

**CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF ONTARIO  
PROFESSIONAL CONDUCT TRIBUNAL**

IN THE MATTER of a proceeding under the *Certified General Accountants Act, 2010*, Statutes of Ontario, c. 6, Schedule A (the "Act") and The Certified General Accountants Association of Ontario's Bylaws (the "Bylaws")

AND IN THE MATTER of a Complaint against Michael Falcone

B E T W E E N:

The Discipline Committee of The Certified General Accountants Association of Ontario

-and-

Michael Falcone

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**DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL**

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Members of the Professional Conduct Tribunal Panel:

Peter-John Vaillancourt, CPA, CGA, Chair  
Irwin Pinsky, CPA, CGA, Member  
Stephen Lutvak, CPA, CA, LPA, Member  
Catherine Kenwell, Public Representative

Pursuant to Article 7.4.2.7 of the Bylaws, the Professional Conduct Tribunal Panel has reviewed the Statement of Facts and Resolution proposed by the parties in this matter, signed on September 15, 2014 by the Chair of the Discipline Committee, Sandy Whyte, FCPA, FCGA and signed on September 22, 2014 by Michael Falcone. The Professional Conduct Tribunal Panel accepts the attached proposed agreed resolution as set out by the parties. The attached proposed agreed resolution is hereby ratified.

I, Peter-John Vaillancourt, CPA, CGA, sign this Decision as Chair of the Panel of the Professional Conduct Tribunal on behalf of the members of the Panel that heard this matter.

Dated this 28<sup>th</sup> day of October, 2014

  
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Peter-John Vaillancourt, CPA, CGA  
Panel Chair

**THE CERTIFIED GENERAL ACCOUNTANTS  
ASSOCIATION OF ONTARIO**

**IN THE MATTER OF A PROCEEDING UNDER SUBSECTION 36(1)  
OF THE CERTIFIED GENERAL ACCOUNTANTS ACT, 2010  
AND THE ASSOCIATION'S BYLAWS**

**IN THE MATTER OF Michael Falcone, a member of the  
Certified General Accountants Association of Ontario**

**STATEMENT OF FACTS AND RESOLUTION**

**A. AGREED UPON STATEMENT OF FACTS**

1. Michael Falcone ("Falcone") became a member of CGA Ontario (the "Association") in 1992.
2. Falcone's CGA Ontario certificate number is 9396 and his CGA Canada certificate number is 329883.
3. In or about December 2008, Michael Falcone Professional Corporation ("Falcone PC") was retained by 2110458 Ontario Inc. o/a Loretta Flour to provide an audit with respect to the correctness, fairness, completeness or reasonableness of its financial statements ("public accounting services"). In addition, Falcone PC was also retained to provide the same public accounting services for 787755 Ontario Ltd. o/a New Durham Trading and NDT Food Services and for 2131413 Ontario Ltd. o/a Loretta Foods (the three companies together hereinafter referred to as the "Loretta Group of companies").
4. At the material time, Falcone PC was not authorized to provide public accounting services in Ontario.
5. At the material time, Falcone PC was not incorporated in Ontario and did not have a certificate of authorization from CGA Ontario.
6. At the material time, Falcone PC was incorporated only in Nova Scotia and held a licence only in Nova Scotia issued by the Public Accountants Board of Nova Scotia to practise public accounting in Nova Scotia.
7. In or about the spring of 2009, the Loretta Group of companies entered into discussions with Bank of Montreal concerning potential financing.

8. In that context, Falcone had direct discussions and communications with Bank of Montreal representatives in June 2009 concerning the proposed financing.
9. Falcone advised Bank of Montreal that he had completed final draft financial statements for the Loretta Group of companies as well as interim statements for Q1 and projections.
10. On or about 10 June 2009 Bank of Montreal requested copies of the final draft financial statements, interim statements for Q1 and projections for the Loretta Group of companies that Falcone had prepared.
11. By email dated 11 June 2009 from the Loretta Group of companies to Bank of Montreal, copied to Falcone, the Loretta Group of companies provided Bank of Montreal with draft financial statements for 2110458 Ontario Inc. o/a Loretta Flour for the year ended 31 December 2008, an unsigned auditor's report with respect to those statements, draft financial statements for the first quarter of 2009 and *pro forma* financial statements for 2009; draft financial statements for 787755 Ontario Ltd. o/a New Durham Trading and NDT Food Services for the year ended 31 December 2008, unsigned auditor's report with respect to those statements, draft financial statements for the first quarter of 2009 and *pro forma* financial statements for 2009; draft financial statements for 2131413 Ontario Ltd. o/a Loretta Foods for the year ended 31 December 2008, an unsigned auditor's report with respect to those statements, draft financial statements for the first quarter of 2009 and *pro forma* financial statements for 2009, consolidated financial statements for the year ended 31 December 2008 and consolidated financial statements for the first quarter of 2009.
12. The draft financial statements for 2110458 Ontario Inc. o/a Loretta Flour (the "draft Loretta Flour financial statements") that were prepared by Falcone PC and delivered to Bank of Montreal showed a net income before taxes of \$1,930,419 and retained earnings of \$1,458,061.
13. In the course of their discussion, Falcone advised Bank of Montreal that he did not anticipate further change to the auditor's report or to the draft Loretta Flour financial statements.
14. Falcone knew or ought to have known that the draft Loretta Flour financial statements were not marked as draft documents when delivered to Bank of Montreal.
15. After Bank of Montreal received the draft Loretta Flour financial statements, on or about 24 June 2009, Falcone PC issued financial statements for 2110458 Ontario Inc. o/a Loretta Flour for the period ended 31 December 2008 (the "final Loretta Flour financial statements"). The final Loretta Flour financial statements reported a net income before taxes of \$355,419 and retained earnings of \$441,681

