule 205 of the Rules of Professional Conduct and the CPA Code of Professional Conduct as follows:
- a. He was involved in the preparation of MC's internal financial records for the year ended January 31, 2014 which inaccurately represented approximately \$11.8 million in drawn credit in circumstances where the January 31, 2014 audited financial statements listed approximately \$14.2 million in drawn credit; and
 - b. He was involved in the preparation of MC's internal financial records for the year ended January 31, 2015 which inaccurately represented approximately \$13.7 million in drawn credit in circumstances where the January 31, 2015 audited financial statements listed approximately \$16.8 million in drawn credit.

Dated at North York, Ontario, this 7th day of July, 2021.

DocuSigned by:
Donna Wong
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D.K.Y WONG, CPA, CA, CMA - DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations, as amended, against **FULVIO A. DE ANGELIS, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 201.1 and 205** of the Rules of Professional Conduct and the CPA Code of Professional Conduct

TO: Fulvio A. De Angelis, CPA, CA

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE JULY 21, 2021

DECISION

The Allegations, as amended, that Fulvio A. De Angelis has breached Rules 201.1 and 205 of the Rules of Professional Conduct and the CPA Ontario Code of Professional Conduct are established, and he has committed professional misconduct.

ORDER

IT IS ORDERED THAT:

1. Fulvio A. De Angelis be reprimanded in writing by the Chair of the hearing;
2. Fulvio A. De Angelis shall pay a fine of \$75,000 to the Chartered Professional Accountants of Ontario ("CPA Ontario") by January 21, 2023;
3. Fulvio A. De Angelis' membership with CPA Ontario is revoked, effective the date of this Decision and Order;
4. Notice of this Decision and Order, disclosing Fulvio A. De Angelis's name, is to 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. Notice of this Decision and Order disclosing Fulvio A. De Angelis' name is to be given by publication on the CPA Ontario website, in *The Globe and Mail* and the *Vaughan Citizen*. Fulvio A. De Angelis shall pay all costs associated with the publication, which shall be in addition to any other costs ordered by the panel.

AND THAT:

6. Fulvio A. De Angelis shall pay costs of \$136,000 to CPA Ontario by January 21, 2023.

DATED this 21st day of July 2021.

A handwritten signature in black ink, appearing to read 'R. Adamkowski', written in a cursive style.

Randal J. Adamkowski, CPA, CA
Discipline Committee

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **Fulvio A. De Angelis, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rules 201.1 and 205** of the Rules of Professional Conduct and the CPA Code of Professional Conduct.

BETWEEN:

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

-and-

Fulvio A. De Angelis

APPEARANCES:

For the Professional Conduct Committee: Julia McNabb, Counsel

For Mr. De Angelis: Not Present and Not Represented

Heard: July 20 - 21, 2021

Decision and Order effective: July 21, 2021

Release of written reasons: September 15, 2021

REASONS FOR THE DECISION AND ORDER MADE July 21, 2021

I. OVERVIEW

i. The Member

[1] The Member began his career with Price Waterhouse Cooper in 1990, and obtained his CPA designation in 1992. In 1993 or 1994, the Member married GM. GM is the sister of RM, the owner and Chief Executive Officer (“CEO”) of MC, the complainant in this matter.

ii. The Allegations

- [2] The Member was the CFO of MC from 1997 to 2016. Over the course of 13 years, he misappropriated approximately \$200,000. Over the course of three years, he falsified financial records, and maintained two sets of financial records, one provided to management and one provided to MC's auditors.
- [3] The Member's conduct caused actual financial harm to MC and placed the business at significant risk of further financial harm.
- [4] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario ("PCC") has made the following amended Allegations against the Member:
1. THAT the said Fulvio A. De Angelis, while employed as the Chief Financial Officer of MC, failed to conduct himself in a manner which would 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 and the CPA Code of Professional Conduct in that he misappropriated funds from MC as follows:
 - a. In or about September 2013 to January 2016, he arranged for approximately 22 unauthorized cheques to be written to withdraw cash from MC's bank accounts and deposited up to \$138,050 in unauthorized funds into his personal bank accounts.
 - b. In or about June 2003 to July 2013, he prepared approximately 33 MC cheques written to himself in amounts up to \$63,032 in unauthorized funds; and
 - c. In or about November 2010 to October 2015 he submitted 44 reimbursement claimstotalling up to \$1,913 for expenses not personally incurred.
 2. THAT the said Fulvio A. De Angelis, in or about February 2013 through June 2016, while employed as the Chief Financial Officer of MC, failed to conduct himself in a manner which would 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 and the CPA Code of Professional Conduct, in that he manipulated MC inventory records which resulted in significantly inflated inventory values in the audited financial statements.
 3. THAT the said Fulvio A. De Angelis, in or about February 2013 through June 2016 while employed as the Chief Financial Officer of MC, associated himself with MC financial information which he knew or should have known was false or misleading, contrary to Rule 205 of the Rules of Professional Conduct and the CPA Code of Professional Conduct, in that he maintained two sets of MC

