

**CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO  
DISCIPLINE COMMITTEE**

James Karas, (Public Member)  
(Chair of Panel)

Betty Wong, CMA

Salim Z. Somani, CA, CPA (Public Member),

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Friday, 26 October 2012

IN THE MATTER of the *Certified Management Accountants Act, 2010*, Statutes of Ontario 2010, C.6, Schedule B, as amended (the "Act");

AND IN THE MATTER of a Hearing of a matter regarding the conduct of **Domenic Giustini** as directed by the Complaints Committee of Certified Management Accountants of Ontario (the "Corporation") to be held according to the Act and Bylaws of the Corporation and the Rules of Procedure of the Discipline Committee of the Corporation.

BETWEEN:

Certified Management Accountants of Ontario

(Applicant)

-and-

Domenic Giustini

(Respondent)

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**DECISION AND ORDER**

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THIS HEARING was heard at Victory Verbatim, Ernst & Young Tower, 17<sup>th</sup> floor, 222 Bay Street, Toronto, Ontario M5K 1H6, on Friday, the 26<sup>th</sup> day of October 2012, commencing at 9:35 in the forenoon, more than thirty (30) minutes after the return date and time set out in the Amended Notice of Hearing, in the presence of the lawyer for the Applicant, the Respondent not attending although duly served.

UPON READING THE AMENDED NOTICE OF HEARING filed by the Applicant;

AND UPON GRANTING an Amendment to the Amended Notice of Hearing so that the numbers of the sections of the Professional Misconduct and Code of Professional Ethics Regulation conform to the numbers thereof at the time of the events giving rise to the alleged breaches thereof;

AND UPON hearing the evidence and reviewing the exhibits filed;

AND UPON hearing the submissions of the lawyer for the Applicant;

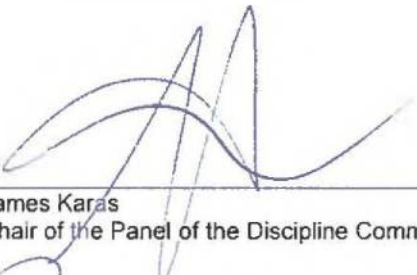
1. THE DISCIPLINE COMMITTEE FINDS AND DECLARES that the Respondent Domenic Giustini is guilty of professional misconduct as that term is defined in Section 1(2)(d) of the Professional Misconduct and Code of Professional Ethics Regulation in force at the time of the misconduct, by reason of having breached sections 2.1(a), 2.1(b), 2.1(c), and 2.4(b) of the Professional Misconduct and Code of Professional Ethics Regulation in effect at the material times, in that
  - (a) between October 26, 2008 and October 20, 2009 while acting as a Trustee in Bankruptcy, he diverted approximately \$37,010.77 from several trust accounts to his personal bank account; and
  - (b) between about January 1, 2006 to December 31, 2009, while acting as a Trustee in Bankruptcy, he directed his staff to maximize refunds on bankrupts' income tax returns by claiming, whether or not there was support for such refunds:
    - (i) accounting fees in the amount of \$525 per bankrupt, per return, on Schedule 4 to the T1 returns as though these were expenses incurred to earn income;
    - (ii) a children's fitness tax credit of \$500 for every bankrupt with a child;
    - (iii) child care expenses of \$500 per month for daycare for every bankrupt with a child; and
    - (iv) rent at \$800 per month for each single bankrupt or at \$900 per month for a family.
2. THE DISCIPLINE COMMITTEE FINDS AND DECLARES that the Respondent Domenic Giustini is guilty of professional misconduct as that term is defined in Section 2.2(b) of the Professional Misconduct and Code of Professional Ethics Regulation as both were in force at the time of the misconduct, by reason of having breached:
  - (a) the member obligations prescribed by Section 39 of the Bylaws of the Corporation, and
  - (b) sections 2.2(b) and section 2.2(f) of the Professional Misconduct and Code of Professional Ethics Regulation and in effect at the material times,in that between February 1, 2012, and March 12, 2012, he failed to respond to communications from employees of the Corporation.
3. THE DISCIPLINE COMMITTEE, under the authority of paragraph 1 of section 35(4) of the *Certified Management Accountants Act, 2010*, in unanimous agreement, revokes the

membership of the Respondent Domenic Giustini, and under the authority of paragraph 4 of section 35(4) of the *Act*, requires that the Respondent Domenic Giustini return his certificate of membership in the Corporation.

