

**CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO
DISCIPLINE COMMITTEE**

James Karas, LLB (Public Member),]
(Chair of Panel)]
Veronica Dimitroff, CMA]
Timothy M. Galvin, MBA, CMA, CA]

Thursday, 9 May 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 a Member of CMA Ontario as directed by the Complaints Committee of Certified Management Accountants of Ontario (the "Corporation") 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-

MEMBER

(Respondent)

DECISION AND ORDER

THIS HEARING was heard at Victory Verbatim, Ernst & Young Tower, 9th floor, 222 Bay Street, Toronto, Ontario M5K 1H6, on Thursday, the 9th day of May 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 reading the Agreed Statement of Facts (and filed as an exhibit),

AND UPON hearing the evidence and reviewing the exhibits filed,

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

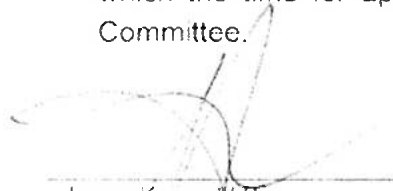
AND UPON recessing in order to consider the evidence, exhibits and submissions:

1. THE DISCIPLINE COMMITTEE FINDS AND DECLARES that the Respondent 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, and in breach of Sections 2.2(f) and 3.3(b) of that Regulation; and of failure to reply to written communications from the Applicant, on a timely basis and in writing, contrary to Section 39 of the Bylaws of the Corporation.

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 shall not 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 one thousand, five hundred dollars (\$1,500); and SPECIFIES that such payment shall be made within six (6) months of the date of this Order
4. 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 without 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 without 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
5. THE DISCIPLINE COMMITTEE makes no order as to costs.
6. THE DISCIPLINE COMMITTEE ORDERS that this Order takes effect on the date upon which the time for appeal of this Order expires if no appeal is filed with the Appeal Committee.


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


Veronica Dimitroff, CMA, CFE


Timothy M Galvin, MBA, CMA, CA

**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 a Member of CMA Ontario 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-

Member

(Respondent)

REASONS

The Complaints Committee referred a complaint against the Member to this Committee, with the result that the Member was charged, as set out in the Amended Notice of Hearing, with eight (8) counts of professional misconduct:

1. That in or around September 2007, the Member failed to obtain a written agreement from the RG, to whom work was contracted, not to disclose or use any confidential information concerning the affairs of the Member's clients contrary to section 3.3(b) of the Professional Misconduct and Code of Professional Ethics Regulation;
2. That the Member failed to promptly notify the Corporation of a change in her employment status from a consulting CMA to (or to include) full time employee contrary to Bylaw 20.1;
3. That the Member failed to respond promptly and cooperate fully with respect to requests for information and other communications from the Corporation regarding the investigation into the complaint of RG contrary to Section 2.2 (f) of the Professional Misconduct and Code of Professional Ethics Regulation;
4. That the Member failed to reply in writing to written communications from the Corporation regarding the investigation into the complaint of RG contrary to Bylaw 39;
5. That between September 2011 and April 2012, the Member failed to obtain a written agreement from EL, CMA to whom work was contracted, not to disclose or use any confidential information concerning the affairs of the Member's clients contrary to 3.3(b) of the Professional Misconduct and Code of Professional Ethics Regulation;

6. That in or around September 2011, the Member failed to provide EL, CMA with a letter of engagement as consultant contrary to section 11.(1) Independent Consulting CMAs Offering Services to the Public Regulation;
7. That between approximately September 2011 and April 2012 the Member failed to take reasonable steps, in arranging an engagement as consultant, to establish a clear understanding of the scope of the work and failed to provide EL with an estimate of cost for work to be done contrary to 3.3(b) of the Professional Misconduct and Code of Professional Ethics Regulation; and
8. That in or around June 2012 the Member failed to respond promptly and cooperate fully with requests for information and other communications from the Corporation regarding the investigation contrary to 2.2 (f) of the Professional Misconduct and Code of Professional Ethics Regulation.

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

Preliminary Motion

Immediately after the commencement of the Hearing, Ms. Cooper moved to withdraw the charges set out in counts numbered 1, 2, 6 and 7. There being no opposition from the Respondent, the Committee ordered that counts numbered 1, 2, 6 and 7 be withdrawn.

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

This Regulation, in effect during the time that the Respondent is alleged in counts 3, 5 and 8 to have breached its provisions, 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:

...

