

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
(THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO)
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **SURINDER P. S. GHUMMAN, CPA, CA, CMA** under **Rules 204.1** and **205** of the Rules of Professional Conduct, as amended.

TO: Mr. Surinder P.S. Ghumman, CPA, CA, CMA

AND TO: The Professional Conduct Committee

REASONS

(Decision and Order made October 21, 2015)

1. This tribunal of the Discipline Committee met on October 21, 2015 to hear allegations of professional misconduct brought by the Professional Conduct Committee against Surinder P.S. Ghumman, CPA, CA, CMA, a Member of CPA Ontario.

2. Ms. Alix Hersak appeared on behalf of the Professional Conduct Committee (PCC), accompanied by the investigator, Mr. Paul Gibel. Mr. Ghumman attended with his counsel Mr. Frank Bowman. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee.

3. The decision of the tribunal was made known at the conclusion of the hearing on October 21, 2015, and the written Decision and Order was sent to the parties on October 30, 2015. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegations, the decision, the order, and the reasons of the tribunal for its decision and order.

Allegation

4. The following allegations of professional misconduct were made against Mr. Ghumman by the Professional Conduct Committee on July 6, 2015:

1. THAT the said Surinder Ghumman, in or about the period October 1, 2010 to February 28, 2011, while engaged to perform a review of the financial statements of "HKUT Limited," failed to hold himself free of any influence, interest or relationship which impaired his professional judgement or objectivity or which, in the view of a reasonable observer, would impair his professional judgment or objectivity in that he borrowed \$25,000 from "KM," a shareholder of the company, contrary to Rule 204.1 of the Rules of Professional Conduct.
2. THAT the said Surinder Ghumman, in or about the period December 1, 2007 to May 31, 2011, while engaged to perform a review of the financial statements of "RWR Inc.," did sign or associate with financial statements which he knew or should have known were false or misleading, contrary to Rule 205 of the Rules of Professional Conduct in that he failed to correct material prior period errors of which he was aware in the November 30, 2010 financial statements with respect to unrecorded expenses, GST receivable, and intercompany payables.

Plea

5. Mr. Ghumman entered a plea of guilty to the allegations.

The case for the PCC

6. Ms. Hersak advised the tribunal that the case for the PCC would be presented by way of an Agreed Statement of Facts, and there would be no other evidence submitted by the parties on the issue of professional misconduct. She then filed the Agreed Statement of Facts (Exhibit 1) signed by Mr. Ghumman on his own behalf, and by Ms. Hersak on behalf of the PCC, as well as a Document Brief (Exhibit 2).

7. In presenting the case for the PCC, Ms. Hersak reviewed the Agreed Statement of Facts, which also included references to documents contained in the Document Brief. No other evidence was called on behalf of the PCC.

The relevant facts

8. The relevant facts are fully set out in the Agreed Statement of Facts.

9. Regarding Allegation 1, Mr. Ghumman was the engagement partner for the client HKUT for the review engagement for the years ended December 31, 2010 and 2011.

10. A staff member working on the 2010 review engagement asked about an amount of \$25,000 included in the loan receivable account, and was told it was a receivable from Mr. Ghumman. Mr. Ghumman borrowed \$25,000 from a shareholder of HKUT in October, 2010, and the funds were put into Mr. Ghumman's professional corporation to purchase a practice that he merged with his sole proprietorship. The funds were repaid on February 3, 2011.

11. Subsequent to the repayment of the loan, an adjusting journal entry was made in April 2011 for the December 31, 2010 year-end which reclassified the loan to the shareholder loan account, noting that it was a personal loan provided by the shareholder.

12. The independence letter dated June 26, 2012 to the client for the 2011 year-end, signed by Mr. Ghumman, stated that his firm was not aware of any relationship between the company and his firm that would affect the firm's judgment and objectivity for the period January 1, 2011 to June 26, 2012. The loan made to Mr. Ghumman was outstanding during that period.

13. Mr. Ghumman was identified as the engagement partner in the review completion checklist signed off by a staff member that asks if any identified engagement or independence risks were resolved and documented. Mr. Ghumman also stated in the Agreed Statement of Fact that the loan was not identified as a threat to independence in 2011.

