

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **MUHAMMAD ALI, CPA, CGA**, a suspended member of the Chartered Professional Accountants of Ontario, under **Rules 104.1 and 409** of the CPA Ontario Code of Professional Conduct

BETWEEN:

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

-and-

Muhammad Ali

APPEARANCES:

For the Professional Conduct Committee: Nisha Dhanoa, Counsel

For Muhammad Ali: Ali Hamza Memon, Counsel

Heard: November 8 and 9, 2021

Decision and Order effective: November 9, 2021

Release of written reasons: December 24, 2021

**REASONS FOR THE ADJOURNMENT DECISION AND ORDER MADE
NOVEMBER 9, 2021**

I. OVERVIEW

- [1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario (“PCC”) has made Allegations that Mr. Ali, while a member of CPA Ontario, was associated with a corporation engaged in the practice of public accounting, contrary to Rule 409 of the CPA Ontario Code of Professional Conduct (the “Code”), and that he failed to cooperate with an investigation by CPA Ontario, contrary to Rule 104.1 of the Code. A hearing to determine whether the Allegations were established and whether the conduct breached the Code

and amounted to professional misconduct commenced on August 4, 2021 and continued on August 6, 11, and 13, 2021. As the hearing had not been completed within the hearing dates allotted for the matter, at the end of the day on August 13, 2021 the matter was adjourned to future dates to be determined based on the availability of all the participants. Four additional dates were obtained for the continuation of the hearing: November 8, 9, 11, and 12, 2021.

- [2] At the resumption of the hearing on November 8, 2021, the Panel was advised by counsel to Mr. Ali that he had been unable to contact his client, and that he had been advised by his client's family that his client was too unwell to attend at the hearing. He advised that Mr. Ali's daughters, who were scheduled to be witnesses for Mr. Ali on November 8, 2021, did not feel they were able to attend, given the condition of their father. He further advised that Mr. Ali's family had indicated that they hoped to soon obtain psychiatric evidence relating to Mr. Ali's condition. Counsel for Mr. Ali requested an adjournment. The Panel adjourned the hearing to the next morning in order to allow counsel to Mr. Ali time to obtain the psychiatric evidence, if it was available, and to allow both counsel time to formulate their positions on how this matter should proceed.
- [3] On November 9, 2021 the Panel received a psychiatric report respecting Mr. Ali, and received submissions from both counsel respecting the report and in respect of the adjournment sought on behalf of Mr. Ali.

II. ISSUES

- [4] The Panel identified the following issues arising from Mr. Ali's request for an adjournment:
- A. Should the Panel grant the adjournment sought by Mr. Ali?
 - B. If so, should any terms be imposed as a condition of the adjournment?

III. DECISION

- [5] The Panel found that the adjournment request should be granted on terms, including that Mr. Ali's membership be suspended until the completion of the hearing, that Mr. Ali provide an updated medical report to the PCC at least 30 days prior to the scheduled continuation of the hearing, and that the hearing should continue on dates as soon as possible to the last week of February, 2022.

IV. REASONS FOR THE DECISION

Previous Hearing Days

- [6] Over the initial four days of the hearing the Panel heard testimony from the complainant, Mr. Vaters, the Investigator, Ms. Harris, Dr. Kaur (a hand-writing expert called on behalf of Mr. Ali), and from Mr. Ali. Mr. Ali's daughters were scheduled to provide evidence in his defence, but Mr. Ali's evidence was not completed until the end of day four, the last hearing date originally scheduled. An additional four days were scheduled to accommodate the evidence of Mr. Ali's daughters, the evidence of any additional witnesses called by Mr. Ali, and the time required for both parties' counsel to make closing submissions.

Evidence and Submissions on November 8, 2021

- [7] At the resumption of the hearing on November 8, 2021, Mr. Ali's counsel advised the Panel that he had been unable to reach his client during the last week. He was told by Mr. Ali's daughter that her father was not doing well, and that his mental health was suffering. A series of emails were exchanged between Mr. Ali's counsel and Mr. Ali's daughter, which were provided to the Panel and were identified as Exhibits 7 and 8. In these email exchanges Mr. Ali's daughter advised Mr. Ali's counsel that Mr. Ali was experiencing a significant mental health crisis, advised that the family was seeking help from a psychiatrist, and advised that under these circumstances she did not consider it appropriate for her to give her evidence at the hearing. By email dated November 7, 2021, Mr. Ali's daughter informed Mr. Ali's counsel that she had requested medical information from a psychiatrist and would provide this information as soon as it was received.
- [8] Mr. Ali's counsel requested an adjournment of indeterminate length to allow for the possibility that his client's condition would improve so that he could attend the hearing, and if not, to obtain medical evidence respecting Mr. Ali's ability to attend the hearing. Counsel for the PCC opposed the adjournment request, noting that Mr. Ali had already provided his evidence. In the alternative, PCC counsel proposed an adjournment with strict terms, including the interim suspension of Mr. Ali's membership, to permit time for Mr. Ali's daughters to reschedule their attendance so they can give their evidence and the hearing can proceed.
- [9] The Panel considered the submissions of counsel and the limited evidence before it, and held that the matter should be put over to the following day. A one-day adjournment would allow additional time for Mr. Ali's counsel to obtain information from the psychiatrist about Mr. Ali's condition, and would permit both counsel additional time to develop their submissions on how the Panel should proceed the following day, if Mr. Ali were not in attendance. The Panel specifically asked counsel to turn their minds to how the Panel should address the potential issue of Mr. Ali's capacity, the availability and compellability of the remaining witnesses, the appropriate length of a further adjournment if one were

to be granted, and what conditions, if any, should attach to such an adjournment.

