

**CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO  
DISCIPLINE COMMITTEE**

Anne Mackenzie, CMA, (Chair of Panel) ]  
David Debenham, CMA ]  
Rebecca Huang LL.B., (Public Member) ]

Tuesday, 27 November 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 **Jeffrey Martin** 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-

**Jeffrey Martin**

(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 Tuesday, the 27<sup>th</sup> day of November 2012, in the presence of the lawyer for the Applicant, and in the absence of the Respondent although he had been properly served with Notice of the Hearing.

UPON READING THE NOTICE OF HEARING filed by the Applicant;

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 Jeffrey Martin is guilty of professional misconduct as that term is defined in sections 1.(2)(d), 2.(1)(b), 2.(1)(c) and 2.(4)(b), of the Professional Misconduct and Code of Professional Ethics Regulation promulgated August 22, 2008


2. THE DISCIPLINE COMMITTEE, by unanimous agreement, under the authority of paragraph 1 of section 35(4) of the *Act*, REVOKES the membership of Jeffrey Martin effective as of and from the 27<sup>th</sup> day of November 2012.
3. THE DISCIPLINE COMMITTEE ISSUES, under the authority of paragraph 6 of section 35(4) of the *Act*, the Reprimand delivered with this Order; and DIRECTS that such Reprimand be recorded on the Respondent's record.
4. THE DISCIPLINE COMMITTEE DIRECTS, under the authority of paragraph 8 of Section 35(4) of the *Act*, that the Respondent shall pay a fine of twenty thousand dollars (\$20,000); and SPECIFIES that such payment shall be made within 6 months from the date of the Hearing, namely on or before the 27<sup>th</sup> day of May 2013.
5. 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:

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's online monthly e-newsletter, *Leading Indicator*, and

notice of the Decision and Order of the Discipline Committee disclosing the name of the Member and brief particulars of the professional misconduct shall published in a local or daily newspaper of the community where the Member resides and/or carries on business, and all costs associate with the publication in the newspaper shall be borne by the Member and shall be in addition to any other costs ordered by this Committee; and

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.

6. THE DISCIPLINE COMMITTEE ORDERS, under the authority of section 38(1) and 38(3) of the *Certified Management Accountants Act, 2010*, that Member shall pay costs fixed in the amount of ten thousand dollars (\$10,000.00) to partially cover the cost of the investigation and hearing.

  
Anne Mackenzie  
Chair of the Panel of the Discipline Committee

  
David Debenham

  
Rebecca Huang

## DECISION AND ORDER

**Lawyers for the Discipline Committee  
Certified Management Accountants of Ontario**

**THE DISCIPLINE COMMITTEE OF  
CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO**

*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 Jeffrey Martin, 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 Discipline Committee Rules of Procedure*

**BETWEEN:**

**CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO**  
(the "Corporation")

And

**JEFFREY MARTIN**  
(the "Member")

**REASONS FOR DECISION**

Per: Anne Mackenzie and David Debenham

1. Because the Member had not appeared, the start of this Hearing was delayed for forty-five minutes after the scheduled commencement time, and thereafter proceeded in his absence.
2. The original Notice of Hearing, Exhibit 2, notes that Complaints Committee of the Corporation has directed that the following matters of complaint regarding Jeffrey Martin's, a former member of the Corporation, conduct be referred to this Discipline Committee of the Corporation, while still a member of the Corporation:
  - a. Jeffrey Martin breached sections 2.2(d), 2.2(e), 3.1(b), 3.1(c), 3.4(b) and 3.4(g) of the Professional Misconduct and Code of Professional Ethics Regulation in that while employed by Ashton Ridge Homes West Inc., Granite Homes Inc., Ashton Ridge Homes Inc., Seaton Ridge Communities Ltd., ABG Management Inc., Keystack Inc., and Biltmore Homes Ltd. (the "Companies"), he misappropriated approximately \$690,975.73 from the Companies;

