

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
(THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO)

CHARTERED PROFESSIONAL ACCOUNTANTS of ONTARIO ACT, 2017

TO: Richard Sniderman, CPA, CA

AND TO: The Discipline Committee

The Professional Conduct Committee hereby makes the following allegations against Richard Sniderman, a member:

1. THAT, the said Richard Sniderman, in or about the period of November 1, 2006 through April 30, 2007, while Chairman, Director and President of Opal Capital Inc. and Opal Financial (collectively "Opal") failed to act in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the Rules of Professional Conduct, in that he improperly converted to his own use monies held by Opal as a fiduciary for various ventures:
 - a) by causing Opal to make a payment of \$50,000 of those monies to "Paul I" with respect to matters unrelated to the investment;
 - b) by causing Opal to make a payment of \$72,713 of those monies on account of the purchase of a condominium unit in Calgary placed in his name;
 - c) by causing Opal to transfer \$315,000 of those monies to himself; and
 - d) by causing Opal to transfer \$650,000 of those monies to a company he controlled, High Willhays Corp.
2. THAT the said Richard Sniderman, in or about the period October 1, 2006 through September 30, 2008, while Chairman, Director and President of Opal received and held money from investors as a fiduciary for the PSI Michigan venture and failed to properly administer those monies with due care, contrary to Rule 202.1 of the Rules of Professional Conduct in that he permitted the co-mingling of the funds received with those from other ventures, did not adequately track the balances and made payments from the pool of co-mingled funds for various purposes without regard to the balances held on behalf of each venture.

3. THAT the said Richard Sniderman, in or about the period October 1, 2006 through September 30, 2008, while a Chairman, Director and President of Opal failed to act in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct in that he held out to potential investors in the PSI Michigan Venture that there was in place a patent on the Molecular Expansion Process technology when none existed.

Dated at Toronto, Ontario this 14th day of March, 2018

A handwritten signature in cursive script, appearing to read "D.J. Cremasco".

D.J. CREMASCO, 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 **RICHARD SNIDERMAN, CPA, CA**, a member of Chartered Professional Accountants of Ontario, under **Rule 201.1** and **Rule 202.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Richard Sniderman

AND TO: The Professional Conduct Committee

DECISION MADE MAY 9, 2018, AND ORDER MADE MAY 10, 2018.

DECISION

The tribunal was satisfied that the particulars of the Allegations were proven and constituted a breach of Rule 201.1 and Rule 202.1 of the Rules of Professional Conduct. Having breached this Rule, the tribunal determined that Mr. Sniderman has committed professional misconduct.

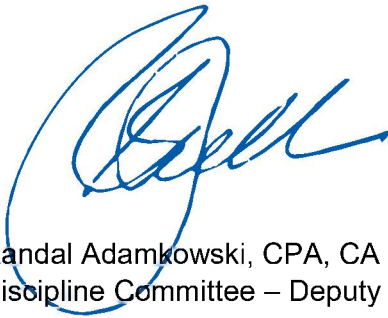
ORDER

The Tribunal orders the following:

1. Mr. Sniderman be reprimanded in writing by the Chair of the hearing.
2. Mr. Sniderman shall pay a fine of \$25,000 to CPA Ontario within 1 year from the date this Order is made.
3. Mr. Sniderman's membership with CPA Ontario is revoked.
4. Notice of this Decision and Order, disclosing Mr. Sniderman's name, is to be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of CPA Ontario;
 - (c) to all provincial bodies;and shall be made available to the public.
5. Notice of the revocation of membership disclosing Mr. Sniderman's name is to be given by publication on the CPA Ontario website and in the *The Globe and Mail*. Mr. Sniderman shall pay all costs associated with the publication and shall be in addition to any other costs ordered by the committee.

6. Mr. Sniderman shall surrender all certificates issued by CPA Ontario, including any membership certificate granting the Chartered Professional Accountant (CPA) designation, to the Adjudicative Tribunals Secretary within ten (10) days from the date this Order is made.
7. Mr. Sniderman shall pay costs of \$165,000 to CPA Ontario within 1 year from the date this Order is made.

