

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: An allegation against **ZHIQIANG ZHU** under **Rule 104.2(a)** of the Rules of Professional Conduct, as amended.

TO: Mr. Zhiqiang Zhu

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made October 23, 2013)

1. This tribunal of the Discipline Committee met on October 23, 2013 to hear an allegation of professional misconduct brought by the Professional Conduct Committee (PCC) against Zhiqiang Zhu, a revoked Member.

2. Ms. Melissa Gentili, a student at law, appeared on behalf of the Professional Conduct Committee (PCC), accompanied by Ms. Alexandra Hersak, counsel to the PCC. Mr. Zhu was not represented by counsel and did not attend the hearing. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee.

3. Ms. Gentili submitted that Mr. Zhu had received proper notification of the Allegation and the Notice of the Hearing. She filed the Discipline Committee Chair's Order made June 26, 2013 (Exhibit 1) authorizing substituted service by regular mail and email. Ms. Gentili also filed an affidavit (Exhibit 2) wherein Jennifer Hurley, the Coordinator of Discipline and Appeals of CPA Ontario, deposed that she had on September 4, 2013 sent Mr. Zhu by email the cover letter and Notice of Hearing to his email address of record and that she received an email delivery confirmation of the email. Ms. Hurley deposed that on October 11, 2013, she had mailed a copy of the cover letter and Notice of Hearing to Mr. Zhu at his address of record and that the mail had not been returned by the post office.

4. The tribunal determined that Mr. Zhu had received proper notice of the hearing, pursuant to Rule 8.01 of the Rules of Practice and Procedure, and decided to proceed in his absence under the authority of s. 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

5. The decision of the tribunal was made known at the conclusion of the hearing on October 23, 2013, and the written Decision and Order sent to the parties on October 28, 2013. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegation, the decision, the order, and the reasons of the tribunal for its decision and order.

Allegation

6. The following allegation was made against Mr. Zhu by the PCC on April 23, 2013. At the hearing on October 23, 2013, the tribunal approved an amendment to the allegation to correct the spelling of Mr. Zhu's given name from "Zhi Quang" to "Zhiqiang":

THAT the said Zhiqiang (Andy) Zhu, in or about the period May 23, 2012 to April 2, 2013, failed to co-operate with the regulatory process of the Institute contrary to Rule 104.2(a) of the Rules of Professional Conduct, in that he failed to promptly reply in writing to the following communications from the Institute to which a written reply is specifically required, dated May 8, June 28, and August 27, 2012, and January 17, 2013, from Ms. Theresa Tonelli, CA, Director of Standards Enforcement at the Institute.

Plea

7. AS Mr. Zhu was not present, the Chair entered a plea of not guilty to the allegation on his behalf.

The Proceeding

8. In her opening statement, Ms. Gentili advised the tribunal that although Mr. Zhu's membership had been revoked for non-payment of fees on October 10, 2013, there is continuing jurisdiction under the provisions of Section 19 of the *Chartered Accountants Act*, 2010. Ms. Gentili advised that the case for the PCC would be presented by way of an affidavit and she filed the Affidavit of Theresa Tonelli, CPA, CA, the Director of Standards Enforcement (Exhibit 3). No other evidence was called on behalf of the PCC.

Case for the PCC

9. A complaint had been referred from the Institute of Chartered Accountants of British Columbia (ICABC) relating to conduct that occurred prior to Mr. Zhu joining the ICABC. The complainant alleged that Mr. Zhu, while working for Unicas Business Services, made several errors in completing the client's corporate tax return for 2008 that had to be amended by another practitioner.

10. Ms. Tonelli wrote to Mr. Zhu on March 27, 2012 by regular and registered mail advising him of the complaint and asking him to respond on or before April 25, 2012. The letter cautioned that failure to respond could result in allegations of professional misconduct being laid against him. The registered letter was signed for but no response was received from Mr. Zhu.

