

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: An Allegation against **Michael J. Iannone, 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-

Michael J. Iannone

APPEARANCES:

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|--|---------------------------------|
| For the Professional Conduct Committee: | Jean Iu, Counsel |
| For Michael J. Iannone: | Not Present and Not Represented |
| Heard: | June 15, 2023 |
| Decision and Order effective: | June 15, 2023 |
| Release of written reasons: | July 4, 2023 |

REASONS FOR THE DECISION AND ORDER MADE JUNE 15, 2023

I. OVERVIEW

- [1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario ("PCC") has made an Allegation that Iannone failed to cooperate with the regulatory process of the Chartered Professional Accountants of Ontario ("CPA Ontario") by failing to reply promptly to communications from the Standards Enforcement department of CPA Ontario ("Standards Enforcement") from September 20, 2022 to February 8, 2023. This hearing was held to determine whether the Allegation was established and whether the conduct breached Rule 104.2 of the CPA Ontario Code of Professional Conduct ("the Code") and amounted to professional misconduct.

II. THE COMPLAINT AND THE ALLEGATIONS

- [2] In late July 2022, CPA Ontario received a complaint against Iannone by a representative of one of his former corporate clients. The complaint alleged, among other things, that Iannone was unprofessional and irresponsible in providing professional services, that he failed to respond to correspondence in a timely manner, and that he missed client meetings. Standards Enforcement contacted him several times, requiring a response to the issues raised in the complaint, but Iannone failed to respond to any of these communications.
- [3] The standard of proof in regulatory matters, unless stated otherwise, is "balance of probabilities," meaning whether it is more likely than not that the events occurred.
- [4] The onus was on the PCC to show on a balance of probabilities that Iannone's conduct breached Rule 104.2 of the Code and constituted professional misconduct.

III. PRELIMINARY ISSUES

- [5] Iannone did not attend the hearing nor did he have a representative attend on his behalf. In order to proceed in the absence of Iannone, the Panel had to be satisfied that he had received proper notice of the Allegation and the hearing. After waiting approximately 10 minutes for Iannone, the Panel sought evidence from the PCC that he had received proper notice. The Affidavit of Alyssa Grace Girardi, a Professional Standards Coordinator in the Investigations and Prosecutions department of the Professional Standards division of CPA Ontario, establishes that Iannone was served with the Allegation of Misconduct on March 9, 2023 by email, to the email address of Iannone contained in CPA Ontario's records (Exhibit 1). The Affidavit also establishes that Iannone read the email serving the Allegation. The Affidavit indicates that service by email to Iannone was effected after a process server was unable to serve Iannone in person at the address listed on Iannone's CPA Ontario member profile.
- [6] On May 23, 2023 the Tribunals Office sent to Iannone the Notice of Hearing for this matter, by way of email (Exhibit 2). The Notice of Hearing confirmed that the hearing was scheduled to proceed on June 15, 2023 at 9:30 a.m. by videoconference. The Notice of Hearing also advised that if Iannone chose not to attend the hearing, the Discipline Committee may proceed in his absence.
- [7] Based on the above evidence, the Panel was satisfied that Iannone had received proper notice of the Allegation and the hearing and determined that it would proceed in his absence.

IV. ISSUES

- [8] 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?

V. DECISION

- [9] The Panel found that the evidence established, on a balance of probabilities, the facts set out in the Allegation of professional misconduct.
- [10] The Panel was satisfied that the Allegation constituted a breach of Rule 104.2 of the Code and having breached this Rule, Iannone committed professional misconduct.

VI. REASONS FOR THE DECISION ON MISCONDUCT

Findings Regarding the Conduct of Iannone

- [11] Evidence in support of the Allegation is contained in the Affidavit of Jennifer Carriere, a Standards Enforcement Officer with CPA Ontario (Exhibit 3).
- [12] On July 26, 2022, CPA Ontario received a complaint against Iannone, from a representative of a former corporate client of Iannone. The complaint alleged that Iannone was unprofessional and irresponsible in providing professional services, as deadlines were missed and deliverables not provided on numerous occasions, ultimately resulting in the firm losing clients and suffering financial and reputational losses. The complaint also alleged that Iannone failed to respond to correspondence in a timely manner, missed numerous client meetings and failed to transfer accounting information to the successor accountant upon request in a timely manner.
- [13] By letter dated September 19, 2022, Standards Enforcement wrote to Iannone to advise him of the complaint and requested his response, in accordance with Rule 104 of the Code, by October 11, 2022. The letter was sent using FileCloud, a file sharing program that allows users to exchange documents, which has been the Standards Enforcement department's primary method of corresponding with members of CPA Ontario since April 2020. Members are notified of correspondence for them on FileCloud by way of an email sent to their preferred email address of record. Members are required to provide CPA Ontario with their legal and preferred address, telephone number, and email address and to provide CPA Ontario with notice of any change in their contact information.
- [14] On September 20, 2022, Iannone appears to have viewed the correspondence on FileCloud. However, no response was received from Iannone.
- [15] By letter dated October 18, 2022, Standards Enforcement wrote again to Iannone using FileCloud, stating that CPA Ontario had not received a written reply to the letter dated September 19, and advising that a written reply was specifically required in accordance with Rule 104 of the Code, by November 1, 2022. The letter also stated that a failure to respond by this date will be referred to the PCC and may result in an allegation of professional misconduct. Iannone does not appear to have viewed this correspondence on FileCloud.
- [16] On November 14, 2022 Standards Enforcement staff telephoned Iannone at his number on record with CPA Ontario about the overdue correspondence. Standards Enforcement staff left a voicemail advising that CPA Ontario had not yet received a response to the letters of September 19, 2022 and October 18, 2022, and that his response was required in accordance with Rule 104 of the Code.

