

**CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO
DISCIPLINE COMMITTEE**

Richard Fung, CMA (Chair of Panel)]
James Karas, LLB (Public Member)]
Salim Somani, CA, CPA (Public Member)]

Monday, 12 August 2013

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 Mitchell Arrojado 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-

Mitchell Arrojado

(Respondent)

DECISION AND ORDER

THIS HEARING was heard at Victory Verbatim, Ernst & Young Tower, 9th floor, 222 Bay Street, Toronto, Ontario M5K 1H6, on Monday, the 12th day of August 2013, in the presence of the lawyer for the Applicant, and the Respondent.

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 and the submissions of the Respondent;

AND UPON retiring to consider all of the above:

1. THE DISCIPLINE COMMITTEE FINDS AND DECLARES that the Respondent is
 - (a) guilty of professional misconduct as that term is defined in
 - (i) Section 1(1) of the Professional Misconduct and Code of Professional Ethics Regulations, Approved: August 22, 2008, and
 - (ii) Section 2.2(b) of the Professional Misconduct and Code of Professional Ethics Regulation , Updated: June 21, 2010; and
 - (b) in breach of
 - (i) sections 1.2(a), 2(1)(c), and 2.1(b) of the Professional Misconduct and Code of Professional Ethics Regulations, Approved: August 22, 2008; and
 - (ii) section 2.2(a), 3.1(b), and 3.1(c) of the Professional Misconduct and Code of Professional Ethics Regulations, Updated: June 21, 2010; and
 - (iii) sections 7(1) and 11(1) of the Independent Consulting CMAs Offering Services to the Public Regulation, 2008.
2. 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.
3. 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 three thousand dollars (\$3,000); and SPECIFIES that such payment shall be made within eighteen (18) months of the date this Decision and Order becomes final under the Discipline Committee Rules of Procedure.
4. THE DISCIPLINE COMMITTEE DIRECTS, under the authority of paragraph 7 of Section 35(4) of the *Act*, that the Member be required to complete, by paying for and attending in its entirety, within 6 months from the date this Decision and Order becomes final under the Discipline Committee Rules of Procedure, an accounting or business ethics course; such to be approved by the Registrar.
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:

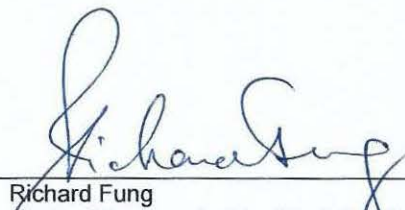
notice of the Decision and Order of the Discipline Committee
disclosing the name of the Member and brief particulars of the


professional misconduct be published and shall be distributed to the Board and to the Members in the CMA Ontario journal; and

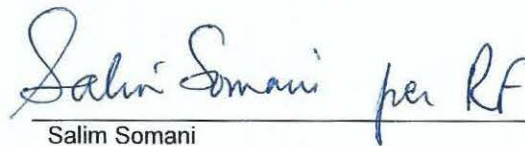
the decision and order of the Discipline Committee disclosing the name of the Member, together with the written reasons for the decision with brief particulars of the finding of professional misconduct, will be published and maintained in the public area of CMA Ontario's website.

The Discipline Committee has determined that disclosure of the name of the Member in the above publications is required in the public interest, and that its disclosure would not be unfair to the Member.

6. THE DISCIPLINE COMMITTEE UNANIMOUSLY ORDERS that if Mitchell Arrojado fails to comply with the terms of this Order within eighteen (18) months from the date this Decision and Order becomes final under the Discipline Committee Rules of Procedure, his membership shall be immediately revoked without further notice or action on the part of the Discipline Committee, and notice of such revocation, disclosing his name, shall be given in the manner specified in paragraph 5 above.
7. THE DISCIPLINE COMMITTEE makes no order as to costs.


Richard Fung
Chair of the Panel of the Discipline Committee


James Karas

 per RF
Salim Somani

**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 Mitchell Arrojado 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

-and-

MITCHELL ARROJADO

REASONS

The Hearing took place at Victory Verbatim, Ernst & Young Tower, 9th floor, 222 Bay Street, Toronto, Ontario M5K 1H6, on Monday, the 12th day of August 2013, in the presence of Jennifer Cooper, the lawyer for the Applicant, and the Respondent, who was not represented.