DATED at Toronto this 10th day of May, 2018



Randal Adamkowski, CPA, CA
Discipline Committee – Deputy Chair

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **RICHARD SNIDERMAN, CPA, CA**, a member of Chartered Professional Accountants of Ontario ("CPA Ontario"), under **Rule 201.1** and **202.1** of the Rules of Professional Conduct, as amended.

BETWEEN:

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

-and-

Mr. Richard Sniderman

APPEARANCES:

For the Professional Conduct Committee: Melissa MacKewn, Counsel
Safina Lakhani, Counsel

For Richard Sniderman: James Lane, Counsel

Heard: May 9 and 10, 2018

Decision and Order effective: May 10, 2018

Release of written reasons: July 12, 2018

REASONS FOR THE DECISION AND ORDER MADE MAY 10, 2018

I. OVERVIEW

[1] Mr. Richard Sniderman, CPA, CA, admitted to breaching Rules 201.1 and 202.1 of the CPA Ontario Rules of Professional Conduct, in relation to joint ventures that he facilitated between 2006 and 2009. Mr. Sniderman and the Professional Conduct Committee ("PCC") filed an agreed statement of facts that supported findings of professional misconduct and filed a joint submission on penalty. The joint submission seeks a reprimand, a \$25,000 fine, revocation of membership, internal and public notification of the proceedings and a return of CPA Ontario certificates. The parties disagreed on the appropriate amount of costs to be paid by Mr. Sniderman. The Tribunal heard evidence from Mr. Sniderman and submissions of the parties on what the appropriate award of costs should be.

[2] Thus, the issues for the Tribunal were whether the alleged conduct amounted to professional misconduct and whether the joint sanction sought by the parties was appropriate in all of the circumstances. The Tribunal also determined the appropriate amount of costs to be paid by Mr. Sniderman.

- [3] The Tribunal granted the orders sought on a joint basis and ordered Mr. Sniderman to pay \$165,000 in costs, with reasons to follow. These are those reasons.

II. FACTS

- [4] Mr. Sniderman is a CPA, CA with no previous discipline history.
- [5] Mr. Sniderman is a venture capitalist and between 2005 and 2009 he ran, through a company he controlled called Opal Capital Inc. ("Opal"), a tax-driven joint venture (PSI Michigan Venture) that generated significant tax deductions for investors. At the same time that Opal was soliciting funds for the PSI Michigan Venture, it was also holding funds for other startup ventures including Goldstar and PSI South. The funds were maintained in co-mingled bank accounts.
- [6] PSI Michigan Venture Investors did receive their tax deductions, however the Venture failed, and no profits were realized. The Canada Revenue Agency commenced a review of the transactions in 2007 but has since closed the file and taken no action.
- [7] The tax structure of the PSI Michigan Venture is not the basis of the PCC allegations. The allegations relate, primarily, to how the money raised for the Venture was managed by Opal.

Allegation One: Improper Conversion

- [8] Allegation one is that Opal improperly converted monies that belonged to joint venture investors. This allegation is supported by four sub-allegations.
- [9] Particular one is that on November 6, 2006, the PSI Michigan Venture was in a cash shortfall position, yet Mr. Sniderman caused Opal (which was holding PSI Michigan Venture Investor funds) to loan \$50,000 to a Mississauga, Ontario company, controlled by a "PJ", for a movie project called "Ice Planet TV Series". Mr. Sniderman believed that PJ would cultivate a relationship with a fourth party, "MJ", who would become a lender to the limited partners on the Opal investment ventures. The film project failed and the loan, which was not documented, was not repaid.
- [10] Thus, while Mr. Sniderman's intention was to indirectly benefit the joint venture investors, by securing a lender, the result was – as admitted by Mr. Sniderman- that he improperly converted to his own use \$50,000 held by Opal Capital as a fiduciary on behalf of the PSI Michigan Venture. He further admits that those actions were contrary to Rule 201.1 of the CPA Ontario Rules of Professional Conduct, for failing to maintain the good reputation of the profession.
- [11] Particular two is that in November of 2006, Mr. Sniderman caused the PSI Michigan Venture, which was still in a cash shortfall position, to transfer \$72,713 to purchase a condominium in Calgary, Alberta, in Mr. Sniderman's name. Mr. Sniderman took out a personal mortgage to fund the rest of the purchase. The condominium was originally going to be purchased by an Opal commission salesperson who was promoting Opal Capital investment ventures. The \$72,713 was ultimately recovered by Opal through offsetting commissions owed to the sales person, although the loan was not properly documented or securitized. In other words, the \$72,713 were "at risk", undocumented and their transfer was unknown to the PSI Michigan Venture investors.

