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

DISCIPLINE COMMITTEE

IN THE MATTER OF: An Allegation against **ALLAN S. GROSSMAN, CPA, CA,** a member of the Chartered Professional Accountants of Ontario, under **Rule 201.1** of the CPA Ontario Code of Professional Conduct.

BETWEEN:

Chartered Professional Accountants of Ontario
Professional Conduct Committee

-and-

Allan S. Grossman

APPEARANCES:

For the Professional Conduct Committee:	Lily Harmer, Counsel
For Allan S. Grossman:	Present and Self-represented
Heard:	October 3, 2023
Decision and Order effective:	October 3, 2023
Release of written reasons:	November 15, 2023

REASONS FOR THE DECISION AND ORDER MADE OCTOBER 3, 2023

I. OVERVIEW

[1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario ("PCC") has made an Allegation of professional misconduct that Allan S. Grossman (the "Member") failed to maintain the good reputation of the profession and its ability to serve the public interest, by contravening the *Securities Act*, RSO 1990, c S. 5, as described in the Reasons and Decision of the Ontario Securities Commission Tribunal (now the Capital Markets Tribunal) dated March 28, 2022 (the "Allegation").

[2] This hearing was held to determine whether the Allegation was established and whether the conduct breached Rule 201.1 of the *CPA Code of Professional Conduct (*the *"Code")*.

II. THE ALLEGATION

[3] On or about May 30, 2023, through counsel, the Member was served with the Allegation,

alleging as follows:

> 1. THAT the said Allan S. Grossman, on or about March 28, 2022, failed to maintain the good reputation of the profession and its ability to serve the public interest, contrary to section 201.1 of the CPA Code of Professional Conduct, in that he was found to have breached the *Securities Act*, RSO 1990, c S. 5, as described in the Reasons and Decision of the Ontario Securities Commission Tribunal attached as Schedule "A".

[4] The Reasons and Decision of the Ontario Securities Commission (the "OSC") respecting the findings of fraud against the Member and others are indexed as *Solar Income Fund Inc. (Re)*, 2022 ONSEC 2. The Reasons and Decision of the Capital Markets Tribunal (the "CMT") respecting the sanctions ordered against the Member and others are indexed as *Solar Income Fund Inc. (Re)*, 2023 ONCMT 3.

III. ISSUES

[5] The Panel identified the following issues arising from the Allegation:

A. Did the evidence establish, on a balance of probabilities, the facts on which the Allegation by the PCC was based?

B. If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did the Allegation constitute professional misconduct?

IV. DECISION

[6] The Panel found that the evidence established, on a balance of probabilities, the facts set out in the Allegation.

[7] The Panel was satisfied that the Allegation constituted a breach of Rule 201.1 of the *Code* and having breached this Rule, the Member committed professional misconduct.

V. REASONS FOR THE DECISION ON MISCONDUCT

[8] The PCC relied wholly on the findings made by the OSC and the CMT regarding the Member. These findings were summarized in the Agreed Statement of Facts (the "ASF") and are set out below.

Background

[9] The Member had been a member since 1969. He is currently a consultant at JI Inc. in Toronto, a company involved in real estate investments which is owned by his spouse.

[10] The Member co-founded SIF Inc., a small private company, in 2009 to develop and manage solar photovoltaic power generation installations. He owned 30% of SIF Inc. through a family trust.

[11] The Member became a director of SIF Inc. in March 2013, was a member of SIF Inc.'s management committee from at least March 2013 to November 2017, and held various senior management positions as an officer of SIF Inc. throughout the relevant time.

[12] The Member was the directing mind of SIF Inc. throughout the relevant time.

[13] SIF Inc. and its principals established various funds which paid SIF Inc. to provide consulting, development, and management services. Investors purchased units in these funds, including in SIF #1 and SIF #2, both of which were managed by SIF Inc.

[14] Both SIF #1 and SIF #2 raised money from the public. In each case, investors purchased fund units through exempt market dealers based on disclosure contained in an offering memorandum and its amendments.

[15] The OSC filed a number of allegations against SIF Inc. and its principals, including the Member, alleging two breaches of the *Securities Act* arising from the use of funds raised by SIF #1 in ways that were inconsistent with what was disclosed to potential and existing investors.