The Complaints Committee referred a complaint against Mitchell Arrojado to this Committee, with the result that Mitchell Arrojado was charged, as set out in the Notice of Hearing as amended. Although the Notice of Hearing asserted, and throughout the Hearing all references were made to, three counts of professional misconduct as set out in that Notice, for the purposes of these Reasons, the Committee has recast these assertions as five (5) counts of professional misconduct corresponding to the respective requirements of the CMA Ontario Regulations (and further references use the numbering that follows):

1. That between approximately April 2010 and November 2010, the Respondent failed to disclose to [REDACTED] E., co-owner of [REDACTED], all material facts known to him when preparing financial reports and/or statements for [REDACTED], constituting negligence, contrary to section 1.2(a) of the Professional Misconduct and Code of Professional Ethics Regulations, Approved: August 22, 2008 and section 2.2(a) of the Professional Misconduct and Code of Professional Ethics Regulations, Updated: June 21, 2010;
2. That between approximately April 2010 and November 2010, the Respondent failed to disclose to [REDACTED] E., co-owner of [REDACTED], all material facts known to him when preparing financial reports and/or statements for [REDACTED], constituting a failure to act at all time with fairness and loyalty to such Member's associates, clients and employers, contrary to sections 2.(1)(b) of the Professional Misconduct and Code of Professional Ethics Regulations, Approved: August 22, 2008 and sections 3.1(b) of the Professional Misconduct and Code of Professional Ethics Regulations, Updated: June 21, 2010;

3. That between approximately April 2010 and November 2010, the Respondent failed to disclose to [REDACTED] B [REDACTED], co-owner of [REDACTED], all material facts known to him when preparing financial reports and/or statements for [REDACTED], constituting A failure to act at all times with competence through devotion to high ideals of personal honour and professional integrity, contrary section 2(1)(c) Professional Misconduct and Code of Professional Ethics Regulations, Approved: August 2008 and sections 3.1(c) of the Professional Misconduct and Code of Professional Ethics Regulations, Updated: June 21, 2010.
4. That between approximately April 2010 and November 2010, the Respondent failed to provide [REDACTED] B [REDACTED] and [REDACTED] a letter of engagement or contract outlining the services to be performed, the timing of delivery, the terms and basis of the fee structure, and other information that was relevant to the engagement, contrary to section 11(1) of the Independent Consulting CMAs Offering Services to the Public Regulation, 2008.
5. That commencing on or about January 2009, the Respondent failed to register his practice with CMA Ontario contrary to section 7(1) of the Independent Consulting CMAs Offering Services to the Public Regulation, 2008.

Preliminary Motion

Immediately after the commencement of the Hearing, Ms. Cooper moved to amend the charges set out in all counts to correct certain dates so that they would be as noted above. There being no opposition from the Respondent, the Committee ordered that all counts be amended accordingly.

Respondent's Plea

The Respondent pleaded not guilty to counts 1, 2, and 3.

At a very early stage of the Hearing, the Respondent admitted that he was guilty of the charges in counts numbered 4 and 5, but in each case with an explanation.

CMA Ontario Regulations

It is convenient to set out the provisions of the CMA Ontario Regulations that are relevant to the charges in this case. (It is noted that the Professional Misconduct and Code of Professional Ethics Regulation was amended during the time-span covered by the impugned conduct of the Respondent in these charges.)

Professional Misconduct and Code of Professional Ethics Regulations, Approved: August 22, 2008

The relevant portions of this Regulation provide:

1. Professional Misconduct

(1) In this section, "negligence" means an act or an omission in the carrying out of the work by a Member that constitutes a failure to maintain the standards that a

reasonable and prudent Member of equivalent designation in the Society would maintain in the circumstances.

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

(a) negligence;

2. Code of Professional Ethics

All Members will adhere to the following "*Code of Professional Ethics*" of the Society:

(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.

Professional Misconduct and Code of Professional Ethics Regulations, Updated: June 21, 2010

The relevant portions of this Regulation provide:

2. Professional Misconduct

2.1 In this section, "negligence" means an act or an omission in the carrying out of the work by a Member, Student or Firm that constitutes a failure to maintain the standards that a reasonable and prudent Member, Student or Firm of equivalent designation in CMA Ontario would maintain in the circumstances.

2.2 For the purposes of the Bylaws, "professional misconduct" means:

(a) negligence;

3. Code of Professional Ethics

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

3.1 A Member, Student or Firm will act at all times with:

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

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

Independent Consulting CMAs Offering Services to the Public Regulation

The relevant portions of this Regulation provide:

7. Practice Registration, De-Registration and Reinstatement

(1) 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.

