

**CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO
DISCIPLINE COMMITTEE**

James Karas, LL.B. Chair]
Joel Emuan, CMA]
Salim Somani, CPA, CA, CA (BC),]
CPA (Illinois, USA)]

Friday, 17 January 2014

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 **Laird William Sweeney**, as referred 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

LAIRD WILLIAM SWEENEY

Respondent

DECISION AND ORDER

THIS HEARING was heard at Victory Verbatim, Ernst & Young Tower, Suite 1710, 222 Bay Street, Toronto, Ontario on Friday the 17th day of January 2014, in the presence of the lawyer for the Applicant. The Respondent was not in attendance or represented.

UPON READING THE NOTICE OF HEARING filed by the Applicant;

AND UPON hearing the evidence and reviewing the exhibits filed,


AND UPON reading the Agreed Statement of Facts (and filed as an exhibit),

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

1. THE DISCIPLINE COMMITTEE FINDS AND DECLARES that the Respondent, Laird William Sweeney is guilty of professional misconduct and in breach of Section 39 of CMA Ontario Bylaws (Dated August 20, 2011) and Section 2.2(f) of the Professional Misconduct and Code of Professional Ethics Regulations (Dated August 20, 2011);
2. THE DISCIPLINE COMMITTEE FURTHER FINDS AND DECLARES that the Respondent Laird William Sweeney is guilty of professional misconduct and in breach of Section 1 of the Rules for Independent Consulting CMAs Offering Services to the Public (Dated August 2001) and Section 7(1) of the Independent Consulting CMAs Offering Services to the Public Regulation.
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 ORDERS, under the authority of paragraph 8 of Section 35(4) of the *Act*, that the Respondent shall pay a fine of five hundred (\$500); and SPECIFIES that such payment shall be made within one hundred and eighty (180) days of the date of this Order.
5. THE DISCIPLINE COMMITTEE ORDERS that in the event that the Member fails to comply with the terms of this Order within 12 months from the date this decision and Order becomes final under the Discipline Committee Rules of Procedure, his membership shall be immediately revoked and notice of the revocation, shall be published as outlined in 20.6.1, 20.6.2 and 20.6.3 of the Discipline Committee Rules of Procedure;
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:
 - 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 journal; 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.

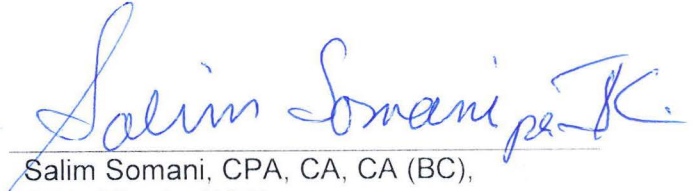
7. THE DISCIPLINE COMMITTEE makes no order as to costs.



James Karas, LL.B.
Chair of the Panel of the Discipline Committee



Joel Emdin, CMA



Salim Somani, CPA, CA, CA (BC),
CPA (Illinois, USA)

**CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO
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James Karas, LL.B. Chair]
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BETWEEN:

CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO

Applicant

and

LAIRD WILLIAM SWEENEY

Respondent

REASONS

The Discipline Committee held a hearing at Victory Verbatim, Ernst & Young Tower, Suite 1710, 222 Bay St., Toronto, Ontario on Friday, the 17th day of January 2014, to consider the matter referred by the Complaints Committee regarding the conduct of Laird William Sweeney, a Member of Certified Management Accountants of Ontario ("CMA Ontario").

The Discipline Committee conducting the hearing consisted of three panel members: James Karas, LL.B. (Chair), Joel Emuan, CMA, and Salim Somani, CPA, CA, CA(BC), CPA(Illinois, USA). The Independent Legal Counsel for the Discipline Committee was Mr. Bryan J. Buttigieg, of Miller Thomson LLP, Barristers & Solicitors.

Counsel for the Applicant was Ms. Jennifer Cooper. The Respondent was not present nor was he represented. The hearing was open to the public.

