

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

TO: Perminder Kandola, CPA, CMA

AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee of CPA Ontario hereby makes the following Allegations of professional misconduct against Perminder Kandola, CPA, CMA, a member of CPA Ontario:

1. THAT the said Perminder Kandola, in or about the period March 1, 2012 to April 30, 2012, while employed as the Chief Financial Officer at "OTS", committed an act discreditable to the profession, contrary to section 3.4(b) of the Professional Misconduct and Code of Professional Ethics Regulation of CMA Ontario, in that he misappropriated approximately \$346,000 from OTS by diverting a payment which was due to OTS into a bank account in the name of OTS but which was not owned by OTS.
2. THAT the said Perminder Kandola, in or about the period October 1, 2017 to November 30, 2017 failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.1 of the CPA Code of Professional Conduct, in that:
 - a. he failed to provide documents or other information when requested to do so by the Professional Conduct Committee through its investigator and staff of CPA Ontario; and
 - b. he failed to attend an interview as requested by the investigator appointed by the Professional Conduct Committee.

Dated at Brampton, Ontario, this th 11 day of December, 2017.



T. J. SOKIC, CPA, CA, DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **PERMINDER KANDOLA**, a suspended member of the Chartered Professional Accountants of Ontario, under **section 3.4(b)** of the Certified Management Accountants of Ontario Professional Misconduct and Code of Professional Ethics, and **Rule 104.1** of the CPA Code of Professional Conduct, as amended.

TO: Mr. Perminder Kandola

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE MAY 30, 2018

DECISION

This Tribunal was satisfied that the particulars of the Allegations were proven and constituted a breach of **section 3.4(b)** of the Certified Management Accountants of Ontario Professional Misconduct and Code of Professional Ethics, and **Rule 104.1** of the CPA Code of Professional Conduct. The Tribunal determined that, having breached these rules, Perminder Kandola ("Mr. Kandola") has committed professional misconduct.

ORDER

The Tribunal orders the following:

1. Mr. Kandola be reprimanded in writing by the Chair of the hearing.
2. Mr. Kandola shall pay a fine of \$20,000 to the Chartered Professional Accountants of Ontario ("CPA Ontario") within six months from the date this Decision and Order are made, by Friday, November 30, 2018.
3. Mr. Kandola's membership with CPA Ontario is revoked.
4. Notice of this Decision and Order, disclosing Mr. Kandola's name, is to be given in the form and manner determined by the Tribunal:
 - (a) to all members of CPA Ontario;
 - (b) to all provincial bodies;

and shall be made available to the public.

5. Notice of the revocation of membership disclosing Mr. Kandola's name is to be given by publication on the CPA Ontario website and in the *Toronto Star* and *The Globe and Mail*. Mr. Kandola shall pay all costs associated with the publication and shall be in addition to any other costs ordered by the Tribunal.
6. Mr. Kandola shall surrender all certificates issued by CPA Ontario and CMA Ontario, including any membership certificate granting the Certified Management Accountant (CMA) and Chartered Professional Accountant (CPA) designation, to the Adjudicative Tribunals Secretary within ten (10) days from the date this Decision and Order is made.
7. Mr. Kandola shall pay costs of \$10,000 to CPA Ontario within six months from the date this Decision and Order are made, by Friday, November 30, 2018.

DATED at Toronto this 30th day of May, 2018



Stephen Dineley, FCPA, FCA
Discipline Committee – Deputy Chair

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **PERMINDER KANDOLA**, CPA, CMA, a member of CPA Ontario, under **section 3.4(b)** of the CMA Ontario Professional Misconduct and Code of Professional Ethics, and **Rule 104.1** of the CPA Ontario Rules of Professional Conduct, as amended.

BETWEEN:

Chartered Professional Accountants of Ontario Professional Conduct Committee

-and-

Perminder Kandola

APPEARANCES

For the Professional Conduct Committee: Tamara Center, Counsel

For Mr. Kandola: Not Present and Not Represented

Heard: May 30, 2018

Decision and Order effective: May 30, 2018

Release of written reasons: August 16, 2018

I. OVERVIEW

[1] This hearing was held to determine whether the allegations laid against Perminder Kandola that he committed an act discreditable to the profession when he misappropriated approximately \$346,000 of funds from Ontario Tire Stewardship (“OTS”) contrary to section 3.4(b) of the Certified Management Accountants of Ontario (“CMA Ontario”) Professional Misconduct and Code of Professional Ethics Regulation and that he failed to co-operate with the regulatory process of the Chartered Professional Accountants of Ontario (“CPA Ontario”) by failing to provide information and attend an interview as requested by the Professional Conduct Committee’s investigator and CPA Ontario’s staff, are established on the facts presented and, if so, whether the allegations amount to professional misconduct.