11. Letter of Engagement/Contract

(1) Where fees for an engagement are greater than \$500, a Consulting CMA will provide/obtain a Letter of Engagement or Contract outlining the service to be performed, the timing of delivery, the terms and basis of the fee structure, and other information that is relevant to the engagement.

Evidence

The evidence consisted of the testimony of two witnesses, and the exhibits.

Exhibits

For convenience, the Committee refers to the following exhibits that were introduced during the Hearing:

Exhibit #	
1	Notice of Referral, as amended
2	Notice of Hearing, as amended
3	Agreed Statement of Facts signed by the Respondent and by Ms. Cooper on the 12 th day of August 2013
4	Copy of Member Profile as of August 11 th 2013 respecting Mr. Mitchell V. Arrajado, CMA
5	Copy of email message from [REDACTED] to the Respondent August 9, 2012, 4:46 PM
6	Copy of email message from the Respondent to [REDACTED] May 16, 2013, 11:49 AM, to which is attached copy of signed Application for Practice Registration dated May 16, 2013; copy of Certificate of Incorporation dated November 10, 2008; copy of Industry Canada Form 2 (undated); and Initial Return under Ontario Corporations Information Act (undated)
7	Copy of letter addressed to the Respondent dated June 27, 2013 from Beth Deazeley, LL.B., CMA Registrar
8	CMA Ontario's Brief of Authorities

Agreed Statement of Facts, Exhibit 3

In paragraph 4 of the Agreed Statement of Facts, Exhibit 3, the Respondent admitted the facts contained in the Exhibit. As noted in paragraph 5 of Exhibit 3, the Respondent also admitted the authenticity of the documents contained in the Agreed Statement of Facts, as well as the authenticity of the documents attached to the Exhibit.

Witnesses

██████████

The only witness called by Ms. Cooper was ██████████, who is an Analyst – Regulatory and Corporate Affairs for CMA Ontario.

In his evidence, Mr. ██████████ described his exchanges, commencing in July 2012, respecting the Respondent's need to register his practice under the CMA Ontario Independent Consulting CMAs Offering Services to the Public Regulation, 2008. As indicated in the email messages entered as Exhibits 5 and 6, Mr. ██████████ provided the Respondent with the necessary information as to the requirements of that Regulation, and the applicable forms, so that the Respondent might comply with such requirements. He noted, as indicated in the dating of Exhibit 6, that the Respondent did not file the necessary forms until mid-May 2013.

Mr. ██████████ was unable to speak of any of the events noted in Exhibit 4 that took place earlier than 2012 as they occurred prior to the time he joined CMA Ontario.

Mr. ██████████ also described, in some detail, the educational, insurance, mentoring and inspection requirements required by this Regulation, as well as the related fees and costs for compliance with such requirements. Although appreciative of all of this information, it is unnecessary for the Committee to address these details for the purpose of the decision in this case.

The Respondent

The Respondent gave evidence on his own behalf.

As to charges 1, 2 and 3, in April 2010, the Respondent was employed to provide accounting services to ██████████, reporting to █Z, it's General Manager. The Respondent was made aware that Staffing Solutions was owned equally by █Z and the complainant, █B, as a silent and generally absent partner. In August 2010, the Respondent became aware of certain discrepancies and anomalies:

that █Z and █V (the office manager of ██████████) had falsified invoices and payroll numbers for previous months that same year;

that █Z had made excessive cash withdrawals from ██████████ bank accounts during that year; and

that ██████████ had not made required CRA and WSIB deductions and remittances.

Although the Respondent encouraged █Z to begin making CRA and WSIB payments, and to tell █B of these discrepancies and anomalies, the Respondent did not himself report them to █B, on the basis, he testified, that he had a loyalty to two clients, █Z and █B. It was not until November 2010, at a time after █Z had advised the Respondent that █B's interest in ██████████ would be sold to █Z, and after █B had become aware that ██████████ had ceased paying

rent, that in reply to questioning by ■B, the Respondent advised ■B of the falsified invoices, cash withdrawals and missed CRA and WSIB remittances.

As to charge 4, the Respondent stated that he was not aware of the requirements of the Independent Consulting CMAs Offering Services to the Public Regulation and therefore of the requirement for a Consulting CMA to obtain a letter of engagement as required by section 11(1) of the Regulation.