At the end of the hearing, the Discipline Committee issued findings of the Applicant's misconduct and an order as to the penalty ("Order"). Reasons for the findings and Order are as follows.

Hearing in the absence of the Respondent

Ms Cooper submitted a Notice of Hearing that provided notice of the date, time and place of today's hearing. The notice also advised the Member that if he did not attend the hearing in person or by an authorized representative, the Discipline Committee could proceed in his absence and without any further notice.

An affidavit of service of the Notice of Hearing was also filed. The Notice of Hearing was sent by email on November 11, 2013, to the same email address that Ms. Cooper advised she was using to communicate with Mr. Sweeney with respect to the hearing and the Agreed Statement of Facts referred to below. The affidavit of service also indicates that Mr. Sweeney was served on July 30, 2013 with the Notice of Hearing and the Discipline Committee Rules of Procedure.

Two Proceeding Management Conferences and two Pre Hearing Conferences were held in advance of today's hearing. Mr. Sweeney attended all conferences.

In the first paragraph of the Agreed Statement of Facts, Mr. Sweeney admits service of the Notice of Referral and Notice of Hearing.

Ms. Cooper advised the Panel that Mr. Sweeney had informed her the day before the hearing that neither he nor an authorised representative would be attending today's hearing.

Based on all of the above, this Panel is satisfied that Mr. Sweeney received proper notice of today's hearing and accordingly, proceeded with the hearing in his absence.

Referral from the Complaints Committee

The Discipline Committee received a Notice of Referral issued on July 29, 2013 by the Complaints Committee. Ms. Cooper filed evidence of correspondence with Mr. Sweeney in which he consented to amendments being made to the Notice of Referral in order to more

accurately reflect the conduct that was the subject of the complaint. Accordingly, the Notice of Referral was amended on consent to read as follows:

1. Between approximately February 23, 2012 and May 16, 2013, the Respondent failed to respond promptly and cooperate fully with respect to requests from CMA Ontario to complete and submit an Application for Practice Registration, contrary to Section 39 of CMA Ontario Bylaws (Dated August 20, 2011) and Section 2.2(f) of the Professional Misconduct and Code of Professional Ethics Regulations (Dated August 20, 2011); and
2. Between approximately August 2001 and December 2009, the Respondent failed to register his practice with CMA Ontario contrary to Section 1 of the Rules for Independent Consulting CMAs Offering Services to the Public (Dated August 2001) and Section 7.(1) of the Independent Consulting CMAs Offering Services to the Public Regulation.

CMA Ontario Regulations

CMA Ontario Bylaws effective date August 20, 2011

The relevant section of this Bylaw provides the following:

39. Obligation to Reply to CMA Ontario Requests

A Member, Student, Firm, Public Accounting Firm or professional corporation 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 Regulations - Approved August 20, 2011

The relevant section of this regulation provides the following:

2. Professional Misconduct

- a. For the purposes of the Bylaws, the following actions constitute "professional misconduct":

(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.

Rules for Independent Consulting CMAs Offering Services to the Public – Dated August 2001

The relevant section of these Rules provides the following:

1. Practice Registration

All Consulting CMAs, part-time and full-time, are required to register their practice with the Society within sixty days of commencing a practice. Practices will be considered as operative on the earliest date that services are provided. Failure to register may result in sanctions.

Independent Consulting CMAs Offering Services to the Public – Dated August 22, 2008

The relevant section of this regulation provides the following:

7. Practice Registration, De-Registration and Reinstatement

(1) Registration

All Consulting CMAs, part-time and full-time, are required to register their practice with CMA Ontario within sixty days of commencing a practice. Practices will be considered as operative on the earliest date that services are provided. Failure to register may result in sanctions.

