

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** An Allegation against **JOHN E.A. IAN MIDDLETON, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rule 104.2** of the CPA Ontario Code of Professional Conduct

**BETWEEN:**

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

**-and-**

**John E.A. Ian Middleton**

**APPEARANCES:**

<b>For the Professional Conduct Committee:</b>	Kelvin Kucey, Counsel
<b>For Mr. Middleton:</b>	Present and Not Represented
Heard:	May 16, 2023
Decision and Order effective:	May 16, 2023
Release of written reasons:	June 2, 2023

**REASONS FOR THE DECISION AND ORDER MADE MAY 16, 2023**

**I. OVERVIEW**

- [1] This hearing was held to determine whether John E.A. Ian Middleton failed to cooperate with the regulatory process of CPA Ontario when he failed to promptly reply in writing to three communications from CPA Ontario in the fall of 2022 and whether such conduct amounts to professional misconduct.
- [2] Mr. Middleton obtained his CA designation in 1986 and his CPA designation in 2012.
- [3] On January 8, 2021, Mr. Middleton was advised of a complaint by a client. On January 29, 2021, Mr. Middleton responded to the complaint. On September 7, 2022, Eric Bunn, CPA, CA, Standards Enforcement Officer, requested that Mr. Middleton provide additional information by way of a written response. Mr. Middleton failed to respond to the request for additional information. Two further requests for a response were sent to Mr. Middleton

on October 14, 2022 and November 11, 2022 to which Mr. Middleton did not reply.

- [4] The onus was on the Professional Conduct Committee (PCC) to show on a balance of probabilities that Mr. Middleton's conduct breached Rule 104.2 of the *CPA Ontario Code of Professional Conduct*, and that his conduct constituted professional misconduct.

### **III. ISSUES**

- [5] The Panel proceeded to consider the following issues:
- 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 proven on a balance of probabilities, did the Allegation constitute professional misconduct?

### **IV. DECISION**

- [6] The Panel found that the Agreed Statement of Facts entered into by the parties established, on a balance of probabilities, the facts upon which the Allegation was based.
- [7] The Panel was satisfied that the Allegation as alleged constituted a breach of Rule 104.2 of the *CPA Ontario Code of Professional Conduct* concluding that Mr. Middleton failed to promptly reply in writing to communications from CPA Ontario.
- [8] The Panel went on to find that having breached Rule 104.2 of the *CPA Ontario Code of Professional Conduct*, Mr. Middleton had committed professional misconduct.

### **V. REASONS FOR THE DECISION**

#### *Findings Regarding Conduct of Mr. Middleton*

- [9] Mr. Middleton appeared without the assistance of counsel or an agent. He advised that he understood that he had a right to having a representative with him and that he waived the right. Mr. Middleton proceeded to represent himself.
- [10] Prior to having reached an Agreed Statement of Facts, the PCC had filed the Affidavit of Tatiana Rabinovitch, Standards Enforcement Officer for CPA Ontario (Exhibit 1). Ms. Rabinovitch's affidavit contained documents relating to the communications, actual and attempted as between Standards Enforcement (SE) and Mr. Middleton, as well as records relating to the uploading, and accessing of correspondence on FileCloud, CPA Ontario's encrypted document handling platform used by SE for all communications relating to the processing of complaints.
- [11] The PCC also filed an Agreed Statement of Facts (Exhibit 2), executed by Mr. Middleton in which Mr. Middleton acknowledged the facts relating to his repeated failures to reply to letters from SE. The Agreed Statement of Facts also contains an admission by Mr.

Middleton of professional misconduct, namely a breach of Rule 104.2 of the *CPAO Rules of Professional Conduct*.

