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CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

TO: Lin (Sophia) Cheng (Suspended)
AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee of CPA Ontario hereby makes the following allegation of professional misconduct against LIN CHENG, a suspended member of CPA Ontario:

1. THAT, the said LIN CHENG, in or about the period of February 6, 2019 to December 3, 2019, failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.2(a) of the CPA Code of Professional Conduct in that she failed to promptly reply in writing to CPA Ontario communications to which a written reply is specifically required, namely the correspondence of Ms. Theresa Tonelli, CPA, CA, Director of Standards Enforcement, dated January 15, 2019, the correspondence of Ms. Jennifer Carrier, Standards Enforcement Officer, dated February 14, 2019 and the correspondence of Ms. Theresa Tonelli, CPA, CA, Director of Standards Enforcement, dated October 17, 2019.

Dated at Mississauga Ontario, this 10th day of December 2019.

A handwritten signature in blue ink that reads "L. Davidson".

L. DAVIDSON, CPA, CGA, CHAIR
PROFESSIONAL CONDUCT COMMITTEE

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **LIN CHENG**, a suspended member of the Chartered Professional Accountants of Ontario, under **Rule 104.2(a)** of the CPA Code of Professional Conduct.

TO: Lin Cheng

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE JUNE 25, 2020

DECISION

The Allegations that Lin Cheng has breached Rule 104.2(a) of the CPA Code of Professional Conduct are established, and she has committed professional misconduct.

ORDER

IT IS ORDERED THAT:

1. Lin Cheng be reprimanded in writing by the Chair of the hearing;
2. Lin Cheng shall pay a fine of \$5,000 to the Chartered Professional Accountants of Ontario ("CPA Ontario") by December 25, 2020;
3. Lin Cheng shall cooperate with the Professional Conduct Committee by fully responding to the correspondence of CPA Ontario, dated January 15, 2019 and October 17, 2019 from Theresa Tonelli and the correspondence dated February 14, 2019 from Jennifer Carriere, by July 25, 2020;
4. Notice of this Decision and Order, disclosing Lin Cheng'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. In the event Lin Cheng fails to comply with the terms of this Order, her membership in CPA Ontario shall be revoked, and notice of the revocation, disclosing her name, shall be given in the manner specified above, and in a newspaper distributed in the geographic

area of her practice. All costs associated with this publication shall be borne by Lin Cheng and shall be in addition to any other costs ordered by the Panel.

AND THAT:

6. Lin Cheng shall pay costs of \$3,300 to CPA Ontario by December 25, 2020.

DATED at Toronto this 25th day of June 2020.

A handwritten signature in blue ink that reads "Dineley". The signature is written in a cursive style with a large, looped initial "D".

Stephen Dineley, FCPA, FCA – Deputy Chair
Discipline Committee

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **LIN (“SOPHIA”) CHENG**, a suspended member of the Chartered Professional Accountants of Ontario, under **Rule 104.2(a)** of the Chartered Professional Accountants of Ontario Code of Professional Conduct.

BETWEEN:

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

-and-

Lin (“Sophia”) Cheng

APPEARANCES:

For the Professional Conduct Committee: Kelvin Kucey, Counsel

For Ms. Cheng: Not represented and did not attend

Heard: June 25, 2020

Decision and Order effective: June 25, 2020

Release of written reasons: August 14, 2020

REASONS FOR DECISION AND ORDER MADE JUNE 25, 2020

I. OVERVIEW

[1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario (“PCC”) had made an Allegation that Ms. Cheng had failed to cooperate with the regulatory process of the Chartered Professional Accountants of Ontario (“CPA Ontario”) by failing to reply promptly to communications from the Standards Enforcement department of CPA Ontario (“Standards Enforcement”). This hearing was held to determine whether the Allegation was established and whether the conduct breached Rule 104.2(a) of the CPA Ontario Code of Professional Conduct and amounted to professional misconduct.

[2] Mr. Cheng obtained her CA designation in 2015. Her membership in CPA

Ontario was suspended for non-payment of fees on August 13, 2019.

- [3] On or about October 1, 2018, Standards Enforcement received a complaint against Ms. Cheng, from a member of CPA Ontario staff. In this complaint, it had been alleged that Ms. Cheng was emailing the CPA Ontario Executive Team multiple times a day demanding they find her employment (“the Complaint”). The current Allegation is based on Ms. Cheng’s alleged failure to cooperate with Standards Enforcement staff in their review of this matter.
- [4] As detailed below, Ms. Cheng did not attend the hearing, although given proper notice of same. In her absence, Ms. Cheng was deemed to not admit the Allegation of professional misconduct made by the PCC. The onus was on the PCC to show on a balance of probabilities that Ms. Cheng’s conduct breached Rule 104.2(b) of the CPA Ontario Code of Professional Conduct and constituted professional misconduct.