4. THE DISCIPLINE COMMITTEE ISSUES, under the authority of paragraph 6 of section 35(4) of the *Certified Management Accountants Act, 2010*, the Reprimand delivered with this Order; and DIRECTS that such Reprimand be recorded on the record of the Respondent Domenic Giustini, and published and maintained in the public area of the Corporation's website.
5. THE DISCIPLINE COMMITTEE DIRECTS, under the authority of paragraph 8 of Section 35(4) of the *Certified Management Accountants Act, 2010*, that the Respondent Domenic Giustini shall pay a fine of twenty thousand dollars (\$20,000); and SPECIFIES that such payment shall be made forthwith after the date of this Order.
6. THE DISCIPLINE COMMITTEE ORDERS, under the authority of paragraph 11 of section 35(4) of the *Certified Management Accountants Act, 2010*, and in accordance with the provisions of section 15.6 of the Discipline Committee Rules of Procedure, that:
  - (a) notice of the Decision and Order of the Discipline Committee disclosing the name of the Member and brief particulars of the professional misconduct be published and shall be distributed to the Board and to the Members in the CMA Ontario online journal, "The Leading Indicator"; and
  - (b) the decision and order of the Discipline Committee disclosing the name of the Member, together with the written reasons for the decision with brief particulars of the finding of professional misconduct, will be published and maintained in the public area of CMA Ontario's website; and
  - (c) the decision and order of the Discipline Committee disclosing the name of the Member, together with the written reasons for the decision with brief particulars of the finding of professional misconduct, will be published in a local or daily newspaper in the Ancaster, Ontario
7. THE DISCIPLINE COMMITTEE ORDERS, under the authority of paragraph 11 of section 35(4) of the *Certified Management Accountants Act, 2010*, that the Respondent Domenic Giustini shall pay the cost of publication prescribed in sub-paragraph 6(c) of this Decision and Order.
8. THE DISCIPLINE COMMITTEE ORDERS, under the authority of paragraph 11 of section 35(5) of the *Certified Management Accountants Act, 2010*, and section 15.9 of

the Rules of Procedure of the Discipline Committee of the Corporation, that this Decision and Order shall take effect on the date that this Decision and Order is pronounced.

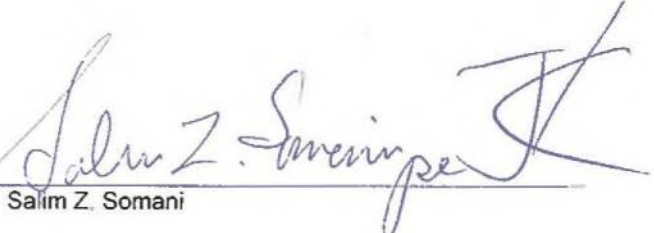
- 9 THE DISCIPLINE COMMITTEE orders that the Respondent Domenic Giustini shall pay costs fixed in the amount of five thousand dollars (\$5,000).



James Karas  
Chair of the Panel of the Discipline Committee



Betty Wong



Salim Z. Somani

CERTIFIED MANAGEMENT ACCOUNTANTS  
OF ONTARIO  
DISCIPLINE COMMITTEE

DECISION AND ORDER

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Lawyers for the Discipline Committee  
Certified Management Accountants of Ontario

**CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO  
DISCIPLINE COMMITTEE**

IN THE MATTER of the *Certified Management Accountants Act, 2010*, Statutes of Ontario 2010, C.6, Schedule B, as amended (the "Act");

AND IN THE MATTER of a Hearing of a matter regarding the conduct of **Domenic Giustini** as directed by the Complaints Committee of Certified Management Accountants of Ontario (the "Corporation") to be held according to the Act and Bylaws of the Corporation and the Rules of Procedure of the Discipline Committee of the Corporation.

BETWEEN:

Certified Management Accountants of Ontario

(Applicant)

-and-

Domenic Giustini

(Respondent)

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**REASONS FOR DECISION**

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The Complaints Committee referred a complaint against Domenic Giustini to this Committee, with the result that Domenic Giustini was charged with four (4) counts of professional misconduct:

1. that Domenic Giustini breached sections 1.2(d), 2.1(a), 2.1(b), 2.1(c), and 2.4(b) of the Professional Misconduct and Code of Professional Ethics Regulation in effect at the time, in that between October 26, 2008 and October 20, 2009 while acting as a Trustee in Bankruptcy, he diverted approximately \$37,010.77 from several trust accounts to his personal bank account;
2. that Domenic Giustini breached sections 1.2(d) of the Professional Misconduct and Code of Professional Ethics Regulation in effect at the time, in that on or about January 1, 2006 to December 31, 2009, while acting as a Trustee in Bankruptcy, he directed his staff to maximize refunds on bankrupts' income tax returns by claiming, whether or not there was support for such refunds:
  - a. Accounting fees in the amount of \$525 per bankrupt, per return, on Schedule 4 to the T1 returns as though these were expenses incurred to earn income;
  - b. A children's fitness tax credit of \$500 for every bankrupt with a child;
  - c. Child care expenses of \$500 per month for daycare for every bankrupt with a child; and
  - d. Rent at \$800 per month for each single bankrupt or at \$900 per month for a family.
3. that Domenic Giustini breached sections 3.1(c), 3.4(b) and 3.4(g) of the Professional Misconduct and Code of Professional Ethics Regulation in effect at the time, in that on or about September 12, 2011, he pled guilty to 3 counts of professional misconduct before the Discipline Panel of the Institute of Chartered Accountants of Ontario

4. that Domenic Giustini breached sections 2.2(b) and section 2.2(f) of the Professional Misconduct and Code of Professional Ethics Regulation and Bylaw 39 in effect at the time, in that between February 1, 2012, and March 12, 2012, he failed to respond to communications from employees of the Corporation.

According to the Amended Notice of Hearing, the Hearing was scheduled to heard, at Victory Verbatim, Ernst & Young Tower, 17<sup>th</sup> floor, 222 Bay Street, Toronto, Ontario M5K 1H6, on Friday, the 26<sup>th</sup> day of October 2012, commencing at 9:00 in the forenoon. Domenic Giustini had not arrived by 9:35 in the forenoon, more than thirty (30) minutes after the return date and time set out in the Amended Notice of Hearing. Upon receipt of the Affidavit of Alina Kokyrsta sworn the 22<sup>nd</sup> day of October 2012 and entered as Exhibit 1, the Committee was satisfied that Domenic Giustini had been served with:

- Notice of Hearing dated 1 August 2012, which was entered as Exhibit 2;
- Amended Notice of Hearing dated 10 August 2012, which was entered as Exhibit 3;
- Amended Amended Notice of Hearing dated 3 October 2012, which was entered as Exhibit 4.

The Committee therefore proceeded in the presence of Jennifer Cooper, the lawyer for the Applicant, and in the absence of Domenic Giustini.

### **Preliminary Motion**

Ms. Cooper asked the Committee to approve the amendment to the Amended Notice of Hearing to correct the section references to the Professional Misconduct and Code of Professional Ethics Regulation in the Amended Notice of Hearing, so as to refer to the sections as they were at the time of the alleged misconduct. In support of her application, Ms. Cooper referred to the case of *R. v. Cameron (Colin)*<sup>1</sup>, in which Justice Fairgrieve of the Ontario Court of Justice permitted the Crown to amend the Criminal Code charge, under a section of the Criminal Code that permitted amendments to conform to the evidence, concluding that the amendment did not prejudice the accused. Ms. Cooper asserted that the reasoning of that case applied in this case.

The Affidavit of Alina Kokyrsta, Exhibit 1, notes in paragraph 6 that Mr. Giustini was served with a copy of the Amended Amended Notice of Hearing (Exhibit 4) by regular mail and by email on October 4, 2012. In the absence of Mr. Giustini or anyone on his behalf, this affidavit was uncontested.

The Committee was satisfied that the Amended Amended Notice of Hearing (Exhibit 4) was served upon Mr. Giustini, and that the amending language that altered the Amended Notice of Hearing (Exhibit 3) did not prejudice Mr. Giustini. The Committee accordingly allowed the amendment as set out in the Amended Amended Notice of Hearing (Exhibit 4).

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<sup>1</sup> 2009 ONCJ 381 (CANLII)

## **CMA Ontario By-laws and Regulations**

It is convenient to set out the provisions of the CMA Ontario By-laws and Regulations that are relevant to the charges in this case.

### ***Section 39 of the Bylaws***

This section provides:

A Member, Student or Firm will, in respect of any matter of professional conduct, reply in writing to any written communication from CMA Ontario in which a reply is specifically requested within 30 days of the date of receipt of such communication.