- [12] Finally, the PCC filed a Document Brief to the Agreed Statement of Facts (Exhibit 3) containing documentation referred to in the Affidavit of Ms. Rabinovitch and in the Agreed Statement of Facts.
- [13] Neither party called any witnesses. Mr. Middleton made a brief statement, again accepting responsibility for his actions and admitting to having breached Rule 104.2 of the *CPA Ontario Code of Professional Conduct*.
- [14] The facts are as follows: On December 7, 2020, CPA Ontario received a complaint from a member of the public who indicated he had retained Mr. Middleton. The complaint was sent to Mr. Middleton via FileCloud, on January 8, 2021. Mr. Middleton provided written representations in response to the complaint on January 29, 2021.
- [15] By way of letter dated September 7, 2022, Eric Bunn, Standards Enforcement Officer of CPA Ontario sent a request to address ten specific inquiries related to the complaint to Mr. Middleton via FileCloud. Mr. Middleton was asked to provide a response by September 28, 2022.
- [16] According to FileCloud's records, SE's letter of September 7, 2022 was viewed by a party identified as "ian\_2" at the email address of Mr. Middleton's practice.
- [17] No additional representations from Mr. Middleton were received.
- [18] On October 12, 2022, Jennifer Taylor, Standard Enforcement Coordinator, called Mr. Middleton and advised him that a response to SE's letter of September 7, 2022 had not been received. Mr. Middleton advised he had not seen the letter and requested that it be resent to him.
- [19] Two days later, on October 14, 2022, Eric Bunn, Standards Enforcement Officer sent a copy of the September 7, 2022 letter and a new letter by email to Mr. Middleton reminding Mr. Middleton of his professional obligations to promptly respond to complaints. Mr. Middleton was given an opportunity to comply with Rule 104 of the *CPA Ontario Code of Professional Conduct* by providing a written reply on or before October 28, 2022. He was warned that failure to respond by the deadline would result in his matter being referred to the Professional Conduct Committee and that an allegation or allegations of professional misconduct may result. The requirements of Rule 10 of the *CPA Ontario Code of Professional Conduct* were set out in the letter. Despite uploading the letter to FileCloud, it does not appear Mr. Middleton accessed the letter.
- [20] An email was sent to the email address associated to Mr. Middleton's accounting practice that same day advising that a letter had been uploaded from SE and provided a link to the letter.
- [21] Mr. Middleton did not reply to the request for further written representations.
- [22] On November 7, 2022, Ms. Taylor attempted to reach Mr. Middleton initially on his mobile

phone. As no one responded, she left voice mail messages on Mr. Middleton's mobile, work and home telephone numbers. In her message she advised that a written response to CPA Ontario's letters of September 7 and October 14, 2022 had not been received. He was reminded that his response was required and should be sent as soon as possible.

- [23] On November 11, 2022, Mr. Bunn again sent an email to Mr. Middleton via FileCloud confirming that no written response had been received and reminding Mr. Middleton of his ethical obligations. Mr. Bunn again copied Rule 104 of the *CPA Ontario Code of Professional Conduct* into the body of the letter. Mr. Middleton was advised that he had until November 25, 2022 to respond failing which the matter would be referred to the Professional Conduct Committee.
- [24] An email was sent to the email address associated to Mr. Middleton's accounting practice that same day advising that a letter had been uploaded from SE and provided a link to the letter. A password to the document was also sent to Mr. Middleton's email address that same day.
- [25] According to FileCloud's records, the November 11, 2022 letter was viewed on November 24, 2022 at 3:13 p.m. by "ian\_2".
- [26] On February 1, 2023, the PCC personally served Mr. Middleton with the Allegation of Professional Misconduct which is the subject of this hearing.
- [27] On March 23, 2023, Mr. Middleton attended and participated in a pre-hearing conference. On May 5, 2023, Mr. Middleton participated in a second pre-hearing conference shortly after which on May 9, 2023, Mr. Middleton produced an unsigned written response dated November 24, 2022. Mr. Middleton asserts that the letter was sent to SE although he had no evidence to corroborate his assertion.
- [28] On May 9 and 10, 2023, with the assistance of CPA Ontario's Information and Technology Department, SE searched its paper and electronic files for any record of Mr. Middleton's November 24, 2022 letter. No such letter was found.
- [29] Through Discipline Counsel, Mr. Middleton's letter dated November 24, 2022 was provided to SE who have advised that Mr. Middleton is now in compliance with his duty to respond.

