



CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

THE CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

TO: YUN F. ZHU, CPA, CGA

AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee of CPA Ontario hereby makes the following Allegation of professional misconduct against Yun F. Zhu, CPA, CGA, a member of CPA Ontario:

1. THAT the said Yun Feng Zhu, in or about the period March 8, 2019 to July 9, 2019 failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.2(a) of the CPA Code of Professional Conduct in that:
 - a. She failed to promptly reply in writing to communications from CPA Ontario to which a written reply is specifically required, namely the correspondence dated February 15, 2019 from Ms. Theresa M. Tonelli, CPA, CA, Director of Standards Enforcement at CPA Ontario.
 - b. She failed to promptly reply in writing to communications from CPA Ontario to which a written reply is specifically required, namely the correspondence dated March 28, 2019, April 8, 2019, April 25, 2019 and May 23, 2019, from Ms. Anita Patel, CPA, CA, Investigator appointed by the Professional Conduct Committee.

Dated at Markham, Ontario, this 17th day of July, 2019

A handwritten signature in cursive script, appearing to read "M. S. Gasparro", written over a horizontal line.

M. S. GASPARRO, 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: An allegation against **YUN FENG (Carolyn) ZHU**, a suspended member, under **Rule 104.2(a)** of the CPA Code of Professional Conduct, as amended.

TO: Ms. Yun Feng Zhu

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE NOVEMBER 21, 2019

DECISION

The Panel was satisfied that the Allegation was proven and constituted a breach of Rule 104.2(a) of the CPA Code of Professional Conduct. The Panel determined that, having breached this rule, Ms. Yun Feng Zhu (“Ms. Zhu”) has committed professional misconduct.

ORDER

The Panel orders the following:

1. Ms. Zhu be reprimanded in writing by the Chair of the hearing.
2. Ms. Zhu shall pay a fine of \$4,000 to the Chartered Professional Accountants of Ontario (“CPA Ontario”) by May 21, 2020.
3. Ms. Zhu is required to cooperate with the Professional Conduct Committee by fully responding to the letters dated March 28, 2019, April 8, 2019, April 25, 2019 and May 23, 2019, from Anita Patel, Investigator, by December 21, 2019.
4. Notice of this Decision and Order, disclosing Ms. Zhu’s name, is to be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of CPA Ontario;
 - (b) to all provincial bodies;and shall be made available to the public.
5. In the event that Ms. Zhu does not comply with the terms of this Order, her membership in CPA Ontario shall be suspended by this Order until such time as she does comply, provided that she complies within 30 days from the date of this suspension. In the event

she does not comply within the 30 day period, her membership in CPA Ontario shall be revoked, and notice of the revocation of her membership, disclosing her name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Ms. Zhu's residence or employment. All costs associated with this publication shall be borne by Ms. Zhu and shall be in addition to any other costs ordered by the Panel.

6. Ms. Zhu shall pay costs of \$8,000 to CPA Ontario by May 21, 2020

DATED at Toronto this 21st day of November, 2019



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

NOTE: As a result of her failure to comply with the terms of the Order, Ms. Zhu's membership in CPA Ontario was revoked effective January 31, 2020

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegation against **YUN FENG (Carolyn) ZHU**, a suspended member of the Chartered Professional Accountants of Ontario, under **Rule 104.2(a)** of the Rules of Professional Conduct, as amended.

BETWEEN:

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

-and-

Yun Feng Zhu

APPEARANCES:

For the Professional Conduct Committee: Julia McNabb, Counsel
Anita Patel, Investigator

For Ms. Zhu: Not Present and Not Represented

Heard: November 21, 2019

Decision and Order effective: November 21, 2019

Release of written reasons: January 8, 2020

REASONS FOR THE DECISION AND ORDER MADE NOVEMBER 21, 2019

I. OVERVIEW

- [1] This hearing is about whether the allegation of failing to cooperate with the regulatory process of the Chartered Professional Accountants of Ontario (CPA Ontario) contrary to Rule 104.2(a) of the CPA Code of Professional Conduct laid against Ms. Zhu was established and amounts to professional misconduct.
- [2] Ms. Zhu obtained her CGA designation in 2003 and her CPA designation in 2014. Ms. Zhu's membership was administratively suspended on July 18, 2019 as a result of her failure to pay the annual member dues and file the annual continuing professional development declaration.
- [3] Prior to the proceedings in issue, Ms. Zhu worked for OMERS, a defined benefit pension plan for municipal employees in Ontario.