11. Ms. Tonelli wrote to Mr. Zhu on May 3, 2012 by regular and registered mail reminding him that failure to respond could result in allegations being made against him and requesting a response by May 17, 2012. The registered letter was returned "unclaimed" by Canada Post but the regular mail letter was not returned.

12. On May 7, 2012, Mr. Zhu provided an initial response by email to Ms. Tonelli. Mr. Zhu indicated that the client's company tax return for 2008 had been prepared from information provided by the client. Mr. Zhu did not receive all the documents requested from the client. Despite numerous requests, the 2007 tax return was not provided to Mr. Zhu's company and there was uncertainty that it had been filed by the predecessor. Mr. Zhu's company had disagreements with the client on tax-related issues and suggested he find another accountant. Mr. Zhu claimed his company only prepared the 2008 tax return and was not paid by the client. By letter of May 8, 2012, Ms. Tonelli requested additional documentation including the client's 2008 T2 and any written correspondence between Mr. Zhu and the client. Ms. Tonelli asked for a reply by May 23, 2012, pointing out the possible consequences of failure to respond. No response was received and a follow-up email was sent on June 28, 2012, asking for a response to Ms. Tonelli's May 8, 2012 letter by July 9, 2012.

13. Mr. Zhu sent an email to Ms. Tonelli on July 11, 2012 indicating he would be out of the country until July 16, 2012 and would "pull out as much as I had regarding this company".

When the materials were not provided by August 27, 2012, Ms. Tonelli sent an email to Mr. Zhu, enclosing her correspondence of May 8 and June 28, 2012, requesting a reply by September 14, 2012. Mr. Zhu was advised that failure to respond could result in an allegation under Rule 104. The delivery of this email was confirmed.

14. Ms. Tonelli sent a letter by registered mail, regular mail, and email to Mr. Zhu on January 17, 2013 requesting the documentation required for the PCC's review. Mr. Zhu was again reminded of the consequences of not responding and was asked to reply by February 8, 2013. Ms. Tonelli copied Rule 104.2(a) in the body of the letter for Mr. Zhu's information. The registered letter was signed for and an electronic delivery receipt confirmation was received regarding the email. Ms. Gentili stated that as of the day of the hearing, no response has been received from Mr. Zhu.

15. Ms. Gentili advised that as of July 16, 2013, Mr. Zhu's membership had been suspended by the Registrar for failure to remit his annual membership dues and continuing professional development declaration. Mr. Zhu's membership was revoked on October 10, 2013.

16. In response to questions by tribunal members, Ms. Gentili advised that the Unicas office in Port Moody is closed. There is no information available on any other individuals involved in Unicas as the website only lists Mr. Zhu. The process server tried phoning and attempted to obtain any other contact information for Mr. Zhu through the BC Institute.

17. Ms. Gentili submitted that despite numerous communications sent to Mr. Zhu for additional information, other than one brief response, nothing further has been received. Without the co-operation of Mr. Zhu, the PCC is unable to carry out its mandate to investigate a complaint. Time and resources have been expended in attempting to obtain the requested information from Mr. Zhu. Ms. Gentili noted that Mr. Zhu is not present at the hearing and his membership has been revoked for non-payment of fees. He has shown an unwillingness to be governed by the rules of CPA Ontario.

18. Ms. Gentili submitted that the evidence is clear, cogent and convincing that Mr. Zhu failed to co-operate with the Director of Standards Enforcement and should be found guilty of the allegation.

Decision

19. After deliberating, the tribunal made the following decision:

THAT the allegation having been amended at the hearing, and having determined to proceed with the hearing in the absence of Mr. Zhu, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to the allegation, and having seen and considered the evidence, the Discipline Committee finds Zhiqiang Zhu guilty of the allegation.

Reasons for Decision

20. Having seen and considered the evidence the tribunal concluded that the evidence was clear, cogent and compelling, and that on the balance of probabilities the allegation was proven by the PCC.