16. The difference was attributable to a broker's fee of \$1,575,000 that was included in the final Loretta Flour financial statements that had not been included in the draft Loretta Flour financial statements.
17. Further, the unsigned auditor's report of Falcone PC that accompanied the draft Loretta Flour financial statements provided, without reservation, an opinion that the financial statements presented fairly, in all material respects, the financial position of the company as at December 31, 2008 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.
18. The auditor's report that Falcone PC ultimately signed that accompanied the final Loretta Flour financial statements contained a reservation with respect to the auditor's inability to observe the counting of physical inventory and whether adjustments to cost of sales, income taxes, net income for the year, opening retained earnings and cash provided from operations might be necessary.
19. Falcone PC qualified its opinion to account for the effect of adjustments, if any, which it might have determined to be necessary had it been able to examine operating inventory quantities.
20. Further, by email dated 23 June 2009, copied to Falcone, Loretta Foods delivered to Bank of Montreal 2010 and 2011 *pro forma* financial statements for the Loretta Group of companies. The *pro forma* statements did not record the broker's fee. The numbers contained in the *pro forma* statements were consistent with those in the Falcone PC draft Loretta Flour financial statements.
21. Bank of Montreal was never given the final Loretta Flour financial statements.
22. Falcone was aware by 3 June 2009, before the draft Loretta Flour financial statements were sent to Bank of Montreal that the working papers of Loretta Flour disclosed a broker's fee in the amount of \$1,575,000.
23. Falcone included the broker's fee of \$1,575,000 in earlier drafts of the draft Loretta Flour financial statements prepared by him in May 2009 but removed the reference to the broker's fee in the draft Loretta Flour financial statements sent to Bank of Montreal on or about 11 June 2009.
24. Falcone knew or ought to have known that the draft Loretta Flour financial statements that he prepared and that were in the possession of Bank of Montreal were no longer accurate.
25. Falcone knew, in particular, that the draft Loretta Flour financial statements he prepared did not contain the broker's fee or the qualifications on the auditor's report.

26. After receipt of the draft Loretta Flour financial statements, and without receipt of the final Loretta Flour financial statements, Bank of Montreal entered into an operating loan agreement with the Loretta Group of companies for \$10,000,000.
27. Rule 401 of the Association's Code of Ethical Principles and Rules of Conduct (the "Code") prohibits members from issuing a communication on any financial information, whether for publication or not, when the information is prepared in a manner that may have a tendency to be misleading.
28. In not (a) recalling the draft Loretta Flour financial statements, (b) advising Bank of Montreal that the draft Loretta Flour financial statements were no longer accurate, (c) providing Bank of Montreal with the final Loretta Flour financial statements or (d) withdrawing from the retainer in the event Loretta Flour precluded him from advising Bank of Montreal of the inaccuracy in the draft Loretta Flour financial statements in its possession, Falcone provided Bank of Montreal with a communication on financial information that he knew had a tendency to be misleading.
29. Rule 402 of the Code prohibits members from being associated with any letter, report, statement, representation, financial statement or tax filing, whether written or oral, which the member knows, or ought to know, is false or misleading, regardless of any disclaimer of responsibility.
30. In not (a) recalling the draft Loretta Flour financial statements, (b) advising Bank of Montreal that the draft Loretta Flour financial statements were no longer accurate, (c) providing Bank of Montreal with the final Loretta Flour financial statements or (d) withdrawing from the retainer in the event Loretta Flour precluded him from advising Bank of Montreal of the inaccuracy in the draft Loretta Flour financial statements in its possession, Falcone was associated with a statement or representation that was false or misleading.
31. Rule 404 of the Code requires members to immediately disclose any material discrepancy that becomes known to the member concerning financial information on which the member has issued a communication, or with which the member is associated.
32. In not (a) recalling the draft Loretta Flour financial statements, (b) advising Bank of Montreal that the draft Loretta Flour financial statements were no longer accurate, (c) providing Bank of Montreal with the final Loretta Flour financial statements or (d) withdrawing from the retainer in the event Loretta Flour precluded him from advising Bank of Montreal of the inaccuracy in the draft Loretta Flour financial statements in its possession, Falcone failed to disclose a material discrepancy concerning the draft Loretta Flour financial statements which he had prepared and with which he was associated.