- [4] In March 2018, CPA Ontario received a complaint from another member who was an employee at OMERS, which alleged that Ms. Zhu may have been involved in irregularities related to the submission of benefit forms. At or about the same time, it appears that Ms. Zhu resigned her employment with OMERS. The complaint was referred to the Professional Conduct Committee (“PCC”) of CPA Ontario.
- [5] By letter dated August 28, 2018, the Director of Standards Enforcement wrote to Ms. Zhu enclosing a copy of the complaint and required a written response by September 25, 2018.
- [6] Ms. Zhu retained legal counsel, who initially appeared to be responding to the complaint appropriately on her behalf.
- [7] By letter dated February 15, 2019, the Director of Standards Enforcement again wrote to Ms. Zhu requesting additional information arising from the response received from her counsel, for the consideration of PCC. That letter required a written response by March 7, 2018.
- [8] By Notice of Allegations dated July 17, 2019, the PCC made two allegations of professional misconduct against Ms. Zhu, that in or about the period March 8 to July 9, 2019, she failed to co-operate with the regulatory process of CPA Ontario contrary to Rule 104.2(a) of the CPA Code of Professional Conduct, by failing to promptly reply in writing to
- A. the letter dated February 15, 2019 from the Director of Standards Enforcement; and
 - B. certain follow-up correspondence including letters dated March 28, April 8, April 25, and May 23, 2019 from the Investigator appointed by the PCC.
- [9] The onus was on the PCC to show on a balance of probabilities that Ms. Zhu’s conduct breached Rule 104.2(a) of the CPA Code of Professional Conduct, and that such conduct constituted professional misconduct.

II. PRELIMINARY ISSUES

- [10] Ms. Zhu did not attend the hearing nor was a representative in attendance on her behalf. A denial of the Allegations was entered on Ms. Zhu’s behalf.
- [11] To proceed in the absence of Ms. Zhu, the Panel had to be satisfied that she had received proper notice of the Allegations and the hearing.
- [12] Ms. McNabb filed the Affidavit of Mervyn Archdall, sworn July 30, 2019 (Exhibit 1). Mr. Archdall confirmed that he had attempted to personally serve Ms. Zhu on July 17, 2019 with a letter from Julia McNabb, Professional Standards Counsel for CPA Ontario which informed Ms. Zhu of the allegation of professional misconduct made against her. Ms. McNabb included a copy of the signed Notice of Allegations with her letter and she also provided information regarding the procedure related to disciplinary hearings.
- [13] Ms. McNabb filed a copy of the Chair’s Order, dated August 20, 2019, ordering that Ms.

Zhu be served with the allegation of professional misconduct and all other documents in the proceedings against her by way of substituted service by mail to her residential mailing address of record with CPA Ontario (Exhibit 2).

- [14] Ms. McNabb also filed the Affidavit of Kristen Couch, the Adjudicative Tribunals Assistant Secretary at CPA Ontario (Exhibit 3). Ms. Couch advised that on September 17, 2019, she sent a letter to Ms. Zhu seeking her availability for a one-day hearing of the Notice of Allegations laid against her. Ms. Couch requested a response by October 4, 2019, stating that in absence of a response, a hearing date would be set without Ms. Zhu's input. On October 11, 2019, a Notice of Hearing was sent to Ms. Zhu by way of mail, confirming that the hearing would proceed on November 21, 2019, at 10:00 a.m.
- [15] Based on the affidavits and documents presented by the PCC, the Panel was satisfied that Ms. Zhu had received proper notice of both the hearing and the Notice of Allegations. The Panel decided to proceed in her absence.
- [16] The only other preliminary issue addressed was a clarification regarding Ms. Zhu's current membership standing. At the time the Notice of Allegations against Ms. Zhu was issued, Ms. Zhu was a member in good standing. The PCC advised that since the Notice of Allegations had been served upon Ms. Zhu, her membership with CPA Ontario has been administratively suspended.

III. ISSUES

- [17] The Panel identified the following issues arising from the allegations:
- A. Did the evidence establish, on a balance of probabilities, the particular facts on which the Notice of Allegations by the PCC were based?
 - B. If the particular facts alleged by the PCC were established on the evidence presented on a balance of probabilities, did those facts and particulars establish a breach of Rule 104.2(a) of the CPA Code of Professional Conduct, and did they constitute professional misconduct?

IV. DECISION

- [18] The Panel found that the evidence did establish, on a balance of probabilities, the particular facts set out in Notice of Allegations dated July 17, 2019.
- [19] The Panel was also satisfied that the conduct alleged and established by the evidence constituted a breach of Rule 104.2(a), and that, having breached this Rule, Ms. Zhu had committed professional misconduct.

