

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

ADMISSION AND REGISTRATION COMMITTEE

IN THE MATTER OF: Allegations against K [REDACTED] R. S [REDACTED], under Regulation 9-1: Student Registration, Obligations and Standing, Section 13: Good Character on Registration, as amended

TO: K [REDACTED] R. S [REDACTED]
[REDACTED]
[REDACTED]

AND TO: The Admission and Registration Committee

NOTICE OF REFERRAL FOR A HEARING

Pursuant to section 13 of Regulation 9-1, adopted by Council under the *Chartered Professional Accountants of Ontario Act, 2017* and the By-law governing the Chartered Professional Accountants of Ontario (“CPA Ontario”), I hereby request the Admission and Registration Committee to convene an oral hearing in respect of this application.

THE GROUNDS FOR THE REQUEST ARE:

1. The Applicant applied to be registered as a student with CPA Ontario on January 1, 2018. Having reviewed the application for registration, I am not satisfied that the applicant has provided evidence of good character as required under Regulation 9-1: Student Registration, Obligations and Standing, Section 13: Good Character on Registration.
2. The particulars are:
 - a. The Applicant was registered in Ontario, British Columbia, Saskatchewan and Nova Scotia as a mutual fund salesperson / dealing representative, and an approved person with Desjardins Financial security Investments Inc. (the “Member”), a member of the Mutual Fund Dealers Association of Canada (“MFDA”);
 - b. Between September and December 2015, the Applicant received a complaint from [REDACTED] client verbally and in writing, which [REDACTED] failed to report to the Member, and without the prior written authorization of the Member, [REDACTED] paid compensation to a client to resolve her complaint, contrary to section 4.1 (a) of MFDA Policy No. 6, section 9-1, 9-2 and 10 of MFDA Policy No. 3, MFDA Rules 2.1.1, 2.1.4, 2.5.1, 1.1.2 and the policies and procedures of the Member;
 - c. In May 2016, the Applicant engaged in discretionary trading by processing three trades in the investment accounts of [REDACTED] client without first obtaining instructions

from the client with respect to all elements of the trades, contrary to former MFDA Rules 2.3.1(a) [now MFDA Rule 2.3.1(b)], 2.1.1, 2.1.0 and 1.1.2 and the policies and procedures of the Member;

- d. The Applicant entered into a settlement agreement with the Staff of the MFDA dated February 8, 2019 (the "Settlement Agreement"), in which the Applicant agreed to a proposed settlement of the matters for which the Applicant could be disciplined by the MFDA pursuant to sections 20 and 24.1 of MFDA By-law No. 1;
 - e. On March 7, 2019, the Settlement Agreement was accepted by a panel of the MFDA, and consequently, the Applicant was ordered to pay a fine in the amount of \$18,000, and costs to the MFDA in the amount of \$5,000.
3. I have determined that the Applicant otherwise meets all the criteria to be registered as a student.

Date: November 25, 2019



Heidi Franken
Registrar

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

ADMISSION AND REGISTRATION COMMITTEE

IN THE MATTER OF: A good character hearing into K [REDACTED] R. S [REDACTED], an applicant for registration as a student with the Chartered Professional Accountants of Ontario pursuant to Regulation 9-1: Student Registration, Obligations and Standing, as amended.

TO: K [REDACTED] R. S [REDACTED]

AND TO: Registrar, CPA Ontario

DECISION AND ORDER MADE JUNE 11, 2020

DECISION

Having read the evidence and having heard the submissions of the parties, the Tribunal is not satisfied that the applicant has provided evidence of good character as required under Regulation 9-1: Student Registration, Obligations and Standing and Section 13: Good Character on Registration.

ORDER

1. The application of K [REDACTED] R. S [REDACTED] to be registered as a student with CPA Ontario is denied.

DATED at Toronto this 11th day of June, 2020.