- [12] While Mr. Sniderman believed that the transaction indirectly benefited the investors by supporting a salesperson with an office and a residence, he admits that the process he followed was inappropriate. He also admits that for a period of time he improperly converted to his own use \$72,713 held by Opal Capital as a fiduciary on behalf of the ventures. He further admits that those actions were contrary to Rule 201.1.
- [13] Particular three is that, on January 11, 2007, Mr. Sniderman caused Opal to transfer \$315,000 (resulting in a cash shortfall position in respect of the PSI Michigan Venture investors), to Mr. Sniderman who then transferred \$300,000 to "MR", a long-time business associate. The transfer to Mr. Sniderman was not documented or securitized. MR then paid \$375,000 to Opal to purchase units in an Opal investment- Goldstar Limited Partnership. The \$315,000 lent to Mr. Sniderman was repaid to Opal by way of services "in kind" provided to Opal by another Opal joint venture investment, Eurovision. The Eurovision services were similarly undocumented.
- [14] While Mr. Sniderman believed that the transfer of \$315,000, to him, indirectly benefitted the joint venture investors, because it secured an investment in another Opal Capital venture by MR, he admits that the process he followed was inappropriate. He also admits that for a period of time he converted to his own use \$315,000 held by Opal as a fiduciary on behalf of the joint venture investors. He further admits that these actions were contrary to Rule 201.1.
- [15] Particular four is that, on April 24, 2007, Mr. Sniderman caused \$650,000 to be transferred from Opal (placing the PSI Michigan Venture in a cash shortfall position), to High Willhays Corp., which holds Mr. Sniderman's life insurance. Of the \$650,000, at least \$80,250 was placed "at risk" by transferring that amount to Mr. Sniderman's wife's daughter, "SF". SF used that money to purchase a unit in Goldstar, and repaid the \$80,250 two months later. As in the case of the other allegations, no loan documents were prepared and the transfers was unsecured.
- [16] While Mr. Sniderman believed that the transaction indirectly benefitted venture investors, by generating a sale of a unit in Goldstar, he agrees that the process he followed was inappropriate. He also admits that, for a period of time he improperly converted to his own use monies held by Opal as a fiduciary on behalf of the joint venture investors. He further admits that those actions were contrary to Rule 201.1.

Allegation Two: Failure to Track Balances and Making Payments from Co-mingled Funds

- [17] The promotional materials relating to the PSI Michigan Venture were prepared by Opal Capital and sent to investors. The materials stated that the monies raised were to be used to fund expenses during construction and startup and provide working capital to fund the operations of PSI Michigan. In fact, as admitted by Mr. Sniderman, the monies received from all the different ventures were co-mingled and used where he felt most appropriate at the time. Although funds received from investors were mainly paid out with respect to the applicable investment, in certain cases Mr. Sniderman would use money from one investment venture, including the PSI Michigan Venture, to cover another. In addition, Opal Capital would use funds received from investors for its own purposes, including unsecured loans to Mr. Sniderman, as described above. The investors were not told that their funds were being used for purposes other than their own investment. Opal's own cash position was unknown at any point in time. It was also

unknown, at any point in time, if the cash belonging to an individual venture was available to it, if required. Mr. Sniderman admits that Opal Capital held the money received from investors in a fiduciary capacity.

- [18] Accordingly, Mr. Sniderman admits that, based on the above, he failed to properly administer monies received from investors with due care, contrary to Rule 202.1 of the Rules of Professional Conduct.