[2] Mr. Kandola obtained his CMA designation in and he became a CPA upon amalgamation of the accounting designations in 2014. He was hired by OTS in 2009, taking the position of Director of Audit and Finance. In 2012, he was promoted to the position of Vice-President

of Finance and in January 2015 he was promoted to the position of Chief Financial Officer for OTS until his resignation in the summer of 2015.

- [3] Commencing in or about 2012, Mr. Kandola and/or other unidentified individuals opened a bank account in the name of "Ontario Tire". This bank account was not related to OTS.
- [4] Through email correspondence with CNH, an entity owing self-declared arrears payments to OTS, Mr. Kandola arranged for CNH to make a wire transfer payment of arrears in the amount of \$346,565. Mr. Kandola provided a "ACH Authorization Form" to CNH, instructing CNH to wire the funds to the Ontario Tire account. Funds in the Ontario Tire account were eventually withdrawn.
- [5] As a result of his involvement in this transaction, Mr. Kandola was the subject of a civil law suit, as well as charges under the provincial *Waste Diversion Act*. Mr. Kandola eventually re-paid \$346,565 to OTS.
- [6] Mr. Kandola has been suspended since March 9, 2018 for failure to pay fees and complete required CPD hours.
- [7] Between November 2016 and November 2017, Mr. Kandola failed to provide responses, information and documentation as requested by the Professional Conduct Committee ("PCC"). Moreover, Mr. Kandola failed to participate in an interview as requested by the investigator appointed by the PCC. Throughout the investigative process, Mr. Kandola was reminded of his obligation to cooperate with the investigation.
- [8] The onus was on the PCC to show on a balance of probabilities that Mr. Kandola's conduct breached section 3.4(b) of the CMA Ontario Professional Misconduct and Code of Professional Ethics, and Rule 104.1 of the CPA Ontario Rules of Professional Conduct, as amended, and constituted professional misconduct.

II. PRELIMINARY ISSUES

- [9] Mr. Kandola did not attend the hearing nor was a representative in attendance on his behalf. In order to proceed in the absence of Mr. Kandola, the Tribunal had to be satisfied that he had received proper notice of the allegations and the hearing.
- [10] Ms. Center provided a copy of the Chair's Order, dated March 5, 2018 ordering that Mr. Kandola be served with the allegations of professional misconduct and all other documents in the proceedings against him by way of substituted service by electronic email to his email address. (Exhibit 1, Chair's Order).
- [11] By way of letter dated January 8, 2018, Ms. Center wrote to Mr. Kandola, serving upon him the allegations of professional misconduct made against him (Exhibit 1, Chair's Order, attachment).
- [12] Ms. Center also filed the Affidavit of Kristen Couch, the Adjudicative Tribunals Assistant

Secretary at CPA Ontario, sworn May 16, 2018. (Exhibit 2, Affidavit of Kristen Couch). According to the information attested to by Ms. Couch, on February 6, 2018, she had advised Mr. Kandola of the proposed hearing date by way of email sent to his email address. On March 8, 2018, the Legal Coordinator of the Administrative Tribunal sent a copy of the Notice of Hearing and a cover letter from Ms. Couch to Mr. Kandola by way of his email address. No response was received from Mr. Kandola.

- [13] The evidence demonstrated that the Notice of Hearing and allegations had been served upon Mr. Kandola pursuant to CPA Ontario's Rules of Practice and Procedure. The Tribunal was satisfied that Mr. Kandola had received proper notice of both the hearing and the allegations and decided to proceed in his absence.
- [14] Ms. Center advised the Tribunal that Mr. Kandola became suspended on March 9, 2018, after the Allegations dated December 11, 2017 had been filed, for failing to have paid fees and for failing to complete the requisite CPD courses required by CPA Ontario. Ms. Center requested that the Allegations be amended to note that Mr. Kandola is a "suspended" member of CPA Ontario.
- [15] The Tribunal granted the amendment sought by Ms. Center.