financial records that contained inconsistent inventory values as follows:

- a. The January 31, 2014 internal financial records represented approximately \$34.2 million in inventory and the January 31, 2014 audited financial statements listed approximately \$43.9 million in inventory;
 - b. The January 31, 2015 internal financial records represented approximately \$36.4 million in inventory and the January 31, 2015 audited financial statements listed approximately \$50.3 million in inventory; and
 - c. The January 31, 2016 internal financial records represented approximately \$34.4 million in inventory and the January 31, 2016 financial records provided to the auditors represented approximately \$58.5 million in inventory.
4. THAT the said Fulvio A. De Angelis, in or about February 2013 through June 2016 while employed as the Chief Financial Officer of MC associated himself with MC financial information which he knew or should have known was false or misleading, contrary to Rule 205 of the Rules of Professional Conduct and the CPA Code of Professional Conduct as follows:
- a. He was involved in the preparation of MC's internal financial records for the year ended January 31, 2014 which inaccurately represented approximately \$11.8 million in drawn credit in circumstances where the January 31, 2014 audited financial statements listed approximately \$14.2 million in drawn credit; and
 - b. He was involved in the preparation of MC's internal financial records for the year ended January 31, 2015 which inaccurately represented approximately \$13.7 million in drawn credit in circumstances where the January 31, 2015 audited financial statements listed approximately \$16.8 million in drawn credit.

II. PRELIMINARY ISSUES

i. The Member Had Proper Notice of the Hearing

[5] The Member did not appear at his hearing. Counsel for the PCC, Julia McNabb, provided the Panel with the Affidavit of Megan O'Leary, sworn July 19, 2021 (made Exhibit 1). The Panel was satisfied from reviewing Ms. O'Leary's affidavit that the Member had received the Allegations of Professional Conduct via his counsel, was aware of the proceedings, knew the date of the proceedings, and chose not to attend.

- [6] Included in Ms. O'Leary's affidavit was correspondence from the Member's counsel agreeing to the hearing dates of July 20 and 21, 2021. Also included in Ms. O'Leary's affidavit was an email from the Adjudicative Tribunals Coordinator to the Member's counsel attaching a Notice of Hearing. In addition, Ms. O'Leary's affidavit contained email exchanges between Ms. McNabb and the Member's counsel demonstrating that the hearing materials were provided and acknowledged.
- [7] Finally, although this was not necessary to the Panel's finding that the Member was on notice of the proceedings and had been properly served with materials, the Affidavit of Ms. O'Leary includes an email from the Member's counsel informing Ms. McNabb that neither he nor his client would be appearing at the hearing.
- [8] Based on all of the above, the Panel is satisfied that the Member was aware of the hearing dates and had full notice of the allegations and the evidence Ms. McNabb intended to adduce. In light of this, we proceeded in the Member's absence.

ii. *The Amended Allegations*

- [9] On July 7, 2021, the PCC filed Amended Allegations. At the outset of the hearing, Ms. McNabb informed us she had amended the allegations in minor ways. Some of the figures had changed slightly and there were minor changes to wording. The Member, having chosen not to participate in his hearing, did not object to the Panel relying on the Amended Allegations. In any event, given the minor nature of the amendments, the Panel saw no prejudice to the Member in accepting and relying on the Amended Allegations.