Allegation Three: Holding Out of a Patent When None Existed

- [19] The PSI Michigan Venture business plans and memos, prepared by and presented to investors by Mr. Sniderman, stated that the Venture held a patent on a Molecular Expansion Process ("MEP") technology. Specifically, these business plans and memos represented that PSI Michigan had an exclusive, patented process that enabled the recycling of mixed plastics. Although Sniderman initially believed that there was a patent, there was none.
- [20] No change was made to the PSI Michigan Venture promotional materials, which referred to the patent, from 2006 until 2008. In 2008, the Business Summary contained a revision under the Intellectual Property heading that removed the reference to a patent and stated only that "PSI is seeking patents for its process".
- [21] Mr. Sniderman admits that he failed to exercise the care, diligence and skill that a reasonably prudent Chartered Accountant would have exercised in comparable circumstances before holding out to investors that patents of the MEP were in place. He admits that he thereby breached Rule 201.1.

III. ADMISSIONS

- [22] Before this Tribunal, Mr. Sniderman admitted the allegations against him and restricted his challenge to the costs order sought by the PCC.
- [23] Nonetheless, there remains the onus on the PCC to show, on a balance of probabilities, that Mr. Sniderman's conduct breached CPA Ontario's Rules of Professional Conduct, that the conduct constituted professional misconduct, and that the jointly submitted sanctions are in the public interest.

IV. PRELIMINARY ISSUES

- [24] During the course of the proceedings the Tribunal became concerned that Mr. Sniderman's admissions may not be unequivocal. Amongst other statements, Mr. Sniderman made statements at the hearing that appeared to transfer the blame, to PCC Investigation staff, for what was alleged against him. In the face of these statements, the Tribunal conducted a detailed plea inquiry directly with Mr. Sniderman. Based on his answers to the questions posed by the Tribunal, the Tribunal determined that Mr. Sniderman's admissions to the allegations and participation in the joint submission were voluntary (see *Adgey v. The Queen*, [1975] 2 S.C.R. 426).

V. ISSUES

- [25] The issues for the Tribunal were the following:

- a) Was the Tribunal satisfied, on a balance of probabilities, that the admitted facts constitute professional misconduct and warrant the sanctions agreed to by the parties? and
- b) What is the appropriate costs award in the circumstances?

VI. DECISION

- [26] The Tribunal found that, on a balance of probabilities, the evidence established the particulars set out in the allegations of professional misconduct and amounted to professional misconduct under Rules 201.1 and 202.1. The Tribunal also found that the joint submission on sanctions was in the public interest.
- [27] The appropriate costs order, in the circumstances, is \$165,000, payable by Mr. Sniderman within one year.

VII. REASONS FOR THE DECISION

Findings of Professional Misconduct

- [28] The Tribunal has found that the conduct of Mr. Sniderman, as admitted, represents a breach of the Rules of Professional Conduct. Rule 201.1 requires a member to act in a manner that maintains the good reputation of the profession. Rule 202.1 requires a member to perform services with integrity and due care.
- [29] Mr. Sniderman's investors should have been able to trust that their investments would be used only in the manner outlined in the promotional material and that their interests would be properly protected including maintaining accurate and understandable records and utilizing usual protocols and methods to safeguard their interests when their funds were put at risk. The admitted facts reveal a course of conduct to the contrary. There is a pattern of behavior by Mr. Sniderman that occurred over several years, which suggests an intent by Mr. Sniderman to behave so, and that each, in the collective opinion of the panel, would put the good reputation of the profession at risk. The parties have agreed that none of these actions were dishonest and it is a fact that there is no evidence that investors (or other parties) were defrauded or cheated. That said, the specifics of the recurring behaviour have similarities that show Mr. Sniderman: set aside usual safeguards that would have provided protection for his investors capital; failed to maintain accurate and understandable records of transactions he executed with investors capital; and used his investors capital in ways that the panel considered inappropriate and collectively they found it hard to understand the correlation between the transactions and the direct benefit to the investors who had contributed the capital used as claimed by Mr. Sniderman.
- [30] In each situation the panel concluded that the action of Mr. Sniderman was contrary to maintaining the good reputation of the profession and failing to perform his services with integrity and due care. Mr. Sniderman acted in a cavalier manner with the capital of his investors and needlessly put the funds at risk by not documenting and placing security on these advances. It is not a relevant fact that there is no evidence of loss to an investor as a result of these transactions. Nor is it sufficient justification of these actions of Mr. Sniderman for him to claim that these transactions indirectly benefited the

investors; particularly in that no benefits were in fact realized from these transactions.