### ***Professional Misconduct and Code of Professional Ethics Regulation effective August 22, 2008***

This Regulation in effect during the time that Domenic Giustini is alleged in counts 1 and 2 to have breached its provisions, between January 1, 2006 and December 31, 2009, (and which was entered as Exhibit 5) provides in part as follows:

#### **1. Professional Misconduct**

(2) For the purposes of the by-laws, "professional misconduct" means

(d) the Member has:

(i) committed or been convicted of any criminal offence including but not limited to fraud, theft, forgery, tax evasion, and violation of securities laws;

#### **2. Code of Professional Ethics**

(1) A Member will act at all times with:

(a) responsibility for and fidelity to public needs;

(b) fairness and loyalty to such Member's associates, clients and employers;  
and

(c) competence through devotion to high ideals of personal honour and professional integrity.

(4) A Member will:

(b) not commit an act discreditable to the profession;

### ***Professional Misconduct and Code of Professional Ethics Regulation effective August 20, 2011***

This Regulation in effect during the time that Domenic Giustini is alleged in counts 3 and 4 to have breached its provisions, between September 12, 2011 and March 12, 2012, (which was entered as Exhibit 6), provides in part as follows:

## **2. Professional Misconduct**

2.2 For the purposes of the Bylaws, the following actions constitute "professional misconduct":

(b) a breach by a Member, Student, Firm, Public Accounting Firm or Professional Corporation of the Act, or the Bylaws or the Regulations;

(f) the failure of a Member, Student, Firm, Public Accounting Firm or Professional Corporation to respond promptly and cooperate fully with respect to requests for information and other communications from CMA Ontario.

## **3. Code of Professional Ethics**

All Members, Students, Firms, Public Accounting Firms and Professional Corporations will adhere to the following Code of Professional Ethics of CMA Ontario:

3.1 A Member, Student, Firm, Public Accounting Firm or Professional Corporation will act at all times with:

(c) competence through devotion to high ideals of personal honour and professional integrity.

3.4 A Member, Student, Firm, Public Accounting Firm or Professional Corporation will:

(b) not commit an act discreditable to the profession;

(g) not act maliciously or in any other way which may adversely reflect on the public or professional reputation or business of a Member, Student, Firm, Public Accounting Firm or Professional Corporation.

## **Proceedings**

For the Corporation, Ms. Cooper tendered no *viva voce* evidence, but rather, submitted several documents for this Committee to consider.

The foundation for the charges in the first three counts was information obtained through a decision of the Discipline Committee of the Institute of Chartered Accountants of Ontario ("ICAO Discipline Decision"), a copy of which was entered as Exhibit 8. The foundation for the charge in the fourth count was the failure of Mr. Giustini to respond to communications from CMA Ontario that demanded a response, the details of which were set out in the Affidavit of Jeff Donnelly sworn the 22<sup>nd</sup> day of October 2012 and entered as Exhibit 10.

Ms. Cooper asked this Committee to accept the ICAO Discipline Decision as establishing that Mr. Giustini was guilty on counts one, two and three. Ms. Cooper drew the attention of this Committee specifically to portions of the content of the decision of the ICAO Discipline Committee (Exhibit 8):

the ICAO Discipline Decision dealt with two professional misconduct charges brought against Mr. Giustini for conduct for which he was charged in substantially the same terms as the charges in counts one and two before this Committee. after making allowances for the differences between the professional conduct requirements of ICAO and CMA Ontario;

Mr. Giustini pleaded guilty to the two charges before ICAO;

an Agreed Statement of Facts signed by Mr. Giustini and Counsel for ICAO was filed in the proceedings before the ICAO Discipline Committee;

the Agreed Statement of Facts acknowledged facts that were essentially identical to the facts recited in counts one and two of the charges before this Committee;

the ICAO Discipline Committee found that the facts set out in the Agreed Statement of Facts had been proven in the proceedings before that Committee

Ms. Cooper asked this Committee to rely on the findings set out in the ICAO Discipline Decision as establishing that Mr. Giustini was guilty of professional misconduct as described in counts one, two and three before this Committee. In support of that reliance, Ms. Cooper referred to the case of *The Law Society of Upper Canada v. Paul Alexander Robson*<sup>2</sup>, in which the Law Society accepted that the findings in a different proceeding were admissible and could be relied upon to establish the same facts in the case before the Law Society.

Accepting Mr. Cooper's representation that Exhibit 8 is the ICAO Discipline Decision respecting Mr. Giustini, this Committee accepted Exhibit 8 as evidence. This is consistent with the authority granted by section 15 of the *Statutory Powers Procedure Act*<sup>3</sup>, which permits this Committee to "admit as evidence at a hearing, whether or not given or proven under oath or affirmation or as evidence in a court ... any document or other thing relevant to the subject-matter of the proceeding and may act on such evidence ..."; and to admit as evidence a copy of a document where "satisfied as to its authenticity".