Elaine Sequeira, FCPA, FCA
Admission and Registration Committee – Chair

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

ADMISSION AND REGISTRATION COMMITTEE

IN THE MATTER OF: A good character hearing into K [REDACTED] R. S [REDACTED], an applicant for registration as a student with the Chartered Professional Accountants of Ontario pursuant to Regulation 9-1: Student Registration, Obligations and Standing, as amended.

BETWEEN:

K [REDACTED] R. S [REDACTED]

-and-

**REGISTRAR, CHARTERED PROFESSIONAL
ACCOUNTANTS OF ONTARIO**

Heard: June 11, 2020

Release of written decision and reasons: July 6, 2020

REASONS FOR THE DECISION MADE JUNE 11, 2020

I. BACKGROUND AND FACTS

[1] This hearing was held to determine whether the Applicant, K [REDACTED] R. S [REDACTED] (the “Applicant”) was of good character at the time of the hearing and thereby met the requirements for registration as a student of the Chartered Professional Accountants of Ontario (“CPA Ontario”). The Applicant’s good character was put into issue as a result of [REDACTED] admitted contravention of the Rules of the Mutual Fund Dealers Association (“MFDA”) in 2015 and 2016. [REDACTED] application was referred by the Registrar to the Admission and Registration Committee (“ARC”).

- [2] The Applicant worked as a mutual fund salesperson/dealing representative from 1991 until December 2019. ■ was an Approved Person with Desjardins Financial Security Investments Inc. ("Desjardins") from July 1, 2006 and Desjardins is a member of the MFDA.
- [3] In the Agreed Statement of Facts between the Applicant and the Registrar (the "ASF"), the parties described the events that led to the Settlement Agreement dated February 8, 2019 with the MFDA (the "MFDA Settlement Agreement"), where ■ admitted to several contraventions of the MFDA Rules. The MFDA Settlement Agreement related to two matters: the Applicant's private settlement of a client complaint in late 2015 without reporting the complaint or the settlement to Desjardins; and, ■ engagement in discretionary trading on two occasions in May 2016 without the proper authorizations.
- [4] Both complaints were made by a client, NB. In September 2014, NB (then 62 years old) and her husband, RB (then 71 years old), retained the Applicant and transferred their accounts to be managed by ■ through Desjardins. The Know-Your-Client information identified NB and RB as novice investors with a medium risk tolerance and a time horizon of more than ten years. NB and RB instructed the Applicant that they wanted to avoid paying fees on their investment accounts.
- [5] The Applicant structured the investments of NB and RB in account portfolios such that approximately 80% of their money was invested in mutual funds subject to deferred sales charge ("DSC") fees if redemptions were made within five years of the purchases.
- [6] In August 2015, NB instructed the Applicant to redeem the investments that she had purchased in trust for her granddaughter. The Applicant processed the redemption as requested and NB incurred a DSC fee in the amount of \$262.19 on the redemption of a mutual fund.
- [7] In September 2015, NB claimed that the DSC fee that she had incurred was inconsistent with her direction to the Applicant to avoid fees on her accounts.

According to the ASF and the MFDA Settlement Agreement, NB told the Applicant that she expected [REDACTED] to refund the DSC fee in full and if [REDACTED] refused, she would contact [REDACTED] supervisor.

- [8] In December 2015, NB still had not received any compensation or a satisfactory response to her complaint. At the time, she did not have her own e-mail account. According to the ASF and the MFDA Settlement Agreement, NB restated her complaint to the Applicant in writing in an e-mail that she sent from the e-mail account of her brother, who was the Applicant's client.
- [9] The Applicant did not report to Desjardins that [REDACTED] had received a verbal or written complaint from NB.
- [10] On December 26, 2015, the Applicant left a bag outside the front door of the home of [REDACTED] clients, NB and RB. In the bag, NB and RB found approximately \$250 in cash (slightly less than the value of the DSC fee that had been incurred), several trade forms and a letter addressed to them.
- [11] The Applicant did not inform Desjardins that NB had complained about the DSC fee that she incurred, nor did [REDACTED] request authorization to pay compensation to NB to resolve her complaint.
- [12] The events leading to the second complaint started on May 1, 2016, when NB informed the Applicant that she wanted to withdraw \$30,000 from her open account. On May 3, 2016, the Applicant confirmed with NB that the proceeds of redemption should be deposited into her bank account. The Applicant processed the redemption, but exercised discretion with respect to which mutual fund(s) should be redeemed to comply with NB's request.
- [13] On May 20, 2016, NB informed the Applicant that she wanted to withdraw another \$30,000 to apply towards a real estate investment that she intended to make with her daughter. On May 26, 2016, NB followed up on her request because it still had not been processed.