As to charge 5, the Respondent repeated that he was not aware of the requirements of the Independent Consulting CMAs Offering Services to the Public Regulation. He continued that he had changed his Member Profile shortly after he incorporated his company and began practicing as a consulting CMA in early 2009. He testified he thought that by changing his profile he had done all that he needed to do, and was not aware until he was contacted by Mr. ■■■ in July 2012 that he was also required to take a number of further steps. He explained that the delay, between receipt of the August 2012 email from Mr. ■■■ (Exhibit 5) and his filing of the Practice Registration form in May of 2013 (Exhibit 6), was his need to determine whether he would be able to finance the fees and expenses that he would have to incur to register his practice.

Findings

Having considered all of the evidence and the exhibits, and having listened carefully to the submissions of the parties, the Discipline Committee finds and declares that the Respondent is:

- (a) guilty of professional misconduct as that term is defined in
 - (i) Section 1(1) of the Professional Misconduct and Code of Professional Ethics Regulations, Approved: August 22, 2008, and
 - (ii) Section 2.2(b) of the Professional Misconduct and Code of Professional Ethics Regulation , Updated: June 21, 2010; and
- (b) in breach of
 - (i) sections 1.2(a), 2(1)(c), and 2.1(b) of the Professional Misconduct and Code of Professional Ethics Regulations, Approved: August 22, 2008; and
 - (ii) section 2.2(a), 3.1(b), and 3.1(c) of the Professional Misconduct and Code of Professional Ethics Regulations, Updated: June 21, 2010; and
 - (iii) sections 7(1) and 11(1) of the Independent Consulting CMAs Offering Services to the Public Regulation, 2008.

Principles Respecting Imposition of Penalties

As this Committee has previously noted, in a decision rendered February 22, 2013, in the case of CMA Ontario v. Dimova, the Discipline Committee has articulated the principles and purposes of, and considerations and factors in, imposing penalties for disciplinary infractions by Members of CMA Ontario, which should be applied by the Committee:

CMA Ontario regulates the profession of Management Accountants in the public interest.

Disciplinary orders are directed toward four main purposes

- (a) Specific deterrence: the penalty in this case must dissuade this Member from repeating her conduct in the future;
- (b) General deterrence: the penalty in this case must persuade other Members that similar conduct will not be tolerated;
- (c) Improved competence, rehabilitation and/or restitution: the penalty in this case should lead other Members generally, and this Member in particular, to improved competence and rehabilitation (restitution is not appropriate in this case); and
- (d) Maintaining public confidence in the profession of Management Accounting: the penalty in this case must help to ensure public confidence in the integrity, probity and trustworthiness not only in Members generally, but also in CMA Ontario as the self-regulatory body of Management Accountants.

Public confidence in the profession of Management Accountants is more important than the fortunes of any one Member.

Public confidence is based on such matters as a Member's credibility, integrity, character, repute, and fitness. While mitigating factors and compassion for a Member may have a place, they should not compromise an impartial adjudication of those matters.

The ability to practise as a Management Accountant or provide accounting services is not a right but a privilege. (Universal Truth)

As to the specific appropriateness of the penalty, again both generally and in this case, the following factors are always generally material to what penalty should be imposed:

1. The existence or absence of a prior disciplinary record: in this case, the Member has no prior disciplinary record.
2. The existence or absence of remorse, acceptance of responsibility or an understanding of the effect of the misconduct on others: in this case, the Member did not seem to understand his own responsibility for his failure to comply with the requirements of Independent Consulting CMAs Offering Services to the Public Regulation, 2008, although he did seem at least partially remorseful; there was no evidence here of any adverse effect upon other persons.
3. Whether the member has since complied with his/her obligations by responding to or otherwise co-operating with CMA Ontario: in this case, the Member cooperated with CMA Ontario, perhaps somewhat reluctantly.
4. The extent and duration of the misconduct: in this case, the failure to alert **B** of the falsified invoices, cash withdrawals and missed CRA and WSIB remittances lasted from the end of August until sometime in November; and the delay in registering his practice once he was actually aware of the requirement extended from August to the following May.
5. The potential impact of the Member's misconduct upon others, (considering not just the merits of the complaints that prompted CMA Ontario to

intervene but whether and how the Member's unresponsiveness did or might reasonably be expected to affect a client's interests); in this case, the Member's conduct impacted upon B's financial interest, as a result of which, the Member continues to face the lawsuit brought by B.

6. Whether the Member has admitted misconduct, and obviated the necessity of a more lengthy hearing required to establish its proof; in this case, the Member partially admitted his misconduct, thereby accommodating a shortened hearing.
7. Whether there are extenuating circumstances (medical, family-related or others) that might explain, in whole or in part, the misconduct; in this case, there were no extenuating circumstances, although the continuing lawsuit brought by B will continue to be a burden that the Respondent will bear.
8. Whether the misconduct is out-of-character or, conversely, likely to recur; in this case, there was no evidence that the misconduct would be likely to re-occur.

