CMA File No. RC-13-04-00033-094562

CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO
DISCIPLINE COMMITTEE

IN THE MATTER OF the Certified Management Accountants Act,2010, S.O. 2010,c.6, Sch. B, as amended (the "Act")

AND IN THE MATTER OF a Hearing of a matter regarding the conduct of David Prentice as referred by the Complaints Committee of Certified Management Accountants of Ontario ("CMA Ontario")

BETWEEN:

CMA Ontario

APPLICANT

- and -

DAVID PRENTICE

RESPONDENT

Panel: Vice-Chair David Debenham

Counsel for the Corporation Marc H Spector
Counsel For the Member: Joseph Sereda
Counsel For the Panel: Marco Mendicino

PANEL'S REASONS FOR DECISION AND ORDER
MOTION FOR ADJOURNMENT (corrigendum)

A. Introduction

1. This hearing was conducted by the Vice-Chair of the Disciplinary Committee (the "Panel") by tele-conference call on the morning of March 12. Given that Mr. Mendicino was in an airport with a lot of background noise, he simply listened into the call. He then called the Panel afterword to confirm he had heard all of the submissions of the parties' Counsel.

2. The only evidence before the Panel is the Corporation's Motion Record for the motion returnable tomorrow, and the "Letter" described in greater detail below.

3. This is a motion for an adjournment brought by the Respondent Member in relation to a motion originally returnable tomorrow, March 13, 2014. The motion was brought by CMA Ontario (the "Corporation") to temporarily suspend the membership of David Prentice (the "Member") until a decision is rendered in his disciplinary hearing (the "Motion"). No disciplinary hearing date has been scheduled. A Proceeding Management Hearing was scheduled for March 24, 2014.

4. Section 36 of the *Certified Management Accountants Act,2010*[1] (the "Act") provides that *"[a]t any time after a matter respecting a complaint against a member… is referred to it by the complaints committee and before making a final decision or order… the discipline committee may order that the member's membership … be suspended, or be subject to any restrictions or conditions that the committee may specify, pending the outcome of the hearing, if there are reasonable grounds to do otherwise may result in harm to any member of the public."* The Act defines the "disciplinary committee" to mean the disciplinary committee established by the Corporation's By-Laws. Article 9.4 of the Rules[2] provide for a motion in advance of the Disciplinary Committee hearing to be made in writing to the Committee Chair, all responses shall likewise be in writing, and the Chair shall decide if the hearing shall be heard in writing, by electronic hearing or orally. Article 1.1.10 confirms that the Committee Chair means the chair of the Committee or her designee. The Panel is the Chair's designee for this motion pursuant to Article 1.4 of the Rules, and as the Vice-Chair and assigned Panellist, the Panel, sitting alone, may dispose of the Motion on such terms as are just, pursuant to Article 9.5 of the Rules. In addition, the Panel may dispose of this motion for an adjournment pursuant to Article 9.1 of the Rules.

[1] S.O. 2010,c.6, Sch. B, as amended
[2] Discipline Committee Rules of Procedure (Nov. 2012)

B. The Parties' Position

5. I was sent an e-mail late yesterday by Counsel for the Corporation that summarized the parties' positions, as provided by the Counsel, as follows:

> *"**(a) MEMBER:** Mr. Prentice is currently out of the province, and Mr. Sereda has been unable to speak with him. Because he does not have any instructions, Mr. Sereda will be asking for an adjournment until March 24th. Mr. Sereda's position is that, given that the issues related to securities violations against Mr. Prentice are several years old at this point, there is no threat of immediate harm, and that a short adjournment without an interim interim order until March 24 would not be inappropriate in the circumstances.'*
>
> *'**(b) CORPORATION:** Mr. Prentice was personally served with motion materials on March 5th. Mr. Prentice chose to leave the province without speaking with his lawyer or [sic] contact information, and without any intention to appear on Thursday. CMA Ontario's position is that this matter is urgent to protect the public. That is why it served Prentice with the motion materials 9 days after the Registrar referred this matter to discipline. Therefore, CMA Ontario will only consent to adjourn Thursday's motion if, in the interim, Mr. Prentice's membership with CMA Ontario is immediately suspended. On March 24th, we can address whether that suspension ought to be extended."*

C. The Issues

6. There are two issues: (1) Should an adjournment be granted?, If so (2) On what terms? During oral submissions, the parties agreed on a timetable. While both issues were argued, the real issue was the 'interim interim' order sought by the Corporation, and which was vigorously opposed by Counsel for the Member.