- [14] On May 27, 2016, NB expressed frustration that she still had not received the money that she had requested and instructed the Applicant to increase the withdrawal request to \$40,000.
- [15] On May 27, 2016, relying on a limited trading authorization, the Applicant submitted letters of direction on behalf of NB (but without her signature) in order to process a \$31,000 redemption from a mutual fund held in her open account and a \$9,000 redemption from a mutual fund held in her tax free savings (“TFSA”) account. Although the Applicant processed the redemptions in response to NB’s request, ■ exercised discretion with respect to which mutual funds should be redeemed and which accounts the redemptions should be taken from.
- [16] On June 14, 2016, when NB received confirmation slips concerning the redemptions that had been processed in her accounts on May 30, 2016, she immediately wrote an e-mail to the Applicant saying that she hoped that ■ had not taken funds from her TFSA account.
- [17] The Applicant replied by stating, among other things, “for the 40K I knew that you would not like any fees so I made sure you were not charged for any transactions.”
- [18] Later the same day, NB contacted the Applicant’s branch manager to complain about the fact that mutual funds had been redeemed from her TFSA account and the fact that many mutual funds had been purchased in her investment accounts subject to DSC fees which she believed was contrary to her instructions and understanding.
- [19] In the ASF, the Applicant admitted that ■ was required to obtain instructions from NB with respect to all elements of the trades that ■ processed on her behalf in May 2016 including the account in which the transactions were to be processed, the specific securities to be traded, the amount or value of each security to be traded and the timing of the trades.

[20] The two complaints were filed with the MFDA. The matter was resolved by the MFDA Settlement Agreement dated February 8, 2018, where the Applicant admitted to the following contraventions of MFDA Rules:

“Between September and December 2015, [the Applicant] received a complaint from ■ client NB verbally and in writing that ■ failed to report to the Member and without the prior written authorization of the Member, ■ paid compensation to ■ client NB to resolve her complaint, contrary to section 4.1(a) of MFDA Policy No. 6, sections 9-1, 9-2, and 10 of MFDA Policy No. 3, MFDA Rules 2.1.1, 2.1.4, 2.5.1 and 1.1.2 and the policies and procedures of the Member; and

In May 2016, [the Applicant] engaged in discretionary trading by processing three trades [in fact, there were only two trades] in the investment accounts of ■ client NB without first obtaining instructions from the client with respect to all elements of the trades, contrary to former MFDA Rules 2.3.1(a) [now MFDA Rule 2.3.1(b)], 2.2.1, 2.10 and 1.1.2 and the policies and procedures of the Member.

[21] As a result of the above-noted contraventions, and in accordance with the MFDA Settlement Agreement, the Applicant was ordered to pay a fine in the amount of \$18,000 and pay costs to the MFDA in the amount of \$5,000. The Applicant testified that ■ paid the fine and the costs.

[22] The Applicant applied to be registered as a student with CPA Ontario a month before ■ entered the MFDA Settlement Agreement. In ■ application for registration dated January 1, 2018, the Applicant declared that ■ was the subject of an investigation or a disciplinary decision or a form of settlement by an academic institution or professional body.