II. PRELIMINARY ISSUES

- [5] At the outset of the hearing, the chair of the Panel confirmed that Ms. Cheng was not present and asked the PCC to present evidence to demonstrate that she had been properly served with notice of the Allegations and the hearing date. The PCC introduced affidavit evidence from three individuals: a coordinator in the Professional Standards division of CPA Ontario, a process server, and the Adjudicative Tribunals Clerk.
- [6] The evidence demonstrated that the process server had attempted to serve Ms. Cheng with the Allegation on six occasions in December 2019. He was not successful and received no response from Ms. Cheng. He had attended at her last known home address according to the records of CPA Ontario. CPA Ontario had successfully delivered material to Ms. Cheng at that address as recently as February 2019. The same materials were sent to Ms. Cheng at the same address by mail in January 2020.
- [7] In January 2020, the PCC had also sent Ms. Cheng notice of the Allegation by email. The PCC received automated confirmation that the email had been received by Ms. Cheng. The email address was the address on the records of the PCC. Correspondence had been sent to her successfully at that email address as recently as October 2019.
- [8] After these attempts, the PCC sought an order from the Discipline Committee validating the attempts at service of the Allegation on Ms. Cheng and authorizing alternative service of other documents by email. The Order was granted on March 18, 2020, and an amended Order was issued on April 15, 2020. A copy of the amended order was served on Ms. Cheng by email from the Adjudicative Tribunals Clerk the same day.

- [9] The Notice of Hearing, confirming that the hearing would proceed on June 25, 2020, by videoconference, was sent by the Adjudicative Tribunals Clerk by email on June 5, 2020. Instructions for the videoconference were sent by email to Ms. Cheng on June 17, 2020. Each of the emails was sent to the email address in the records of CPA Ontario and set out in the amended Order, dated April 15, 2020.
- [10] In the week before the hearing, the Adjudicative Tribunals Clerk also attempted to contact Ms. Cheng by telephone at the last telephone number for Ms. Cheng in the records of CPA Ontario. On one occasion, the number was unavailable. On the second occasion, a person answered, but when the Clerk asked for Ms. Cheng, she was told that it was a wrong number.
- [11] After considering the available evidence, the Panel was satisfied that Ms. Cheng had been given notice of the Allegations and the date set for the hearing of those Allegations in accordance with the Amended Order for substituted service. In the Panel's view, CPA Ontario had taken all reasonable steps to advise Ms. Cheng of the hearing date. As a result, the Panel concluded that it was appropriate to proceed in her absence.

III. ISSUES

- [12] The Panel identified the following issues arising from the Allegation:
- A. Did the evidence establish, on a balance of probabilities, the facts on which the Allegation by the PCC was based?
 - B. If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did the Allegation constitute professional misconduct?

IV. DECISION

- [13] The Panel found that the evidence established, on a balance of probabilities, the facts set out in the Allegation of professional misconduct.
- [14] The Panel was satisfied that the Allegation constituted a breach of Rule 104.2(a) and, having breached this Rule, Ms. Cheng had committed professional misconduct.

V. REASONS FOR THE DECISION

Findings regarding Conduct of Ms. Cheng

- [15] The evidence in support of the Allegation was placed before the Panel through

the Affidavit of Theresa Tonelli, the Director of Standards Enforcement (Exhibit 5). This evidence was uncontradicted.

- [16] Ms. Tonelli wrote to Ms. Cheng on January 15, 2019, to advise her of the Complaint and that the PCC was investigating the matter. Ms. Tonelli advised Ms. Cheng that her written reply was required no later than February 6, 2019. The letter made reference to the obligation to respond under Rule 104 and cautioned that an allegation of professional misconduct could be made if Ms. Cheng failed to respond. The letter was sent by regular and registered mail to Ms. Cheng's last known address according to the records of CPA Ontario. The copy by regular mail was returned, but the other copy was signed for on January 16, 2019.
- [17] Ms. Cheng did not respond to the letter of January 15, 2019.
- [18] On February 14, 2019, Jennifer Carriere, CPA, CA, a Standards Enforcement Officer with CPA Ontario, wrote to Ms. Cheng enclosing Ms. Tonelli's original letter and asking that her written reply be provided no later than March 7, 2019. Ms. Carriere reminded Ms. Cheng of her professional obligation to co-operate with CPA Ontario. The letter was sent by regular mail and courier to Ms. Cheng's last known address according to the records of CPA Ontario. The copy by regular mail was returned, but the couriered copy was signed for on February 15, 2019.
- [19] Ms. Cheng did not respond to the letter of February 14, 2019.
- [20] Ms. Tonelli again wrote to Ms. Cheng on October 17, 2019, to advise her of the Complaint and request her written reply no later than November 8, 2019. The letter made reference to the obligation to respond under Rule 104. The letter was sent by regular and registered mail to Ms. Cheng's last known address according to the records of CPA Ontario. The copy by registered mail was returned, but the copy sent by regular mail was not returned. A further copy was sent to Ms. Cheng's email address on October 18, 2019, and a delivery confirmation was received.
- [21] To the date of Ms. Tonelli's affidavit, June 11, 2019, Ms. Cheng had not responded to any of the letters from Standards Enforcement.
- [22] The Panel was satisfied that there was clear, cogent and compelling evidence to demonstrate that Ms. Cheng had not responded to any of the three letters that had been sent, and delivered, to her by CPA Ontario.

