CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO
DISCIPLINE COMMITTEE

Eran Goldenberg, FCMA (Chair of Panel)
Ellen Bessner
Hashem Shafie, CMA

Tuesday, March 6, 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 the Member 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)

ORDER

THIS HEARING was heard at Victory Verbatim, Ernst & Young Tower, Suite 900, 222 Bay Street, Toronto, Ontario M5K 1H6, on Thursday, the 17'h day of November, Wednesday the 25th day of January 2012, Wednesday the 22nd day of February 2012 and Tuesday) he 6th day of March, 2012 in the presence of the lawyer for the Applicant, and the Respondent appearing on his own behalf.

ON 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 and of the Respondent on his own behalf.

1. THE DISCIPLINE COMMITTEE FINDS AND DECLARES the Member is guilty of professional misconduct as that term is defined in Section 1.2(b) of the *"Professional Misconduct and Code of Professional Ethics Regulation',* in effect in September 2008, and in breach of sections 3(1)(c) and 3.3(b), of that Regulation.

2. THE DISCIPLINE COMMITTEE FINDS AND DECLARES the Member is in beach of Sections 7(1) and 7(2) of the Independent Consulting CMAs Offering Services to the Public Regulation and Section 30 of the Bylaws of the Corporation.

3. THE DISCIPLINE COMMITTEE ISSUES, under the authority of paragraph 6 of section 35(4) of the *Act,* a Reprimand the particulars of which are attached to 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 pay a fine of two thousand dollars ($2,000); and SPECIFIES that such payment shall be made on or before Tuesday the 22nd day of May 2012.

5. THE DISCIPLINE COMMITTEE DIRECTS, under the authority of paragraph 10 of Section 35(4) of the *Act,* that failure to comply with the terms of paragraph 4 of this Order shall result in suspension of the Member's membership until such time as the Member complies with the terms of that paragraph.

6. THE DISCIPLINE COMMITTEE ORDERS, under the authority of paragraph 11 of section 35(4) of the *Certified Management Accountants Act, 2010,* that:

   notice of the decision and order of the Discipline Committee 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, 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 determines that the disclosure of the name of the Member is not required in the public interest and its disclosure would be unfair to the Member.

Eran Goldenberg, FCMA - Chair of the Panel of the Discipline Committee
Hashem Shafie, CMA
Ellen Bessner (Public Representative)

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 the Member 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 OF THE DISCIPLINE COMMITTEE

The formal Order of the Discipline Committee having been issued, these are the reasons for the decision and Order.

The Discipline Committee held a Hearing at Victory Verbatim, Ernst & Young Tower, Suite 900, 222 Bay St, Toronto, Ontario M5K 1H6, on Thursday the 17th day of November, 2011, Wednesday the 25th day of January 2012, Wednesday the 22nd day of February 2012 and Tuesday the 6th day of March, 2012, to hear evidence, submissions and argument and to deliver its decision; all to consider matters arising out of a complaint regarding the conduct of the Respondent, a Member of Certified Management Accountants of Ontario.

The Panel of the Discipline Committee conducting the hearing was composed of:

Eran Goldenberg, FCMA (Chair of Panel)
Ellen Bessner, (Public Representative)
Hesham Shafie, CMA

Counsel for the Applicant was Ms. Catherine M. Patterson of Ferguson Patterson, Barristers & Solicitors.

The Respondent was not represented by counsel and appeared on his own behalf.

Counsel for the Discipline Committee was Mr. Bryan J. Buttigieg, of Miller Thomson, Barristers & Solicitors.

Ms. Patterson tendered a Notice of Hearing in this matter dated October 11, 2011; this was marked as Exhibit 1.

Ms. Patterson tendered a print-out of the Summary of the Allegations that appear on the Corporation's website; this was marked as Exhibit 2.