#### *Finding of Professional Misconduct*

- [30] The onus was on the PCC to show on a balance of probabilities that Mr. Middleton engaged in conduct that breached Rule 104.2 of the *CPA Ontario Code of Professional Conduct*, and that such conduct constituted professional misconduct.
- [31] Mr. Middleton did not challenge the facts which were largely set out in the Agreed Statement of Facts he signed on May 11, 2023. In the Agreed Statement of Facts, Mr. Middleton agreed and conceded that he was aware of the communications sent to him from SE and that information had been requested of him. He has conceded that he did not respond as required. Mr. Middleton also admitted in the ASF and before the Panel that his conduct breached Rule 104.2 of the *CPA Ontario Code of Professional Conduct* and that such a breach constitutes professional misconduct. Mr. Middleton stated on more

than one occasion before this Panel that he was responsible for the failure to respond to the letters sent to him by SE.

- [32] Despite advising that he had had difficulties reaching SE and despite presenting an unsigned letter dated November 24, 2022, Mr. Middleton presented no evidence excusing his conduct or corroborating his attempts to reach SE or to send his letter dated November 24, 2022.
- [33] Given the evidence presented, the Panel found that there was clear, cogent and compelling evidence that Mr. Middleton had failed to respond to letters sent to him by SE on September 7, 2022, October 14, 2022 and November 11, 2022 and that his failure to respond to those letters breached Rule 104.2 of the *CPA Ontario Code of Professional Conduct* and constituted professional misconduct.

## **VI. REASONS FOR SANCTIONS**

- [34] By way of sanction, the PCC sought a written reprimand by the Chair; a fine in the amount of \$5,000 to be paid within 60 days of the Panel's decision; a requirement that Mr. Middleton continue to cooperate with the PCC by fully responding to all correspondence of the CPA Ontario; and notice of the Decision and Order to all members of CPA Ontario, all provincial bodies as well as to the public. The PCC also requested that in the event Mr. Middleton fails to comply with any terms of the Panel's Order, Mr. Middleton's membership with CPA Ontario shall be immediately suspended for 60 days pending his compliance with the Order. If, after 60 days, Mr. Middleton has not complied, the PCC has asked that his membership in CPA Ontario be immediately revoked and notice of the revocation disclosing his name, should be published in the *Globe and Mail* with costs associated with this publication to be borne by Mr. Middleton.
- [35] Mr. Middleton did not object to the sanctions proposed by the PCC and only requested that any sanction be in keeping with the jurisprudence arising from similar matters.
- [36] When considering the appropriate sanction in this matter, the Panel considered mitigating circumstances, including the level of cooperation Mr. Middleton showed through the disciplinary process. In addition to attending the hearing, Mr. Middleton participated in pre-hearing conferences. He entered into an Agreed Statement of Facts which alleviated the need for the PCC to call evidence. Through the Agreed Statement of Facts, Mr. Middleton not only admitted to the facts regarding his failure to promptly reply to the communications from CPA Ontario, he also admitted that his conduct amounted to professional misconduct, specifically acknowledging that he had breached Rule 104.2 of the *CPA Ontario Code of Professional Conduct*. In statements made during the course of the hearing, it was obvious to the Panel that Mr. Middleton fully and readily accepted responsibility for his actions. Finally, Mr. Middleton did not have any disciplinary history in his over 37 years of service as a CPA Ontario member.
- [37] The Panel also considered the aggravating factors, most notably the fundamental obligation on any member of this profession to provide prompt and complete responses to complaints. It is essential that the public have confidence in our profession, and in our

ability to self-regulate. Fundamental to self-regulation is the requirement and expectation that our members fully and promptly respond to complaints. By so doing, concerns may be readily addressed, explanations offered to the complainants and the necessary remedial, and possibly disciplinary consequences can be meted out in a timely and meaningful manner. By providing incomplete, late or no responses at all, members chip away at the trust we have built with the public. It is therefore vital that it is made clear to both the members of this profession and to the public that members are required to fully engage in the investigative process. The ability to cooperate with one's regulator is the cornerstone of integrity.