III. ISSUES

- [10] The Panel identified the following issues arising from the Allegations:
- A. Did the evidence establish, on a balance of probabilities, the facts on which the Allegations by the PCC were based?
 - B. If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did the Allegations constitute professional misconduct?
 - C. If the answer to B. is yes, what is the appropriate sanction?

IV. DECISION AND ORDER

- [11] The Panel found that the evidence established, on a balance of probabilities, the facts set out in the Amended Allegations of professional misconduct.

[12] The Panel was satisfied that the Amended Allegations constituted a breach of Rules 201.1 and 205 of the Rules of Professional Conduct, and, having breached these Rules, the Member committed professional misconduct.

[13] The Panel imposed the following Order on sanction and costs:

1. Fulvio A. De Angelis be reprimanded in writing by the Chair of the hearing;
2. Fulvio A. De Angelis shall pay a fine of \$75,000 to the Chartered Professional Accountants of Ontario ("CPA Ontario") by July 21, 2022;
3. Fulvio A. De Angelis' membership with CPA Ontario is revoked from the date of this Decision and Order;
4. Notice of this Decision and Order, disclosing Fulvio A. De Angelis' name, is to 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. Notice of this Decision and Order disclosing Fulvio A. De Angelis' name is to be given by publication on the CPA Ontario website, in *The Globe and Mail* and the *Vaughan Citizen*. Fulvio A. De Angelis shall pay all costs associated with the publication, which shall be in addition to any other costs ordered by the panel.

AND THAT:

6. Fulvio A. De Angelis shall pay costs of \$136,000 to CPA Ontario by July 21, 2022.

V. REASONS FOR THE DECISION ON MISCONDUCT

[14] Evidence in support of the Amended Allegations was placed before the Panel through the *viva voce* testimony of the investigator, Scott Porter, a Document Brief, made Exhibit 2, a Schedule Brief, made Exhibit 3, and a Transcript Brief, made Exhibit 4. The Panel did not have the benefit of any evidence from the Member, other than his representations provided during the investigation, which were included in the Document Brief (Exhibit 2), and his oral representations during three investigative interviews contained in the Transcript Brief (Exhibit 4).

1. The Facts Underlying the Misconduct

i. Background to the Misconduct

- [15] The MC and De Angelis families were old friends. After marrying GM in or about 1993, the Member became a trusted member of the MC family.
- [16] RM and her husband (now deceased) established MC in approximately 1993. From 1997 to January 2012, MC was a publicly traded company listed on the Toronto stock exchange and became one of Ontario's largest wineries. In January of 2012, RM privatized the company and assumed full ownership thereof.
- [17] In November of 1996, MC hired the Member as their in-house accountant. After the company went public in 1997, the Member was promoted to the position of Chief Financial Officer ("CFO"). He remained in that position until the end of his tenure at MC in August of 2016.
- [18] As the CFO, the Member managed a small staff of accounting personnel, was responsible for all financial matters at MC, prepared financial statements, was the primary contact for MC's auditors, KPMG, and reported to RM. In January of 2015, MC hired a CPA, BF, to be MC's new President. After BF was hired, the Member reported to both RM and BF.
- [19] MC terminated the Member's employment in August of 2016, approximately two months after his misconduct came to light.

ii. The Discovery of the Misconduct

- [20] In or about early 2016, BF became concerned that the value of MC's inventory appeared to exceed the relative inventory levels of MC's closest industry competitors.
- [21] BF asked the Member to prepare detailed inventory reports. It took the Member an inordinate amount of time to complete the task and, even when complete, the figures in the spreadsheets he created could not be reconciled with the prior financial statements provided by him to management.
- [22] In or about the middle of June 2016, MC's senior management met with the Member and asked him to explain the discrepancies between the spreadsheets he created and the financial statements he had provided to management. During this meeting, the Member admitted he had been manipulating the spreadsheets and financial statements previously provided to management for a number of years.
- [23] The Member further admitted he had been maintaining two sets of financial statements, one set that he would provide to MC's auditors, KPMG, and a second set he would provide to management.