14. There was no discussion of potential safeguards or documentation in the working papers other than the journal entry reclassifying the loan to the shareholder loan account. The loan had already been repaid at that time.

15. Regarding Allegation 2, Mr. Ghumman was the engagement partner responsible for the review engagement of RWR Inc. (RWR) and compilation engagements for 650*** Ontario Limited (650) and PE Inc. (PE) beginning with the 2008 year ends. These three companies have one owner. PE and 650 own real estate which is leased to RWR. Mr. Ghumman

approved the release of the financial statements for the three companies for the 2010 year ends.

16. The rent was to include a charge for tax, maintenance and insurance expenses which was recorded as revenue in PE and 650 for 2007 to 2009. These amounts were recorded as accounts receivable in PE and 650, and were not recorded as expenses in RWR. Because the intercompany balances were not reconciled, this discrepancy was not discovered until 2010. The unrecorded expenses were material for each of the years.

17. During the year ended November 30, 2010, a new controller was hired by RWR and he discovered the error. The controller corrected the error by recording an adjusting journal entry to charge additional rent expenses of \$262,499 and \$410,487 in the 2010 year, even though the amount had accumulated over the three-year period. Mr. Ghumman subsequently reversed the controller's correcting entries in an adjusting journal entry with an explanation that the books of RWR would not be adjusted, but instead adjusting entries would be made in corresponding companies' books in subsequent years and GST would be claimed gradually. The effect of this was that the errors remained uncorrected in the issued financial statements, and Mr. Ghumman knew the material errors were not corrected.

18. Mr. Ghumman's actions in respect of the error were contrary to the requirements of *CICA Handbook* Section 1506.27 and .37, which requires correction of material prior period errors subsequently discovered, and appropriate disclosure of these prior period corrections in the relevant periods of the financial statements to which they apply.

Submissions

19. Ms. Hersak submitted that based on the acknowledged facts as set out in the Agreed Statement of Facts, the evidence was clear, cogent and convincing that Mr. Ghumman failed to comply with the rules of professional conduct. Ms. Hersak stated that Mr. Ghumman failed to hold himself free of any influence that would impair his professional judgement by borrowing money from his client. Mr. Ghumman failed to correct material prior period errors that had been brought to his attention. These errors were inadvertent but should have been corrected following the proper procedures as set out in the *CICA Handbook*.

20. Mr. Bowman submitted that the facts as set out in the Agreed Statement of Facts are agreed to by Mr. Ghumman.

Decision

21. After deliberating, the tribunal found, on the uncontested evidence, that the allegations had been proven. The tribunal announced the following decision:

THAT having heard the plea of guilty to Allegation Nos. 1 and 2, and having seen and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee finds Surinder Ghumman guilty of Allegation Nos. 1 and 2 of professional misconduct.

Reasons for Decision

22. The tribunal found that the Agreed Statement of Facts, the relevant parts of which are set out above, clearly establish the allegations of professional misconduct beyond the balance of probabilities.

23. The details set out in the Agreed Statement of Facts, together with the Member's plea of guilty to each of the allegations, and Mr. Bowman's agreement with Ms. Hersak's review of the Agreed Statement of Facts left the tribunal in no doubt that the required standard of proof: clear cogent and compelling, had been met.

Submissions on Sanction

24. Ms. Hersak stated that there was no additional evidence by either party and there was a joint submission on sanction. Ms. Hersak, on behalf of the PCC, submitted that an appropriate sanction in this matter, agreed to by the parties, would be: a written reprimand; a fine in the amount of \$8,000, that Mr. Ghumman take the professional development courses *Using Values to Build a Better Ethical Culture* and *Review Engagements*, and the usual publicity to all Members and the public. The PCC also sought an order for costs of \$12,000.

25. Ms. Hersak submitted that the sanctions recommended fall within the range of similar cases. The sanctions would be appropriate to protect the public interest, and address specific and general deterrence. Ms. Hersak submitted that all joint submissions should be accepted by the tribunal unless they were felt to be truly unreasonable and would bring disrepute to the profession.

26. Ms. Hersak stated that the aggravating factors included borrowing from a client which to a reasonable observer could impair Mr. Ghumman's objectivity, and failing to follow the proper procedures to correct the error rather than reversing the controller's correcting entries. The initial error in the financial statements should have been caught by Mr. Ghumman.