OSC Proceedings

[16] On March 28, 2022, the OSC made a finding that the Member breached s. 126.1(1)(b) of the *Securities Act*. In particular, the OSC found that loans made by SIF #1 to SIF #2 for two specific purposes - to pay distributions to SFI #2 investor and to pay fees to SIF #2's exempt market dealers - constituted prohibited fraudulent conduct. The Member was found to have caused the fraudulent conduct and thus to be personally in breach of s. 126.1(1)(b) of the *Securities Act*.

[17] The OSC made the following specific findings in relation to the Member and his involvement in the events in issue, among others:

> [189] [The Member] admitted that he authorized the use of SIF #1 funds to pay SIF #2's dealer fees and distributions, and he did so to maintain the confidence of the SIF #2 investors and exempt market dealers. However, he explained that based on his own interpretation of the offering memorandum and advice he had earlier received from Aird & Berlis, he believed this was an authorized use of funds.
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> [190] We discuss the Aird & Berlis legal advice below. [The Member]'s mistaken interpretation of the offering memorandum is of no assistance to him. He is bound by what the offering memorandum said and what it actually meant, not his interpretation at the time, an interpretation he now concedes was incorrect.
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> [191] [The Member] authorized the transfers of funds for the unauthorized purposes, and knew that by doing so, SIF #1's funds (and by extension the funds of SIF #1 investors) were being subjected to risks not previously applicable to those funds. Staff has

> therefore proven, subject to the legal advice defence, that [the Member] was subjectively aware of the fraudulent act.

[18] The OSC rejected the defence relied upon by the Member and his co-defendants that they reasonably relied on legal advice received:

> [294] In conclusion, there is no clear evidence whatsoever that Aird & Berlis actually gave any advice regarding the question at issue, i.e., whether the offering memorandum permitted SIF #1 to use its funds to lend to SIF #2 for the purpose of paying dealer fees and SIF #2 investor distributions. Therefore, none of the four respondents has available the defence of reliance upon legal advice.

[19] The OSC found that the total amount of fraud for which SIF Inc., the Member, and one of his co-defendants shared responsibility was $234,864.04.

[20] On January 11, 2023, the successor to the OSC, the CMT, issued its Reasons and Decision on sanction and costs against the Member.

[21] The CMT held that it was in the public interest to order sanctions consistent with the purposes of the *Securities Act*, which include the protection of investors from unfair, improper, or fraudulent practices, and the fostering of fair and efficient capital markets. It ordered as follows:

(a) SIF Inc. and [the Member] be jointly and severally liable to disgorge to the Commission $234,864.04, and that a co-defendant K. have joint and several liability for $51,361.34 of that amount;

(b) SIF Inc., [the Member], K., and M. pay administrative penalties of $175,000, $175,000, $125,000, and $1,000, respectively;

(c) SIF Inc., [the Member] and K. each pay $37,500 of the Commission's costs connected with the investigation and this proceeding, and that [the Member] and K. be jointly and severally liable for SIF Inc.'s portion;

(d) the respondents cease trading in or acquiring any securities or derivatives permanently, except that the individual respondents may, upon satisfaction of their financial obligations resulting from the CMT's order, conduct limited personal trading as specified;

(e) the individual respondents resign as directors and officers of any issuer or registrant, and be prohibited permanently from acting in any such capacity;

(f) any exemptions contained in Ontario securities law do not apply to any of the respondents, permanently; and

(g) the respondents be prohibited permanently from becoming or acting as a registrant or as a promoter.

[22] In its analysis, the CMT identified the following factors, among others:

(a) The amount of the fraud was not overly significant compared to other cases, and was a small portion of the $60 million that SIF #1 raised from investors,

(b) The fraud was at the lower end of the spectrum in terms of duration and number of individual transactions, and was not part of a larger fraudulent scheme;

(c) Fraud is one of the most egregious violations of securities laws. It can cause direct harm to investors, and it undermines confidence in the capital markets.

(d) The misconduct was not part of a larger fraudulent scheme.

(e) [The Member]'s conduct was deliberate in that he authorized the use of SIF #1 funds to pay SIF #2's dealer fees and distributions, and that he did so to maintain the confidence of SIF #2's investors and exempt market dealers.