Charges

Ms. Patterson read the charges (as set out in the Notice of Hearing (Exhibit 1)), as follows:

1. that in or about April 2010 you were employed by Company A as Finance Manager. In that role you had access to confidential information relating to Company A and other companies associated with Company A including Company B;

2. that in or about April 2010 you revealed confidential information belonging to Company A or a party engaged in a contractual dispute with Company B without the knowledge of consent of Company B or Company A;

3. that in or about 2010, without authorization or a legitimate purpose, you copied confidential financial documents belonging to Company A and its associates onto a personal USB stick and tried to mislead company officials investigating the matter by deleting the documents and lying;

4. that in or about 2010, without authorization or a legitimate purpose, you removed confidential financial documents belonging to Company A and its associates by copying them onto a personal USB stick and/or by emailing them to your own email address;

5. that while employed full-time by Company A, in breach of your employment agreement which precluded other employment or engagement in any other business without the prior written approval of Company A, you operated an accounting business under the name "Company C"; and

6. that you offered management accounting services to the public on a contractual or fee for service basis without registering your practice with CMA Ontario.

Plea

The Respondent pleaded guilty to the charges of a breach, Sections 7(1) and 7(2) of the *Independent Consulting CMAs Offering Services to the Public Regulation* and not guilty to the charges of breach of the *Professional Misconduct and Code of Professional Ethics Regulation* Sections 3.1(b), 3.1(c), 3.3(a), 3.3(b) and 3.4(b).

Evidence

Over the course of four days, the Panel heard from the following witnesses:

Witness A
Witness B
Witness C
Witness D
Witness E
Witness F
Witness G
Member

Twenty-Six exhibits, some containing multiple documents in tabbed volumes, were tendered by the parties.

All the witnesses except the Member were called by the Applicant. The Member testified on his own behalf.

Witness A is one of the Principals at Company A, the former employer of the Member. Witness B is a private investigator who was retained by Company A because of a suspected theft of confidential Company A accounting records. Witness C was qualified as an expert in forensic document examination. Witness D is a colleague of Witness B. Witness E was the auditor for Company A. Witness F and Witness G are employees of Company A and were co-workers of the Member in the Company A accounting department.

The complaints against the Member arose from events that first came to light in the midst of litigation between Company A and Company D, an important customer of Company A. During that litigation, Company D produced a package of Company A accounting records related to Company D. Company D claimed to have obtained these records through a private investigator they had hired who found the records in a garbage bin outside the Company A office. Company A did not believe this and instead formed the opinion that someone at Company A had improperly provided the records (referred to in the hearing as the "Company D Documents") to Company D.

In the course of an investigation by Company A, suspicion fell on the Respondent who denied having disclosed the Company D documents, but did admit that his handwriting appeared on two pages of the Company D documents. The Respondent also admitted to Company A that he had from time to time copied certain electronic Company A files to his personal USB drive and was engaged in offering services as a CMA to members of the public at the same time as he was a full-time employee of Company A.

The allegations of professional misconduct against the Member relate to these three issues:

1. Disclosure of the Company D Documents to Company D;

2. Unauthorized copying of employer records to a personal USB device; and

3. Engaging in a home based accounting business without written permission.

Disclosure of the Company D Documents to Company D

Company A engaged Witness's B firm to investigate how the Company D documents came to be disclosed. The Member was interviewed twice at length. He submitted to a lie detector test (which he passed) and provided samples of his writing to a handwriting analyst. In the course of the investigation, a second, almost identical package to the Company D documents was discovered in the Company A accounting file room (the "Second Set of Documents"). These documents, which were found clipped to a binder, were the same printed accounting records as the Company D documents, but the Panel was told by Witness C that the handwriting, though probably produced by the same person who wrote on the Company D documents, was different and not an exact replica of what was on the Company D documents.

Company A asked the police to investigate a case of possible theft of the Company D documents by the Member. The police produced a written report and concluded that:

"The documents in question are apparently of no value to Company D in relation to their arbitration with Company B. In addition, the reports were prepared by the Member in March of 2010 and kept in binders inside his unlocked office. *Anybody within the building could have had access to these documents during that time period.* The documents were also forwarded to an off-site accounting firm in April, in order that the corporate income taxes be prepared. *Therefore an unknown number of persons could have potentially had access to these documents.*

There are no witnesses to the alleged theft and no video surveillance at the premises.

The Member passed a polygraph examination conducted by Investigative Solutions Network Inc. During his interview with police the Member also appeared forthcoming. He admitted to making the mistake of saving company documents, including banking templates on his USB drive, however adamantly denied providing Company D with the documents in question. *There is no physical evidence to suggest that the Member stole the alleged documents, nor that he provided them to an agent of Company D.*

At this time there is no evidence of any criminal offence."