- [31] Further to the agreement between the parties that there is no allegation of dishonesty the panel notes that it is also true that there is no evidence that Mr. Sniderman intentionally and knowingly mislead or provided false information. However, the evidence is clear that the promotional material provided to prospective investors contained false information that was certainly pertinent to their investment decision. It is also a fact that at some future time Mr. Sniderman became aware of this false statement and that he did nothing at that time to inform the investors of the error. Mr. Sniderman's inaction given his role and relationship with the venture is considered by the panel to be another transgression of Rule 201.1
- [32] In the circumstances, on the agreed facts, the Tribunal finds, on a balance of probabilities, that there has been a breach of Rules 201.1 and 202.1 of the Rules of Professional Conduct.

Sanctions

- [33] With respect to sanctions, as noted above, the proposed penalties of reprimand, a \$25,000 fine, revocation of membership, internal and public notification of the proceedings and a return of CPA Ontario certificates have been submitted as part of a joint submission. That joint submission was presented to the Tribunal through parties who were represented by experienced counsel. As a matter of settled law, the Tribunal is not to depart from a joint submission on sanctions unless it would bring the administration of justice into disrepute or is otherwise contrary to the public interest (see, in the criminal law context, *R. v. Anthony-Cook*, 2016 SCC 43, at para. 32). The Tribunal finds that the process undertaken by the parties to arrive at a detailed agreed statement of facts, which statement then formed the foundation for carefully agreed-to list of sanctions, is in the public interest and should not be departed from. It is in the public interest that disputes of a complex nature, as this one is, be resolved by the parties, and that they be entitled to forego the time and expense of a fully contested hearing. Accordingly, the Tribunal sees no basis to set aside the jointly submitted sanctions.

VIII. COSTS

- [34] The Tribunal has jurisdiction to order cost against Mr. Sniderman in respect of investigation, counsel and hearing costs of the PCC (see s. 38(1) of the Act). As set out in *Groia v. Law Society of Upper Canada*, 2015 ONSC 686 (Div.Ct.), appeal dismissed, 2016 ONCA 471, reversed on other grounds, 2018 SCC 27, the ordering of costs is the "quintessential exercise of discretion". In *Groia*, the Court referred with approval, to the test set out in *Law Society of Upper Canada v. MacFarlane*, [2009] L.S.D.D. No. 56 at para. 37, for the test to be applied in a professional discipline context on the issue of costs. Specifically, the Court stated:

Using this foundation and the case law of this tribunal, the general principle is that the financial burden of prosecuting a licensee should not rest on the profession generally. That said, the following non-exhaustive list of additional considerations may be taken into account by the Panel in exercising its discretion:

- a) the complexity of the proceeding;

- b) the importance of the issues;
- c) the duration of the hearing;
- d) the conduct of any party that shortened or unnecessarily lengthened the proceeding;
- e) settlement offers or other appropriate attempts to resolve the matter;
- f) whether any party took improper, vexatious or unnecessary steps in the proceeding;
- g) the licensee's financial circumstances and ability to pay;
- h) any hardship that would result from a costs order.