V. REASONS FOR THE DECISION

- [20] The PCC appointed Ms. Anita Patel, CPA, CA, DIFA, CFE, CFF, CAMS (a member of CPA Ontario and CPA Illinois) to be the Investigator in relation to the complaint against Ms. Zhu. Ms. Patel was called as a witness at the hearing by counsel for the PCC. She testified at the hearing, and the Panel accepted her evidence.
- [21] When no response was received from Ms. Zhu to the February 15, 2019 letter, Ms. Patel followed up with correspondence to Ms. Zhu and her counsel by emails dated March 28 and April 8, 2019. By email on April 8, 2019 Ms. Zhu's legal counsel advised Ms. Patel that he had been unable to contact his client.
- [22] Having received no further response, by letter dated April 25, 2019 delivered by courier and email to Ms. Zhu, and by email to her counsel, Ms. Patel served Ms. Zhu with a formal reminder of her duty to co-operate with the regulatory process of CPA Ontario, including but not limited to the requirement under Rule 104.2(a) of the CPA Code of Professional Conduct. That letter also enclosed copies of the prior correspondence dated February 15, March 28, and April 8, 2019. That letter required a written response to that correspondence by May 3, 2019. In response, by email on April 25, 2019 Ms. Zhu's legal counsel advised Ms. Patel that he had been able to contact his client, and that she was requesting until May 9, 2019 to respond.
- [23] Having received no further response, by email on May 10, 2019, Ms. Patel again wrote to Ms. Zhu and her legal counsel to request a response. She also enclosed an authorization to permit information to be obtained from OMERS. Ms. Zhu's legal counsel responded the same day, to advise Ms. Patel that he had been unable to meet with his client, and that she was again not responding to his emails.
- [24] Having again received no further response, by letter dated May 23, 2019 delivered by courier and email to Ms. Zhu, and by email to her counsel, Ms. Patel again provided Ms. Zhu with a formal reminder of her duty to co-operate with the regulatory process of CPA Ontario, including but not limited to the requirement under Rule 104.2(a) of the CPA Code of Professional Conduct. That letter enclosed further copies of the prior correspondence dated February 15, March 28, April 8, and May 10, 2019. That letter also required a written response by May 31, 2019.
- [25] No further response was received from Ms. Zhu or her counsel. Accordingly, by letter dated June 14, 2019, Ms. Julia McNabb, Professional Standards Counsel with CPA Ontario wrote to Ms. Zhu to advise that the PCC would be reviewing the complaint against her on July 9, 2019, and to invite her to appear before the PCC at 1 pm that day to be interviewed directly by the PCC members. On June 17, 2019, Ms. McNabb again wrote to Ms. Zhu indicating that the PCC had directed her to serve on Ms. Zhu a Notice to Member to Attend before the PCC on July 9, 2019 at 1 pm. That letter also enclosed the formal Notice to that effect.
- [26] There was no cross-examination of Ms. Patel and no other evidence was called on behalf of Ms. Zhu. The Panel accepted Ms. Patel's evidence and found that it

established the particular facts set out the Notice of Allegations on a balance of probabilities.

- [27] PCC, as part of its case brief, provided evidence to the benefit of Ms. Zhu by way of correspondence from her legal counsel which included a Psychiatrist's report relating to the mental health of Ms. Zhu. The correspondence from Ms. Zhu's legal counsel attributed to Ms. Zhu certain responses regarding the complaint made against her. The Panel was not able to accept these statements alleged to be from Ms. Zhu as mitigating circumstances, because she did not make them directly to the Panel nor was their validity otherwise proven. In addition, the correspondence from Ms. Zhu's psychiatrist was not confirmed under oath and the Psychiatrist was not available to the Panel for cross examination. Further, that letter addressed Ms. Zhu's state of mind at the time of the circumstances related to the initial complaint made against her and not the allegation against her of failing to cooperate under Rule 104.2(a) and consequently was not relevant to this decision.
- [28] The letter from Ms. Zhu's legal counsel together with the attached report from Ms. Zhu's Psychiatrist was the entirety of Ms. Zhu's cooperation with PCC and has been determined by the Panel to be inadequate. For cooperation to be helpful in this case it must have allowed PCC to advance the resolution of the complaint made against the member. The PCC clearly determined that they needed additional cooperation to resolve the complaint as they attempted through additional correspondence beginning with their letter of February 15, 2019 to obtain the input that they did require to resolve the complaint. The Panel concludes that the member was required by Rule 104.2(a) to respond to those additional letters and could not rely on the letter from Ms. Zhu's legal counsel as meeting the level of cooperation required of her.
- [29] The onus was on the PCC to show on a balance of probabilities that Ms. Zhu's conduct breached Rule 104.2(a) of the CPA Code of Professional Conduct and constituted professional misconduct.
- [30] The Panel was satisfied that the correspondence dated February 15, March 28, April 8, April 25, and May 23, 2019 formed part of an ongoing regulatory process of CPA Ontario, and that a written response to it from Ms. Zhu, as a member of CPA Ontario, was required by Rule 104.2(a) of the CPA Code of Professional Conduct. The Panel was satisfied that Ms. Zhu's attention was specifically drawn to the duty to co-operate set out in Rule 104.2(a), and that she was provided with ample and repeated opportunities to respond to this correspondence if she wished to do so.
- [31] As a result of Ms. Zhu's lack of response, CPA Ontario's investigation into the complaint made against her by a fellow member of the profession is no further ahead than when the complaint was first received. When complaints such as this remain outstanding, complainants cannot help but question whether CPA Ontario takes complaints seriously. A failure to respond to a complaint is a serious breach of the Rules, including Rule 104.2(a), and raises concerns regarding a member's willingness to be regulated.
- [32] Based on the clear, cogent and convincing evidence presented, the Panel concluded