[23] On January 31, 2018, in response to questions about ■ declaration, the Applicant wrote to CPA Ontario and stated the following with respect to the circumstances that resulted in the MFDA disciplinary action:

“The reason for the investigation was that during May 2016, while I was in Vienna, a client requested a withdrawal from her accounts. I processed the trade from the accounts as I understood that it should be done and had it deposited into her bank account. Upon my return from Europe she had complained that the money had been taken from the wrong account. We made the correction but this was not sufficient for her. She made a formal complaint and as a result I have been under investigation ever since.”

[24] In a second (undated) letter to CPA Ontario regarding the circumstances giving rise to the MFDA disciplinary action, the Applicant stated as follows:

“In May 2016, N. requested a second redemption from her account. She had made a redemption a month or so earlier of precisely the same amount. Upon reading her e-mail request, I misinterpreted it and thought it was a follow up from the previous request. I was wrong. At this time, I was also leaving for Europe for a conference, which exacerbated the issue. Because I was in a rush I did not give the communication the due time that it needed. It was my understanding that N.’s request was a follow up of a previous request and not the initiation of a new request. In this I was incorrect. It was an additional request for an equal amount of money from the same account. There is some dispute to the actual events that followed. My belief is that we spoke and that I did the transaction precisely as articulated. She claimed that I did not do the redemption as agreed. Once I returned to Canada everything was changed to what she said she wanted. There were no costs or expenses incurred for the change as far as I know. However, while I was still in Europe, she initiated the complaint process and continued to escalate it.”

[25] In the Applicant’s second letter to CPA Ontario, ■ set out the following as “thoughts and takeaways”:

“Lesson 1: Follow my impressions. I followed up with her because her brother was a good friend and I didn’t want to offend him. That will not

happen again. It is better to test the friendship than to get into a bad situation.

Lesson 2: Some people aren't worth helping. There are individuals who create problems as part of their nature. There is nothing that will satisfy them, and the truth is not something they want. [...]

Lesson 3: Anyone who disputes publicly available and produced information probably have [sic] a hidden agenda and should be avoided if possible. [...]

Lesson 4: When someone no longer believes what you say, even when it is verified and substantiated with documentation, then it is time to cut your losses and walk away. [...]

Lesson 5: Every time I receive instructions now I send an electronic copy to the client for approval, thereby ensuring that there is no misunderstanding of the instructions. I get written confirmation of most transactions now prior to making any trades. There are very few exceptions to this rule.

Lesson 6: Although I am very thorough with my paperwork, even though I had all the disclosures signed and resigned. None of that matters. I am having to take better notes now of events, conversations and meetings.”

- [26] During the hearing, the Applicant characterized ■ two issues with MFDA as failing to report a complaint and a problem with email instructions. ■ explained that with respect to the second issue, ■ was “intoxicated in Dubrovnik” at the time and ■ did not check to see what ■ instructions were. The Applicant testified that the client wanted the transaction completed right away and as a result, ■ engaged in “what was considered to be discretionary trading”. ■ told the panel that this was the only complaint that ■ had received in 30 years and that was all ■ had to say.
- [27] The Applicant was cross-examined by Counsel for the Registrar and asked questions by the panel.

- [28] With respect to 2015 complaint, the Applicant indicated that [REDACTED] instructions from NB and RB to avoid investment fees were premised on their agreement that the funds would not be touched for five years. Contrary to the ASF and the MFDA Settlement Agreement, the Applicant denied that [REDACTED] received a complaint from NB about the investment fee in 2015 and indicated that [REDACTED] had refunded her DSC fees (cash left in the bag outside the clients' front door) on [REDACTED] own initiative.
- [29] The Applicant explained that [REDACTED] left cash in the bag at the door of [REDACTED] clients' home (as opposed to reimbursing them through the Desjardins account) because it was "convenient" and [REDACTED] knew it was not allowed. [REDACTED] said that [REDACTED] did not get a receipt for payment or tell anyone at Desjardins about this incident because [REDACTED] knew that what [REDACTED] was doing was against policy and [REDACTED] was concerned that [REDACTED] would get into trouble.
- [30] The Applicant testified that [REDACTED] left a note in the bag along with the trade forms and told the clients to sign the forms they wanted to sign and to destroy the other documents. When a panel member expressed concern that these were unsophisticated clients and might not understand the forms without [REDACTED] guidance, the Applicant said that the documents were not important and were just "routine stuff."
- [31] With respect to the 2016 complaint, the Applicant was cross-examined about the events of May 2016 and on [REDACTED] different versions of the events, as follows:
- a. In [REDACTED] letter to CPA Ontario dated January 31, 2019, [REDACTED] said that [REDACTED] was in Vienna in May 2016 at the time of the trade;
 - b. In [REDACTED] undated letter to CPA Ontario, [REDACTED] said that [REDACTED] was "leaving for Europe for a conference" at the time of the trade; and
 - c. In [REDACTED] direct evidence, [REDACTED] said [REDACTED] was "intoxicated in Dubrovnik" at the time of the trade.