- [38] In crafting the appropriate sanction in this particular matter, the Panel considered both specific and general deterrence, as well as denunciation and rehabilitation.
- [39] The majority of this Panel finds that a reprimand is appropriate in the circumstances of this matter. Reprimands are intended as a form of specific deterrence. Reprimands are meant to offer a further opportunity for reflection regarding the seriousness of the misconduct. Reprimands also afford the member an opportunity to consider remedial and rehabilitative steps. The Discipline Committee Regulation 6-2 16.1.1 allows for reprimands to be delivered orally or in writing. While there is a history of written reprimands being delivered by this Tribunal, "tradition" is not a factor to be considered in sentencing. Given Mr. Middleton's presence at the hearing and his level of engagement in the disciplinary process, the majority of the Panel felt that the immediacy of an oral reprimand was appropriate. One member of the Panel concluded that a written reprimand would have been the appropriate manner by which to provide Mr. Middleton with an opportunity to reflect on his conduct and the impact it has on the profession.
- [40] An oral reprimand was delivered during the course of the hearing making it clear to Mr. Middleton that failing to cooperate with CPA Ontario is a serious matter. Even if faced with technical challenges during the pandemic, the onus was on Mr. Middleton to reach out to SE and/or CPA Ontario to address difficulties accessing or sending information. The Panel made it clear that the public's trust in the profession is jeopardized when members fail to fully and properly respond to complaints. The Panel did note Mr. Middleton's admissions and cooperation during the disciplinary process and having had the opportunity to deliver an oral reprimand, concluded that Mr. Middleton fully appreciated the severity of his actions.
- [41] The Panel concluded that a fine in the amount of \$5,000 is appropriate considering the nature of the misconduct and the lack of compelling evidence justifying a lack of communication and response with CPA Ontario. Mr. Middleton offered no evidence confirming that the representations had been sent other than to note that the representations found on his computer were dated and he normally only dated materials that were ready to be sent. A search of the PCC data banks revealed no receipt of these additional representations. While Mr. Middleton presented additional representations, they were not presented until after disciplinary proceedings had been instigated. Finally, as noted above, Mr. Middleton did not object to the proposed fine or the suggested amount of time to pay. The Panel recognizes that Mr. Middleton has since cooperated both in the disciplinary process by entering into an Agreed Statement of Facts and admitting to his misconduct, as well as providing responses to SE. Without such cooperation, this Panel

would have imposed a higher fine.

- [42] Publication of the Decision and Order as requested by the PCC serves as a general and specific deterrent. It informs the public that members of this profession are held accountable for breaches of the Rules that govern them and face serious consequences for their actions.

## **VII. COSTS**

- [43] The PCC sought costs in the amount of \$3,200 to be paid within 6 months of the Panel's decision. Costs are not considered a sanction, but rather are imposed on an indemnity basis. The profession should not bear the costs of members such as Mr. Middleton who failed to abide by their professional obligations.
- [44] The PCC presented a Costs Outline (Exhibit 4) for the Panel's consideration. The parties minimized costs by jointly negotiating and entering into an Agreed Statement of Facts, which also included an admission that Mr. Middleton's conduct amounted to professional misconduct. The parties were efficient in their presentations and as such, the hearing took only half a day.
- [45] This Panel accepted the PCC's bill of costs and awarded costs in the amount of \$3,200 to be paid by July 16, 2023.

**DATED** this 2<sup>nd</sup> day of June, 2023

A handwritten signature in dark ink, appearing to read 'Fahad Meer', with a stylized flourish underneath.

Fahad Meer, CPA, CA  
Discipline Committee – Deputy Chair

### Members of the Panel

Jim Huang, CPA, CGA  
Alexander Metaxas-Mariatos, CPA, CMA  
Jeremy Cole, FCPA, FCA  
Marianne Park-Ruffin, Public Representative

### Independent Legal Counsel

Nadia Liva, Barrister & Solicitor