3.3(b) obtain, at the outset of an engagement, written agreement from any party or parties to whom work is contracted not to disclose or use any confidential information concerning the affairs of such Member's, Student's, Firm's, Public Accounting Firm's or Professional Corporation's employer or client unless authorized to do so or except when such information is required to be disclosed in the course of any defence of himself, herself or itself or any associate or employee in any lawsuit or other legal proceeding but only to the extent necessary for such purpose and only as permitted by law;

...

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 #	
7.	1 Notice of Hearing
2	Amended Notice of Hearing
3	Agreed Statement of Facts signed by the Respondent on January 31, 2013 and by Ms. Cooper on April 26, 2013
4	Document Book containing copies of eight (8) transcribed voicemail messages and email messages (as noted in its index), between Jeff Donnelly and the Respondent, between April 5, 2012 and June 4, 2012
5	Copy of email message from Jeff Donnelly to the Respondent June 1, 2012 1:16pm
6	Brief of Authorities (four cases as noted in its index)
6a	Copy of <i>Law Society of Upper Canada v. Baker</i> , April 6, 2006
7	Response of the Member dated April 4, 2012 to complaint of RG
8	Reasons of CMA Ontario Discipline Committee in <i>CMA Ontario v. Dimova</i> dated February 22, 2013
9	Reasons of ICAO Discipline Committee in <i>ICAO v. Cutbush</i> dated January 6, 1992

Agreed Statement of Facts, Exhibit 3

In paragraph 4 of the Agreed Statement of Facts, Exhibit 3, the Respondent admitted that she was guilty of count 5 of the charges, in that she failed to obtain a written agreement from EL,

CMA to whom work was contracted, not to disclose or use any confidential information concerning the affairs of the Member's clients contrary to 3.3(b) of the Professional Misconduct and Code of Professional Ethics Regulation.

As noted in paragraph 5, the Respondent also admitted the authenticity of the documents contained in the Agreed Statement of Facts, as well as the authenticity of the documents contained in the Document Book, Exhibit 4.

Witnesses

Jeff Donnelly

The only witness called by Ms. Cooper was Jeff Donnelly, Manager, Investigation and Complaints for CMA Ontario.

In his evidence, Mr. Donnelly gave a synopsis to the content of transcribed voicemail messages from the Respondent and emails exchanged between him and the Member, all of which are set out in Exhibits 3, 4 and 5. In summary, he noted that, despite voicemail and email messages that he had left for the Member:

she had not responded within the time limit required in the By-laws, 30 days after deemed receipt, respectively, of the two complaints; and

she did not respond promptly and cooperate fully with respect to his requests for information respecting her status as an independent CMA or as an employee; and for information respecting the names of certain of her clients.

Mr. Donnelly asserted that, when a Member does not provide information requested by CMA Ontario, that failure hinders the investigation and the ability of the Complaints Committee to make a decision on all of the facts.

Witness 1

The Respondent called Witness 1, one of her employees.

Witness 1 advised the Committee:

that she had worked for the Respondent for about eight years;

that the Charity and Not-for-Profit community is quite small;

that a call from Mr. Donnelly, if identified by his position in CMA Ontario, would have a seriously detrimental effect on the Member's professional business;

that the period from March through June is extremely busy for a charitable practice, when the Respondent would typically be working at least 10 hours per day, 7 days per week; and

that the Respondent regularly received a huge number of email messages, and that increased during tax season, so that it would be easy to miss some.

The Member

The Respondent gave evidence herself.

She asserted that in August 2011 when EL first came to her as a mentor on a referral from CMA Ontario, he had previously been employed by a company, and was intending to commence his own business as a Consulting CMA. As he had no accounting experience, she counselled him that he needed to learn basic bookkeeping, a skill in which he was insufficiently proficient. To assist him, she provided him with some of her own client files so that he might practice inputting entries, a task that she told him should only require about one hour in each case. Her role was to train him, and to review and critique his work. There was no agreement that she would pay him for any of his efforts. In September-October 2011, the relationship with EL terminated when he obtained a full time job. Subsequently, in January-February 2012, when the Respondent realized that she needed the files she had provided to EL in order to produce statements, she contacted him to obtain them from him. In response, EL demanded a very substantial payment, claiming to have spent 48 hours work for which he was entitled to be, and had not been, paid; and that if she did not pay, he would make her life miserable. Although initially refusing to pay, the Respondent eventually did make a payment to EL who then returned the files.