III. ISSUES

- [16] The Tribunal identified the following issues arising from the allegations:
- a) Did the evidence establish, on a balance of probabilities, the facts on which the particulars alleged by the PCC were based?
 - b) If the particulars alleged by the PCC were established on the evidence presented on a balance of probabilities, did the particulars constitute professional misconduct?

IV. DECISION

- [17] The Tribunal found that the evidence established, on a balance of probabilities, the facts on which the allegations were based.
- [18] The Tribunal was satisfied that the allegations alleged constituted breaches of section 3.4(b) of the CMA Ontario Professional Misconduct and Code of Professional Ethics, and of Rule 104.1 of the CPA Ontario Rules of Professional Conduct, as amended, in that Mr. Kandola committed an act discreditable to the profession when he misappropriated approximately \$346,000 from his employer and that he failed to cooperate with the regulatory process, and as such, having breached these provisions, Mr. Kandola had committed professional misconduct.

V. REASONS FOR THE DECISION

Findings Regarding Conduct of Mr. Kandola

Engaging in Discreditable Conduct

- [19] The PCC called Rabindra Deodat as its only witness. From 2012 to present, Mr. Deodat had held the following positions: Manager of Field Audits, Manager of Internal Audits and Director of Internal Audit for OTS. Mr. Deodat is a member of CPA Ontario and prior to the 2014 amalgamation, was a Certified General Accountant.
- [20] Mr. Deodat provided testimony relating to the creation and operation of OTS, as well as to the parties who participate in the collection and recycling of tires in the province of Ontario. Fees collected through the sale of tires are remitted to OTS in order to support recycling projects for end of life tires.
- [21] In 2015, Mr. Deodat was instructed by OTS's Audit and Finance Committee to conduct an audit of its Field Audit Department to ensure that participants were in compliance with the stewardship program and as a means of quality assurance.
- [22] As part of his audit of one of the stewards (i.e. companies who supply tires), Mr. Deodat noted that CNH had been importing tires since September 2009, but had only registered with OTS in April of 2011. During the audit, Mr. Deodat noted that CNH had not remitted fees from the time it had begun importing tires to the time it had registered. CNH had self-assessed and noted that it owed approximately \$346,000 to OTS.
- [23] In or about the spring of 2015, Mr. Deodat had requested information from OTS's CEO, Mr. Horseman regarding CNH. Mr. Kandola had resigned from his position as CFO 2 to 3 months prior to Mr. Deodat making this request. Mr. Deodat testified that Mr. Horseman had fully cooperated and provided the requested information and with further requests arising thereafter. Mr. Deodat discovered that the issue of outstanding fees owed by CNH had been discovered by Mr. Kandola and Mr. Horseman in 2012. CNH acknowledged it had not been remitting and advised it was prepared to remit the funds owed. Through legal counsel, an amount was agreed upon.
- [24] Initially CNH made payments to OTS through cheques. As time progressed, CNH suggested transferring funds by bank transfers would be more efficient and Mr. Kandola agreed to payment to OTS in this manner. (Exhibit 3, Document Brief, Tab 2). The audit uncovered that a bank transfer in the amount of \$346,565.86 had been made on March 9, 2012 to a TD Bank account #77855219062. (Exhibit 3, Document Brief, Tab 3). The beneficiary of this bank account was Ontario Tire. Mr. Deodat identified the signature on the Authorization of payments from CNH to Ontario Tire, as Mr. Kandola's signature. (Exhibit 3, Document Brief, Tab 2).
- [25] A report was prepared as a result of the investigation conducted by Mr. Deodat (Exhibit 3, Document Brief, Tab 4). Mr. Deodat concluded that \$346,565.86 in remittance fees from CNH should have been deposited into OTS's bank account. While the fees were sent by

CNH, they were not deposited into OTS's bank account. Pursuant to instructions from Mr. Kandola, CNH had wired the \$346,565.86 into the TD Bank account under the name "Ontario Tire" which did not belong to OTS.

- [26] In addition to the evidence of Mr. Deodat, the PCC filed a number of media reports relating to Mr. Kandola's conduct and other matters with respect to OTS.