Finding of Professional Misconduct

- [23] The Panel was satisfied that the obligation on a member to cooperate with the regulatory process under Rule 104.2(a) was clear and unequivocal. It is well-established that when CPA Ontario asks for a response, the member must

respond. In this case, a response was requested three times by way of three separate letters. Ms. Cheng did not reply in any way to any of these letters. In those circumstances, the Panel found that Ms. Cheng had failed to cooperate with the regulatory process of CPA Ontario, contrary to Rule 104.2(a) of the Code of Professional Conduct, and Ms. Cheng had thereby committed professional misconduct.

VI. DECISION AS TO SANCTION

- [24] After considering the evidence, the law and the submissions of the PCC, the Panel accepted the submission of the PCC and concluded that the appropriate sanction was a written reprimand, a fine of \$5,000 payable within six months, an order that Ms. Cheng respond to the correspondence from Standards Enforcement within thirty days, failing which Ms. Cheng's membership would be revoked, and the usual order as to publication of the decision to all members of CPA Ontario and the decision being available to members of the public.
- [25] The Panel also concluded that if Ms. Cheng's membership was revoked, the fact of that revocation would be published in the *Globe and Mail*.

VII. REASONS FOR DECISION AS TO SANCTION

- [26] In the Panel's view, a reprimand and fine were necessary in the circumstances of this case to underscore the importance of all members cooperating with CPA Ontario. As observed by counsel for the PCC, the ability of CPA Ontario to investigate matters would be seriously impaired if members were not obliged to respond to their regulator. It had to be clear to all members of the profession, and the public, that non-cooperation with CPA Ontario could lead to serious consequences. These sanctions conveyed this message to both Ms. Cheng, as a specific deterrent for her, and the profession at large, as a general deterrent to others who may be faced with a request for a response from CPA Ontario.
- [27] At the same time, it was appropriate to give Ms. Cheng a final opportunity to respond to Ms. Tonelli's, with a clear deadline, in light of the Panel's decision. However, if Ms. Cheng chose not to respond at that point, there was really no alternative but to terminate Ms. Cheng's membership. Ongoing non-cooperation could not be reconciled with continuing membership in the profession.
- [28] Publication in the ordinary course was required in order that the deterrent message could be conveyed to other members and the public.

VIII. COSTS

- [29] The PCC asked the Panel to award two thirds of the costs incurred by the PCC in the prosecution of this matter, as reflected in the Costs Outline filed as Exhibit 6. The total costs set out in the Costs Outline was \$6,650. The Panel raised a concern about the amount of preparation time claimed by counsel for an uncomplicated unopposed matter. The Panel was also concerned that the request for substituted service had been necessitated by the restrictions on movement due to the COVID-19 pandemic, not any omission of Ms. Cheng.
- [30] Counsel for the PCC indicated that significant time was required for the various steps, but the PCC was not opposed if the Panel considered it appropriate to reduce the time spent in its assessment of costs. He further explained that the order for substituted service had been required due to Ms. Cheng's non-response, and only the amendment of the initial order was a consequence of the pandemic.
- [31] After considering the matter further, the Panel decided that, in light of its concern as to the total amount of costs incurred, it was reasonable to reduce the costs order to 50% of the amount in the Costs Outline, rather than the two-thirds sought. The Panel ordered that Ms. Cheng pay costs in the amount of \$3,300 within six months of the order being made.

Dated at Toronto this 14th day of August, 2020



Stephen F. Dineley, FCPA, FCA
Discipline Committee – Deputy Chair

Members of the Panel

Paul Busch, CPA, CA, LPA
Rebecca Huang (Public Representative)
Gary Katz, FCPA, FCA
Salim Somani, CPA, CA, LPA

Independent Legal Counsel

Glenn Stuart
StuartLaw