In response to questions from the Committee, the Respondent confirmed that EL, as a CMA, was bound by the CMA Ontario regulations including confidentiality and that she had not provided any client information to any other person. She also repeated that EL had threatened to bring a complaint against her.

As to her failure to respond promptly and cooperate fully with respect to Mr. Donnelly's requests for information, she noted that she was extremely busy and overwhelmed as it was tax time, and that she felt that Mr. Donnelly was aggressive and not at all helpful, not appreciating the impact that his contacting her clients and previous clients would have.

Findings

The Discipline Committee finds that:

The Respondent was six (6) days late in responding to the complaint of RG; her response was required on April 3, 2012 but was not delivered until April 9, 2012 (although it is dated April 4, 2012);

The Respondent was sixteen (16) days late in responding to the complaint of EL; her response was required on May 17, 2012, but was not delivered until June 1, 2012;

The Respondent was six (6) months and nine (9) days late in responding to the demands for information received from Mr. Donnelly; her reply was first due on June 1, 2012, and subsequently extended until June 4, 2012, but was not delivered until December 12, 2012.

Accordingly, at the Hearing on Thursday, the 9th day of May 2013, this Committee found and determined that the Member was of guilty of professional misconduct as that term is defined in Section 2.2(b) of the Professional Misconduct and Code of Professional Ethics Regulation, and in breach of Sections 2.2(f) and 3.3(b) of that Regulation; and of failure to reply to written communications from the Applicant, on a timely basis and in writing, contrary to Section 39 of the Bylaws of the Corporation.

It very clear that the Respondent and Mr. Donnelly had a clash of personalities, but that does not excuse her from complying with her professional obligations as set out in the Professional Misconduct and Code of Professional Ethics Regulation and in the Bylaws. It is also apparent that, after referral by the Complaints Committee when the carriage of the matters was passed over to Ms. Cooper, the Respondent was much more cooperative, albeit six months later than initially required.

Principles Respecting Imposition of Penalties

In a decision rendered 22 February 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 was remorseful, understood and accepted responsibility for what she did (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 fully cooperated with CMA Ontario.
4. The extent and duration of the misconduct: in this case, the delay in responding to CMA Ontario was a few days in the case of one count, and approximately six months in the other.
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, there was no evidence of any impact of the Member's conduct upon any other person.
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 originally denied but later admitted her 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 was some evidence of health issues, but these were not considered as extenuating circumstances.
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

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 she had not accepted responsibility and only provided an explanation for her conduct; that she had not been cooperative with the CMA Ontario investigator, but had, after the matter had been referred to the Complaints Committee, complied with her obligation and had cooperated with counsel; that, although her non-compliance did not affect a client interest, she did not appear to appreciate her non-compliance effected the regulatory process itself; that her admission of misconduct only went to one of the counts and did not obviate a more lengthy hearing; that, despite her assertion of a busy practice, there were no extenuating circumstances; and that her refusal to cooperate was out of character, and since she now appears to understand the seriousness of that failure, 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:

Reprimand, to be recorded on the Member's record;

A fine in the amount of \$2,000;

Costs fixed in the amount of \$5,000;

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 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, to be published and maintained in the public area of CMA Ontario's website; and

The Decision and Order to take effect on the date pronounced.

In response, the Respondent expressed surprise that the Applicant was seeking a fine of \$2,000 since Ms. Cooper had, a year ago, mentioned a fine of \$1,000. She also expressed surprise at the demand for costs of \$5,000 since the CMA Ontario staff were employed and paid in any event. She noted that she had eventually cooperated fully, and that the great difference in manner between Mr. Donnelly and her had contributed to the level of cooperation. She added that she had had health problems, noting that such problems had led to the adjournment of the originally scheduled Hearing date. She also asked the Committee to consider that she was a single mother, engaged in a lawsuit with a former client, and had had to put her home on the market for sale.

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 Bylaws and the Professional Misconduct and Code of Professional Ethics Regulation, the assessment of the penalty in this case reflects the Committee's view of the very short time period between the due date for the responses to the complaints, the (for want of a better expression) personality clashes between the Member and CMA Ontario, and the greater time that the Respondent took to respond to the CMA Ontario requests for information.

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, but such Reprimand shall not be recorded on the Member'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 one thousand, five hundred dollars (\$1,500), such payment to be made within six (6) months of the date of this order;

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 without 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 without 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

the Committee makes no order as to costs.

The order takes 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 21 day of May 2013


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


Veronica Dimitroff, CMA, CFE


Timothy M. Galvin, MBA, CMA, CA