- [17] On the same day, Standards Enforcement wrote to Iannone using FileCloud, stating that CPA Ontario had not received a written reply to the letters of September 19, 2022 and October 18, 2022, and advised that his reply was specifically required in accordance with Rule 104 of the Code, by November 28, 2022. The letter also advised Iannone that a failure to respond by that date will be referred to the PCC and may result in an allegation of professional misconduct. Iannone does not appear to have viewed this correspondence on FileCloud.
- [18] The facts in the Carriere Affidavit establish that Iannone did not promptly reply in writing to communications from CPA Ontario to which a written reply was specifically required.
- [19] The Panel was satisfied that this undisputed evidence clearly and cogently demonstrated that the facts set out in the Allegation were established on a balance of probabilities.

Finding of Professional Misconduct

- [20] In order to fulfill its mandate to protect the public interest, CPA Ontario must ensure the accountability of its members. Rule 104 of the Code, requiring members to cooperate with the regulatory process, is a critical tool for this purpose. To properly investigate a complaint from the public, an investigator must be able to access the relevant facts in a timely manner. If members fail to respond promptly and completely to communications from Standards Enforcement, CPA Ontario's ability to fulfill its mandate of governing the profession in the public interest is frustrated.
- [21] Given multiple opportunities, Iannone failed to respond to any communication from Standards Enforcement during his period of non-cooperation. He was properly notified of the complaint against him and the requirement that he respond, lest discipline proceedings be brought against him. He did not respond to communications he received through voicemail or through FileCloud, by which he was notified through his preferred email address on record.
- [22] Absent credible evidence that demonstrates a member was unable to respond due to an illness or disability, the failure of a member to respond promptly and completely constitutes a breach of Rule 104 of the Code. Accordingly, this Panel finds Iannone's failure to cooperate, in violation of Rule 104 of the Code, constitutes professional misconduct.

VII. DECISION AS TO SANCTION

- [23] After considering the evidence, the law and the submissions of the PCC, the Panel accepted the submission of the PCC and concluded that the appropriate sanction was a written reprimand, a fine of \$5,000 payable by July 15, 2023, and an order that Iannone respond to the correspondence from Standards Enforcement within 30 days.
- [24] In the event that Iannone fails to comply with the Order, the Panel ordered that his membership with CPA Ontario shall be suspended until such time as he does comply, provided that he complies within 30 days from the date of the suspension, failing which Iannone's membership will be revoked.
- [25] The Panel also ordered that if Iannone's membership were revoked, notice of the revocation would be published in the Toronto edition of the *Globe and Mail* newspaper.

VIII. REASONS FOR THE DECISION AS TO SANCTION

- [26] The PCC tendered a further affidavit of Jennifer Carriere, sworn June 9, 2023 (Exhibit 5), which states that Iannone attended at one prehearing conference, but did not attend at a subsequent prehearing conference that had been scheduled for his benefit. The affidavit also indicates that, as of June 8, 2023, there was evidence that Iannone had not attempted to contact anyone at CPA Ontario since his attendance at the prehearing conference.
- [27] The PCC submitted that Iannone's failure to attend at a subsequent prehearing conference without advising CPA Ontario, and Iannone's failure to contact CPA Ontario in advance of this hearing or attend at this hearing, constitutes a continuing pattern of conduct which demonstrates a lack of engagement or cooperation with his regulator.
- [28] The PCC submitted that, in the absence of any explanation from Iannone for his failure to cooperate, there was no reason to vary from the standard sanctions for failure to cooperate.
- [29] Given the regrettable absence of Iannone at the hearing, the Panel heard no evidence of mitigating factors from Iannone nor any submission from him about the appropriate sanction. The Panel found there were no reasons in this case to vary from the standard sanctions for failure to cooperate. A written reprimand will impress upon Iannone the seriousness of his misconduct, and that membership in CPA Ontario includes important responsibilities as well as benefits. The fine of \$5,000 is consistent with prior decisions for a first instance of failure to cooperate, and serves as a deterrent, both to Iannone and to the general membership of CPA Ontario. The Order to cooperate gives Iannone a final opportunity to demonstrate that he is willing to cooperate by responding to the questions arising from the complaint, and also ensures that there is not an indefinite period of non-cooperation.

IX. COSTS

- [30] The law is settled that an order against Iannone 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.
- [31] It has become customary for the PCC to file a Costs Outline in the same form as used in civil proceedings, and to seek two-thirds of the costs incurred in the investigation and prosecution of the matter. The PCC Costs Outline is found at Exhibit 4. It totals \$4,391.25, two-thirds of which is \$2,927.50, the amount sought by the PCC.
- [32] There being nothing exceptional in this case to justify varying from the usual partial indemnity rate, the Panel orders a cost award of \$2,927.50, payable by July 15, 2023.

DATED this 4th day of July, 2023



Bernard S. Schwartz, FCPA, FCA
Discipline Committee – Deputy Chair

Members of the Panel

Alexandra Finkel, CPA, CA

Marianne Park Ruffin, Public Representative

John Wilkinson, Public Representative

Independent Legal Counsel

John Dent, Barrister & Solicitor