- [24] By way of example, the financial statements provided by the Member to MC management as at January 31, 2015 valued MC's inventory at \$36 million. The figures provided to KPMG for the purpose of their annual 2015 audit, however, valued the inventory at \$50 million.
- [25] Subsequent audited financial statements as at August 31, 2016, January 31, 2017 and January 31, 2018 reported inventory values far lower than any of the inventory values as at January 31, 2014, 2015 and 2016 represented to management or to KPMG.
- [26] After the June meeting, MC hired KPMG to conduct a special audit. The Member continued to be employed for an additional two months so as to assist KPMG with the special audit. In August of 2016, the Member's employment with MC was terminated.

iii. The Misconduct

- [27] The facts in this portion of our reasons are set out under the heading of each allegation.

A. Misappropriation – Allegation 1a, 1b and 1c

- [28] The Member misappropriated a total of approximately \$200,000 from MC in a variety of ways:
1. Over an extended period he wrote 22 cheques to cash aggregating \$138,050, substantially all of which he deposited into his personal bank account and he caused to have these payments recorded in the company's books as casual wages but not included in his compensation reported to Canada Revenue;
 2. Over an extended period, he wrote 33 cheques to himself as expense reimbursements aggregating \$63,032, all of which were deposited to his personal bank account and which he caused to have recorded in the company's books erroneously as legitimate business expenses, though they were not expenses of the company; and
 3. He submitted over time 44 reimbursement claims for expenses totaling \$1,913, which he had not personally incurred and which he had paid for with the company credit card provided to him.

a. The 22 Cheques to Cash (\$138,050)

- [29] RM provided the Member with a quantity of pre-signed blank cheques. There was no assertion that the Member signed any of the cheques in either allegation 1(a) or 1(b). They were all signed by RM. As the cheques all were signed by an

authorized signing officer of the company the panel could not conclude that the payments were not authorized, but alternatively that the payments and subsequent deposits to the Members bank account were deceitful, even though the voucher contained an authorized signature.

- [30] The Member filled out a number of these cheques to “cash”. He would then ask the Administrative Accounting Assistant (“AAA”) employed by MC to go to the bank and return with cash. The AAA reported directly to the Member. She provided the cash from the cheques in question to the Member.
- [31] Mr. Porter demonstrated that with respect to 22 of these cheques, shortly after receiving the funds, deposits in corresponding, if not exact, cash amounts were made into the Member’s personal bank account. Mr. Porter took the Panel through a Schedule (Schedule C) he had created and which is contained in Exhibit 3.
- [32] By way of example, on September 12, 2013, the Member wrote a pre-signed cheque to cash in the amount of \$9,800. That same day, the Member deposited \$6,800 to his personal bank account and six days later, he deposited a further \$2,700 to his personal bank account. Another example from September 25, 2015 shows the proceeds from a pre-signed cheque to cash in the amount of \$9,700 and a corresponding deposit of \$9,500 in cash the same day to his personal bank account.
- [33] The 22 cheques the Member wrote to cash amount to a total of \$192,115. The deposits to his personal bank account amount to a total of \$138,050. Seven of the 22 cheques contained a handwritten notation on the back of the cheque: “Re-Vineyards”. During his first and second interviews with Mr. Porter, the Member confirmed he wrote the notation. Each of the cheque entries corresponding to all 22 cheques were coded to “Temporary Labour”. The evidence established that the Member instructed one of the staff reporting to him to code the cheque entries to “Temporary Labour”.
- [34] Mr. Porter interviewed RM and another employee of MC. They both confirmed that from about 2000 to 2006, MC would often take out cash to pay temporary labourers during harvest. That practice ceased in 2006, however, because MC entered into a contract with a company called VH. VH sourced and paid the temporary labourers. In turn, MC paid VH via cheque. In other words, in 2013 to 2015, there were no casual labourers whom MC paid in cash and consequently these notations and account codings were clearly wrong.
- [35] Mr. Porter interviewed the Member three times. During the second interview, the Member confirmed that the deposits to his bank account shown on Schedule C came from the pre-signed cheques he had written to cash and negotiated.
- [36] During this same interview, Mr. Porter confronted the Member with the fact that the

cash from the cheques could not have been utilized to pay temporary labourers. The Member agreed. He changed his story and claimed the deposits to his personal account represented reimbursement for funds he had disbursed on behalf of the company. His explanation for using his personal credit card rather than the corporate credit card he was provided was that he "... wanted the Air Miles or the points, whatever you want to call them, okay?"