D. **The Orders**

7. The Member is immediately suspended on a "without prejudice" basis pending the further order of the Panel on the Motion. This means that this Order is not to be construed as evidence at any proceeding, as it is not decided on the merits. It is simply a precautionary order resulting from the exigencies of the situation the Panel is faced with, and should not be taken to reflect on the Member's stature or reputation in the community. All of the implications of 'suspension' are set out in the Act, the By-Laws, and the Rules. To the extent that the Member encounters any difficulties in complying with this Order, counsel for the Corporation is to be immediately alerted to same, and a motion may be brought to the Panel if, and as, required, to vary or enforce this Order, as circumstances require.

8. The Motion is adjourned, to be heard on the merits on March 26, 2014, pre-emptory to both sides. This means that the parties should not contemplate asking for another adjournment absent truly unforeseeable events.

9. The timetable preceding the Motion is as follows: The Member's materials are to be served on the Corporation by 3 pm on March 20, 2014. The Member's Counsel advised that he had filed a response to the Second Complaint (described below) with the Tribunal. He will re-file that response by 3 pm March 20, 2014 as well. The Corporation's Reply materials are to be served by 3:30 pm March 21, 2014. Cross-examinations, if any, are to be held on March 24, 2014 (the reporting service should be alerted to the need of emergency transcripts, and should be booked, now), any pre-hearing motions the parties may wish to make will be heard at 9 am on March 25, 2014 by tele-conference (requiring notice of same be given to the Panel by 4:30 pm on March 24), all Motion material is to be filed with the Panel by 4 pm on March 25, 2014, and the hearing of the Motion is to commence on 10 am on March 26 .

10. Since the Panel is not satisfied that proceeding in writing or by electronic hearing would be adequate in the circumstances, and given that the Member's counsel's offices are close by (and the Member is from Oakville), the Panel orders that the Motion proceed orally in Toronto.

11. The Corporation will amend its Notice of Motion to include all references to the Act, By-Laws, and Rules it intends to rely on at the Motion.

12. I am seized of the Motion, but not of any other part of this proceeding.

13. The Proceeding Management Hearing scheduled for March 24, 2014 is adjourned *sine die* (without a fixed day for the hearing).

14. The parties consented to the orders set forth in paragraphs 8, 9, and 10. The real argument involved the 'interim interim' suspension issue. For that reason, the Panel will explain its reasons before we proceed with the merits of the motion we should review the procedural history leading to this motion.

15. These Orders are effective immediately, without the need for any further, formal Order to be in full force and effect. The parties' counsel will work with the Panel's counsel to draft and file a formal Order.

E. The Chronology of the Motion

16. On March 5, 2014, the Member was served with a Motion Record returnable on March 13, 2014 seeking the relief set out above.

17. On March 7, 2014, Counsel for the Corporation sent the Panel an e-mail containing a letter (the "Letter") via the Regulatory Liaison and Hearings Coordinator for CMA Ontario, advising that the Corporation was relying on ss. 35 and 36 of the Act. The Member was also sent a copy of that Letter, which confirmed that the Corporation sought my attendance in person for this

application to suspend the Member. The Letter further advised that the Corporation was relying on ss. 35 and 36 of the Act, and Articles 7.4,9.2, 9.4, and 20.2 of the Discipline Committee Rules of Civil Procedure (the "Rules"). These provisions are also referred to in pre-amble of the Corporation's draft Order, appearing as Exhibit "Y" of the Affidavit of Jennifer Cooper sworn March 3, 2014 (the "Affidavit") in support of this Application. The Letter goes on to advise that the Panel should choose to hear this motion orally, particularly the seriousness of this motion: This Motion goes beyond mere procedural pre-hearing issues that are dealt with at the typical Proceeding Management Conference (such as motion to deal with requests for particulars of the Corporation's allegations, disclosure of witness lists and statements, and production of documents). Given the seriousness of an interim suspension, the Corporation takes the position that the Member ought to have the benefit of the most fair process, including, an oral hearing, and, if the Member wishes, the opportunity to cross-examine on the Affidavit.