- b. Jeffrey Martin breached sections 2.2(d), 2.2(e), 3.1(b), 3.1(c), 3.4(b) and 3.4(g) of the Professional Misconduct and Code of Professional Ethics Regulation in that on or around April 19, 2011, he was found guilty of committing a civil fraud and embezzlement against the Companies in the Ontario Superior Court of Justice; and
  - c. Jeffrey Martin breached sections 2.2(b) and section 2.2(f) of the Professional Misconduct and Code of Professional Ethics Regulation and Bylaw 39 in that between February 1, 2012, and March 12, 2012, he failed to respond to communications from employees of the Corporation.
- 3. Under the current Professional Misconduct and Code of Professional Ethics Regulation promulgated on August 20, 2011 (the "Current Code"), professional misconduct includes **a breach by a Member of the Act, or the Bylaws or the Regulations (2.2(b))**; fraud, theft, forgery, tax evasion, violation of securities laws, or unlawful conduct in the Member's professional capacity, including any criminal conviction of the above (2.2(d)); pleading guilty to or being found guilty of a criminal offence but being discharged absolutely or upon conditions prescribed in a probation order (2.2(e); **and the failure of a Member, to respond promptly and cooperate fully with respect to requests for information and other communications from CMA Ontario (Current Code 2.2(f), By-Law 39)**. The Current Code requires a Member to act at all times with fairness and loyalty to such Member's clients and employers (3.1(b); and competence through devotion to high ideals of personal honour and professional integrity (3.1(c)). The Current Code also requires a Member to not commit an act discreditable to the profession (3.4(b)), and not act in any way that may adversely reflect on the public or professional reputation or business of a Member, Student, or a Professional Corporation, amongst others. The provisions in bold survive as part of the charges in the Amended Notice of Hearing.
- 4. Exhibit 1 to our hearing of November 27, 2012 contains an affidavit of service of Alina Koryrsta sworn November 19, 2012 that satisfies us that the Member has been given notice of this disciplinary hearing in accordance with Rule 9.2 of the Discipline Committee Rules of Procedure and that we may properly proceed in his absence. Tab F of that affidavit of service gives notice that the Notice of Hearing's charging sections will reference the Professional Misconduct and Code of Professional Ethics Regulation in effect at the time that the alleged events took place (the "2008 Code", being Exhibit 3 at this hearing) rather than the Current Code entered as Exhibit 5 at this hearing.

5. This panel granted the motion to amend the Notice of Hearing in accordance with *R v. Cameron*, [2009] ONCJ 381, at para. 34 (O.C.J.), and Rule 1.5 of the Discipline Committee Rules of Procedure.
6. In the absence of the Member, a plea of “not guilty” was entered on his behalf, and the matter proceeded in accordance with the amended charges found in Exhibit 3. Those include charges under the provisions of the 2008 Code as follows.

- a. Paragraph 1(2)(d) defines as professional misconduct as having committed or been convicted of any criminal offence including fraud.

Counsel for the Corporation submits that, given the reference to “having committed” in this provision, a finding of civil fraud suffices (on a balance of probabilities in a civil proceeding, and in this proceeding) to sustain a finding of professional misconduct.

- b. Paragraph 2(1)(b) requires a Member to act at all times with fairness and loyalty to the Member's employer.
- c. Paragraph 2(1)(c) requires a Member to act in accordance with the highest ideals of personal honour and professional integrity.
- d. Paragraph 2(4)(b) requires a Member not to commit an act discreditable to the profession;
- e. Paragraph 2(4)(g) precludes a Member from acting maliciously, or in any way which may adversely reflect on the public or professional reputation or business of another Member.

Counsel for the Corporation submits that we can read this provision as a series of alternative provisions, which preclude a Member from acting maliciously, or which in any way that may adversely reflect on the public, etc..

7. The Counsel for the Corporation relies on *LSUC v. Robson*, [2011] ONLSHP 0059, at para. 32 for the proposition that the Judgment in prior civil proceedings is *prima facie* evidence of the professional misconduct that is being alleged herein. We accept this submission.
8. This Committee is satisfied that the Member committed civil fraud and embezzlement against his employers for several hundreds of thousands of dollars as set out in the Judgment of Justice O'Connor dated April 19, 2011 in *Ashton*

*Ridge Homes West Inc. v. Martin et al*, Ontario Superior Court File No. 188/10, commenced in Guelph, Ontario.

The majority is satisfied that this finding is sufficient to make a finding of professional misconduct under paragraph 1(2)(d)(i) under the 2008 Code.<sup>1</sup> The dissent differs from the majority.

The entire panel, however, is satisfied that this finding is sufficient to find breaches of paragraphs 2(1)(b), 2(1)(c), 2(4)(b) of the 2008 Code. Rule 2(4)(g) is without application as it refers to defamatory comments against another Member of the profession.


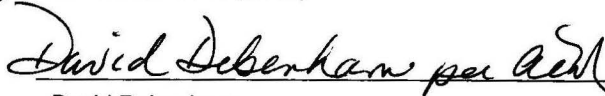
9. The charges under By-Law 39 and the Current Code are dismissed. Tab 1 of Ex 1 reflects the Member's response to the Corporation's letter of February 1, 2012 appearing as Exhibit 12a, and as such, it substantially complies with By-law 39 related to the obligation to reply to the Corporation's requests. The Member's resignation was his answer to the charges. While this did not preclude this Committee from proceeding, it did comply with his obligations in this regard.
10. In the result, the seriousness of the fraud and embezzlement involved warranted the unanimous order adopted by all members of this Committee.
  - a. The Member shall be reprimanded and the reprimand shall be recorded on the Member's record.
  - b. The Member's membership shall be revoked effective on the date of the Hearing, namely, 27 November 2012.