21. The correspondence, by regular mail, registered mail and email from Ms. Tonelli to Mr. Zhu, which the tribunal found he received, is described in paragraphs 10 to 14 above. Mr. Zhu responded twice to Ms. Tonelli. Both responses were by email, one dated May 7, 2012 and one dated July 11, 2012. In his email of May 7, 2012 Mr. Zhu did provide information as to the

services provided for the complainant. Ms. Tonelli wrote to Mr. Zhu the next day, May 8, 2012, requesting specific documents. When there was no reply she followed up with an email of June 28, 2012 requiring a response by July 9, 2012.

22. In his email of July 11, 2012 Mr. Zhu said that he was out of the country and "I will pull out as much as I had regarding this company." However, not only did he not respond providing the specific documents required, he did not reply again despite correspondence from Ms. Tonelli dated August 27, 2012 and January 17, 2013.

23. In addition to sending letters to Mr. Zhu by regular post and emails to the addresses of record of CPA Ontario, attempts were made by a process server in British Columbia to locate Mr. Zhu and Unicas by visiting the premises of the address of record and other addresses found by the process server. The process server was not successful in making contact with Mr. Zhu.

24. In each of the letters to Mr. Zhu, Ms. Tonelli advised him of the consequences of not responding to the letter in a timely fashion, and in her letter of January 17, 2013, she provided Mr. Zhu with a copy of Rule 104.2(a).

25. Mr. Zhu had plenty of opportunity to communicate with Ms. Tonelli but failed to do so, thereby breaching Rule 104.2(a). This failure to reply resulted in the inability of the PCC to conduct its investigation of the complaint referred by the ICABC.

26. Mr. Zhu failed to cooperate with the regulatory process of CPA Ontario by failing to reply to Ms. Tonelli, the Director of Standards Enforcement, as required, not once, but three times, all of which were proven by the PCC.

Sanction

27. Ms. Gentili filed a Sanction Evidence Brief (Exhibit 4) which contained two affidavits, one of Alexandra Hersak, sworn on June 24, 2013, and the other, an affidavit of Jano Frandsen, a process server, sworn on May 21, 2013.

28. Mr. Hersak's affidavit referred to Mr. Zhu's addresses of record with CPA Ontario and to addresses provided to CPA Ontario by the Institute of Chartered Accountants of British Columbia. Jano Frandsen's, affidavit outlined his attempts to serve the allegation on Mr. Zhu. Mr. Frandsen had attended at three different possible business addresses and attempted service at a residential address. Mr. Zhu's phone number of record was out of service and online searches proved unsuccessful in locating alternative business or residential addresses or telephone numbers.

29. Ms. Gentili, on behalf of the PCC, submitted that an appropriate sanction would be: a reprimand in writing by the Chair of the hearing; a fine in the amount of \$3,500; an order that Mr. Zhu cooperate by responding in writing to the Director of Standards Enforcement within 30 days of the Decision and Order becoming final and the usual publicity. In the event Mr. Zhu does not comply, Ms. Gentili proposed that he be barred from applying for readmission for a period of five years and then only if all terms have been fulfilled.

30. The PCC also sought an order for costs in the amount of \$3,000 on a partial indemnity basis. Ms. Gentili filed a Costs Outline (Exhibit 5) which showed that the costs were approximately \$6,000. Although no investigator was required, the costs incurred were the result of Mr. Zhu's misconduct in failing to cooperate.

31. Ms. Gentili indicated that the aggravating factors included the fact that although Mr. Zhu did provide a brief response initially, he ignored subsequent requests from Ms. Tonelli for additional information. Mr. Zhu has shown an unwillingness to be contacted, has failed to provide current business contact information to CPA Ontario and the BC Institute and has failed to attend the hearing. Further, his membership has been revoked. Ms. Gentili submitted that his failure to provide current addresses and to maintain his membership in good standing indicated he was unwilling to be governed.