18. After this Letter was received, the Panel suggested that Counsel for the Applicant contact Counsel for the Respondent and report back to the Panel using a form similar in form and substance to a motion confirmation form used by the Superior Court of Ontario.[3] As Counsel for the Respondent correctly pointed out in his oral submissions, it is common practice amongst lawyers that if a motion that is to be brought on notice will involve the moving party discussing a proposed motion with the responding party, and that discussion leading to an agreement on proposed dates for the hearing, and steps prior to the hearing. A few days before the hearing, the parties' representatives call each other and based on that discussion, a motion confirmation form is served by the moving party on the responding party and the court to reflect the status of the motion as of that date, and to alert the Panel as to any interim developments prior to the commencement of the hearing of the motion.

[3] *www.**ontario**courts.ca/scj/files/**forms**/civ/**confirmation**-EN.doc*

19. It appears that as a result of using that motion confirmation form, Mr. Sereda sought an adjournment from Counsel for the Corporation, resulting in this motion today. In the perfect world, the responding party would e-mail, fax, or courier the Panel c/o of the *Regulatory Liaison and Hearings Coordinator* of the Corporation, and copy Counsel for the moving party by the same media, so that it was clear when the request for adjournment was being made, and the Panel and the parties could address the issue forthwith.

F. Reasons for the Adjournment being Granted

20. Rule 9.1 provides that a party may make a motion for an adjournment at any time, and an adjournment may be granted, granted on terms, or refused. The terms may be anything which tribunal considers fair and reasonable, including an award of costs, save and except no costs may be awarded against the Corporation.

21. Rule 9.1 confirms that decision to permit or deny an adjournment falls squarely within the discretion of the Panel. Tribunals have an inherent power to control their own processes, which includes the power to grant or refuse adjournments, and to impose reasonable conditions on such adjournments.[4]

[4] Senjule v. LSUC, 2013 ONSC 2817 (CanLII),

22. In *Igbinosun v. Law Society of Upper Canada*,[5] the Court of Appeal for Ontario set out a non-exhaustive list of factors that govern rulings on adjournment requests:

Factors which may favour the granting of an adjournment	Factors which may support the denial of an adjournment
a finding that include the fact that the consequences of the hearing are serious, and that the applicant would be prejudiced if the request were not granted	a lack of compliance with prior court orders
a finding that the applicant was honestly seeking to exercise his right to counsel, and had been represented in the proceedings up until the time of the adjournment request	previous adjournments that have been granted to the applicant
the request was made in a timely fashion, rather than being left to the last minute despite knowing that a request to adjourn would be made	previous peremptory hearing dates
the applicant's reasons for being unable to proceed on the scheduled date are reasonable	the desirability of having the matter decided
the length of the requested adjournment is reasonable	the applicant is seeking to manipulate the system by orchestrating delay.

23. In exercising its discretion, the Panel should balance the interests of both parties, the interests of the administration of justice in the orderly processing of complaints, and to ensure all matters are determined on their merits to the extent the parties allow this to happen. In any particular case, several considerations may bear on these interests. Some may be entitled to more weight than others. If one of the parties is self-represented, that would be a relevant factor. That is not to say that a self-represented party is entitled to a "pass": Only that unfamiliarity with the nature of the proceedings, would be one of the factors involved in granting or denying an adjournment. [6] For future reference, the following list of

[5] 2009 ONCA 484, at para 37
[6] Toronto-Dominion Bank v. Hylton, 2010 ONCA 752,at paragraph 37-39 (CanLII),

factors should be considered: a) whether the request for an adjournment was genuine; (b) whether any party would be prejudiced if an adjournment were granted or vice versa; (c) whether the request for an adjournment was made as soon as practicably possible before the commencement of the hearing; (d) whether the request for an adjournment was reasonable in the circumstances of the case (e) the number of prior requests and motions for an adjournment; (f) the number of adjournments already granted; (g) prior directions or orders with respect to the scheduling of future hearings; (h) the public interest in timely hearings; (i) the costs of an adjournment to the parties; (j) the continued availability of witnesses if the final hearing date is being postponed; k) the efforts made to avoid the adjournment; l) the public interest in a fair hearing; (m) the failure to participate in preceding preliminary steps in the proceeding, and follow prior directions, and m) any other relevant factor, such as a party being self-represented or being placed in jeopardy due to the inadvertence of counsel. [7]