Evidence and Submissions on November 9, 2021

- [10] At the resumption of the hearing on November 9, 2021 the Panel was advised that a psychiatric report for Mr. Ali had been prepared by Dr. Panjwani, a consultant psychiatrist at Trillium Health Partners. A profile of Dr. Panjwani, and his report dated November 8, 2021, were admitted into evidence and marked as Exhibits 9 and 10, respectively. No counsel raised issues with Dr. Panjwani's report being entered as an Exhibit without restriction. The Panel is aware that the 'open court principle' applies to this tribunal, and is also aware of its responsibility to manage privacy interests within the context of the principle of openness. To that end, although the Panel has reviewed the entirety of Dr. Panjwani's report respecting Mr. Ali's mental health, these Reasons for Decision include only the information respecting Mr. Ali's mental health which is necessary for the public to understand the basis for the Panel's decision on the adjournment request.
- [11] Dr. Panjwani reported that he assessed Mr. Ali on November 8, 2021. He reported Mr. Ali's statements that he has been severely distressed and traumatized by the ongoing CPA Ontario investigation and tribunal hearing over the past 3 years, suffering symptoms which have negatively affected most areas of his life. He reported Mr. Ali's statements that for the past few weeks, these symptoms were considerably worse.
- [12] In the section of the report entitled "Mental Status Examination," Dr. Panjwani wrote that there is "no evidence of any formal thought disorder, delusion, or abnormal perceptual experiences." He wrote that Mr. Ali has "impaired cognitive and executive functions", has "impaired short-term and working memory", and "has a fair degree of insight."
- [13] Dr. Panjwani wrote that in his clinical opinion, Mr. Ali is presently unable to perform any gainful occupation.
- [14] Counsel for Mr. Ali reviewed the report of Dr. Panjwani with the Panel and submitted that based on the report, Panel should dismiss the hearing and refer the matter to the Capacity Committee.
- [15] Counsel for the PCC submitted that the report was of limited assistance as it was based on a single visit with Mr. Ali, with no prior history, it was based primarily on self-reported symptoms, and it contains a number of factual statements inconsistent with evidence provided by Mr. Ali, specifically relating to Mr. Ali's work history over the past 3 years. PCC counsel submitted that, if the Panel were to grant an adjournment, it should include the condition that Mr. Ali be

suspended on an interim basis. PCC counsel further submitted, in response to the position of Mr. Ali's counsel, that the Panel does not at this time have the jurisdiction to refer the matter to the Capacity Committee as the hearing has not yet come to a conclusion, pursuant to s. 43 of Regulation 6-2. PCC counsel submitted that if the Panel was concerned about Mr. Ali's ability to participate in the hearing, it is open to it to adjourn the hearing, or impose a temporary stay with terms and conditions, amounting to the same remedy. PCC Counsel submitted that the evidence does not rise to the level to support a permanent stay of the proceedings against Mr. Ali. PCC counsel also provided a case to the Panel in which another tribunal declined to rely on a different report of Dr. Panjwani.

- [16] PCC counsel submitted that an interim suspension was necessary to protect the public in this case, given the medical report which supports the conclusion that Mr. Ali is currently unable to meet his obligations as a CPA.
- [17] Independent Legal Counsel (ILC) to the Discipline Committee provided advice to the panel in respect of Regulation 6-2, which in s. 41 provides that if the issue of the capacity of a party arises during a Discipline Committee hearing, the Panel shall determine if the party is competent to participate in the hearing, and if the Panel determines that the party is not competent, the Panel shall stay the hearing on such terms as it deems appropriate. ILC advised that to displace the presumption of competency, the Panel must be convinced on a balance of probabilities that the party is unable to understand the nature of the proceeding and unable to appreciate the consequences of the process. ILC also advised the Panel that if it found that Mr. Ali suffered from a disability, it had a duty accommodate that disability to the point of undue hardship.