(f) [The Member]'s belief that the conduct was an authorized use of funds was a product of reckless conduct. The Tribunal made clear that:

i. "For an individual with [the Member]'s position in the business, his professional qualifications, and his lengthy experience, including in the capital markets, such recklessness undermines the mitigating effect of an honest belief'; and

ii. "Recklessness has no place in the conduct of a senior officer and/or director who is engaged in the public solicitation and deployment of investors' funds. The sanctions we impose must specifically deter all the respondents from engaging in similar conduct. There is also a need to deter each of the individual respondents from asserting, while they are an officer, that the responsibility for discharging some of the obligations of the office belong to others and not to themselves. As the merits panel found, that is an inappropriate approach to governance for a public issuer. It undermines investor protection and the integrity of the capital markets."

(g) The misconduct was "somewhat or moderately serious", arising in the context of a legitimate business that was not part of a larger scheme, and the Member and his co-defendants did not set out to commit a fraud.

(h) The fraud was not designed to, and did not, provide any direct benefit to the Member, although he benefited indirectly.

(i) [The Member] and his co-defendants cooperated fully with OSC staff throughout their investigation.

(j) [The Member]'s relevant experience was at the high end of the range relative to his co-defendants, with his more than 50 years' experience as a CPA and having previously founded a firm that was registered with the Commission (then known as

a limited market dealer, now an exempt market dealer) and that sold real estate. This warranted sanctions that make clear that there are serious consequences for such misconduct by those with considerable experience in senior positions.

(k) The misconduct appears to be an aberration, although individuals with lengthy and senior business experience should know better and should act more responsibly.

(l) There was insufficient support for [the Member]'s assertions that he is unable to pay to warrant any reduction in financial sanctions.

(m) In awarding costs, it was relevant to consider that only the narrow fraud allegation had been made out, while the OSC had declined to make findings in respect of another wider-ranging allegation.

[23] In imposing an administrative penalty of $175,000 on each of SIF Inc. and on the Member, the CMT said:

> [130] It is appropriate to impose the same penalty of $175,000 for [the Member]. He had more than 50 years' experience as a Chartered Professional Accountant and had capital markets experience, including as a founder of a limited market dealer firm. He was a founder of SIF Inc., he became a director of the company in November 2013, and he held various senior officer roles throughout the relevant time. He was the only person who was a director and/or officer of SIF Inc. for the entire period of March 2013 to December 2016. He played a primary role among the three individual respondents, [...]. By his own admission, he directed that the unauthorized transfers be made for the impugned purposes. His level of responsibility should correspond to that of SIF Inc.

[24] The CMT issued its Order on January 11, 2023.

Admission of professional misconduct

[25] At paragraph 18 of the ASF, the Member admitted the Allegation and admitted that it constituted professional misconduct contrary to Rule 201.1 of the *Code*.

[26] In particular, the Member admitted that he failed to maintain the good reputation of the profession and its ability to serve the public interest in that he was found to have breached the *Securities Act*, as described in the Reasons and Decision of the OSC and CMT.

[27] At the hearing, the Member confirmed the Allegation and admitted that the Allegation constituted professional misconduct.

Finding of Professional Misconduct

[28] Under Rule 201.1 of the *Code,* a member or firm shall act at all times in a manner which will maintain the good reputation of the profession and serve the public interest. There is a rebuttable presumption that a member or firm has failed to maintain the good reputation

of the profession or serve the public interest when the member or firm has been found guilty of violating the provisions of any securities legislation (Rules 201.2 and 102.1(d)).

[29] The Panel concluded that the ASF provided clear and cogent evidence that proved the Allegation on a balance of probabilities and established that the Member breached Rule 201.1 of the *Code*.

VI. DECISION AS TO SANCTIONS AND COSTS

[30] The Panel ordered as follows:

1. Allan S. Grossman's membership with CPA Ontario is revoked, effective the date of this Decision and Order [October 3, 2023];

2. Allan S. Grossman shall pay a fine of $25,000 to CPA Ontario by October 3, 2025;

3. Allan S. Grossman shall be reprimanded in writing by the Chair of the hearing;

4. Notice of this Decision and Order, disclosing the Allan S. Grossman'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. Notice of this Decision and Order, disclosing the Allan S. Grossman's name, is to be given by publication on the CPA Ontario website and in the *Globe and Mail*. Allan S. Grossman shall pay all costs associated with the publication, which shall be in addition to any other costs ordered by the Panel.

AND THAT:

6. Allan S. Grossman shall pay costs of $7,697.33 to CPA Ontario by October 3, 2025.

VII. REASONS FOR THE DECISION AS TO SANCTION

Sanctions requested by the PCC

[31] The PCC asked for the sanctions set out above, except that they asked that the fine be set at $30,000 rather than $25,000.