24. Adjournments are predicated on the fundamental principle that a tribunal must hear both sides before reaching a decision. This principle derives from the Latin maxim "*audi alteram partem*", which literally means, "to hear the other side". It is critical that both parties have a reasonable opportunity to be heard if they wish to be heard[8]. In this case the Counsel for the Corporation must concede that the consequences of the Motion are serious, and by extension the interim-interim order he requests are serious, as his Letter requesting an oral hearing notes the seriousness of the charges against the Member. Secondly, the Member did have counsel, and the request for an adjournment, while it should have been made immediately after service of the motion, was still made in a timely fashion in the circumstances. Counsel's reason for asking for the adjournment was reasonable. Counsel for the Member had a prior motion booked in the Superior Court of Ontario and he was unable to get instructions as the Member left for holidays with his family for "spring break".

[7] Sterling Aircraft Products Limited v. Canada (National Revenue), 1994 CanLII 7159 (CA CITT), Children's Aid Society of Sudbury And Manitoulin v. C.(T.), 1994 CanLII 4269 (ON CJ), Law Society of Upper Canada v. Renata Snidr, 2013 ONLSHP 175,at para 15 (CanLII)
[8] L'Alliance Des Professeurs Catholiques de Montréal v. La Commission Des Relations de la Province de Québec et al., 1952] 4 D.L.R. 161 at 180

25. Counsel for the Member advises that he did file a response to the Second Complaint, and the Panel cannot be satisfied that denying a first request for an adjournment would do justice on these facts. Denying an adjournment in the absence of any prejudice to the other party or the public interest is usually contrary to the interests of justice.[9] A concern for the principles of natural justice and the appearance of justice being done explains why, perhaps to the chagrin of those opposing adjournments and indulgences, any Tribunal appears to tend to err on the side of caution, particularly where the request for an adjournment would promote a decision on the merits. It is in the public interest that, whatever the outcome, the Member should perceive that he or she had their day in court and had a fair chance to make out their case.

G. The "interim interim order"

26. We now turn to the Corporation's request for an "interim interim" order.

27. The Corporation's counsel has proposed that the Panel make an "interim-interim order". That is a term of art that originates in the family courts of Ontario, in which a dependent spouse sues for spousal support, and brings a motion for interim support. The respondent then appears in court, asking for an adjournment to cross-examine the dependent spouse. In order to provide some support on a "without prejudice" basis, the court makes an "interim-interim" order for support to relieve the allegedly dire straits that the dependent spouse is in pending the hearing of the motion. The respondent agrees to this as a condition knowing that any over-payments made under the "interim interim" order can be offset by the court's order at the time the motion for interim support is heard. The "interim interim" order is a practical way of ensuring that the respondent gets a fair hearing

[9] Bhimji Khimji v. Dhanani (2004) 69 O.R. (3d) 790, at para 790 (C.A.)

while both sides are not prejudiced by the delay in hearing the motion.[10] The "interim-interim" order is a way of granting an adjournment on terms that can be easily corrected at the hearing of the motion itself. The analogy is not an exact one for our purposes, as the Member's counsel points out that even on an interim-interim basis, the suspension is a severe remedy that may have reputational consequences that cannot easily be **un**done by an order at the Motion, if ever.