Decision on Competence of Mr. Ali

- [18] The Panel held that the report of Dr. Panjwani, tendered by counsel to Mr. Ali, raised the issue of Mr. Ali's capacity, thus requiring the Panel to determine pursuant to Regulation 6-2 s. 41 whether Mr. Ali is competent to participate in the hearing. The Panel accepted the advice of ILC that that to displace the presumption of competency, the Panel must be convinced on a balance of probabilities that the party is unable to understand the nature of the proceeding and unable to appreciate the consequences of the process. The Panel noted that Dr. Panjwani in his report does not directly address whether Mr. Ali would be unable to understand the nature of the proceedings and unable to appreciate the consequences of the process. In the report Dr. Panjwani does state that: "There is no evidence of any formal thought disorder, delusion, or abnormal perceptual experiences. He has impaired cognitive and executive functions. He has impaired short-term and working memory. He has a fair degree of insight."

Elsewhere in the report Dr. Panjwani provided his clinical opinion that Mr. Ali is presently unable to perform any gainful occupation.

- [19] The Panel held that the information in the report does not provide a sufficient basis to displace the presumption that Mr. Ali is competent to participate in the hearing. The threshold for competence to participate in a hearing is a relatively low one. It is a different test and a lower threshold than for a determination of capacity to fulfil one's obligations as a CPA, as set out in section 43 of the *Chartered Professional Accountants of Ontario Act, 2017*. The fact that Dr. Panjwani reported that Mr. Ali has impaired cognitive and executive functions, and is currently unable to perform any gainful occupation, does not necessarily mean he would be unable to understand the nature of the proceedings and the consequences of the process.
- [20] Other sections of Dr. Panjwani's report could be interpreted as supporting Mr. Ali's competency, including the finding that he has a fair degree of insight, and the fact that Dr. Panjwani did not report any difficulty on Mr. Ali's part in participating in the psychiatric evaluation and in understanding, and responding to, Dr. Panjwani's questions. The Panel also notes that during Mr. Ali's previous attendance at the hearing, through direct and cross examination, his ability to participate was never in question, notwithstanding that according to Dr. Panjwani's report, he was severely distressed and traumatized at that time. Without having the benefit of observing Mr. Ali's current ability to participate in the hearing, the Panel would need additional evidence from a medical report more directly related to the test for competency in order to find that the presumption of competence to participate in the hearing has been displaced.
- [21] Accordingly, as the Panel has not determined that Mr. Ali is not competent to participate in the hearing, the Panel is not obliged to stay the proceedings pursuant to Regulation 6-2.

Decision on Adjournment and Terms

- [22] The Panel then addressed whether the adjournment sought by Mr. Ali should be granted, and if so, whether any terms should be imposed as a condition of the adjournment.
- [23] The Panel considered Rule 14 of the Rules of Practice and Procedure, which, among other things, sets out the factors a panel may consider in respect of an adjournment request. Among these considerations are prejudice to a person, the public interest, the availability of witnesses, and the requirements for a fair hearing.
- [24] The Panel found that there would be prejudice to Mr. Ali if an adjournment were

not granted. The evidence supports a finding that Mr. Ali is currently suffering from a mental health crisis, which has also affected the ability of his daughter, the next scheduled witness, to provide her evidence in support of Mr. Ali's defence. In these circumstances the Panel found that Mr. Ali's current mental health issue should be accommodated by temporarily adjourning the hearing, to allow the opportunity for Mr. Ali's condition to stabilize, and for his daughter to provide her evidence as part of his defence.

- [25] The Panel was conscious of the need to protect the public and the public interest. The Panel was not prepared to grant the adjournment without imposing terms to ensure that the public was protected and that the public retained confidence that the Discipline Committee was taking all appropriate steps to protect the public. Dr. Panjwani's finding that Mr. Ali is presently "unable to perform any gainful occupation" leads to the inference that Mr. Ali does not currently have the capacity to fulfil his obligations as a CPA. The Panel was satisfied, based on the evidence before it, that given Mr. Ali's current state there was a significant risk to the public and that an order suspending Mr. Ali's membership on an interim basis would likely reduce that risk.
- [26] The Panel sought and obtained input from the parties as to their position on the specific terms and conditions that should accompany the adjournment and interim suspension. The parties presented a joint submission to the Panel that the adjournment should remain in place until at least the last week of February, 2022, and that Mr. Ali would provide an updated medical report from Dr. Panjwani to the PCC no later than 30 days prior to the scheduled continuation of the hearing. The joint submission of the parties provided that Mr. Ali's suspension would remain in place until this matter is concluded on the merits, or until otherwise varied or cancelled by the Discipline Committee. The Panel was advised by the parties that one of the reasons for the length of the adjournment was to ensure that Dr. Panjwani was available to provide oral evidence on behalf of Mr. Ali and to be available for cross examination by the PCC.
- [27] The Panel had some concerns about the length of the adjournment, but accepted the joint submission of the parties, as reflected in the Order of November 9, 2021.

Dated this 24th day of December, 2021



Randal Adamkowski, CPA, CA
Discipline Committee – Deputy Chair

Members of the Panel

Peter Vaillancourt, CPA, CGA

Catherine Kenwell (Public Representative)

Independent Legal Counsel

John Dent, Barrister & Solicitor