Evidence and Findings on the Respondent's Conduct

Ms. Cooper advised the Panel that the parties had agreed to submit an Agreed Statement of Facts. Based on the Agreed Statement of Facts signed by Ms. Cooper and Mr. Sweeney and the submissions of Ms. Cooper, the Panel makes the following findings:

1. The Member became a member of CMA Ontario in 1993 and has not been subject to any prior discipline proceedings before CMA Ontario's Discipline Committee.
2. Prior to obtaining his CMA designation, the Member offered financial consulting services to the public through his business, LWS Enterprises. The services included business advisory services, strategic business planning, personal and corporate income tax services.
3. The Member continued to provide these services to the public on a fee for service basis through LWS Enterprises after he obtained his CMA designation.
4. The Member was a sole practitioner/consulting CMA from 1993 until CMA Ontario's Board of Governors granted him retirement status in December 2009.

Failure to Register Practice

5. Although the Member was a sole practitioner/consulting CMA from 1993 until he was granted retired status by CMA Ontario in 2009, he did not register his practice with CMA Ontario.
6. Although the Member was not granted retired status by CMA Ontario until 2009, he began winding down his consulting practice in 2002 and did not provide consulting services to the public for a fee between 2002 and 2009. The Member considered himself retired in 2002 and began receiving his Canada Pension Plan (CPP) benefits in that year (2002).
7. Although the Member was not aware of the registration requirement nor that he was in breach of CMA Ontario's rules and regulations at the time, the Member now acknowledges that his failure to register his practice was a breach of the requirements outlined in the various iterations of CMA Ontario's Rules and by-laws.

Failure to Respond to CMA Ontario Staff.

8. In or around February 10, 2012, information was received by CMA Ontario which suggested that the Member may be providing services as a consulting CMA despite his retired status.
9. On February 10, 2012, Matthew Payne, Analyst-Regulatory and Corporate Affairs, CMA Ontario, contacted the Member by telephone. In his role as Analyst, Mr. Payne's duties include the oversight of consulting CMA's registration and compliance with CMA Ontario's rules, regulations and by-laws.
10. As a result of his conversation with the Member, Mr. Payne formed the opinion that the Member may be providing services to the public for a fee and requested that the Member submit a Practice Registration Application.
11. On February 10, 2012, Mr. Payne also sent an email to the Member requesting that the Member fill out a Practice Registration Application and return it to him. A copy of the

Independent Consulting CMAs Offering Services to the Public Regulation and a Practice Registration Application was attached to the email.

12. The Member did not respond to the email from Mr. Payne or submit the Practice Application as requested.

Mr. Matthew Payne was called as a witness by Ms. Cooper. Mr. Payne confirmed the facts set out in paragraphs 8 through 12 above. Mr. Payne explained that in order to be granted retired status, a member must be at least 55 years of age and the total number of years the person has been a member plus their age must be more than 70. Once designated as Retired, the Member can still practice, provided they register with CMA and income from their practice is below \$29,000.00 per annum. He explained that the information he had tried to obtain from Mr. Sweeney included confirmation that he was still practicing and details of the volume of his practice. Mr. Payne made three follow up attempts to obtain a response from Mr. Sweeney over the course of two weeks but did not receive any response by email, telephone or otherwise. In his experience, members usually responded to his inquiries within a week or two. Not having received any response from Mr. Sweeney, Mr. Payne filed the complaint that gave rise to this Hearing.

Registration

Mr. Sweeney, as an Independent Consulting CMA, was obliged to follow the Rules for Independent CMAs Offering Services to the Public. For the purpose of this hearing, between August 2001 and August 2008, the applicable Rules for registration of Mr. Sweeney's practice were those published by the Society of Management Accountants of Ontario in August 2001. Pursuant to these rules, all Consulting CMA's must register their practice within 60 days of commencing a practice. The Independent Consulting CMAs Offering Services to the Public Regulation, which came into effect in August of 2008 also required all Consulting CMAs to register their practice with the Society of Management Accountants of Ontario within sixty days of commencing a practice (see S.7(1)). As set out in the agreed statement of facts, and as found by this Panel, although Mr. Sweeney was a Consulting CMA from 1993 until he was granted retired status by CMA Ontario in 2009, he did not register his practice with CMA Ontario.