- [32] After lengthy questioning by counsel for the Registrar and clarification from the panel, it appeared that the Applicant was in Canada for the first trade (May 3, 2016), ■ then left for a two-week trip to Europe which started in Vienna, and ■ was then in Dubrovnik when ■ made the second trade (May 27, 2016).
- [33] While the Applicant did disclose in ■ CPA Application that "■ was the subject of an investigation or a disciplinary decision or a form of settlement by an academic institution or a professional body" ■ did not disclose the specifics of the 2015 or 2016 complaints and later, in subsequent letters to CPA Ontario, ■ did not mention the 2015 cash payment or the discretionary trading findings. When questioned about this, ■ explanation was that ■ answered the questions as posed by CPA Ontario.
- [34] The Applicant was asked if ■ had any other complaints that went to the MFDA and ■ advised that Desjardins and MFDA received a complaint alleging that ■ had given tax advice, however after an investigation, ■ was advised in writing in January 2020 that ■ had been "exonerated." The Applicant was asked by the panel when this complaint was initiated and ■ indicated that ■ believed that this was in June - August 2018. ■ advised that ■ did not report these investigations to CPA Ontario.
- [35] The Applicant was asked several questions about ■ perspective on these issues and in particular, ■ was asked if ■ had any remorse about the events in 2015 and 2016. The Applicant stated that ■ had been "stupid". ■ said ■ now appreciated the importance of following rules, no matter how "trivial" the rule is. The Applicant described the discretionary trading rules as "persnickety."
- [36] The Applicant testified that ■ retired in early 2020 and sold ■ book of business on November 30, 2019. ■ said that ■ planned to live in the Philippines during the winter months and in Canada for the remainder of the year.
- [37] The Applicant was asked why ■ applied to CPA Ontario and ■ indicated that ■ only wanted to write the CPA Ontario exams and ■ did not intend to become an

accountant. The Applicant said that ■ had a friend who said that the CPA Ontario exams were difficult and so ■ wanted the challenge of writing the exams - "it's an ego thing for me."

- [38] Counsel for the Registrar pointed out that the Applicant was asked to update ■ character letters and tell ■ references about the issues before CPA Ontario. The Applicant told the panel that ■ had chosen not to do so because ■ motivation was to write the exams and whether ■ was found to be of good character was "incidental." ■ added that ■ did not want to bother ■ references because it was tax season and it was not important to ■

Good Character Letters

- [39] The Applicant provided the panel with three letters respecting ■ character. M ■ P ■ and R ■ N ■, ■, both wrote letters in April 2020 that stated they had worked with the Applicant on a professional basis and both found ■ to have "high integrity" and a good work ethic.
- [40] E ■ H ■, a former client, sent an undated email in support of the Applicant. ■ wrote that ■ had been ■ client for many years and ■ had a "high work ethic and outstanding integrity."
- [41] As none of the letters indicated that the authors were aware of the good character issues, counsel for the Registrar advised that the Applicant was asked to update the letters to refer to the events at issue. The Applicant did not do so, for reasons set out above.