(CMA Document brief, Ex 3, Tab 7 page 21, emphasis added)

The evidence before the Panel differed in some minor respects from that which was apparently before the police at the time of writing the above passage; in particular, the Panel heard that the reports in question were Trial Balances which, in the normal course of events, would be used by the Respondent in the course of his employment and while they would be kept in his unlocked office they would not normally be kept in binders. The Panel was also told that these Trial Balances would not normally be forwarded to an offsite accounting firm. Instead a different printout, having one less column, would be prepared, inserted into binders and sent to the outside accounting firm belonging to Witness E.

The totality of the evidence before us leads us to draw a similar conclusion as made by the police investigators on the central allegation made by the Corporation against the Member, namely that there is no evidence that the Member ever provided the Company D documents to Company D. Despite the time spent by the Corporation on this issue during the course of this hearing, there is no evidence that the Member ever copied the Company D documents to his USB drive. There is no evidence that the Member ever had any contact with anyone at Company D. There is no evidence that the Member ever provided any document to anyone at Company D.

There is, however, ample evidence that other persons in the office had access to the Company D documents. The Member and other witnesses described the accounting department at Company A as an open office area with an internal storage room. Two to three other accounting employees and a co-op student, in addition to the Member, worked in this department. Although the storage room would be locked at night, all employees in the accounting department had access to the room and it was kept unlocked during the day. At least one other department made use of the internal storage room and co-op students from other departments would also access this area. Until the Company D document issue arose, cleaning staff had access to the accounting department after hours. (See Ex 26, tab 1, page 5).

In preparing the financial records of Company A and its related companies, the Member would start by generating two trial balance printouts. The Member and a co-op student would then each use one of the trial balance printouts while verifying the underlying information, such as reviewing actual invoices. The work could take more than one day and the trial balance the Member was using might be left on his desk during the day and overnight. Because the name of the company in question would not appear on every page, the Member would write the name of

the company on some pages to avoid confusion. This appears to be the genesis of the handwritten names that appear on the Company D documents and possibly also the Second Set of Documents.

It is for the Corporation to establish on a balance of probabilities that the Member provided the Company D documents to Company D. If we find, as we do, that the Corporation has not discharged its burden of proof, then is not necessary for us to determine how Company D came to be in possession of the Company D documents. Nor is it necessary for us to determine how or why the Second Set of Documents came to be. While various theories were advanced by the parties, no explanation was sufficiently supported by the evidence to lead us to make any determination on either point.

Ms Patterson, in her closing submissions, emphasised the testimony of Witness C who concluded that the handwritten word "Company E" which appears on both the Company D documents and the Second Set of Documents was the product of two separate and distinct writings and that one is not the copy of the other. He was of the opinion that "there is very strong support for the view that" the words "Company E" in both document sets were written by the same person. Ms. Patterson argued that because the Member has admitted that the writing on the Company D document was his, then it must follow that The Member's denial of being the author of the word "Company E" on the Second Set of Documents could not be believed. She asked us to take into account that the Member had admitted to storing some Company A documents on his personal USB stick (though not related to Company D). She urged us to draw an inference from this evidence that the Member on a balance of probabilities provided the Company D documents to Company D.

We are unable and unwilling to draw such a sweeping inference from the evidence before us. Ms. Patterson has candidly admitted that the allegations against the Member with respect to the Company D documents are purely circumstantial. We accept the statements of law set out in the decision of *R v. Munoz,* (2006) CanIII 3269 (ONSC) and find the reasoning of the Ontario Court of Appeal in *R. v. Portillo* (2003), 176C.C.C. (3d) 467 (Ont.C.A.) cited therein to be particularly instructive. The fact that the Member's writing is admitted to be on the Company D document and the fact that Witness C gave his opinion that the words "Company E" that appear in both the Company D document and the Second Set of Documents were created by the same person, is not enough to reasonably support the inference that the Member provided the Company D documents to Company D. To find otherwise would, to paraphrase the words of Mr. Justice Doherty in *Portillo,* require us to reach a conclusion based on the assumption of facts not proved or mere speculation.