27. Ms. Hersak stated that the mitigating factors were that Mr. Ghumman has no history before the Discipline Committee, has expressed remorse, has pleaded guilty to the allegations, has cooperated fully with the PCC, and has proceeded by way of an Agreed Statement of Facts, including sanctions. The loan, which has been repaid to the client, was a one-time occurrence due to a cash flow situation.

28. Ms. Hersak distributed a Book of Authorities containing the CPA Ontario cases of *Hall, McKeand*, and *Weisbrod*, which deal with the independence and objectivity side of this case, along with the *Gray*, *Stanley* and *Wagner* cases which deal with false and misleading statements.

29. Ms. Hersak submitted that the sanctions proposed by the PCC appropriately deal with the principles of general and specific deterrence, and rehabilitation. The professional development courses would assist in Mr. Ghumman's rehabilitation. The fine proposed and the publicity act as a general and specific deterrent. It is very significant to the Member to have his name publicized and it is important to the public perception that the regulator is policing the activities of its Members. Ms. Hersak submitted that Mr. Ghumman is anxious to get back on the right road.

30. Ms. Hersak filed a Costs Outline (Exhibit 3) stating that costs are an indemnity, not a penalty, and the costs requested of \$12,000 represent approximately two-thirds of the actual costs incurred.

31. Mr. Bowman submitted that the sanctions requested by the PCC have been agreed to by Mr. Ghumman, and asked the tribunal to accept the proposed sanctions. Mr. Bowman stated that the loan referred to in Allegation No. 1 was for a short duration and repaid within four

months. There was no intention by Mr. Ghumman to mislead anyone with regard to the financial statements referred to in Allegation No. 2.

32. The tribunal commenced deliberations but called the parties back to ask why suspension had not been asked for by the PCC, as had been ordered in the *Stanley* case.

33. Ms. Hersak stated that the *Stanley* case was distinguished by his willful intention to deceive the bank, knowing that inventory was overstated, whereas this case relates to a mechanical error. Mr. Ghumman took the wrong approach to correct the error but did not intentionally mislead. Ms. Hersak submitted that suspension was not a sanction considered by the PCC in Mr. Ghumman's case.

34. Mr. Bowman submitted that the *Stanley* case involved five charges and there was a clear intention to mislead, which is in stark contrast to this matter. Mr. Bowman stated that unless they are far out of the range, the proposed sanctions should be accepted. Mr. Bowman noted that the PCC deals with many cases and has a perception for what sanctions are appropriate.

Order

35. After deliberating, the tribunal made the following order:

1. THAT Mr. Ghumman be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Ghumman be and he is hereby fined the sum of \$8,000, to be remitted to the Chartered Professional Accountants of Ontario (registered business name of The Institute of Chartered Accountants of Ontario) ("CPA Ontario") within twelve (12) months from the date this Decision and Order is made.
3. THAT Mr. Ghumman be and he is hereby required to complete, by paying for and attending in their entirety within (12) months from the date this Decision and Order is made the following professional development courses made available through CPA Ontario:
 - *Using Values to Build a Better Ethical Culture*
 - *Review Engagements*
 or, in the event a course listed above becomes unavailable, the successor course which takes its place.
4. THAT notice of this Decision and Order, disclosing Mr. Ghumman's name, be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of CPA Ontario;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to all provincial bodies;
 and shall be made available to the public.
5. THAT in the event Mr. Ghumman fails to comply with the requirements of this Order, he shall be suspended from membership in CPA Ontario and his public accounting licence shall thereupon be suspended until such time as he does comply, provided that he complies within three (3) months from the date of his suspension. In the event he does not comply within the three (3) month period, his membership in CPA Ontario and his licence shall thereupon be revoked, and notice of the suspension of his licence and notice of the revocation of his

membership and licence, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Ghumman's practice or employment. All costs associated with this publication shall be borne by Mr. Ghumman and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

6. THAT Mr. Ghumman be and he is hereby charged costs fixed at \$12,000, to be remitted to CPA Ontario within twelve (12) months from the date this Decision and Order is made.