Submissions on Penalty

By CMA Ontario

Ms. Cooper for the Applicant, after referring to the above principles and purposes, and considerations and factors, noted that the Respondent had no previous disciplinary record; that he had not accepted full responsibility and only provided an explanation for his conduct on some of the counts; that he had been cooperative with the CMA Ontario; that his admission and explanation of misconduct only went part way to obviating a more lengthy hearing; that there were no extenuating circumstances; and that it is not likely that such misconduct will likely recur.

Taking all of these factors into consideration, Ms. Cooper submitted that, in conformity with the above principles and purposes, and considerations and factors, the Committee should impose the following penalties in this case:

1. Issue a reprimand and direct that the reprimand be recorded on the register. (Section 35.(4) 6 of the *Certified Management Accountants Act*)
2. Fine of \$10,000, to be paid in full within 12 months of the date this Decision and Order becomes final under the Discipline Committee Rules of Procedure (Section 35(4)8)
3. Suspend the Members membership for a period of 2 to 6 months. (Section 35(4)2)
4. Direct that the Member be required to complete, by paying for and attending in its entirety, within 6 months from the date this Decision and Order becomes final under the Discipline Committee Rules of Procedure, an accounting or business ethics course. The course shall be approved by the Registrar. (Section 35(4)7)
5. Publication of Decision and Order as outlined in 20.6.1, 20.6.2 and 20.6.3 of the Discipline Committee Rules of Procedure. To be clear, all ordered Notices and publications will disclose the name of the Member.
6. That the Member surrender his certificate of membership in CMA Ontario to

the Regulatory Liaison & Hearings Coordinator within 10 days from the date this Decision and Order becomes final under the Discipline Committee Rules of Procedure. (Section 35(4)4)

7. 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, disclosing his name, shall be given in the manner specified in paragraph 5 above. (Section 35(4)10)

By the Respondent

In response, the Respondent seemed surprised that the CMA Ontario was seeking any penalty. He admitted that he had made a mistake in respect of counts 4 and 5, and submitted that there should be none respecting these counts. As to counts 1, 2 and 3, he submitted that it was not fair to say that he chose one of ■Z and ■B over the other, but that he had only given ■Z an opportunity to explain everything to ■B.

Penalties Imposed

This Committee has therefore determined that the penalty that follows is consistent with the purposes of general deterrence; specific deterrence; improved competence and rehabilitation; and the maintenance of public confidence in the profession. Without taking away from the necessity of compliance with the requirements of the Professional Misconduct and Code of Professional Ethics Regulation, of the Independent Consulting CMAs Offering Services to the Public Regulation, 2008, the assessment of the penalty in this case reflects the Committee's view of the conduct of the Respondent and the continuing burdens that he faces outside of these disciplinary proceedings.

The Committee therefore imposes the following penalties:

under the authority of paragraph 6 of section 35(4) of the *Act*, the Committee orders that a Reprimand will be imposed, that such Reprimand be recorded on the Respondent's record;

under the authority of paragraph 8 of Section 35(4) of the *Act*, the Committee orders that the Respondent shall pay a fine of three thousand dollars (\$3,000); and specifies that such payment shall be made within eighteen (18) months of the date the Order becomes final under the Discipline Committee Rules of Procedure;

under the authority of paragraph 7 of Section 35(4) of the *Act*, that the Member be required to complete, by paying for and attending in its entirety, within 6 months from the date the Order becomes final under the Discipline Committee Rules of Procedure, an accounting or business ethics course; such to be approved by the Registrar;

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, 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; and

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;

the Committee has determined that disclosure of the name of the Respondent in the above publications is required in the public interest, and that its disclosure would not be unfair to the Member;


if the Respondent fails to comply with the terms of this Order within eighteen (18) months from the date the Order becomes final under the Discipline Committee Rules of Procedure, his membership shall be immediately revoked without further notice or action on the part of the Discipline Committee, and notice of such revocation, disclosing his name, shall be given in the manner specified above; and


the Committee makes no order as to costs.


The Order will take effect on the date upon which the time for appeal of the Order expires if no appeal is filed with the Appeal Committee.

The Committee wishes to thank counsel for the Applicant, and the Respondent, for their helpful presentations and submissions.

All of which is respectfully submitted this day of August 2013


Richard Fung
Chair of the Panel of the Discipline Committee


James Karas


Salim Somani