II. ISSUES IN THIS HEARING

- [42] The issue in this application was whether the evidence demonstrated on a balance of probabilities that the Applicant was of good character at the time of the hearing and could be registered with CPA Ontario.

III. DECISION

- [43] The Panel found that the Applicant failed to establish on a balance of probabilities that ■ was of good character at the time of the hearing and refused ■ application for registration to CPA Ontario.

IV. REASONS FOR DECISION

Good Character Requirement in Regulations

- [44] Under subsection 3.3 of Regulation 9-1, the Registrar shall register as a Student with CPA Ontario any individual who provides evidence of good character satisfactory to the Registrar. The Registrar shall not register an applicant without being satisfied that the registration will not put the public at risk or bring the reputation of the profession into disrepute (subsections 6.1 and 6.2 of Regulation 9-1).
- [45] It is the Applicant's responsibility to ensure that their application is complete and accurate (subsection 7.2 of Regulation 9-1).
- [46] If an applicant does not provide evidence of good character satisfactory to the Registrar, or if the evaluation of their application requires an assessment of the applicant's credibility, the Registrar shall refer the matter to an oral hearing before the ARC (sections 13 and 14 of Regulation 9-1). In referring the matter to the ARC, the Registrar is not making a decision about the applicant's good character, but rather they are finding that they have not been given sufficient evidence by the applicant to make a decision about good character or that the evidence provided on its face requires testing for credibility.
- [47] If the ARC determines that an applicant is not of good character, they shall make an order refusing the applicant's registration and may impose restrictions and conditions for reapplication if appropriate (section 19). If the ARC determines that the applicant has met the good character requirements, it shall make an order

registering the applicant on such terms and restrictions as the Committee considers appropriate.

What is Good Character?

[48] “Good character” is not defined in the Regulations, however it has been considered in CPA Ontario case law as well as case law from other regulators, such as the Law Society of Ontario. *Law Society of Upper Canada v Preya*, 2000 CanLII 14383, is often cited for its definition of good character:

“That combination of qualities or features distinguishing one person from another. Good character connotes moral or ethical strength, distinguishable as an amalgam of virtuous attributes or traits which undoubtedly include, among others, integrity, candour, empathy and honesty.”

[49] In *Law Society of Upper Canada v Blackburn*, 2010 ONLSHP 112, the Panel quoted from Madam Justice Southin of the British Columbia Court of Appeal:

“[G]ood character” means those qualities which might reasonably be considered in the eyes of reasonable men and women to be relevant to the practice of law...Character...comprises...at least these qualities:

1. An appreciation of the difference between right and wrong; and
2. The moral fibre to do that which is right, no matter how uncomfortable the doing may be and not to do that which is wrong no matter what the consequences may be to oneself;
3. A belief that the law at least in so far as it forbids things which are *malum in se* must be upheld and the courage to see that it is upheld.

[50] Gavin McKenzie, in his book *Lawyers and Ethics: Professional Responsibility and Discipline*, stated that the objectives of the good character requirement are the same as the principles of discipline, namely to:

“...protect the public, to maintain high ethical standards, to maintain public confidence in the legal profession and its ability to regulate itself, and to deal fairly with persons whose livelihood and reputation are affected.”

[51] Section 6 of Regulation 9-1 sets out similar objectives: the Registrar shall not register an applicant without being satisfied that the registration will not put the public at risk or bring the reputation of the accounting profession into disrepute.

Who Bears the Onus and What is the Burden of Proof?

[52] Under section 13 of Regulation 9-1, an applicant must provide satisfactory evidence to establish his or her good character. Here, the onus was clearly on the Applicant to convince the Panel that despite ■■■ previous misconduct, ■■■ was a person of good character at the time of the hearing.

[53] In the absence of a contrary standard of proof set out in the Regulations, the burden of proof applicable to other hearings of the committees of CPA Ontario should apply to good character hearings, namely proof on a balance of probabilities. Thus, the Applicant must satisfy the Panel that ■■■ was of good character at the time of the hearing on a balance of probabilities.