- [37] Between the second interview and the third interview, the Member sent credit card statements purporting to support his explanation that the cash he deposited to his personal account represented reimbursement for legitimate company expenses.
- [38] The supporting documentation provided by the Member does not support his explanation. Mr. Porter cited numerous examples of purported expenses that could not have been legitimate expenses. We will cite only two examples in our reasons. The first example pertains to reimbursement of \$18,384, relating to dental expenses incurred by the Member for himself and his family. During the relevant time, MC had a benefits plan with Manulife. Every employee was entitled to reimbursement for up to \$1,500 annually for dental expenses for themselves and each member of their family. RM confirmed that MC did not reimburse employees for dental expenses above and beyond what was included in the benefits plan.
- [39] The second example pertains to a credit card entry for \$3,999.46 representing car repair costs after the Member's car was hit in a parking lot. The Member told Mr. Porter that MC reimbursed him for the repairs. However, RM told Mr. Porter that this expense was not authorized. Moreover, the company used expense reports and approval procedures for reimbursement but an expense report did not exist in support of this payment to the Member.
- [40] At the third interview, the Member was confronted with the fact that the majority of expenses for which he claimed he had been reimbursed were not in fact legitimate in that they were personal in nature. He agreed that he could not account for \$121,126.00 of the cash he deposited into his account.

b. The 33 Handwritten Cheques (\$63,023.98)

- [41] The evidence demonstrated that between 2005 and 2013, the Member wrote 33 cheques to himself. These cheques were also pre-signed by RM. The only difference between this allegation and Allegation 1a is that the Member made this batch of cheques payable to himself, rather than to cash. The entries and hyperlinks to the cheques are found at Schedules D1 and D2, in Exhibit 3.
- [42] Like Allegation 1a, the Member suggested that these cheques represented reimbursement for legitimate company expenses. This explanation is not

supported by the evidence.

- [43] By way of example, the Member cited as a legitimate company expense \$5,099.99 paid to HDC Services in 2006. Mr. Porter spoke with GM, the Member's estranged spouse. She confirmed that in 2006, the family renovated their basement and that the line items in the credit card statements relating to amounts paid to HDC Services were expenses related to the basement renovation.
- [44] Similarly, the Member proffered that \$241.50 paid to S Floral and \$2,094.67 paid to AR Restaurant in 2005 was a legitimate company expense. Both GM and RM confirmed that in fact these expenditures related to a party celebrating a religious event for the Member's daughter. RM told Mr. Porter that MC did not agree to pay for this party and that this was a personal expense.
- [45] The Member was given an opportunity to explain why he had provided these entries (and others) as support for legitimate company expenses when GM and RM said they were personal and not approved for reimbursement. The Member said either he must have made a mistake or he was simply "following the practice of the family." Ultimately the Member admitted that most of the expenses he claimed were not legitimate company expenses but were in fact personal, and that he intentionally reimbursed himself for personal expenses because that is what the family did.

c *Reimbursement for Expenses Never Incurred (\$1,913)*

- [46] The evidence demonstrated that on 44 occasions the Member submitted reimbursement forms through the petty cash reimbursement process for expenses he had paid for with the corporate credit card. In other words, he claimed and received \$1,913 representing reimbursement for expenses he never incurred.
- [47] Mr. Porter took the Panel through Schedule F (Exhibit 3) wherein the corporate credit card statements were compared to the petty cash reimbursement forms. The Panel was satisfied that every expense the Member sought and received reimbursement for was matched by an expenditure on the corporate credit card statement. By way of example, the Member sought reimbursement for a lunch at R Pizzeria on November 15, 2010, in the amount of \$25.09. The corporate credit card statement shows that \$25.09 was spent at R Pizzeria on November 15, 2010. It is clear the Member did not pay for the lunch out of his personal funds, yet he sought reimbursement.
- [48] The Member's explanation given to Mr. Porter in the second interview was that these were innocent errors.