Nor are we prepared to make as sweeping a finding against the Member's credibility as the Corporation's assertions would require of us. There are indeed some inconsistencies in the Member's statements to Company A and its investigators, especially at the outset. The Member told us that on August 9, 2010 he was questioned by his employer and their investigators from about 1:30 pm to 12:30 am. This included a transcribed interview with two professional investigators, a polygraph test and a late-night interview by the owner of the company and Mr. A. No counsel was present for the Member throughout this time. Under these circumstances, it is not at all surprising if the Member felt nervous, intimidated and in all likelihood also tired. We do not, under the circumstances, attach significant weight to any inconsistencies that exist in statements he gave under such conditions. Instead, we note that at all times, on the central issue; the Member denied ever providing the Company D documents to Company D. We also had ample opportunity to observe the Member in person during his testimony before us, including an extensive cross-examination by the Corporation in which his evidence on this issue remained consistent and unshaken.

For all the above reasons, we do not find the Member in breach of any of the charges of professional misconduct as they relate to the alleged disclosure of the Company D documents.

Unauthorized copying of employer records to a personal USB device

The Member has admitted to copying Company A electronic files to his USB drive and taking those files out of the Company A office. He says this was a "mistake" and did so for "convenience and temporary purpose" because in June of 2010 he had been told by his employer to no longer save Company B related information on his office computer. He did not hide this fact and told two of his co-workers that this is what he was doing, though he did not seek permission from management (see Ex 26, tab 1, page 10). In cross-examination, he admitted that he could have saved information to the Company A network.

Witness A testified that the Member's actions were contrary to the Company A Code of Ethics and Conduct in particular Sections 3 and 4 which read in part:

> "3. Company A employees will refrain from unauthorized acquisition, use, duplication ... of any... property…"
>
> 4. Company A employees will actively avoid activities that might lead to a breach or compromise of the Company A system or which might compromise the privacy or security of any Company A client."
>
> (Ex. 3, tab 1, p.6)

The Member signed the Company A Code of Conduct when he joined Company A in 2008 (Ex 3, tab 1, p.7). He did not claim to have obtained any authorization to duplicate the records to his USB device, as required by the Company A Code of Conduct. He admitted that this was a mistake. In these days of proliferation of electronic data and the ease with which such data can be copied and disseminated, keeping confidential employer files without authorisation on a personal USB drive which is taken outside the office and failing to immediately delete these files could well lead to a compromise of the Company A system or compromise the privacy or security of a Company A client.

In these actions, we find the Member to have breached Section 3.1(c) of the *Professional Misconduct and Code of Professional Ethics Regulations.* His actions and his breach of the Company A Code of Conduct amount to a significant error in judgement that in our view amounts to a failure to act with competence through devotion to high ideals of personal honour and professional integrity.

On August 11, 2011, two days after he was interviewed by his employer and the private investigators and after having been told that he was not to make copies of Company A records, The Member sent some company financial information by e-mail to his home address. The Member admitted to doing this and told us he simply entered the wrong email address by mistake. We accept his explanation and make no finding of misconduct with respect to this act.

Engaging in a home based accounting business without written permission.

During its investigation in August 2010, Company A learned that The Member was engaged in his own accounting business out of his home. The Member admitted to this and said the business was part- time and did not interfere with his work for Company A. He said he disclosed the existence of this work to a Mr. N the VP Finance for Company A and to Ms. B at the time of his initial interview for the position. He said he sought clarification from Mr. N in the presence of Ms. B before signing the employment agreement and was told he could do this work in his spare time (Ex. 26, Tab1, page 11).

The employment agreement was signed by The Member on August 28, 2008. Clause 3 of the Agreement provides:

> "3.Exclusive Service
>
> (1) During the term of employment the Employee shall well and faithfully serve the Employer and shall not, during the term, be employed or engaged in any capacity in promoting, undertaking or carrying on any other business, without the prior written approval of the Employer."
>
> (Ex. 3, Tab. 1, page 9)

Clauses 15, 16 and 19 are also of note:

> **15. Entire Agreement**
>
> This agreement constitutes the entire agreement between the parties with respect to the matters set out in regard to the employment of the Employee and any and all previous agreements, written or oral, express or implied between the parties or on their behalf relating to such matters in regard to the employment of the Employee by the Employer are terminated and cancelled and each of the Parties releases and forever discharges the other of and from all manner of action, causes of action, claims or demands under or in respect of any agreement.
>
> **16. Modification of the Agreement**
>
> Any modification to this agreement must be in writing, signed by the parties or it shall have no effect and shall be void.
>
> **19. Independent Legal Advice**
>
> The Employee acknowledges that he has read, understands and agrees with all of the provisions of this agreement, and acknowledges that he has had the opportunity to obtain independent legal advice with respect to it.
>
> (Ex. 3, Tab. 1, pages 14- 15)

The agreement is clear and unambiguous. Written approval is required. Any previous oral agreement is "terminated and cancelled". Any modification must be in writing. The Member had the opportunity to obtain independent legal advice.

The Member did not call Mr. N as a witness. No evidence was provided that Mr. N or anyone else provided approval in writing to the Member or made any written modifications to the employment agreement as required by his agreement with Company A. Mr. N was no longer at Company A by 2010. Witness A stated he was not aware of this conversation or that the Member was engaged in his home business until the information came to light in August of 2010.

Section 3.3(b) of the *Professional Misconduct and Code of Professional Ethics Regulation* (the "Code") states that:

> A Member, Student or Firm will inform his or her employer or client of any business connections or interests of which such Member's, Student's or Firm's employer or client would reasonably expect to be informed;

The obligation is to "inform". No guidance is given to us in the above section as to what steps must be taken by a Member to discharge this duty. Is a one time statement to a senior member of the company during an initial employment interview sufficient? In some cases it might be. It is our view that whether or not a Member has provided sufficient information, so as to discharge his or her duty to "inform" under Section 3.3(b) of the Code will depend on whether the Member took reasonable steps to ensure his employer was aware of the facts being disclosed. Each case will have to be evaluated on its own unique facts.

We find this is a sufficiently important obligation that a single conversation, not recorded in writing, in the face of a subsequent clear and unambiguous written agreement, along with the failure to call other evidence to show knowledge by the employer of the part-time business is simply not enough to discharge the duty to inform created by the Code.

Based on the evidence before us, we do not think the Member took reasonable steps to discharge this duty simply by one conversation in an interview when he took no steps to create a written record of that conversation and proceeded to sign an agreement with his employer which made no reference to the conversation and contained the provisions referred to above. Under these circumstances, discharge of a professional duty to inform can not be left to such an imperfect, easily forgotten and hard to prove method of communication. The situation may well have been different if there had not been such a written agreement or if the evidence showed that The Member's part-time business was known to his employer outside of that one unrecorded conversation.

Under these circumstances, we find that the Member has failed to comply with Section 3.3(b) of the Code.

Determination of Penalty

The Member was present throughout the hearing, but for reasons unknown to the Panel, chose to leave before hearing our oral decision and was not present to make submissions on the proposed penalty. Ms. Patterson informed us on the record that she spoke to the Member before he left and informed him that he would have an opportunity to make submissions to us on the proposed penalty in the event there was a finding of guilt, but he declined to stay. Mr. Donnelly, who was here instructing Ms. Patterson on behalf of the Corporation also told us on the record that he called the Member on his cell phone and also afforded him the opportunity to return and make submissions to the Panel on any proposed penalty. The Member once again declined.

The Notice of hearing (Exhibit 1) which was duly served on the Member states in part:

> **AND TAKE NOTICE** that if you do not attend at the Hearing in person or by your Representative, being a person authorized under the *Law Society Act* (Ontario) to represent you in a Hearing, the Discipline Committee may proceed in your absence and you will not be entitled to any further notice in the hearing.

Accordingly, the Discipline Committee proceeded to hear Ms. Patterson's submissions on penalty in the Member's absence.

Ms. Patterson submitted that the Corporation viewed the acts of the Member for which he was found guilty to fall into the following order of seriousness:

1. The breach of Section 7 of Independent *Consulting CMAs Offering Service to the Public Regulation;*
2. The unauthorised copying of company records to the USB device; and
3. The failure to inform the employer of the home business.