28. What factors should I consider in exercising my discretion to grant an adjournment with, or without, a suspension of the Member's license for a little less than a fortnight?

i Whether an adequate remedy would be unavailable to the Applicant Corporation at the final hearing without the term being sought. In other words, the Applicant must demonstrate that unless the term requested is granted, it will suffer irreparable harm in the time period before a decision on the merits can be rendered on the motion—there is no substitute to the term sought (or any substitute is even more unsavory);

ii The existence of a strong link between an alleged breach of the Corporation's rules and regulations, the likely consequences of the breach and the term sought. In other words the term imposed would be appropriate, commensurate with, and consistent with what might be ordered at the hearing;

iii The claim must not be frivolous or vexatious, and must usually be based on a "prima facie" case. In other words, does the present state of the evidence show that the applicant's case warrants the imposition of any terms?

iv A term must not penalize the Respondent Member in a manner that will prevent redress if the motion fails on its merits. In other words, will there be irreparable damage done to the Member by the interim order should he or she ultimately succeed?

v A term must be not only consistent with the purposes and objects of the Corporation's rules and regulations, but also the public interest that those rules and regulations were established to protect. The discretion to grant a term will not be exercised absent a critical public interest purpose,

vi A term will not be granted if the granting of the term would grant substantially the entire remedy sought, or otherwise tilt the balance in favour of one party.

[10] Bubnick v. Hansen, 1996 CanLII 1482 (BC SC),

vii The circumstances leading to the request for the term must be such that it is beyond the ability of the Tribunal to hold an expeditious hearing into the merits of the application.[11]

H. Procedural History of this Proceeding

29. In reviewing these factors, one cannot help but notice the methodical approach the Corporation has taken with respect to this matter. Proceedings appear to have been commenced against the Member as far back as 2007 with "cease trade" orders, and in earnest in 2008. As of April 2011, the Ontario Securities Commission ("OSC") issued an order that the Member was prohibited from trading in, or acquiring securities, permanently (the "Prohibition Order"). Thus, rather than being proactive and linking consulting members' names with disciplinary hearings in their chosen fields of endeavour, the Corporation appears to have been content to allow the disciplinary processes to run their course, and then prosecute members. Certainly the plethora of disciplinary cases from Alberta and Ontario that reference the Member over the 2008 to 2011 period that appear in the Applicant's motion record are significant. We therefore have to ask, what will cause irreparable harm to the Corporation's position, or the public interest, in the next 11 days that requires a suspension now, when the Corporation did not prosecute with dispatch, and did not bring this motion immediately? Rather, it was the Corporation itself that gave every appearance in its Notice of Referral of November 24, 2014 that this proceeding could proceed in the ordinary course and the next step would be a proceeding in the ordinary course with a Proceeding Management Conference on March 24, 2014. Why is there not at least a cover letter to the Notice of Referral saying a motion for interim suspension was going to be served shortly? What has changed to create the sense of urgency? For that Counsel for the Corporation invited a review of

[11] Weyerhaeuser Company Limited v. IWA Local 1-2171, 2003 CanLII 62653 (BC LRB), <

the proceedings as a whole.

30. On April 18, 2013, the Corporation received an anonymous complaint against the Member, referencing OSC proceedings that fined the Member some $550,000, together with costs of $115,000 in relation to a variety of allegations. Significantly, this Complaint listed several web-links to proceedings that go as far back as 2008.[12]

31. On May 10, 2013, the Corporation's Director of Compliance proceeded with a "Request to Initiate Complaint" against the Member pursuant to By-Law 31.1.(a) because the Complaint was anonymous ("the First Complaint"). The First Complaint appended the OSC's Reasons for Decision dated January 13, 2011, and its Decision on Sanctions and Costs dated April 29, 2011.

32. On August 22, 2013, the Corporation received another anonymous complaint about the Member that references a civil proceeding in the Superior Court of Ontario, *Alsagi v. Synergy Group et al*, as well as the OSC Proceedings noted above.

33. By letter dated September 4, 2013, the Member, through his counsel, responded to the First Complaint ("the Response").

34. On November 22, 2013, the Corporation faxes the Member's counsel a letter giving notice that the Corporation is aware of a criminal investigation into the Member's activities, and warns the Member of a possible motion for an interim suspension order.

35. On December 4, 2013, the Corporation faxes the Member's counsel a second letter advising that in light of his failure to respond, the Corporation will open a

[12] Corporation's Motion Record ("CMR"), p71

"regulatory" file, conduct an investigation, and likely obtain an interim suspension of the Member's membership.