Failure to Cooperate

- [27] On November 24, 2016, Ms. Tonelli, Director of Standards Enforcement at CPA Ontario wrote to Mr. Kandola advising him of information which had come to the attention of the Professional Conduct Committee ("PCC") from media reports. She requested that Mr. Kandola provide a written response to issues raised in her letter regarding potential breaches of the CPA Code of Professional Conduct Rules and the CMA Ontario Professional Misconduct and Code of Professional Ethics Regulations. (Exhibit 4, Exhibit A to the Affidavit of Linda Robinson). The letter was sent by registered and regular mail to Mr. Kandola's address of record with CPA Ontario. Mr. Kandola did not respond.
- [28] On January 4, 2017, a second letter enclosing Ms. Tonelli's November 24, 2016 letter was sent to Mr. Kandola's email address of record with CPA Ontario. A response was requested to Ms. Tonelli's letter by January 18, 2017. (Exhibit 4, Exhibit B to the Affidavit of Linda Robinson).
- [29] On January 18, 2017, Mr. Kandola responded to the January 4, 2017 email requesting an extension. He advised he had not responded as he was out of the country when the January 4th email had been sent and that he had been dealing "with a serious mental health issues for some time now." He provided two medical notes, one dated September 6, 2016 and the other dated January 18, 2017. Mr. Kandola did not specify a specific date for the extension. (Exhibit 4, Exhibit C to the Affidavit of Linda Robinson).
- [30] Ms. Tonelli responded to Mr. Kandola's email by way of letter dated January 24, 2017 and sent to Mr. Kandola by way of email. Ms. Tonelli advised she could not grant an unlimited extension but did grant an extension to February 14, 2017. (Exhibit 4, Exhibit D to the Affidavit of Linda Robinson).
- [31] On February 9, 2017, a letter was sent by facsimile transmission by Doriann Shapiro, M.S.W., RSW, Counseling Services, Problem Gambling Institute of Ontario, Centre for Addiction and Mental Health ("CAMH"). While the letter advises that Mr. Kandola has sought an assessment and treatment through CAMH's Problem Gambling Service, it provided no information regarding the extension, an inability to participate in the regulatory process, nor was it linked to the conduct at issue. (Exhibit 4, Exhibit E to the Affidavit of Linda Robinson).
- [32] On July 17, 2017, Tamara Center, counsel for the PCC sent an email to Mr. Kandola in which she advised him that the PCC had appointed an investigator to obtain further information regarding the allegations found in media reports. She advised that the investigator, Linda Robinson was authorized to interview Mr. Kandola and require the

production of relevant materials. She reminded Mr. Kandola of his duty to co-operate with the investigation. (Exhibit 4, Exhibit F to the Affidavit of Linda Robinson).

- [33] Ms. Robinson wrote an email to Mr. Kandola on October 2, 2017 requesting that he attend an interview with her during the week of October 17, 2017. This request was repeated by way of letter dated October 10, 2017 sent by courier to Mr. Kandola's address of record and by email. (Exhibit 4, Exhibits G&H to the Affidavit of Linda Robinson).
- [34] Mr. Kandola replied on October 15, 2017 advising that an interview "would risk jeopardizing my health and recovery". He attached the January 18, 2017 medical note and requested time to recover. (Exhibit 4, Exhibit I to the Affidavit of Linda Robinson).
- [35] On October 26, 2017, Ms. Robinson wrote to Mr. Kandola's physician, Dr. Kapoor requesting information to corroborate and expand upon the issues raised by Mr. Kandola's submission of the January 18, 2017 medical note and his advice that he could not participate in the investigation. This request was copied to Mr. Kandola. No response was received. (Exhibit 4, Exhibit J to the Affidavit of Linda Robinson).
- [36] On November 9, 2017, Ms. Center wrote to Mr. Kandola requesting that he make himself available to be interviewed by Ms. Robinson no later than November 30, 2017. She advised that a failure to attend would result in the completion of the investigation without Mr. Kandola's input and she reminded him of his obligations to cooperate. This letter was sent to Mr. Kandola's email. (Exhibit 4, Exhibit K to the Affidavit of Linda Robinson). No response was received from Mr. Kandola.
- [37] On November 15, 2017, Ms. Center again wrote to Mr. Kandola providing him with one final opportunity to attend an interview on or before November 24, 2017. She advised that the investigation would be referred to the PCC on December 12, 2017. Again, she reminded him of his obligations to cooperate with the investigation. This letter was sent to Mr. Kandola's email address from which he had previously communicated with CPA Ontario. (Exhibit 4, Exhibit L to the Affidavit of Linda Robinson). Mr. Kandola did not respond.