[32] Counsel for the PCC noted that the Member was the co-founder, 30% owner and the directing mind of SIF Inc. She emphasized that the Member had been found guilty of fraud by the OSC and there were significant consequences to his actions, including a permanent cease trading order, liability to disgorge monies to the OSC, an administrative penalty and costs.

[33] Counsel for the PCC asked the Panel to consider the mitigating and aggravating circumstances as found by the CMT. These are set out in paragraph [22] above.

[34] Counsel for the PCC referred the Panel to several other decisions of the Discipline Committee where members of CPA Ontario had been found guilty of contravening the *Securities Act,* including *Jones (Re)*, *Horsley (Re)*, *Sanfelice (Re)*, and *Prentice (Re)*.

[35] In all of these matters where the members had been found to be in contravention of the *Securities Act,* the Discipline Committees revoked their membership and ordered a reprimand. The fines in these matters ranged from $40,000 to $100,000.

[36] Counsel for the PCC asked for an Order that the Member pay a fine of $30,000 in recognition that the fraud found by the OSC was in the lower end of the range of frauds and there had been no direct personal benefit of the fraud to the Member. She also pointed out that the Member had signed the ASF, wherein he acknowledged his professional misconduct contrary to Rule 201.1 of the *Code*.

Sanctions requested by the Member

[37] The Member asked that there be no sanctions by CPA Ontario for his professional misconduct. He gave evidence that although he had not appealed the Decision of the OSC, his co-respondents had appealed the Decision and he hoped that the Decision would be overturned. The Chair advised the Member that he had agreed that he had committed professional misconduct in the ASF and the outcome of any appeals would not affect the decision of this Discipline Committee. The Member clarified that he was not retracting the admissions made in the ASF or his admission of professional misconduct.

[38] The Member argued that he had never been criminally convicted of fraud in relation to the transactions reviewed by the OSC. He also argued that his conduct was distinguishable from the other cases cited by counsel for the PCC in that none of the funds transferred to SIF #2 were diverted to himself or his family.

[39] The Member suggested that he had consulted with a lawyer about the propriety of the payments that were found to be improper, and he had deferred the decision to his counsel. The Panel noted that this issue was thoroughly canvassed by the OSC in their Reasons and Decision and the OSC did not accept his explanation. The OSC found that the Member was an experienced CPA and the legal advice that he sought did not address the payments he authorized to be made to SIF #2. The Member clarified that he received blanket advice about appropriate payments, and he said that he relied upon that advice. When questioned by counsel for the PCC, the Member denied that he had been reckless, despite the findings of the OSC and CMT or his agreement to the facts set out in the ASF. He characterized his misconduct as a technical breach of the *Securities Act*.

[40] The Member argued that the OSC had found his testimony to be truthful and forthright, even where his evidence was against his own interests. He had cooperated with the investigation at the OSC.

[41] Finally, the Member explained that he was 80 years old and was no longer able to work

given various medical concerns. He provided a letter dated September 12, 2023 from his family doctor setting out his medical history and his current health problems. He also provided his T1 2022 showing income of less than $50,000 and selected bank statements reflecting modest savings.

[42] In her reply submissions, counsel for the PCC argued that the Member's admissions in the ASF were clearly made reluctantly and he did not appear to accept the full magnitude of what he had done. She reiterated that the jurisprudence of CPA Ontario supports the principle that misconduct involving fraud and dishonesty must result in the revocation of the membership in CPA Ontario. The amount of money at issue when there has been a finding of fraud is irrelevant to the finding of professional misconduct.

[43] With respect to the documents provided by the Member, counsel for the PCC submitted that the letter from his family doctor did not demonstrate any connection between the misconduct and the Member's health. She argued that the financial information provided by the Member was inadequate. To the extent that the Member may not have the resources to pay the fine and costs at this time, counsel noted that PCC had proposed that payment be made in two years.

Committee's Decision on Sanctions

[44] The Panel carefully considered the evidence and submissions related to the sanctions appropriate in this matter.

[45] The Panel found that the Member's conduct that resulted in the review by the OSC was serious. As noted by the CMT, the Member had over 50 years of experience as a CPA and he was the directing mind of SIF Inc. He was aware of and bound by the offering memorandum, but still transferred funds for unauthorized purposes to SIF #2. This was done to bolster the confidence of the SIF #2 investors and exempt market dealers. In transferring these funds from SIF #1, the Member knowingly exposed the investors of SIF #1 to risks that were not previously applicable to those funds.