- [35] The parties were unable to arrive at a joint submission on the costs issue. The PCC sought costs in the amount of \$200,000 (inclusive of disbursements and taxes) (Exhibit . Mr. Sniderman submitted that an order in the amount of \$25,000 was appropriate.
- [36] Mr. Sniderman testified on the cost issue, and stated that he does not have an ability to pay a costs order. His evidence was that he owns no assets, earns only an old-age pension, has considerable unpaid tax assessments, and relies on his children for financial support in regard to his day-to-day living expenses. On the other hand, he also testified that he did sell a successful mailbox business ten to fifteen years ago- for a considerable amount of money- is an officer of a numbered company owned by his children (which pays his credit card expenses), owns nine or ten other private companies, and owns some companies that are domiciled outside of Canada including, the Ukraine, the Isle of Wight and Delaware U.S.A. Mr. Sniderman filed no financial statements in relation to any of these companies. It was also noted in argument that Mr. Sniderman was a venture capitalist for many years and appears to have some expertise in tax sheltering plans.
- [37] In the circumstances, on the whole of the evidence, the Tribunal is not satisfied that Mr. Sniderman has established that he has an inability to pay a costs order.
- [38] The PCC submitted a Costs Outline which indicated it had incurred "reduced" costs of \$420,000. It stated that it reduced its costs to that amount by \$100,000 to eliminate duplication, any costs incurred that may have related to areas that were not prosecuted, and time spent on a companion investigation. The PCC then reduced that amount by a further 50%, and arrived at a further rounded down number of \$200,000 all inclusive. The PCC argues that what ultimately became the parties' joint submission on sanction, was the same position offered to Mr. Sniderman in March of 2014. The PCC also argues that it kept Mr. Sniderman apprised of its costs as they were being incurred. Thus, it is submitted, the costs currently sought cannot be outside of Mr. Sniderman's reasonable expectation of what his exposure on costs was.
- [39] In response, Mr. Sniderman submits that the allegations against him, at the outset of the proceedings, were allegations involving moral turpitude and that the agreed statement of facts contains no such allegations. It follows that Mr. Sniderman could not have been expected to accede to the PCC's position in March of 2014, until the moral turpitude allegations were removed. By then, it is submitted, considerable costs had been inefficiently incurred by the PCC. Put in other words, Mr. Sniderman submits that in exercising its discretion, the Tribunal should not order costs of an investigation that was

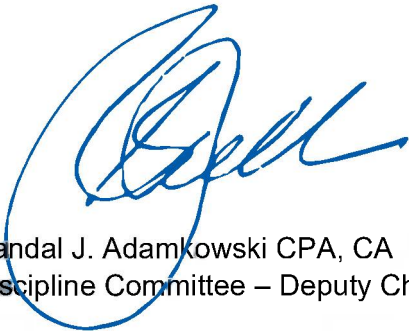
considerably broader than its outcome. He also argues that the PCC's overly expansive investigation was on account of the PCC accepting, without reservation, the allegations of Mr. Sniderman's former business partner. He submits that this points to an additional inefficiency in the prosecution since, it is submitted, those allegations were rejected by the RCMP, Ontario Securities Commission and the Canada Revenue Agency.

- [40] In the circumstances, the Tribunal is prepared to order cost to the PCC in the amount of \$165,000, inclusive of disbursements and taxes. The Tribunal accepts that the PCC was compelled to conduct a material and complex investigation into Mr. Sniderman's affairs, with or without the allegations of moral turpitude. Moreover, the PCC has applied reasonable discounts to the total fees it incurred, to arrive at the \$200,000 figure it seeks. Nonetheless, the Tribunal is concerned that the amount of \$200,000 is excessive in light of the fact that some of the costs incurred by the PCC would have pertained to a related investigation. Moreover, the complaint by Mr. Sniderman's former business partner did lead investigators into areas that bore no fruit in terms of findings against Mr. Sniderman. Finally, the fact that the original set of allegations has been narrowed over time, weighs in Mr. Sniderman's favour.

VIII. ORDER

- [41] Based on the above, the Tribunal grants the Orders agreed to by the parties and orders costs of the proceeding, against Mr. Sniderman, in the amount of \$165,000, inclusive of disbursements and taxes. Mr. Sniderman has one year to pay those costs.

DATED at Toronto this 12th day of July, 2018



Randal J. Adamkowski CPA, CA
Discipline Committee – Deputy Chair

Members of the Tribunal

Jane Rivers, CPA, CGA
George Ireland, CPA, CA
Barry Soloway (Public Representative)
Catherine Kenwell (Public Representative)

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Richard Macklin
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