

**IN THE MATTER OF a Proceeding under  
the *Certified General Accountants Act, 2010* and the Bylaws**

**IN THE MATTER OF Mr. Victor Herrera, a member of  
The Certified General Accountants Association of Ontario**

**B E T W E E N:**

The Discipline Committee of The Certified General Accountants Association of Ontario

- and -

Mr. Victor Herrera

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**DECISION AND REASONS FOR DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL**

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Members of the Professional Conduct Tribunal Panel:

Mr. David Handley, Public Representative, Chair  
Ms. Jane Rivers, CGA  
Mr. John Biancucci, CGA

Appearances:

Ms. Karen Jolley, Counsel for the Discipline Committee  
Ms. Lisa Braverman, Registrar and Independent Legal Counsel to the Professional Conduct Tribunal

Hearing Date:

May 1, 2012, Toronto

## **OVERVIEW**

A panel of the Professional Conduct Tribunal of The Certified General Accountants Association of Ontario heard this matter on May 1, 2012, at Toronto. At the conclusion of the hearing, the panel reserved its decision.

## **ALLEGATIONS**

Counsel for the Discipline Committee entered into evidence the Notice of Hearing dated March 22, 2012, contained in the Discipline Brief exhibit #2, and the Affidavit of Service, exhibit #1, relating to the Notice of Hearing.

The allegations against the member are that he breached the following provisions of the Code of Ethical Principles and Rules of Conduct as stated in the Notice of Hearing:

### **R101 Discredit**

A member shall not participate in, or knowingly provide services to, any practice, pronouncement or act that would be of a nature to discredit the profession.

### **R102 Unlawful Activity**

A member shall not participate in, or provide services to, any activity that the member knows, or which a reasonable and informed third party would believe, to be unlawful.

### **R108 Conduct Unbecoming**

It shall be unethical for a member or student, while acting in a professional capacity or otherwise, to engage in misconduct of a reprehensible or serious nature which reflects on the member's or student's honesty, integrity, or trustworthiness or, is relevant to the person's suitability as a member of the profession.

### **R606 Detrimental Actions**

(a) A member shall not participate in any action that is detrimental to the Association or the profession.

The particulars of the allegations against the member as stated in the Notice of Hearing are as follows:

#### **Particulars:**

1. In or about November 2010 you applied to the Association to write the newly offered examination in AP1 (applications in public practice).
2. In conjunction with your application, on or about 9 November 2010 you submitted an Affidavit of Experience signed by Abraham Kaufman, a retired C.A. indicating that you had worked in his firm as a CA trainee-student from **7 May 1979 to 11 January 1980**. You further confirmed in the cover letter that you had "36 wks @ 45 hours 1620 hours."
3. In order to write the AP1 examination, a member had to have completed a minimum of 2,500 hours and 30 months of full time, practical experience in public accounting in an approved training office at any time during one's career. The experience must have included:
  - (a) a minimum of 1,250 assurance hours with a minimum of 100 hours of reviews and 625 hours of audit;
  - (b) a minimum of 100 tax hours related to the above assurance hours;
  - (c) 1,150 hours in other related services; and
  - (d) be verified by a licensee from the approved training office where the experience was obtained.

4. The 1620 hours reported by you were not sufficient to meet the AP1 experience requirements.
5. The Association advised you of the experience requirements on or about 9 November 2010.
6. By letter dated 18 November 2010 you asked Kaufman to sign a Practical Experience Report for the period 7 May 1976 to 12 June 1981 and indicated to him that, by your calculations, you had worked at this firm 9,000 hours over that 5 year period.
7. By letter dated 3 February 2011 Kaufman returned to you, unsigned, the documents you had asked him to sign and the Bay Gift card for \$100 that had been sent to him with the draft Practical Experience Report. Kaufman advised you that he was unable to act on the documents you had sent.
8. With a cover letter dated 4 April 2011, you filed with the Association a "new" Affidavit of Experience purportedly signed by Kaufman that you indicated you had just located, confirming that you that you worked at his firm as a CA student-trainee from **10 May 1976 to 12 June 1981**. (265 weeks rather than 36 weeks and 9,800 hours rather than 1,620 hours).
9. You also submitted what you indicated was a letter from Kaufman dated 30 June 1981 that you had just located wherein Kaufman confirmed that you worked for his firm Abraham M. Kaufman & Co. from 10 May 1976 to 12 June 1981.
10. The information you provided was inconsistent with records you had filed earlier with the Association that indicated you had worked for Kaufman from May 1979 to January 1980.
11. In the course of the investigation in the discrepancy in hours, Kaufman confirmed to the Association that you did not work for him from 10 May 1976 to 12 June 1981. You worked for him only from 7 May 1979 to 11 January 1980 as was indicated on the original Affidavit of Experience that you had provided.
12. Kaufman further indicated that he would not have provided a letter dated 30 June 1981 on the letterhead of "Abraham M. Kaufman & Co." as the firm merged and changed names effective 1 March 1981 and thereafter operated as "Kaufman, Vasil & Associés". In addition, the firm phone number had changed with the merger from that on the letterhead that you submitted to the Association.
13. Similarly, the first submitted Affidavit of Experience for the period 7 May 1979 to 11 January 1980 is under the name of Abraham M. Kaufman & Co. Chartered Accountants. As noted, until March 1981, this was the correct name of the firm.
14. The second submitted Affidavit of Experience that purports to be for the period 10 May 1976 to 12 June 1981 is also under the name of Abraham M. Kaufman & Co. Chartered Accountants. As noted, this was not the correct name of the firm by June 1981 nor was the telephone number noted the correct number after the firm merger. Kaufman would not have signed an Affidavit of Experience in June 1981 using his old firm name and an incorrect telephone number.
15. During the investigation you indicated that you worked part time with Kaufman from 10 May 1976 to 6 June 1979 and part time from 12 January 1980 to 12 June 1981.
16. Kaufman advised the Association that he never hired part time employees.
17. Further, the hours you submitted for the time you said you worked for Kaufman (40 hours per week or 2,000 hours per year) are inconsistent with a part time position.

