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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **Louis Sapi, CPA, CA,** a member of the Chartered Professional Accountants of Ontario, under **Rules 201.1, 204.4, 205, 216** and **406** of the CPA Ontario Rules of Professional Conduct and Code of Professional Conduct.

BETWEEN:

Chartered Professional Accountants of Ontario
Professional Conduct Committee

- and -

Louis Sapi

APPEARANCES:

For the Professional Conduct Committee:	Kelvin Kucey, Counsel
For Mr. Sapi:	James Lane, Counsel
Heard:	March 15, 2022
Decision:	March 15, 2022
Order:	May 13, 2022
Release of written reasons:	May 13, 2022
Corrected and re-issued:	July 6, 2022

REASONS FOR THE DECISION MADE MARCH 15, 2022 AND ORDER MADE MAY 13, 2022

I. OVERVIEW

[1] This case presents a striking example of the mischief caused when counsel present a joint submission on sanction with the overconfident expectation it will be accepted, absent any meaningful evidence in support thereof. Counsel should not expect hearing panels to rubber-stamp joint submissions merely because counsel have arrived at one. Counsel have a positive obligation to the Tribunal to adduce

ample evidence in support of their joint position. Mr. Sapi's conduct in this matter involved ongoing and significant dishonesty. Such conduct could easily have resulted in a lengthy suspension, or even revocation. As will be explained later in these reasons, the Panel ultimately accepted the joint submission, albeit with great reluctance. Counsel's failure to provide the Panel with suitable evidence in support of the joint submission caused delay in the proceedings, and very nearly undermined the primary purpose of joint submissions - to encourage settlement and promote certainty in the discipline process. It is our sincere hope that in the future, this will be avoided, and counsel will abide by their obligation to present evidence in support of the sanction they have agreed upon.

[2] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario ("PCC") has alleged that Mr. Louis Sapi ("Sapi") engaged in professional misconduct, by way of five separate allegations.

[3] This hearing was held to determine whether the allegations were established and whether the conduct breached Rule 205 of the CPA Ontario Code of Professional Conduct and Rules 201.1, 204.4, 216 and 406 of the CPA Ontario Code of Professional Conduct and the CPA Ontario Rules of Professional Conduct, and whether the conduct amounted to professional misconduct.

[4] Sapi obtained his CA designation in 1986 and has been a member of CPA Ontario, and its predecessor Institute, since March 1, 1986.

[5] Sapi is currently the managing partner of HS & Partners LLP, Chartered Professional Accountants ("HS"), located in Mississauga, ON.

[6] Sapi holds a Public Accounting Licence.

II. THE ALLEGATIONS

[7] The PCC made five allegations against Sapi. They are summarized below:

1. Sapi compromised the independence of three audits of the financial statements of a company, SSM, conducted by his firm, when he failed to disclose his financial interest in SSM;

2. For a period of two years, Sapi failed to disclose any activity, interest or relationship which, in respect of the above-noted engagement, would be seen by a reasonable observer to impair his or his firm's independence;

3. In relation to his interest in SSM, Sapi made the following false or misleading statements:

a. He completed his firm's independence disclosure document representing he did not have a financial interest in SSM when in fact he held a $100,000 interest in SSM; and

b. He represented to CPA Ontario investigators that his investment in SSM was only made after his firm's resignation as auditors and was limited to $50,000, when in fact he had invested approximately $200,000 during the audit engagement period.

4. Sapi accepted referral fees from SSM during the period of the engagement; and

5. Sapi permitted a member of his staff who was a lawyer and not a CPA to solicit investors for SSM in consideration for referral fee payments.

III. PRELIMINARY ISSUES

[8] The parties raised no preliminary issues.

IV. ISSUES

[9] 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?

V. DECISION ON PROFESSIONAL MISCONDUCT

[10] The Panel found that the evidence established, on a balance of probabilities, the facts set out in the allegations of professional misconduct.

[11] The Panel was satisfied that the allegations constituted a breach of Rules 201.1, 204.4, 205, 216 and 406, and that having breached these Rules, Sapi committed professional misconduct.