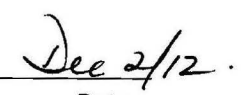

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<sup>1</sup> See *Steciuk v. Canada (Citizenship and Immigration)*, [2007] CanLii 68581, at para 5 (IRB) where a finding of embezzlement in Poland was found to be the equivalent of criminal fraud under s.380 of the Criminal Code for the purpose of denying an application for a permanent residency visa based on misconduct which would be considered a criminal offence if it had occurred in Canada. The close identity of criminal and civil fraud was noted in *Bank of Montreal v. Woldegabriel*, [2007] CanLii 11138, at para 68-69 (Ont. S.C.). The fact that civil fraud requires the additional element of damages while the criminal fraud only requires dishonest deprivation or putting property at risk, does not avail the member in our context.



- c. The Member shall be fined the sum of twenty thousand dollars (\$20,000.00) to be remitted to CMA Ontario within 6 months from the date of the Hearing, namely, 27 November 2012.
  - d. Notice of the Decision and Order of the Discipline Committee, disclosing the name of the Member and brief particulars of the finding of professional misconduct shall be published and distributed to the Board of Directors and to other CMA Ontario Members and students via CMA Ontario's online monthly e-newsletter, *Leading Indicator*, and shall be published in a local or daily newspaper of the community where the Member resides and/or carries on business. All costs associated with the publication in the newspaper shall be borne by the Member and shall be in addition to any other costs ordered by this Committee.
  - e. The Decision and Order of this Committee, disclosing the name of the Member, together with the written reasons for the decision and finding of professional misconduct shall be published and maintained in the public area of CMA Ontario's website.
  - f. This Decision and Order shall be effective on the date of the Hearing, namely, 27 November 2012.
  - g. The Member is ordered to pay costs in the amount of ten thousand dollars (\$10,000.00) to partially cover the cost of the investigation and hearing.
11. In future, the Corporation will be expected to capture its time and disbursements so that its requests for costs can be substantiated by reasonable estimates when it requests costs under s. 28 of the *Act*.

  
Anne Mackenzie (Chair)  
  
David Debenham

  
Date  
  
Date

Per: Rebecca Huang LL.B. (dissenting in part but concurring in the result):

I would respectfully dissent from the decision of my colleagues with respect to their finding of professional misconduct under paragraph 1(2)(d) of the Professional Misconduct and Code of Professional Ethics Regulation promulgated August 22, 2008 in effect at the time that the alleged events took place (the "2008 Code", Exhibit 3 at this hearing).

Paragraph 1(2)(d) of the 2008 Code reads:

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;  
or
  - (ii) pleaded guilty to or been found guilty of a criminal offence but has been discharged absolutely or upon conditions prescribed in a probation order.

It is clear that paragraph 1(2)(d) applies only when a member has committed, been convicted or guilty of a criminal offence. The criminal nature of the offence is a prerequisite to the application of this provision.

There is no evidence on which I can conclude that the Member had committed or been convicted or guilty of a criminal offence. CMA relied on a summary judgment issued by the Ontario Superior Court of Justice against the Member and four other co-defendants which found that the Member "did commit civil fraud and embezzlement as against the Plaintiffs which were his employers." The word "fraud" is used variously in different areas of law and requires different legal elements. For example, in criminal law, under section 392 of the *Criminal Code*, a finding of fraud requires proof of a criminal intent to harm the others by dishonest means. In civil law, fraud is often pleaded as tort involving employee misconduct while acting in a fiduciary capacity, without any reference to the criminal law: see for example *Jefflin Investments Ltd. v. Charendoff*, 2009 CarswellOnt 7790 (Ont., S.C.J.) and *Hampton Securities Inc. v. Buttar*, 2011 CarswellOnt 839 (Ont. S.C.J.). Civil fraud is not synonymous with criminal fraud. Therefore, I disagree that the finding of civil fraud and embezzlement could be relied on to convict a member under paragraph 1(2)(d) of the 2008 Code.

Furthermore, it is simply unfair for the Panel to find against Mr. Martin under paragraph 1(2)(d) now. During the hearing, CMA introduced evidence that Mr. Martin had been criminally charged with seven counts of fraud. However, the criminal proceeding is still pending. A finding now against Mr. Martin under paragraph 1(2)(d) of the 2008 Code is not only premature and unwarranted but also unfair to the Member if, for whatever reasons, there is no criminal conviction in the criminal proceeding. A Discipline Committee hearing is a serious proceeding for professionals. A CMA member should not be disciplined for "criminal offence" before such finding has been reached by the criminal court.

However, as Hoilett J. stated in *Research Capital Corp. v. Brounsuzian*, 2000 CarswellOnt 3676 (S.C.J.), even though civil fraud may not carry the same taint as criminal fraud, a finding of civil fraud is still a serious conclusion to reach. Accordingly, I agree with the orders issued by the Panel.

  
Rebecca Huang LL.B. Date Dec 2/12

## REASONS FOR DECISION

**Lawyers for the Discipline Committee  
Certified Management Accountants of Ontario**