32. Ms. Gentili indicated the mitigating factors included that Mr. Zhu did provide a brief response to Ms. Tonelli on May 7, 2012. She also acknowledged that Mr. Zhu had no previous involvement with the discipline process.

33. Ms. Gentili submitted that a reprimand, fine and publicity will point out the seriousness of his conduct to Mr. Zhu and act as a general deterrent to dissuade other Members from similar misconduct. Cooperation indicates a willingness to be governed and would allow the PCC to proceed in its investigation of the complaint.

34. Ms. Gentili distributed a Case Brief containing four cases involving failure to respond to PCC or Practice Inspection matters: *Root, Ross, Hubbard and Collaton*.

Order

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

IT IS ORDERED in respect of the allegation:

1. THAT Mr. Zhu be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Zhu be and he is hereby fined the sum of \$3,500 to be remitted to CPA Ontario within three (3) months from the date this Decision and Order is made.
3. THAT Mr. Zhu cooperate with the Professional Conduct Committee by responding fully and in writing to letters dated May 8, June 28 and August 27, 2012 and January 17, 2013 from the Director of Standards Enforcement within thirty (30) days from the date this Decision and Order is made.
4. THAT notice of this Decision and Order, disclosing Mr. Zhu's name, be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of CPA Ontario
 - (b) to all provincial institutes/Ordre;
 and shall be made available to the public.

IT IS FURTHER ORDERED:

5. THAT Mr. Zhu be and he is hereby charged costs fixed at \$3,000 to be remitted to CPA Ontario within three (3) months from the date this Decision and Order is made.

AND IT IS FURTHER ORDERED:

6. THAT in the event Mr. Zhu fails to comply with any of the requirements of this Order, he shall be restricted from applying for readmission to membership in

CPA Ontario for a period of five (5) years and then only if all requirements of the Order have been complied with.

Reasons for Sanction

36. The tribunal concluded that the order sought by the PCC for the reasons advanced by Ms. Gentili was appropriate. The tribunal ordered that the fine be remitted to CPA Ontario within three months to provide a reasonable time period for payment.

37. The tribunal concluded that a reprimand in writing from the Chair of the hearing, the fine and the notice were appropriate sanctions to provide for specific and general deterrence.

38. The tribunal ordered Mr. Zhu to cooperate with the PCC by appropriately responding to the specified letters in order that the PCC may continue its investigation into the complaint referred to it by the ICABC, and provided him a reasonable time of 30 days to fulfill that order. This order to cooperate is necessary to ensure the public's interest in having complaints addressed and resolved is maintained by CPA Ontario.

39. The notice of this Decision and Order provides both specific and general deterrence. In many cases, public notice is viewed as being the most significant sanction imposed. To inform the public and members of CPA Ontario of the sanction imposed for the failure to cooperate with officials of CPA Ontario maintains the integrity and transparency of the disciplinary process. In exceptional circumstances this notice may be withheld, but in this case the tribunal did not find any circumstances that warranted such withholding.

40. An order of the Discipline Committee which did not impose consequences of failing to comply with the terms of the order would be meaningless. Accordingly, the order provides that if Mr. Zhu, a revoked Member, fails to comply with any part of the order, he may not reapply for membership for five years and until he complies with all terms of the order. This serves as a specific and general deterrent.

Costs

41. Mr. Zhu's professional misconduct was the reason for these proceedings and he should assume part of the costs. The costs requested by the PCC were approximately half of the total costs of the proceedings and accordingly the tribunal found that costs of \$3,000 should be paid by Mr. Zhu on a partial recovery basis. The tribunal provided Mr. Zhu a reasonable period of three months in which to pay the costs.

DATED AT TORONTO THIS 17TH DAY OF DECEMBER, 2013
BY ORDER OF THE DISCIPLINE COMMITTEE



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

MEMBERS OF THE TRIBUNAL:

J.C. BLACKWELL, CPA, CA

P.A. BUSCH, CPA, CA

G. HINTON (PUBLIC REPRESENTATIVE)