VI. REASONS FOR THE DECISION ON PROFESSIONAL MISCONDUCT

Findings Regarding the Conduct of Sapi

[12] The parties filed an Agreed Statement of Facts ("ASF"), which was made Exhibit 1. The parties provided supporting documentation for the ASF via a Document Brief, which was made Exhibit 2. The parties tendered no further evidence in the conduct portion of the hearing, or in the sanction portion, other than a Costs Outline tendered by counsel for the PCC.

Finding of Professional Misconduct

[13] SSM was a subsidiary of PEFC. SSM itself was made up of three companies. The Principals of PEFC, MR, BB and ML, utilized SSM as a pooled investor fund, administered by PEFC, to lend money to borrowers on the security of second mortgages.

[14] On or about October 8, 2015, Sapi's firm, HS, undertook the assurance work of SSM. Sapi was the relationship partner and his partner, H., was the engagement partner. In addition, two other members of the HS firm formed part of the audit team.

[15] The HS assurance engagement for SSM was for the years ended December 31, 2014, and December 31, 2015. In total, HS issued six unqualified audit opinions for the three companies operating under the auspices of SSM.

[16] At all material times, Sapi and his spouse operated 912*** Ontario Inc., a personal holding company ("Sapi Co."). Sapi Co. held investments in SSM and received referral fees or in-kind compensation in the form of a discount on investment fees paid to PEFC or its related entities.

[17] At all material times, SV, a lawyer, and non-CPA staff member of HS, owned and operated KRM, a company through which she referred investors to PEFC and its related entities, and received referral fees in return.

[18] Although Sapi was the relationship partner for the SSM audit engagement, he took an active role in the audit and often conducted himself as though he were the engagement partner.

[19] Prior to October 8, 2015, when HS undertook the assurance work for SSM, Sapi invested $100,000 in SSM through Sapi Co. Sapi entered into a Trust Agreement

suggesting that Sapi Co. held the investment in trust for a business associate, GS. The PEFC investor database did not reflect an in trust investment in SSM for Sapi Co. or for GS.

[20] At the commencement of the SSM audit engagement, Sapi completed the HS independence disclosure, falsely representing that he did not "hold a financial or ownership interest in an assurance client or related entity where I am a member of the engagement team."

[21] Sapi failed to disclose to his partner, H, or to the other two members of the audit team that he was permitting SV to refer investors to PEFC and collect referral fees in return.

[22] In November of 2015, HS issued two audit reports for two of SSM's companies for the year ending 2014. The audit reports included unqualified opinions.

[23] On or about February 1, 2016, Sapi invested a further $100,000 in SSM through Sapi Co., again through a Trust Agreement with GS. The PEFC investor database did not reflect an in trust investment in SSM for Sapi Co. or GS.

[24] In March of 2016, HS issued two audit reports for three of SSM's companies for the year ending 2015. The audit reports included unqualified opinions.

[25] In May of 2016, Sapi invested a further $30,000 in SSM. Sapi and his mother were jointly recorded as the investor in the PEFC investor database.

[26] On or about August 10, 2016, Sapi Co. invested a further $50,000 in SSM raising Sapi's direct or indirect investment in SSM to $280,000.[1]

[27] Sapi did not disclose any of his investments in SSM to the other members of the HS audit team.

[28] In September of 2016, HS issued its audit report of 2014 and 2015 Restated Financial Statements of SSM.

[29] Sapi Co. received $13,500 in referral fees, some of which Sapi received personally.

[30] SV, through her company KRM and a related entity, received just under $145,000 in compensation for referred investments.

[31] Sapi circumvented H's leadership of the SSM audit engagements, by routinely

1. The allegations refer to an investment in the amount of $200,000, citing a time frame of August 12, 2015 to February 1, 2016. The remaining $80,000 was not included in the allegations, but is relevant to both Sapi's state of mind and the quantum of referral fees he received.

engaging with SSM's leadership without H's participation.