B. The Inflation of Inventory Values for the Audited Financial Statements

[49] The Member was the only point of contact between MC and their auditors, KPMG. The Member prepared financial statements for KPMG, which they in turn relied upon when drafting their audited financial statements

[50] The financial statements the Member prepared for KPMG contained grossly inflated inventory values as set out below:

January 31, 2014 \$43,952,033

January 31, 2015 \$50,334,190

January 31, 2016 \$58,563,062¹

[51] KMPG's special audit revealed that as at August 31, 2016, the inventory was valued at \$18,221,395, substantially less than the \$58,563.062 represented by the Member as at January 31, 2016 or the \$50,334,190 as at January 31, 2015. Further, subsequent annual audited financial statements as at January 31, 2017 and January 2018 reported inventory values of \$17.4 million and \$16.7 million respectively. These consistently grossly lower values provide circumstantial evidence of the possible extent of the inventory misstatements at January 31, 2014, 2015 and 2016.

[52] The Panel has taken into account that the value of inventory in an agricultural business will fluctuate depending on the season, and the restructuring efforts subsequent to August 31, 2016 may also have had a significant effect on inventory levels. Nevertheless, these comparisons provide circumstantial evidence of the magnitude of the inventory misstatements as proven by other means. Moreover, the Member admitted that he inflated the values of both the raw and bulk inventory.

[53] The Member inflated the values of the raw and bulk inventory in two ways. He added fictitious inventory to the financial records and he changed inventory descriptions so that low-cost wines were priced as higher cost wines in the final costed inventory list.

[54] With respect to the raw inventory, Mr. Porter provided the panel with an example of mispriced home winemaking kits. This physical raw material inventory was controlled by an employee, FD. The inventory list that FD retained from 2014 is at Tab 17.1 of Exhibit 2. FD's list shows inventory of 147 drums of Red Concentrate and 225 drums of White Concentrate, for a total of 372 drums. The Member's inventory list (Tab 22.2, Exhibit 2) shows 1 million litres valued at \$4 million for both Red and White concentrate together. Mr. Porter explained that 1 million litres equals 4500 drums.

1 Schedule A1, Exhibit 3

- [55] The Panel understood from this that while product on hand of both Red and White Concentrate equaled only 372 drums, the Member misrepresented product on hand as equaling 4500 drums. Mr. Porter explained that this amounted to an inventory overstatement of \$3.5 million representing a difference of 4,128 drums.
- [56] During the third interview with Mr. Porter, the Member admitted to augmenting the raw material inventory in the manner described above for both 2014 and 2015.
- [57] The second inflation of inventory relates to the bulk inventory. The example provided to us related to the wine in tanks. PR was the winemaker responsible for maintaining the inventory of wine in tanks. PR's lists are detailed and specific (Tabs 19 and 20 Exhibit 2). Mr. Porter took us through the following example wherein a low-cost wine was altered in the inventory list to be priced as a high-cost wine. PR's inventory list for 2014 shows an entry (line E3) citing 49,300 litres of BP Red, valued at 0.90 per litre, amounting to a value of \$44,370. When the Member provided the inventory values to KPMG, he had the line item for BP Red changed to Cabernet Franc Ice Wine, at a cost of \$37.05 per litre, amounting to a value of \$1,826,565. This change resulted in an overstatement of inventory value of just under \$1.8 million.
- [58] The Member did not change the descriptions of the wine varieties himself. Rather, he asked PR to change the descriptions and PR complied. PR was interviewed by Mr. Porter and confirmed he was asked to change the description of the items in the bulk inventory and that he did so.
- [59] There were multiple instances of these types of costing manipulations resulting in overstatement of the value of the wine in tanks. In aggregate, the errors identified by Mr. Porter with respect to bulk inventory amounted to \$19.3 million for 2014 and \$26 million for 2015.
- [60] The Member acknowledged that he told PR to change the descriptions of the wine in tanks for the purpose of providing inflated values to both management and KPMG. The Member confirmed during his interviews that he was the only one who knew about the inflated values and that management did not know.
- [61] KPMG relied on the inflated inventory values in preparing the audited financial statements for the company.

C. Two Sets of Financial Records - Inventory

[62] The evidence demonstrated that the Member provided one set of financial records to KPMG and another set to management. Although the inventory values provided to management were also inflated, they were lower than those provided to KPMG. The table below sets out the differences and is reproduced from Schedule A1 of Exhibit 3.