The Discipline Committee agrees with this ranking on the facts of this case and agrees with Ms. Patterson's submission that the breach of Section 7 requires that the penalty provide for both specific and general deterrence and should not amount to something that could be treated as the "cost of doing business". The committee, however, is also aware of the following mitigating facts:

1. The Respondent pleaded guilty to the Section 7 charge at the first opportunity;

2. The Respondent has taken steps to bring himself into compliance with the Regulation by registering his business and taking the appropriate courses. Ms. Patterson informed us that all that remains was for the Respondent to complete the requisite period of mentorship, which is currently underway;

3. No evidence was provided to us that any of the conduct of which the Member was found guilty resulted in any material harm to any person;

4. No evidence was provided to suggest that the Member's services to any member of the public as a CMA were in any way deficient or resulted in any complaints from members of the public;

5. There was no evidence that the information on the Member's USB device was ever disclosed to any person or resulted in any actual disclosure of confidential information to any person; and

6. No previous disciplinary offences are alleged

Ms. Patterson asked that the Committee suspend the Member for a period of two months, impose a substantial fine and require the Member to contribute to the costs of the hearing.

The committee considered penalty submissions and did not consider a suspension to be appropriate, especially since the Member has had to spend a substantial amount of time preparing for and attending this hearing all of which necessarily kept him away from any ability to generate income. Much of his efforts and the time spent were no doubt taken up with the serious allegations of theft, which we have dismissed. While the breach of Section 7 is very serious, it took up no time at the hearing as the Member pleaded guilty to the charge. We therefore think the Member has already paid a substantial price for his actions and find that a suspension would be an unduly harsh penalty under the circumstances.

We also find that it is inappropriate that the Member be required to pay any costs for the hearing. We note that the main allegation in this hearing and the bulk of the evidence before us was on the issue of the alleged theft. On that issue, The Member has been completely successful.

We therefore order that the Member be required to pay a fine in the amount of $2,000 which must be paid on or before Tuesday the 22nd day of May 2012 and that failure of the Member

to pay the fine within the ordered time will result in revocation of his membership until such time as the fine is paid.

We also order that the Member be reprimanded and that the reprimand be recorded on the respondent's record.

Publication of the Decision, Order and the Respondent's Name

Pursuant to Paragraph 11 of subsection 35(4) of the *CMA Act* and Section 15.6 of the *Discipline Committee Rules of Procedure* (the "Rules") we also order that notice of the decision and order of the Discipline Committee 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 that the decision and order of the Discipline Committee, together with these written reasons for the decision be published and maintained in the public area of CMA Ontario's website.

Section 15.6 of the Rules requires that the above publication order also include disclosure of the name of the Member unless the Panel determines that disclosure of the name of the member in any or all of the above publications is not required in the public interest and its disclosure would be unfair to the Member.

Practicing as a CMA without the requisite registration is a serious offense. It is one that can have serious consequences to the public who have every right to expect that anyone offering his or services to the public as a CMA is appropriately qualified and registered and has completed the training and mentorship required by the governing body. Had the Member not taken the steps he has to complete his registration and comply with the requirements of the *Independent Consulting CMAs Offering Services to the Public Regulation,* we would not have ordered that the Member's name be withheld from disclosure. But in these circumstances, the Public is at no risk from the non-disclosure because the Member has taken and almost completed the requisite steps to comply with the regulation. As a result, we find that disclosure of the Member name is not required in the public interest.

Nor do we believe future employers are particularly at risk from unauthorised duplication of records or non-disclosure of other business connections or interest by the Member. We have no doubt that the Member has impressive intellectual capacity. We are satisfied as a result, that the Member is fully aware of the consequences of his past conduct and believes that he will never put himself in such a position again.

We are also aware of the potential harsh consequences publication of the Member's name could have to the Member himself. In these days of ready access to all sorts of electronic information, publication of the Member's name may well have lasting and permanent detrimental effects on his ability to make a living in his chosen profession that far outweigh the gravity of the conduct that brought him before us. Taking all the above into account, it is our opinion that disclosure of the name of the Member in the above publications is not required in the public interest and its disclosure would be unfair to the Member.

All of which is submitted this 6th day of March 2012

Eran Goldenberg, FCMA - Chair of the Panel of the Discipline Committee
Hashem Shafie, CMA
Ellen Bessner (Public Representative)