[32] Specifically, Sapi engaged with SSM's leadership via the following means:

a. He met with MR, without H, to discuss the December 31, 2015 financial statements and the related risks of developer loans;

b. He corresponded with SSM management regarding his referral fees and the referral fees earned by SV;

c. He corresponded internally with the HS tax group and externally with SSM (without H) regarding audit adjustments relating to the December 31, 2014 and 2015 financial statement restatements;

d. He corresponded with MR regarding "[SSM] tax, legal structure and procedures issues," identifying that the structure results in "ultimately the lack of protection of investors.";

e. He was the HS audit team point of contact for the Principals, and was presumed by them to be the engagement partner on the file;

f. He gave instructions to the HS audit team on the SSM 2014 and 2015 audits;

g. When questioned by BB regarding a potential conflict of interest of investor acting as auditor, Sapi allegedly stated that he was cleared of any conflict of interest by CPA Ontario, or representations to that effect; and

h. He sent the HS resignation email to MR on April 20, 2017, without copying H.

[33] Sapi continued to advise and engage SSM's leadership post HS's formal resignation as auditors on April 20, 2017.

[34] During the course of the PCC investigation, Sapi mislead the investigators, asserting that his investment in SSM was only made after his firm's "verbal" resignation as auditors, in late spring of 2016 and was limited to $50,000, when in fact he had invested approximately $200,000, between August 12, 2015 and February 1, 2016, during the HS audit engagement period with Trust Agreements entered into with GS.

[35] Through the ASF Sapi admitted that these facts constitute professional misconduct in relation to the five allegations before the Panel.

[36] The Panel concluded that the allegations, having been proven on a balance of

probabilities, through clear and cogent evidence, constituted breaches of Rule 205 of the CPA Ontario Code of Professional Conduct and Rules 201.1, 204.4, 216 and 406 of the CPA Ontario Code of Professional Conduct and the CPA Ontario Rules of Professional Conduct.

[37] In May 2017, the Ontario Securities Commission ("OSC") obtained a receivership order over PEFC and its related companies, in part, to protect investors who were told their money would be invested in second residential mortgages. The OSC followed its receivership order with a Statement of Allegations, in which it alleged that, contrary to PEFC's representations to its investors, approximately $50 million of their funds were invested in higher risk land and property development projects. PEFC and the Principals allegedly engaged in hidden self-dealing by paying approximately $3.87 million in fees on various development projects to the Principals and by the Principals either taking an indirect 50% ownership interest in such projects or agreeing to do so. Additionally, the OSC alleged that PEFC used investor funds reserved to pre-pay interest on mortgages for its own purposes, without disclosing this practice to its investors.

[38] On or about March 1, 2019, the Receiver, Grant Thornton Limited, filed a Statement of Claim against PEFC, its related companies and the Principals, seeking, among other things, $50 million in damages for negligence, breach of fiduciary duty, breach of trust and knowing assistance of breach of trust.

[39] On or about March 12, 2020, the OSC filed an Amended Statement of Allegations against PEFC, SSM, multiple related entities and the Principals. The OSC sought significant remedies against the defendants citing fraud, misleading investors, unregistered trading, and the illegal distribution of securities. That matter is ongoing.

[40] Sapi is not the subject of any of the above described OSC proceedings.

VII. DECISION AS TO SANCTION

[41] As we have set out in our introductory remarks, the parties presented a joint submission on sanction to the Panel. The salient features of the joint submission are an oral reprimand, a $25,000 fine to be paid within 12 months of the date the Order is issued, and Notice of the Decision and Order in the manner determined by the Discipline Committee. In addition, the parties agreed to a costs order in the amount of $40,000, also to be paid within 12 months of the date the Order is issued.

[42] The Panel reluctantly accepted the joint submission of the parties. We ordered a written reprimand rather than an oral reprimand, simply to avoid the inconvenience of having to reconvene for the sole purpose of administering the reprimand.