that Ms. Zhu had failed to cooperate by not responding to the letter dated February 15, 2019 from the Director of Standards Enforcement, and to Ms. Patel's letters of March 28, 2019, April 8, 2019, April 25, 2019 and May 23, 2019. The Panel found that Ms. Zhu committed professional misconduct in that she breached Rule 104.2(a).

VI. SANCTIONS

- [33] Ms. McNabb, on behalf of the PCC, noted that Ms. Zhu had no prior discipline history. She submitted that an appropriate sanction in this matter should be: a) a written reprimand from the Chair of the Panel; b) a fine in the amount of \$4,000 to be remitted to CPA Ontario on a date specified by the Panel; 3) that Ms. Zhu be required to co-operate with the Professional Conduct Committee by fully responding to the correspondence sent to her on March 28, 2019, April 8, 2019, April 25, 2019 and May 23, 2019 within 30 days from the date of the Order; 4) that in the event that Ms. Zhu does not comply with the terms of this Order, that her membership in CPA Ontario be revoked, with the appropriate notification of her membership revocation to be given in a local newspaper, 5) that notice of the Decision and Order be given to all members of CPA Ontario, all provincial bodies, and be made available to the public; and 6) that Ms. Zhu bear the costs associated with the publication in addition to any other costs ordered by the Panel in the event her membership is revoked.
- [34] The Panel accepted most of the proposed sanctions put forward by the PCC, finding the accepted sanctions to be reasonable and not contrary to the public interest.
- [35] The sanctions imposed by the Panel also take into consideration the sentencing principles of general and specific deterrence, as well as rehabilitation. By way of mitigation, the Panel noted that there had been no prior discipline history.
- [36] The Panel also considered aggravating factors in determining the appropriate sanctions against Ms. Zhu. The Panel found that the breach of Rule 104.2(a) as found was prolonged, and apparently deliberate. The Panel also considered that the allegations raised by the original complaint were potentially serious, such that the public interests in obtaining a prompt response from Ms. Zhu were very high.
- [37] In considering the PCC's submissions, the Panel was required to consider whether the sanctions proposed were within the range of reasonable sanctions for similar misconduct and whether the sanctions were not contrary to the public interest. While the Panel reviewed cases presented by the PCC, the Panel concluded that the imposition of a sanction of revocation of membership after only 30 days further default in co-operation by Ms. Zhu may be unduly harsh, particularly in circumstances where her membership was already under administrative suspension. The Panel therefore varied the sanctions proposed by the PCC in the event of failure to comply after 30 days, to be a suspension by Order, for a further 30 days. The sanction of revocation of membership was imposed only in the event that, after a further 30 days, totaling 60 days from November 21, 2019, Ms. Zhu still fails to comply with the Order to co-operate by fully responding the correspondence sent to her on March 28, 2019, April 8, 2019, April 25, 2019 and May

23, 2019.

VII. COSTS

- [38] Costs are imposed as an indemnity, not as an additional fine. The PCC presented a Costs Outline.
- [39] The Panel carefully considered the PCC's submissions relating to costs and the Costs Outline presented by the PCC. The PCC sought costs in the amount of \$8,000, being two-thirds of the total cost for a one-day hearing. The Panel concluded that the amount was reasonable and therefore ordered the costs payable by Ms. Zhu at \$8,000, to be paid by May 21, 2020.

DATED at Toronto this 8th day of January, 2020



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

Members of the Panel

Timothy Galvin, CPA, CA, CMA
David Handley (Public Representative)

Independent Legal Counsel

M. Philip Tunley
St. Lawrence Barristers LLP

NOTE: As a result of her failure to comply with the terms of the Order, Ms. Zhu's membership in CPA Ontario was revoked effective January 31, 2020