Accordingly, this Panel finds Mr. Sweeney in breach of Section 1 of the Rules for Independent Consulting CMAs Offering Services to the Public (dated August 2001) and Section 7(1) of the Independent Consulting CMAs Offering Services to the Public Regulation.

Response to CMA Ontario Communications

All members of CMA Ontario agree to comply with the CMA Ontario bylaws. Section 39 of the CMA Ontario ByLaw, effective August 20, 2011, obliges all members "in respect of any matter of professional conduct" to "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."

The written inquiries of Mr. Payne to Mr. Sweeney were in respect of matters of professional conduct. Mr. Sweeney did not respond to these inquiries within thirty days, or ever, in writing or otherwise. As a result, this Panel finds Mr. Sweeney in breach of S.39 of the CMA Ontario ByLaw. This also constitutes Professional Misconduct pursuant to Section 2.2(f) of the Professional Misconduct and Code of Professional Ethics Regulation (August 2011) as it is a failure of the member "to respond promptly and cooperate fully with respect to request for information and other communications from CMA Ontario."

Penalties imposed


In light of our findings, we impose the following penalties:

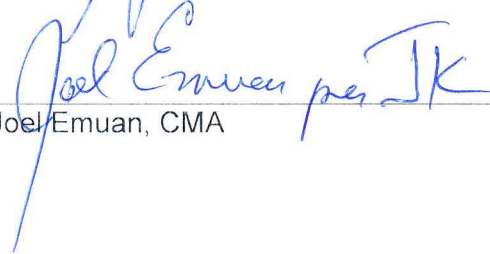
1. under the authority of paragraph 6 of section 35(4) of the *Act*, the Committee orders that a Reprimand will be imposed and such reprimand shall be recorded on the Respondent's record;
2. under the authority of paragraph 8 of Section 35(4) of the *Act*, the Committee orders that the Respondent shall pay a fine of five hundred dollars (\$500), such payment to be made within one hundred and eighty (180) days of the date of this order;
3. in the event that the Respondent fails to comply with the terms of this Order within twelve months from the date this decision and Order becomes final under the Discipline Committee Rules of Procedure, his membership shall be immediately revoked and notice of the revocation, shall be published as outlined in 20.6.1, 20.6.2 and 20.6.3 of the Discipline Committee Rules of Procedure;

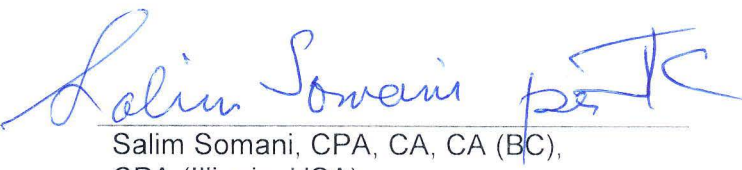
4. under the authority of paragraph 11 of section 35(4) of the *Act*, and in accordance with the provisions of section 15.6 of the Discipline Committee Rules of Procedure, the Committee orders that notice of the Decision and Order of the Discipline Committee disclosing the name of the Respondent and brief particulars of the professional misconduct be published and shall be distributed to the Board and to the members in the CMA Ontario journal;
5. the Decision and Order of the Discipline Committee disclosing the name of the Respondent, 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
6. the Committee makes no order as to costs.

The Discipline Committee wishes to thank counsel for the Applicant for her assistance during the hearing. While the Respondent was not present, the Committee recognises the Respondent's cooperation with counsel for the Applicant in advance of the hearing and is grateful to both Ms. Cooper and Mr. Sweeney for their efforts to resolve substantial issues prior to the hearing by filing a joint agreed statement of facts.

All of which is submitted this 17th day of January 2014


James Karas, LL.B.
Chair of the Panel of the Discipline Committee


Joel Emuan, CMA


Salim Somani, CPA, CA, CA (BC),
CPA (Illinois, USA)