36. On or about December 10, 2013, the Corporation proceeds with a Request to Initiate Complaint ("the Second Complaint"). The Second Complaint contains the RCMP's Application for Documents in relation to a criminal investigation of the Member, and several others. That Application contains a detailed Information prepared by [redacted] of the RCMP, a Chartered Accountant. Counsel for the Member advises that he filed a response to the Second Complaint, and he may have done so. The Motion Record suggests that this Response was never received by the Corporation for whatever reason.

37. On December 18, 2013, the Corporation's Complaints Committee met to consider the First Complaint and Response, and by Decision dated January 22, 2014, it referred the First Complaint to the Disciplinary Committee.

38. On January 10, 2014, the Corporation sent the Member's counsel a "Notification of Complaint" enclosing the Second Complaint, and referencing the letter dated November 22, 2013 previously sent to counsel (and referenced above). This Notification of Complaint set a February 7, 2014 deadline for the Member's Response to the Second Complaint.

39. On February 20, 2014, the Corporation sent the Member a letter again requesting a response to the Second Complaint. The new deadline expired on February 28, 2014.

40. On February 26, 2014, the Corporation served a "Notice of Referral" dated February 24, 2014 on the Member. This Notice advised the Member that the First Complaint has been referred to the Disciplinary Committee, and that a "Proceeding Management Conference" was scheduled to be heard by a Panellist of the Disciplinary Committee on March 24, 2014. A Proceeding Management

Conference is governed by Article 7 of the Rules (which were also sent to the Member's counsel on February 26, 2014). Its primary purpose is to sort out any preliminary procedural issues prior to the Disciplinary Hearing.

41. On March 5, 2014, the Member was served with a Motion Record returnable on March 13, 2014 seeking his interim suspension and the cancellation of the Proceeding Management Conference scheduled for later this month. We now turn to Counsel's oral submissions.

I. Counsel's Oral Submissions on Suspension

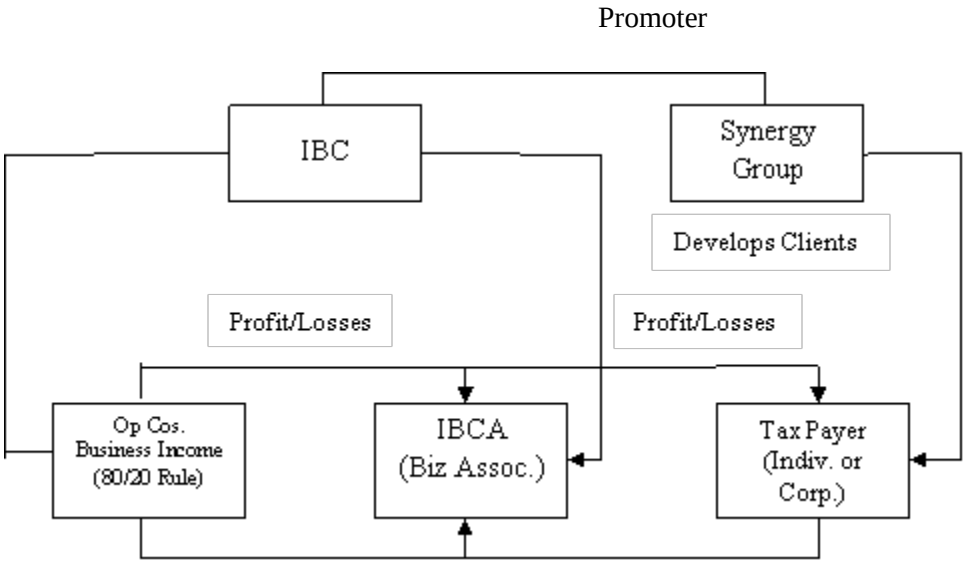
42. Counsel for the Corporation points to the Member's "Yatedo" internet resume that suggests that the Member continues to act as the Vice-President of "Carson Global Wealth Associates" ("CGWA"). He is apparently "closing large accounts" for that company. [13]