Factors Determining Good Character

[54] In *GB v Registrar, Chartered Professional Accountants of Ontario* (“GB”), the Panel adopted the five-point test developed by the Law Society of Ontario jurisprudence, namely:

- a. The nature and duration of the misconduct;
- b. Whether the applicant is remorseful;
- c. What rehabilitative efforts, if any, had been taken and the success of such efforts;
- d. The applicant’s conduct since the misconduct; and

- e. The passage of time since the misconduct.

Analysis

Nature and Duration of Misconduct

- [55] The Applicant admitted that in December 2015, ■ paid ■ client, NB, personally for the DSC fees attracted by the redemption of mutual funds and that ■ did not report this to Desjardins because ■ knew that it was not permitted. The Applicant also admitted that ■ engaged in discretionary trading in May 2016.
- [56] During ■ evidence, the Applicant claimed that ■ was not aware that the client had complained about incurring transaction fees in 2015, due to an email miscommunication, and therefore ■ did not fail to tell Desjardins the complaint or how ■ settled the complaint. ■ evidence was that ■ had dropped the cash off at the client's home of ■ own volition. ■ admitted that ■ knew that this was "against the rules." This evidence is contrary to the Applicant's agreement to the facts in the MFDA Settlement Agreement and the ASF, where ■ admitted that ■ had received NB's verbal complaint and decided not to disclose the complaint to Desjardins.
- [57] The panel found that the Applicant's evidence was inconsistent with ■ previous statements. The Applicant's unusual behaviour in dropping off cash and documents in a bag at the client's front door suggests that ■ was aware of the client's verbal complaint and was trying to resolve it privately and under Desjardin's radar. The Applicant provided no explanation for ■ previous agreements about the facts to MFDA and CPA Ontario, and the reasonable inference from ■ bizarre and unprofessional conduct was that the client complained to ■ and ■ did not report it to Desjardins.
- [58] The panel finds that the Applicant's failure to report the complaint to Desjardins and ■ secret resolution of the complaint showed a lack of honesty and respect for the rules of ■ professional organization. As Justice Southin stated, good

character comprises that moral fibre to do that which is right no matter how uncomfortable the doing may be or the consequences to oneself.

- [59] The Applicant characterized [REDACTED] breach of the rules respecting discretionary trading as “trivial,” however the panel found that acting without the clear instructions of one’s client is serious. The Applicant appeared to believe that the fact that [REDACTED] was “intoxicated in Dubrovnik” and the client was anxious to receive the funds quickly excused [REDACTED] failure to obtain clear trading instructions. The panel noted that the Applicant’s clients were vulnerable and financially unsophisticated, and found that they deserved a more conscientious and professional level of service from [REDACTED]. The contempt that the Applicant showed [REDACTED] clients in [REDACTED] communications to CPA Ontario showed a continued lack of respect for a client and her instructions.
- [60] The Applicant’s failure to make full disclosure to CPA Ontario will be dealt with below.
- [61] The panel found that each of the Applicant’s actions or omissions occurred over a relatively short period of time, however they demonstrated a lack of respect for Desjardin’s reporting obligations and for [REDACTED] client.

Whether Applicant is Remorseful

- [62] During the hearing, the Applicant expressed no remorse for [REDACTED] actions. In [REDACTED] correspondence with CPA Ontario, where [REDACTED] listed [REDACTED] “thoughts and takeaways”, the Applicant states about [REDACTED] client: “Some people aren’t worth helping” and [REDACTED] accuses her of having a “hidden agenda”. The Applicant took no responsibility for [REDACTED] own actions, which were in violation of the Desjardins reporting requirements for complaints and [REDACTED] professional obligations to obtain clear instructions before making financial decisions for clients.
- [63] While the panel acknowledged that the Applicant paid [REDACTED] fine and costs to MFDA, the panel notes that [REDACTED] never apologized to the client. The panel found that the Applicant was not remorseful and demonstrated little insight into why [REDACTED] behaviour was sanctioned by Desjardins and MFDA.