VIII. REASONS FOR THE DECISION AS TO SANCTION

1. The Sanction Portion of the Hearing

[43] Initially, neither party led any evidence on penalty other than the Costs Outline provided by counsel for the PCC. The only evidence pertaining to the misconduct and to the member, adduced by the parties was the ASF, Exhibit 1, and the accompanying Document Book, Exhibit 2. The only facts the Panel could rely on were contained in these two exhibits. The facts, which we have set out above, disclose that a senior, trusted CPA engaged in dishonest behaviour with his clients, his firm, his regulator and indirectly with members of the public, over a period of approximately two years. There was no indication in the ASF that Sapi's conduct was unintentional or that he misunderstood his obligations.

[44] At the sanction portion of the hearing, Sapi failed to provide any of the type of evidence the Panel would have expected to see in mitigation of such serious misconduct, e.g. – character letters, a statement of remorse, medical evidence demonstrating a nexus between a medical condition and the misconduct. Not only did Sapi fail to provide the Panel with any evidence in mitigation on penalty, but he absented himself at the commencement of his hearing, after only a brief appearance. No explanation was provided, and the clear appearance was that he had more important matters to attend to. Although members are permitted to have counsel represent them and are not required to be present at their hearing, due to the gravity of the charges, the Panel regarded this conduct as disrespectful, bordering on contemptuous, and a further indication of the expectation that the joint submission would be simply accepted without consideration by the Panel.

[45] The Panel received advice from Independent Legal Counsel ("ILC"), that a member's attitude at their hearing is irrelevant to the determination of sanction unless the conduct reflects a continuing disregard of the member's professional obligations. The Panel followed this advice and determined that the member's callous approach to his own discipline hearing, while disrespectful to the Panel, could not be said to reflect a continuing disregard of his professional obligations. In light of this, the Panel did not take the member's attitude into account when determining whether to accept or reject the joint submission.

2. The Post-Deliberation Portion of the Hearing

[46] The Panel was very uncomfortable with the joint submission. In our view, conduct as egregious as that engaged in by the member ought to have resulted in a suspension at the very least. The joint submission appeared to us to be unduly lenient.

[47] After deliberations, the Panel and the parties returned to the hearing. The Panel informed the parties that we were uncomfortable with the joint submission, and we were not certain we would accept it.

[48] Having received no evidence from the member in mitigation of penalty or regarding remorse, the Panel asked counsel what use they could make of the absence of remorse. ILC advised the Panel that the absence of remorse cannot be relied upon as an aggravating factor on penalty. However, she also advised the Panel that in failing to provide evidence of remorse, the member loses the benefit of mitigation that evidence of remorse would provide. Counsel for the PCC and for the member agreed with this advice.

[49] We asked the parties for written submissions on the following matters:

1. Are there any CPA Ontario cases where the regulator was misled or deceived and neither a suspension nor revocation was imposed?

2. Are there any CPA Ontario cases where referral fees were accepted and neither a suspension nor revocation was imposed?

3. Are there any CPA Ontario cases where members of the CPA's firm were misled and neither a suspension nor revocation was imposed?

4. Please provide further explanation as to why the PCC is not requesting a suspension or revocation.

5. Please provide further explanation as to why the PCC is not requesting newspaper publication.

6. Please provide further explanation as to why the PCC is not requesting the traditional two thirds cost award.

7. Please provide further explanation as to why the absence of remorse ought not to factor into the Panel's deliberations.

[50] In Mr. Kucey's written submissions, he provided the Panel with further case law wherein members had deceived their governing body, accepted referral fees or misled their firms' audit teams and received a reprimand rather than a suspension

or revocation. The Panel relies on these representations to arrive at the conclusion that the sanction of a reprimand can be imposed in cases where the member has engaged in dishonest conduct.

[51] In answer to question #4 above, Mr. Kucey provided the following explanation:

> In assessing the significance of Mr. Sapi's conduct the PCC was satisfied that he had operated under the good faith, but mistaken, impression that he was in compliance with the requirements of the Rules and Code of Professional Conduct. The remedy of suspension or revocation properly arises in the circumstance of volitional conduct with full knowledge of the wrongdoing. The PCC was satisfied that Mr. Sapi's conduct did not rise to the level of knowingly breaching clear CPA Ontario Rules of Professional Conduct, therefore neither revocation nor suspension is appropriate in the instant case.