43. We then turn to RCMP [redacted]' information to obtain ex parte production orders under s. 487.012 of the *Criminal Code* from various financial institutions. That information refers to a tax scheme that began with Synergy Group (2000) Inc. and which continues with CGWA, with the Member a Vice-President of Sales for both companies. The allegation is that the Member continues with these tax schemes, even though prohibited from doing so by the orders of various provincial securities commissions since 2011. The evidence is that "*although [the Member] was found to have been violation of the securities act in his role in selling securities, he had continued to promote financial products (tax scheme) to the public. ... David Prentice has been involved in the commission of... offences under investigation since 2005[,] and continues to be have [an] ongoing involvement in the commission of these offences.*" [14]

[13] Ex B of the CMR, page 65
[14] CMR, p 208-209, 277-278

44. The underlying allegation is that the Member was one of two main promoters (and Vice-President of Sales) of Synergy, a company that sold an elaborate, and illegal, tax evasion scheme that the Member marketed as a foolproof investment---investors would lend money to a joint venture that contracted with a pool of legitimate businesses--- if the pool of businesses made money, they would make money—if the pool lost money, the businesses' losses would flow through to the investors' tax returns on a ratio of $5000 for every $1000 invested based on a combination of joint venture structures. The Member was allegedly a co-Promoter of this complex scheme through a company named "Synergy", the company receiving the pooled funds. Given various regulatory difficulties the tax scheme had using "Synergy", a slightly amended version of the tax scheme was now promoted by the Member through CGWA. CGWA seems to be a business name for "Integrated Business Concepts Association ("IBCA"). The Member allegedly earned 6% commission for raising investors' money, which was deposited in the Royal Bank of Canada pending execution of the scheme. As it turned out, 63% to 93% of the losses in the pool of businesses were generated by non-arm's length businesses that owned by the organizers of the scheme. Most of the money was invested in three movies. Most of the arm's length members of the pool never assigned 100 % of their losses to the joint venture. The Member is alleged to continue to raise capital for the scheme under the CGWA despite the prohibition orders by several provincial securities commissions.[15] It is the recent revelation of the allegedly illegal activities of CGWA, and the Members' participation in them while continuing to use of the "CMA" designation, in the face of prohibition orders. that lend to this motion be brought in the manner it was. The Synergy Tax Program is alleged to looked something like this[16]:

[15] CMR,p277
[16] Kustom Design Financial Services Inc., Re, 2010 ABASC 179, at para 114 (CanLII),



45. That explanation of the alleged "tax scheme", brief, incomplete, and possibly inaccurate as it might be, is provided by way of context to the essential fact that in April 2011, the Member was prohibited from trading or acquiring securities and any exemptions in Ontario Securities law do not pertain to him. When the Panel queried what the public interest was not served by the Corporation reporting the Member's alleged contempt to the OSC, Counsel replied that this was an option, but preceding by way of this Motion, and seeking interim-interim relief was the way selected based on the powers granted him by the Act, By-Laws and Rules.

46. We then turn to the various letters of the Corporation to the Member, dated November 22, 2013, December 4, 2013, January 10, 2014, and February 20,2014.[17]. Those letters not only gave the Member notice that the Motion would be brought, but they gave the Member notice of the RCMP investigation and that something had to be done---- further, the Corporation gave the Member a way to avoid the reputational risk of an interim suspension order by voluntarily

[17] Ex I,J,L,M of the CMR.

restrict his practice until a final resolution of the disciplinary proceedings.[18] The Member chose to ignore these notices and take steps to protect his reputation. Counsel for the Corporation takes the position that when the motion record was received on March 5, 2014, the Member should have been in a position to respond or at the very least, contact his Counsel and make arrangements to defend the Motion before he left on holidays. This would have left the Member's counsel with at least some material to defend the "interim-interim" motion if the Member required an adjournment.

47. Counsel for the Member argues forcefully that nothing is going to happen in the next fortnight, and there is no irreparable harm to the Corporation or the Public Interest in simply adjourning with the agreed upon timetable. He advises that the Member is on holidays, and the only irreparable harm is to the Member because once someone's designation has been suspended, the circumstances of the suspension, and the reinstatement, are often lost in the gossip--- a reputation is built in a lifetime and lost in a second. The allegations in support of a document warrant are simply allegations, and to suspend the Member for even a moment based on unsupported hearsay is to defeat the very premise of *audi alterem partem*--- the Panel would be acting as judge, jury and executor without a fair hearing.