33. Rule 606(a) of the Code provides that a member shall not participate in any action that is detrimental to the Association or the profession.
34. In allowing Bank of Montreal to proceed on the basis of the draft Loretta Flour financial statements when he knew those statements were not accurate, and when he took no steps to advise Bank of Montreal of the inaccuracy or correct the inaccuracy or withdraw from the retainer in the event Loretta Group of companies precluded him from advising Bank of Montreal of the inaccuracy in the draft Loretta Flour financial statements in its possession, Falcone participated in an action that was detrimental to the Association or the profession.
35. Falcone's conduct amounted to professional misconduct.

**B. AGREED UPON RESOLUTION**

1. Falcone recognizes that it was contrary to the Code for him to take no steps to either advise Bank of Montreal that the draft Loretta Flour financial statements were no longer accurate or provide Bank of Montreal with the final Loretta Flour financial statements or withdraw from the retainer in the event the Loretta Group of companies would not permit him to advise Bank of Montreal that the draft Loretta Flour financial statements were no longer accurate.
2. Falcone recognizes that by not correcting the draft Loretta Flour financial statements or advising Bank of Montreal that the draft Loretta Flour financial statements were no longer accurate, he was associated with financial information and communication in connection with financial information that tended to be misleading.
3. Falcone recognizes that by not correcting the draft Loretta Flour financial statements or advising Bank of Montreal that the draft Loretta Flour financial statements were no longer accurate, he was associated with information that was false or misleading.
4. Falcone recognizes that by not correcting the draft Loretta Flour financial statements or advising Bank of Montreal that the draft Loretta Flour financial statements were no longer accurate, he did not disclose a material discrepancy that became known to him concerning the draft Loretta Flour financial statements with which he was associated.
5. Falcone agrees that his conduct amounted to a violation of Rules 401, 402, 404 and 606(a) of the Code.
6. Falcone accepts a reprimand from the Association as a result of his breaches of the Code.

7. Falcone accepts a suspension of his membership for a period of six months, from the date of ratification of this agreement by the Professional Conduct Tribunal.
8. Along with his acceptance of this resolution, Falcone has enclosed both his CGA Ontario membership certificate and his CGA Canada membership certificate to be held by the Association for the duration of his suspension.
9. Falcone accepts a fine of \$4,000, being comprised of a fine of \$1,000 for each violation of the Code, namely Rule 401, 402, 404 and 606(a).
10. Falcone understands that the discipline committee (the "Committee") is not seeking any costs payable from him. However, he understands that if he does not accept this resolution, the matter will proceed to a disciplinary hearing before the Professional Conduct Tribunal and the Committee will be seeking costs of that hearing from him.
11. Falcone understands that, as required by the bylaws, the terms of the resolution will be published in an accounting member magazine in print and online and the full resolution will be posted on the Association's website.
12. Falcone understands that, after a ten day waiting period from the date of acceptance of this proposed resolution, the Committee will present this proposed agreed resolution of this complaint to the Professional Conduct Tribunal. The Tribunal may accept or reject the resolution. If it accepts the resolution of the complaint, this ratification shall be the final disposition of the complaint. Where the Tribunal refuses to accept the proposed resolution, it may grant this Committee an opportunity to return before it within 10 days or such other reasonable time as shall be stipulated by the Tribunal, with an amended proposed agreed resolution. Where the Tribunal refuses to ratify a proposed resolution and does not grant the Committee an opportunity to return before it with an amended proposed agreed resolution, a Professional Conduct Tribunal panel of three members shall be appointed to conduct a formal hearing pursuant to sections 20 and 28 of Article 9 of the bylaws.
13. Falcone further understands that if he and the Committee are unable to resolve this complaint through an agreed upon resolution process, the matter will be referred to the Professional Conduct Tribunal for a hearing.

I hereby agree to this above statement of facts and resolution.

Date of Offer:

Name:

15 September 2014



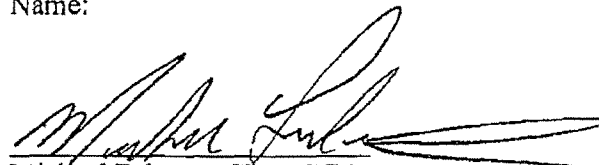
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Sandy Whyte, FCPA, FCGA  
Chair, 2013/ 2014 Discipline Committee

Date of Acceptance:

Name:

September 22, 2014



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Michael Falcone, CPA, CGA