[52] Similarly, Mr. Lane, in his submissions, represented that his client held an honest but mistaken belief that he was complying with the CPA Ontario Rules of Professional Conduct during the course of the subject engagements, and that he never intended to deceive the CPA Ontario during the investigation. Mr. Lane was cautious in his approach and expressed awareness of the fact that as counsel, he cannot give evidence. Mr. Lane's assertion perfectly encapsulates the need for counsel to adduce evidence in support of a joint submission so they can confidently point to the mitigating factors in support of their joint submission.

[53] Mr. Lane also took the position that the facts contained in an ASF are carefully circumscribed. He went on to suggest the following:

> PCC counsel is in no position to agree to the inclusion of assertions by the member about his state of mind. Presentation of the evidence in this format generally does not allow for the inclusion of evidence about the member's thought process, belief, motivation, honest intent, exercise of judgement, factors considered in support of that judgement, reflection, remorse, learning, steps taken to prevent recurrence, steps taken to make amends to those affected, and other subjective factors. For these reasons, a discipline committee panel considering a matter should not speculate about what considerations the PCC possibly failed to take into account in coming to an agreement with the member.

[54] The Panel roundly rejects these assertions. The assertion of counsel for the PCC that the member had operated under the good faith but mistaken impression that he was in compliance with the rules, cannot comfortably co-exist with the facts as set out in the ASF. In particular, the member's false representations to the CPA Ontario investigators cry out for an explanation. The Panel simply cannot reconcile

the member's statement to the investigators that he had only invested $50,000 in SSM and that this was done after HS' "verbal" resignation as auditors with the $230,000 he had already invested either through Sapi Co. or personally. It should have been apparent to the member that if he was being investigated by CPA Ontario, he should be truthful about the $230,000, and explain the trust agreement aspect of it. If counsel for the PCC was in fact satisfied that Sapi did not intend to violate the rules, the allegations of misleading, which inherently involve intention, ought not to have been alleged.

[55] Moreover, if counsel for the PCC were satisfied that the member believed he was in compliance with the rules when he accepted referral fees and made false representations on the disclosure statement, an admission regarding Sapi's state of mind ought to have been included in the ASF. Alternatively, if both counsel were of the view that those facts were relevant to sanction, rather than finding, evidence of those facts should have been led on sanction. As it is, assessed against the facts contained in the ASF, the mere assertion that the member did not intend to fall afoul of the rules strains credulity. More was and is required.

[56] In addition to providing written submissions, Mr. Lane tendered a letter of remorse signed by his client. Mr. Kucey did not object to the Panel accepting the letter into evidence, notwithstanding that both parties had closed their cases.[2] In light of the consent of both parties, the Panel accepted the letter into evidence. As we noted above, Sapi did not deem the hearing to be of sufficient importance to require his attendance. Moreover, the letter was written only after the Panel expressed concerns about Sapi's lack of remorse. Under the circumstances, the Panel placed very little weight on the letter.

[57] Both parties reiterated that this was not a matter that required newspaper publication. Mr. Kucey cited section 48 of Regulation 6-2 which requires newspaper publication only in the instance of revocation of CPA Ontario membership or the restriction, suspension or revocation of a Public Accounting License. As the PCC did not seek any of these remedies, newspaper publication is not required. The Panel accepts and agrees with this submission.

[58] With respect to costs, Mr. Kucey cited the complexity of the corporate structures as triggering the incursion of significant costs, as opposed to the misconduct engaged in by Sapi. Mr. Kucey also referenced the fact that Sapi has been required to pay a $25,000 fine, which is significant.

2. Because the letter was provided to the Panel after the hearing had concluded, we have marked the letter Exhibit 4.

3. Analysis

[59] The Panel recognizes that a joint submission is entitled to a high level of deference. A joint submission should be adopted unless it is contrary to the public interest or would bring the regulatory process into disrepute because it was beyond the reasonable range of sanction. In the words of Justice Moldaver in the matter of *R. v. Anthony-Cook*:[3]

> [34] … a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold — and for good reason, as I shall explain.