J: Reasons for Suspension

48. This is a very difficult decision. Counsel for the Corporation advises that dealing with the OSC's Prohibition Order and contempt proceedings is a possible tool, but he is using the "tool kit" (my phrase) afforded him under the Act, the By-Laws, and the Rules. It is a fair point. Therefore I am satisfied that there is no other adequate remedy available to the Corporation pending the Motion. To ask the Corporation to prevail upon a provincial securities commission to vindicate the public interest and the good name of the "CMA" designation is beyond the Panel's right to expect (or to ask the Corporation to go cap in hand to another

[18] CMR, page 318

regulator is perhaps even a more unsavory substitute to applying the "tool kit" afforded the Corporation).

49. Since suspension is a possible penalty in this matter, there is a strong link between an alleged breach of the Corporation's rules and regulations, the likely consequences of the breach, and the term sought. In other words, the term imposed would be appropriate, commensurate with, and consistent with what might be ordered at the hearing.

50. The claim is not frivolous or vexatious, and must usually be based on a "prima facie" case. In other words, does the present state of the evidence show that the applicant's case warrants the imposition of any terms? The answer is "yes". The circumstantial evidence put forward by the Corporation meets this test, particularly as one references the RCMP Corporal's evidence.

51. A term must not penalize the Respondent Member in a manner that will prevent redress if the motion fails on its merits. In other words, will there be irreparable damage done to the Member by the interim order should he or she ultimately succeed? This is the criterion that troubles the Panel most gravely. The reputational risk is a grave one. In the circumstances however the Member decided to run this risk when he left for holidays without instructing counsel and providing a scintilla of evidence to challenge the Corporation's evidence, or to provide evidence to support counsel's assertions that nothing was going to happen in the next fortnight. In the face of the Corporation's circumstantial evidence of the prohibited activities continuing, the Member had to provide the Panel with a scintilla of evidence that he was away on holidays and **not** engaging in any of the activities he was asked to undertake not to do, and chose to ignore. We must be mindful of the OSC findings in its January, 2011 decision that "*...Prentice traded in securities without being registered, ... that he made illegal distributions...; that he engaged in conduct relating to securities that he knew or reasonably ought to have known was fraudulent,... that as a de facto officer of Synergy and Borealis, he authorized permitted and acquiesced in Synergy's and Borealis's breaches of the Act...and that he acted contrary to the public interest". [emphasis added]*.

52. We therefore find the “interim-interim” suspension critical to the public interest purpose, recognizing that the brief period involved should not impinge on the day to day working life of the Member given the brevity of period involved and Counsel’s representation that his client is on “spring break”. In the weighing of interests, the public interest must prevail, and the failure of the Member to provide evidence that the public interest would not be implicated by him while continuing to advertise himself as a “CMA” was a decisive factor in our decision. We end where we began, s. 36 of the Act that requires us to grant the term “.*if there are reasonable grounds to do otherwise may result in harm to any member of the public.”*

53. The "reasonable grounds to believe" standard requires something more than mere suspicion, but less than the balance of probabilities standard applicable in civil matters.. Reasonable grounds will exist where there is an objective basis for the belief which is based on credible information.[19] The circumstantial evidence proffered by the Corporation meets this test: The “may result in harm” test is a lower test that the Law Society’s test of “significant harm” and the evidence that some member of the public may invest based on the Member’s credibility as a CMA during the fortnight in question goes well beyond speculative. Unlike the recent case of *Law Society of Upper Canada v. Walton,*[20] there was evidence of the Member’s continuing involvement in illegal activities, however frail that evidence it may turn out to be once a proper review on the merits takes place at the hearing of the Motion itself.

DATED AT OTTAWA THIS 12th DAY OF MARCH, 2014

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David Debenham (Vice-Chair).

[19] Law Society of Upper Canada v. Graham Edward Wilson, 2011 ONLSHP 217,at para 33 (CanLII),

[20] 2014 ONLSHP 13 (CanLII),