Inventory	January 31, 2014	January 31, 2015	January 31, 2016	August 31, 2016
Internal Financial Statements	\$34,259,230 ¹	\$36,445,338 ²	\$34,469,908 ³	N/A
Provided to Auditors	\$43,952,033 ⁴	\$50,334,190 ⁵	\$58,563,062 ⁶	N/A
External Audited Financial Statements			N/A	\$18,221,395 ⁷

[63] The Member was able to perpetrate this deceit on management by doctoring the internal financial statements to make them look like they were the KPMG audited financial statements. An example of this is found at Tab 3.1 of Exhibit 2. The Member took the audited financial statement with the KPMG signature and changed the inventory value from \$43,952.033 to \$34,259.230.

[64] Mr. Porter reviewed the metadata relating to the document at Tab 3.1. The metadata showed that the document was last modified by the Member.

[65] RM told Mr. Porter that the 2014 and 2015 internal statements were presented as audited statements. She had no reason to believe they were not in fact the audited statements signed by KPMG.

[66] During his third interview with Mr. Porter, the Member admitted to maintaining two sets of records, one for management and one for KPMG. Inventories for both the internal financial statements provided to management, and for the external financial statements provided to the company’s Bank for both years in question were significantly inflated.

D. Two Sets of Financial Records – Line of Credit

[67] The Member underreported the available credit and the monies drawn down on the line of credit to management. The figures reported to management were significantly lower than the figures reported to KPMG and which were included in the audited financial statements. The table below is reproduced from Schedule A2 of Exhibit 3, and illustrates the differences between the two sets of documents:

Line of Credit		January 31, 2014	January 31, 2015
Internal Financials	Authorized Limit	\$14.5 million ⁸	\$17.5 million ⁹
	Credit Drawn	\$11.8 million ¹⁰	\$13.7 million ¹¹
Audited External Financials	Authorized Limit	\$15.5 million ¹²	\$17.5 million ¹³
	Credit Drawn	\$14.2 million ¹⁴	\$16.8 million ¹⁵

[68] During his second interview with Mr. Porter, the Member admitted he had provided different numbers regarding the line of credit to management and to KPMG. He suggested he did so for the benefit of the family.

iv. The Consequences to MC

[69] In the summer of 2016, after the Member's manipulations of inventory values and line of credit figures were discovered, KPMG conducted a special balance sheet audit. They produced their report on November 10, 2016 (Tab 12, Exhibit 2). The balance sheet was as at August 31, 2016.

[70] The notes to the balance sheet as at August 31, 2016 reported on by KPMG disclosed:

- The company had paid \$4.4 million in increased income taxes due to the overvaluation of the inventory;
- The correction of the errors resulted in the violation of financial and non-financial covenants under the terms of MC's lending agreements
- MC did not receive a waiver from the lenders for the above-noted violations, and thus the amounts outstanding under MC's various lending agreements were classified as a current liability in the consolidated balance sheet;
- At the time, MC did not have the funds available to repay all amounts outstanding under the various lending agreements;
- The lender appointed an advisor, obtained a demand debenture of \$25 million and entered into a forbearance agreement.

[71] With respect to the forbearance agreement, the lender set out permanent reductions of the available line of credit through periodic mandatory repayments totaling \$10.18 million by April 30, 2017. The lender which provided first mortgages on land, buildings, and vineyards, did not provide waivers and at the time of the

delivery of the report had not provided new or revised lending agreements.

[72] KPMG concluded the note entitled “Special Investigation and going concern” with the following warning:

The Company is currently in discussion with one of its current lenders, who holds first security charges on land, buildings, and vineyards, to provide additional financing and is also in discussions with potential buyers to sell certain non-core assets. Management believes that it will complete one or more of these arrangements in sufficient time to continue to execute its planned operations without interruption. However, there can be no assurance that capital will be available as necessary to allow the Company to continue operations and repay or refinance the outstanding operating lines and term debt, including repayments required by the forbearance agreement discussed above, or if the capital is available, that it will be available on terms acceptable to the Company. As a result of the foregoing, there is a material uncertainty that may cast significant doubt as to whether the Company will be able to continue as a going concern and realize its assets and settle its liabilities as they fall due.

v. Finding of Professional Misconduct

[73] With respect to Allegation 1. The Member’s explanations provided in the interviews are not credible and do not withstand scrutiny. The vast majority of the proceeds from the cheques made out to cash which he originally recorded in the accounts of the company as casual wages and subsequently claimed to be reimbursements of company expenses were not. The cheques he originally claimed were company expenses were in fact personal in nature and were ultimately deposited into his personal bank account.