Reasons for Sanctions

36. The tribunal agreed that the sanctions recommended: a reprimand; a fine; PD courses and publicity were appropriate. They addressed the principles of deterrence, both general and specific as well as rehabilitation as submitted by the parties. The difficulty the tribunal had, as will be apparent from the fact that specific submissions were requested with respect why a suspension was not recommended, was whether or not the sanctions taken as a whole adequately addressed the misconduct in this case, particularly with a view to satisfying the principle of general deterrence.

37. The tribunal acknowledges that joint submissions are only rejected when they fall outside the range of sanction which is appropriate. When looking at the appropriate range, one of the first things a tribunal does is look to precedent cases acknowledging that seldom are two cases exactly the same.

38. The tribunal carefully considered the similarities and differences in the *Stanley* case and this case. In both cases, there was a joint recommendation which did not include a suspension and in both cases counsel for the parties were asked to address the issue of whether or not there should be a suspension. While both Mr. Stanley and Mr. Ghumman were found guilty of an allegation under Rule 205, there is no indication in the reasons that Mr. Stanley intended to ultimately correct the \$500,000 overstatement of inventory whereas Mr. Ghumman did intend to correct the errors in the inter-company balances even though he did not do it correctly. Further, Mr. Stanley was also found guilty of two charges under Rule 201.1

39. The tribunal concluded that the nature and extent of Mr. Stanley's misconduct was significantly more egregious than that of Mr. Ghumman. In light of this and the impact the other terms of the order would have on Mr. Ghumman, the tribunal concluded that a suspension was not required in this case. The tribunal concluded the sanctions jointly recommended would emphasize to both Mr. Ghumman and CPA Ontario's Members that maintaining a high standard of conduct is in the public interest and is critical in maintaining the confidence the public has placed in the CPA profession as a self-regulating body.

40. The written reprimand by the Chair makes it clear that a recurrence of this conduct will not be tolerated. It is relevant that Mr. Ghumman acknowledged his wrongdoing, had cooperated fully with the PCC in its investigation as well as in the preparation of the Agreed Statement of Facts. The reprimand should serve to specifically deter Mr. Ghumman should he be tempted to ignore the high standards expected of a CPA.

41. The fine serves as a specific deterrent to reinforce to Mr. Ghumman that professional misconduct is not tolerated. It also serves as a general deterrent to other Members that this

conduct is unacceptable. The tribunal determined that 12 months was a reasonable time for Mr. Ghumman to pay the fine. There were no submissions as to financial hardship or additional time for payment.

42. The requirement to take two professional development courses will enable Mr. Ghumman to continue with his rehabilitation and help him be more sensitive to the issues and risks of conducting a professional practice.

43. The tribunal concluded that in the interest of transparency of the disciplinary process the normal publication of this matter, including Mr. Ghumman's name, was appropriate and in the public interest. It demonstrates to the public that CPA Ontario takes breaches of professional conduct seriously. There were no submissions by the parties requesting that publication be withheld, and the tribunal determined that there were no exceptional or unusual circumstances to warrant withholding publication.

44. Publication acts as a specific deterrent to Mr. Ghumman. It is also accepted that publication of the Member's name is a strong general deterrent to the CPA membership. The fact that Members highly value their reputation and the impact of publication of a Member's name on their reputation makes publication an essential component of the sanction in this case.

Reasons for Costs

45. The tribunal agreed that the costs of \$12,000 as agreed to by the parties were reasonable and appropriate in the circumstances.

46. CPA Ontario is a self-regulatory body and as such, disciplinary matters are a part of its governing activities. The principle that a Member whose misconduct is responsible for the expense of the investigation and prosecution should bear an appropriate share of the costs is well established. The PCC submitted a bill of costs outlining the expenses of the investigation and hearing, and the tribunal agreed that the costs of \$12,000, representing a portion of the total costs, was appropriate and fell within the range of reasonableness. As with the fine, the tribunal determined that 12 months was a reasonable time for Mr. Ghumman to pay the fine.

DATED AT TORONTO THIS ^{14TH} DAY OF DECEMBER, 2015
BY ORDER OF THE DISCIPLINE COMMITTEE



A.D. NICHOLS, FCPA, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

B.G. ALLENDORF, CPA, CA
E. BESSNER (PUBLIC REPRESENTATIVE)
P.J. VAILLANCOURT, CPA, CGA