[60] In our view, both counsel failed in their obligation to provide the Panel with sufficient evidence in support of the joint submission. While the ratio in *R. v. Anthony-Cook* requires the Panel to accept a joint submission unless we can demonstrate it is not in the public interest to do so, there is a corollary obligation on counsel to provide the Panel with evidence in support of a joint submission, particularly one which appears to be unduly lenient:

> [54] Counsel should, of course, provide the court with a full account of the circumstances of the offender, the offence, and the joint submission without waiting for a specific request from the trial judge. **As trial judges are obliged to depart only rarely from joint submissions, there is a "corollary obligation upon counsel" to ensure that they "amply justify their position on the facts of the case as presented in open court"** (Martin Committee Report, at p. 329). **Sentencing — including sentencing based on a joint submission — cannot be done in the dark.** The Crown and the defence must "provide the trial judge not only with the proposed sentence, but with a full description of the facts relevant to the offender and the offence", in order to give the judge "a proper basis upon which to determine whether [the joint submission] should be accepted" (*DeSousa*, at para. 15; see also *Sinclair*, at para. 14).[4] [emphasis added]

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3. *R. v. Anthony-Cook*, 2016 SCC 43 ¶ 34
See also: *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303
4. *R. v. Anthony-Cook*, 2016 SCC 43 ¶ 54

[61] In this matter, counsel failed in their duty to provide the Panel with evidence justifying their position, leaving the Panel "in the dark" about why the proposed penalty was appropriate specifically to the member and the offences before us. We hope these reasons serve to inform all counsel appearing before the CPA Ontario Tribunal in the future to uphold their duty to provide the Tribunal with evidence justifying a joint submission. Counsel ought not to presume that the Panel will accept a joint submission in the absence of supporting evidence, merely because it has been proposed.

[62] The Panel, with considerable disquiet, has decided to accept the joint submission. While in our view, Sapi's conduct should attract a suspension in the range of 6 to 12 months, there are cases involving deception wherein the member received a reprimand without suspension or revocation. In light of this, we cannot definitively state that the penalty falls outside the range of reasonable outcomes. We are also mindful of the importance of joint submissions to the efficient functioning of the CPA Ontario Tribunal, and to the value of certainty in negotiations between parties. We also wish to avoid unfairness to the member, who may well have relied on the prospect of the joint submission when considering his response to the investigation and discipline proceedings.

IX. COSTS

[63] The law is settled that an order against a 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 the costs of the investigation, prosecution and hearing arising from the member's misconduct.

[64] Costs are awarded at the discretion of the Discipline Committee. It has become customary for the PCC to file a Costs Outline, and to seek 2/3 of the costs incurred in the investigation and prosecution of the matter.

[65] The PCC Costs Outline was made Exhibit 3. It totals $94,424.50, 2/3 of which amounts to $62,949.66.

[66] Both parties jointly submitted that a costs award of $40,000, representing just under 1/2 of the actual costs incurred, is appropriate. The parties' submissions in support of this award are not persuasive. Members who misconduct themselves risk incurring significant costs relating to the investigation and prosecution of the misconduct. The fact that the investigation was unduly complex due to the various corporate structures involved is not a reason to shift the burden of the bulk of the

costs to the profession. Had Sapi not misconducted himself, CPA Ontario would not have had to incur costs to untangle the complex corporate web of PEFC and SSM. Notwithstanding the above, the Panel does not believe acceptance of the joint submission on costs would bring the Tribunal system into disrepute. In light of this, we accept the joint submission on costs.

Dated this 13th day of May, 2022

Andrea Mintz, CPA, CA, LPA
Discipline Committee – Deputy Chair

Members of the Panel

Gary Katz, FCPA, FCA
Alexander Metaxas-Mariatos, CPA, CMA
Soussanna Karas, Public Representative
Marianne Park, Public Representative

Independent Legal Counsel

Lisa Freeman, Barrister & Solicitor