[74] The Member suggested many times during his interviews with Mr. Porter that he was merely doing what the family did, suggesting a culture existed at the company that supported false transactions and reporting of this nature. Such claims were not supported by evidence. In any event, such a culture would not entitle a CPA to do the same and in fact would require him or her to take some actions counteracting such behaviour.

[75] The Member, having chosen not to attend his hearing, did not testify. Nonetheless, the Panel is entitled to accept hearsay evidence and to assess it in the manner in which we assess any evidence we receive. We rejected the Member’s explanations, given during his interviews with Mr. Porter, that the misappropriations were innocent mistakes. The Member resorted to the innocent mistake explanation only after Mr. Porter demonstrated to him that his first and second explanations did not support an authorized taking of the funds in question.

Moreover, when left without a viable explanation, the Member admitted to taking some of the funds for his personal gain. The preponderance of evidence demonstrated on a balance of probabilities that the Member misappropriated the funds as alleged.

- [76] With respect to Allegations 2, 3 and 4, the evidence of the Member's misconduct was overwhelming and amply supported by the documentation, information from third parties interviewed by Mr. Porter, and by the Member himself.
- [77] The PCC has proved all four allegations on a balance of probabilities and the panel has determined that these actions of the Member amount to a breach of Rule 201.1 and Rule 205.

VI. REASONS FOR THE DECISION ON SANCTION

- [78] The Decision and Order of the Panel set out in Section IV of these reasons was requested by Counsel for the PCC. The Panel agreed with the request and did not alter the terms requested.
- [79] The Member engaged in what can only be described as an egregious breach of trust in a variety of ways. The misappropriation alone would have attracted the sanction of revocation. However, the manipulation of the financial records, the deceit perpetrated on management by creating and maintaining two sets of financial statements and the involvement of company employees in the manipulation of the records is equally serious.
- [80] An aggravating feature of the misconduct is the Member's abuse of his trusted position in the family. RM delegated the responsibility for financial matters to the Member, as a CPA, and he abused this trust. It was only when BF joined the company as President were the Member's figures and actions questioned, and ultimately discovered.
- [81] Although the Member participated in the investigation, his participation did not shorten it as he provided misleading information and was not forthcoming with reliable information. The Member did not appear at the hearing and offered no evidence of remorse. The member conducted these varied activities over many years and so had numerous opportunities to desist. The Member solicited other employees who, although they may not have been aware of the ramifications of their witless involvement, would in hindsight be impacted. There were numerous impacted parties including management, the company's bank and Canada Revenue.
- [82] Revocation is the only appropriate penalty in these circumstances. Nothing short

of revocation will serve as a general deterrent and instill and maintain public confidence in the CPAO's ability to regulate the profession in the public interest.

VII. COSTS

- [83] The law is settled that an order against the Member for costs with respect to the disciplinary proceeding is not a penalty. Costs are intended to indemnify the PCC, based on the underlying 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.
- [84] Costs are awarded at the discretion of the Discipline Committee. It has become customary for the PCC to file a Costs Outline in the same form as used in civil proceedings, and to seek 2/3 of the costs incurred in the investigation and prosecution of the matter.
- [85] The PCC Costs Outline is found at Exhibit 5. It totals \$204,287.50, 2/3 of which is approximately \$136,000, the amount sought by the PCC.
- [86] The Panel orders a cost award of \$136,000, payable by July 21, 2022.

Dated this 15th day of September, 2021



Randal Adamkowski, CPA, CA
Discipline Committee – Deputy Chair

Members of the Panel

David Handley, (Public Representative)
Gary Katz, FCPA, FCA
Catherine Kenwell, (Public Representative)
Olga Wong, MBA, CPA, CGA, FCCA

Independent Legal Counsel

Lisa Freeman, Barrister & Solicitor