[46] One of the Panel members noted that paragraph 126 of the CMT decision stated that although the respondents, including the Member, were reckless, they were not "*deliberately deceitful*" and had not received "*direct personal benefit.*" While the OSC and CMT found that the Member's conduct constituted a breach of subsection 126.1(1)(b) of the *Securities Act* by "*perpetrating a fraud on any person or company*," the Panel member was of the view that accounting and auditing standards define fraud as "*a deliberate act to misrepresent or deceive for personal or financial gain*". Accordingly, in the view of the one Panel member, since the Member's actions were not "*deliberately deceitful*" and were without "*direct personal benefit*", these factors should be considered material mitigating factors.

[47] This view was not shared by the majority of the Panel, who found that the Member had acted deliberately and derived an indirect personal benefit by transferring funds from SIF #1 to SIF #2 contrary to the terms of the Offering Memoranda, a document that the Member knew intimately. The Member testified at the hearing before the OSC that he had caused an unauthorized transfer of funds between SIF #1 and SIF #2 to prevent a loss of

investor confidence in SIF #2. This unauthorized transfer allowed the Member to preserve his reputation with the investors of SIF #2 and to preserve his ability to receive compensation for his management role.

[48] By signing the ASF, the Member agreed that he was found by the OSC to have caused fraudulent conduct and that this constituted fraud in the context of securities legislation. Furthermore, the Member admitted that he committed professional misconduct when he failed to maintain the good reputation of the accounting profession and its ability to serve the public interest when he was found to have breached the *Securities Act.*

[49] Because the Member admitted this professional misconduct in the ASF it was not necessary to conduct a contested hearing in this matter. This was a mitigating circumstance in the determination of the appropriate sanction. However, the Panel noted that at the hearing, the Member attempted to explain away his actions rather than accept full responsibility or appreciate the gravity of what he had done.

[50] The finding that the Member breached the *Securities Act* undermined the good reputation of the CPA profession and its ability to serve the public interest. As the CMT noted, investors and some of the other directors placed trust in the Member given his credential as a CPA. The only sanction which will send a strong message to the members of the public and the profession is revocation.

[51] While the Panel found that the evidence provided by the Member about his financial status was insufficient, the Panel took into account his age and the payments that he has been required to make to the OSC. For those reasons, the fine was set at $25,000, payable in two years from the date of the Order.

[52] With respect to the notice of the Order, the notice requirements set out in the Panel's Order are mandated by Regulation 6-2. Under section 45 of Regulation 6-2, notice of professional misconduct *shall* be given to all members and provincial bodies. Under section 48 of Regulation 6-2, notice of the revocation of membership of a member *shall* be given in a newspaper distributed in the geographic area where the subject practiced and the member *shall* pay CPA Ontario the cost of the publication.

VIII. COSTS

[53] The law is settled that an order against the Member for costs with respect to the disciplinary proceeding is not a penalty. Costs are intended to indemnify the PCC, based on the underlying principle that the profession as a whole should not bear all of the costs of the investigation, prosecution, and hearing arising from the member's misconduct.

[54] The standard practice for the PCC is to request two-thirds of their actual costs, as set out in a Costs Outline. The PCC's Costs Outline in this matter noted fees and disbursements. Two-thirds of these costs is $7,697.33, which was the amount sought by the PCC.

[55] The Member argued that there should be no costs awarded against him and relied upon his 2022 tax return and bank statements. As set out above, the Panel found that these documents did not provide a sufficient picture of the Member's ability to pay the fine or the costs.

[56] The Panel reviewed the PCC's Costs Outline and found it to be reasonable. There was no evidence that would result in the Panel deviating from its normal practice of awarding partial indemnity costs to CPA Ontario.

[57] The Panel made a costs award against the Member of $7,697.33, payable by October 3, 2025.

DATED this 15th day of November, 2023

Andrea B. Mintz, CPA, CA, LPA
Discipline Committee – Chair

Members of the Panel
Ian Wollach, CPA, CA
Marianne Park-Ruffin, Public Representative
John Wilkinson, Public Representative

Independent Legal Counsel
Susan Heakes, Barrister & Solicitor