Finding of Professional Misconduct

- [38] The onus was on the PCC to show on a balance of probabilities that Mr. Kandola's conduct breached section 3.4(b) of the CMA Ontario Professional Misconduct and Code of Professional Ethics, and Rule 104.1 of the CPA Ontario Rules of Professional Conduct, as amended, and constituted professional misconduct.
- [39] The Tribunal was satisfied based on the evidence before it that Mr. Kandola had misdirected funds received from CNH to a bank account he had established at Toronto Dominion Bank. The funds received were arrear payments owed to OTS. There was no evidence presented by the PCC as to who received the benefit of the funds upon the withdrawal from the "Ontario Tire" account and whether Mr. Kandola received any benefit from such funds. Evidence was heard that Mr. Kandola did repay the funds to OTS. However as Chief Financial Officer of OTS, Mr. Kandola owed a fiduciary duty to OTS and

by misdirecting the funds to the “Ontario Tire” account, Mr. Kandola had caused financial assets rightfully the property of OTS to be deposited in an account not controlled by OTS. This dishonest conduct by Mr. Kandola, a person in a senior trusted position at OTS, necessarily amounted to professional misconduct.

- [40] The Tribunal was satisfied that the evidence presented with respect to Mr. Kandola’s non-cooperation with the PCC to be persuasive and found Mr Kandola in breach of rule 104.1.
- [41] The Tribunal found that Mr. Kandola committed professional misconduct in that he breached section 3.4(b) of the CMA Ontario Professional Misconduct and Code of Professional Ethics, and Rule 104.1 of the CPA Ontario Rules of Professional Conduct, as amended.

VI. SANCTIONS

- [42] The Tribunal accepted the position of the PCC with respect to penalty to be imposed in this matter. Given that Mr. Kandola’s conduct constituted an act of moral turpitude, the Tribunal found that the sanction imposed had to emphasize deterrence to him, as well as other members of the profession considering such conduct. The sanction also had to reassure the public that CPA Ontario was protecting the trust in it and its members.
- [43] A written reprimand was necessary as a specific deterrent to the suspended member and to stress the unacceptability of his conduct as a chartered professional accountant. It is important for CPA Ontario to clearly convey that message as a regulator.
- [44] The Tribunal concluded that a fine was required in these circumstances as a general deterrent to other members of the profession who may be tempted to engage in similar conduct. The Tribunal accepted that the amount of the fine sought by the PCC, being \$20,000, was in line with the fines in the cases identified by counsel to the PCC.
- [45] In determining the appropriate penalty, there were several aggravating factors on which the Tribunal relied. Firstly, the misdirection of the funds was first and foremost a misappropriation of a significant amount of funds. Secondly, Mr. Kandola engaged in deliberate and deceitful conduct in order to misappropriate the funds. Thirdly, Mr Kandola’s lack of cooperation indicated a complete lack of remorse. Finally, Mr. Kandola as CFO held a senior position of trust at OTS, which he abused by his fraudulent action.
- [46] Although there were mitigation factors identified, such as Mr. Kandola’s lack of a discipline history and that funds were paid to OTS, the Tribunal found that those factors could not diminish the nature of the aggravating circumstances surrounding the misconduct.
- [47] Revocation of Mr. Kandola’s membership in CPA Ontario was appropriate given the gravity of the misconduct. Mr. Kandola’s actions amounted to moral turpitude and as such, reflect negatively on the good reputation of the profession and as such a clear message needed to be sent to other members, and also to the public, that our profession will not tolerate such behavior of its members.

[48] The Tribunal also ordered that notice of Mr Kandola's revocation be given full publication, including notice in the Toronto Star and the Globe and Mail.

VII. COSTS

[49] Costs are imposed as an indemnity, not as an additional fine. The PCC presented a Costs Outline. After having applied an adjustment to the Costs Outline given that the hearing did not take a full day, the Tribunal accepted the PCC's submissions on costs and ordered costs in the amount of \$10,000 to be paid within 6 months of the Order.

Dated at Toronto this 16th day of August, 2018



Stephen Dineley, FCPA, FCA
Discipline Committee – Deputy Chair

Members of the Tribunal

Paul Busch, CPA, CA
Richard Fernandes, CPA, CA
Gary Katz, CPA, CA
Betty Kuchta (Public Representative)

Independent Legal Counsel

Nadia Liva, Barrister & Solicitor