Rehabilitation Efforts and the Success of Such Efforts

- [64] The Applicant indicated that ■ changed ■ practice after 2016 and ensured that every time ■ received approval of a transactions, ■ would get ■ instructions in writing “so that there would be no misunderstanding of the instructions.” While this a good practice, it does not address the events of 2016, where the Applicant made trades for NB without any instructions about how those trades should be structured.
- [65] The panel found that there was no significant evidence of the Applicant’s rehabilitation.

Applicant’s Conduct Since the Misconduct

- [66] The Panel was concerned about the Applicant’s failure to be honest and candid in ■ communications with CPA Ontario. As set out above, honesty and candour are necessary qualities for a chartered accountant and are the hallmarks of good character. Candour with one’s potential regulator is extremely important.
- [67] When CPA Ontario asked the Applicant for particulars about ■ issues with MFDA, ■ failed to disclose the first complaint (in either communication) and ■ was vague and misleading about the second complaint about discretionary trading. These communications took place around the same time as the MFDA Settlement Agreement and the allegations and facts should have been fresh in ■ mind. Given the timeframe and the Applicant’s failure to provide an explanation for the omissions when questioned during the hearing, the panel came to the conclusion that the omissions in ■ communications with CPA Ontario were intentional.
- [68] Furthermore, in the application for registration, the Applicant was asked if ■ was the subject of any investigation by a professional body. When ■ applied on January 1, 2018, ■ was not subject to the complaint to MFDA that ■ had provided tax advice; ■ indicated that this investigation started in June 2018. The panel would have expected the Applicant, who was aware that such investigations were

of concern to CPA Ontario, to advise them of the status of the matter. Again, ■ demonstrated a lack of candour.

[69] In her closing submission, counsel for the Registrar suggested that the Applicant lied to the panel about ■ circumstances when ■ made the discretionary trades in 2016. The panel found that the Applicant's differing versions of these events (ie. ■ was leaving for Europe, ■ was in Vienna or ■ was intoxicated in Dubrovnik) were an example of ■ lack of attention to detail and ■ cavalier attitude towards ■ misconduct in the NB matter. While the panel found that although the Applicant was not credible about these events, ■ various explanations demonstrated a lack of concern about ■ conduct with ■ former client more than intentional fabrication.

The Passage of Time Since the Misconduct

[70] The Applicant's misconduct when serving NB took place almost four years ago. Unfortunately, the panel found that the Applicant's evidence at the hearing, as set out above, failed to establish that ■ character had changed since that time.

Character letters

[71] The Applicant's references failed to state that they were aware of any good character issues, particularly the Applicant's non-disclosure to CPA Ontario. The fact that the Applicant was reluctant to advise them of the issues and to produce new letters either demonstrated a lack of candour on ■ part or showed ■ indifference to the CPA Ontario process. Either way, it does not reflect well on the Applicant's character or professionalism.

Conclusion

[72] The Panel concluded that the Applicant failed to demonstrate on a balance of probabilities that ■ had accepted full responsibility for the events that took place four years ago, or that ■ had made efforts to rehabilitate ■ character since that

time. ■ evidence at the hearing showed a cavalier attitude towards ■ professional obligations.

[73] In conclusion, for reasons set out above, the Panel found that the Applicant had not established that ■ was a person of good character as of the date of the hearing.

[74] Written costs submissions of no more than two pages in length are to be submitted by both parties according to the following schedule: by the Registrar, within 14 days from the date of these Reasons; by the Applicant, within 14 days after delivery of the Registrar's submissions; and, reply by the Registrar within five days of the Applicant's submissions.

Dated at Toronto, Ontario this 6th day of July, 2020



Elaine Sequeira, FCPA, FCA
Admission and Registration Committee –Chair

Members of the Panel

Naresh Agarwal, Public Representative
John Blanken, CPA, CA, LPA
Margot Howard, Public Representative
Bernard Schwartz, FCPA, FCA

Independent Legal Counsel

Susan J. Heakes