The Affidavit of Jeff Donnelly (Exhibit 10) contains a catalogue of instances in which CMA Ontario required Mr. Giustini to respond to CMA Ontario, but following such demands, Mr Giustini failed to respond. There was no evidence to contradict what is contained in this affidavit.

## Findings

The Discipline Committee found that

1. the Respondent Domenic Giustini was guilty of professional misconduct as that term is defined in Section 1(2)(d) of the Professional Misconduct and Code of Professional

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<sup>2</sup> 2011 ONLSHP 59 (CANLII)

<sup>3</sup> Revised Statute of Ontario 1990, Chapter S.22

Ethics Regulation in force at the time of the misconduct, by reason of having breached sections 2.1(a), 2.1(b), 2.1(c), and 2.4(b) of the Professional Misconduct and Code of Professional Ethics Regulation in effect at the material times, in that

- (a) between October 26, 2008 and October 20, 2009 while acting as a Trustee in Bankruptcy, he diverted approximately \$37,010.77 from several trust accounts to his personal bank account; and
  - (b) between about January 1, 2006 to December 31, 2009, while acting as a Trustee in Bankruptcy, he directed his staff to maximize refunds on bankrupts' income tax returns by claiming, whether or not there was support for such refunds:
    - (i) accounting fees in the amount of \$525 per bankrupt, per return, on Schedule 4 to the T1 returns as though these were expenses incurred to earn income;
    - (ii) a children's fitness tax credit of \$500 for every bankrupt with a child;
    - (iii) child care expenses of \$500 per month for daycare for every bankrupt with a child; and
    - (iv) rent at \$800 per month for each single bankrupt or at \$900 per month for a family.
2. the Respondent Domenic Giustini was guilty of professional misconduct as that term is defined in Section 2.2(b) of the Professional Misconduct and Code of Professional Ethics Regulation as both were in force at the time of the misconduct, by reason of having breached:
- (a) the member obligations prescribed by Section 39 of the Bylaws of the Corporation, and
  - (b) sections 2.2(b) and section 2.2(f) of the Professional Misconduct and Code of Professional Ethics Regulation and in effect at the material times,
- in that between February 1, 2012, and March 12, 2012, he failed to respond to communications from employees of the Corporation.
3. the Respondent Domenic Giustini was not guilty of a breach of sections 3.1(c), 3.4(b) and 3.4(g) of the Professional Misconduct and Code of Professional Ethics Regulation in effect at the time, simply because on or about September 12, 2011, he pleaded guilty to 3 counts of professional misconduct before the Discipline Panel of the Institute of Chartered Accountants of Ontario.

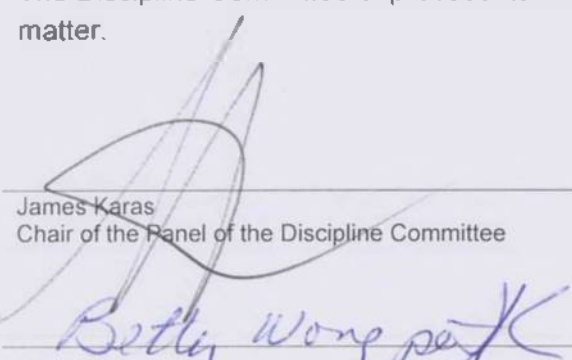
### Penalty

This Committee considered the submissions made by Ms. Cooper as to the appropriate penalty that should be imposed, but of course heard no submissions to contradict or vary what Ms. Cooper sought. After due consideration:

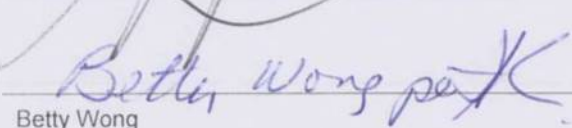
1. The Discipline Committee, under the authority of paragraph 1 of section 35(4) of the *Certified Management Accountants Act, 2010*, in unanimous agreement, revoked the membership of the Respondent Domenic Giustini, and under the authority of paragraph 4 of section 35(4) of the *Act*, requires that the Respondent Domenic Giustini return his certificate of membership in the Corporation.
2. The Discipline Committee issued, under the authority of paragraph 6 of section 35(4) of the *Certified Management Accountants Act, 2010*, the Reprimand delivered with this Order; and directed that such Reprimand be recorded on the record of the Respondent Domenic Giustini, and published and maintained in the public area of the Corporation's website.
3. The Discipline Committee directed, under the authority of paragraph 8 of Section 35(4) of the *Certified Management Accountants Act, 2010*, that the Respondent Domenic Giustini pay a fine of twenty thousand dollars (\$20,000); and specified that such payment shall be made forthwith after the date of this Order.
4. The Discipline Committee ordered, under the authority of paragraph 11 of section 35(4) of the *Certified Management Accountants Act, 2010*, and in accordance with the provisions of section 15.6 of the Discipline Committee Rules of Procedure, that:
  - (a) notice of the Decision and Order of the Discipline Committee disclosing the name of the Member and brief particulars of the professional misconduct be published and distributed to the Board and to the Members in the CMA Ontario online journal, "The Leading Indicator"; and
  - (b) the decision and order of the Discipline Committee disclosing the name of the Member, together with the written reasons for the decision with brief particulars of the finding of professional misconduct, be published and maintained in the public area of CMA Ontario's website; and
  - (c) the decision and order of the Discipline Committee disclosing the name of the Member, together with the written reasons for the decision with brief particulars of the finding of professional misconduct, be published in a local or daily newspaper in the Ancaster, Ontario
5. The Discipline Committee ordered, under the authority of paragraph 11 of section 35(4) of the *Certified Management Accountants Act, 2010*, that the Respondent Domenic Giustini pay the cost of publication prescribed in sub-paragraph 4(c) of this Decision and Order.
6. The Discipline Committee ordered, under the authority of paragraph 11 of section 35(5) of the *Certified Management Accountants Act, 2010*, and section 15.9 of the Rules of Procedure of the Discipline Committee of the Corporation, that the decision and order take effect on the date that the decision and order was pronounced, namely, the 26<sup>th</sup> day of October 2012.

7. The Discipline Committee ordered that the Respondent Domenic Giustini pay costs fixed in the amount of five thousand dollars (\$5,000).

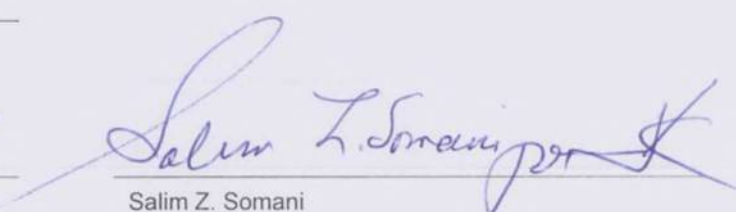
The Discipline Committee expressed its thanks to Ms. Cooper for her presentation of this matter.



James Karas  
Chair of the Panel of the Discipline Committee



Betty Wong



Salim Z. Somani

Reasons Signed: the 30 day of November 2012

Reasons Released: the 30 day of November 2012

## LIST OF EXHIBITS

- Exhibit 1 Affidavit of Service, sworn by Alina Kokyrsta on 22 October 2012.
- Exhibit 2 Notice of Hearing dated 1 August 2012.
- Exhibit 3 Amended Notice of Hearing dated 10 August 2012.
- Exhibit 4 Amended Amended Notice of Hearing dated 3 October 2012.
- Exhibit 5 Professional Misconduct and Code of Professional Ethics Regulation of The Society of Management Accountants of Ontario, Approved August 22, 2008.
- Exhibit 6 Professional Misconduct and Code of Professional Ethics Regulation of Certified Management Accountants of Ontario, Approved August 20, 2011.
- Exhibit 7 Copy of *R. v. Cameron (Colin)*, 2009 ONCJ 381 (CanLII).
- Exhibit 8 Copy of Reasons of the Discipline Committee of The Institute of Chartered Accountants of Ontario dated 18 October 2011, in respect of a Decision and Order made September 12, 2011, respecting Domenic A. Giustini.
- Exhibit 9 Copy of *Law Society of Upper Canada v. Paul Alexander Robson*, 2011 ONLSHP 0059 (CanLII).
- Exhibit 10 Affidavit of Jeff Donnelly sworn on 22 October 2012 as to responses of Domenic Giustini in answer to correspondence from Certified Management Accountants of Ontario.
- Exhibit 11 Extract from the By-laws of Certified Management Accountants of Ontario, of Section 39.

Certified Management Accountants of Ontario  
Applicant

and

Domenic Giustini  
Respondent

CMAO File No: C1112-02

CERTIFIED MANAGEMENT ACCOUNTANTS  
OF ONTARIO  
DISCIPLINE COMMITTEE

REASONS FOR DECISION

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