18. Additionally, the information you submitted concerning your employment with Kaufman was inconsistent with additional information you had filed with the Association and with the Certified General Accountants of British Columbia indicating that you had worked elsewhere from January 1980 to January 1982.

19. In a resume you submitted to the Association on or about 14 June 1987 you indicated you worked for Kaufman from May 1979 to January 1980 as a CA trainee. You did not indicate that you worked for Kaufman from May 1976 to June 1981. Your resume indicated no employment from May 1976 to July 1977, indicated you were employed by Machine Products Corporation from July 1977 to September 1977 and indicated no employment from September 1977 to May 1979. For the period January 1980 to April 1982 it indicated you were employed at The Sherwin Williams Co.

20. In a Practical Experience Questionnaire filed with the Certified General Accountants of British Columbia you indicated that you worked for Kaufman as a CA trainee from 1979 to 1980. You indicated that you worked for Sherwin Williams from 1980 to present (1985). You also indicated that in the period 1976 to 1979, you were enrolled both at Concordia University (p/f time – BA) and at Vanier College (p/f time – certificate – finance). It did not indicate that you worked for Kaufman from 1976 to 1979 or from 1980-1981.

21. On your Application for Admission Questionnaire for the Certified General Accountants of British Columbia, you indicated that you worked for Kaufman as a CA Trainee from 7 May 1979 to 11 January 1980 and that, from 28 January 1980 to 15 January 1982, you worked for Sherwin Williams. You did not list any employment prior to 1979.

22. Sherwin Williams confirmed in a general letter dated 18 March 1982 and in a further letter to CGA-BC dated 1 August 1986 that you worked for them since 28 January 1980 as staff auditor responsible for financial and operational audits of its retail store locations and was based in Toronto, Montreal and Vancouver from January 1980 to April 1982.

23. Machine Products Corporation confirmed in a letter dated 30 September 1977 that you worked there from 21 July 1977 to 23 September 1977 as a student working approximately 42.5 hours per week.

24. By misrepresenting your work experience to the Association and, specifically in misrepresenting your hours worked in an attempt to meet the experience requirements for AP1, you violated Rules 101, 102, 108 and 606(a) of the Code.

25. In creating and submitting false documentation to the Association to support your alleged experience requirements, you violated Rules 101, 102, 108 and 606(a) of the Code.

26. In requesting Kaufman to provide false information to the Association so that you could satisfy the AP1 experience requirements, and in providing him with a \$100 gift certificate to do so, you violated Rules 101, 102, 108 and 606(a) of the Code.

27. Your conduct amounted to professional misconduct.

#### **MEMBER'S PLEA**

As the member was neither present nor represented by counsel, the member was deemed to have denied the allegations set out in the Notice of Hearing. The hearing proceeded on the basis that the Discipline Committee has the onus of proving the allegations against the member.

## **FACTS AND EVIDENCE**

Counsel for the Discipline Committee presented an Affidavit of Service, exhibit #3, establishing that the member had been served on April 4, 2012 with a Request to Admit Facts and Documents, exhibit #7, the Response to Request to Admit, the Discipline Brief as well as a Notice under the Evidence Act (Business Records), exhibit #6. The member was advised that he had 20 days to respond to the Request to Admit Facts and Documents, and that if he failed to respond, he would be deemed to admit the truth of the facts and the authenticity of the documents, for the purposes of this proceeding. The member did respond to the Request to Admit Facts and Documents. In particular, in the member's Response to Request to Admit, exhibit #9, the member wrote in the response "Yes" to the question "Admits the truth of facts numbers" and "Yes" to the question "Admits the authenticity of documents numbers". The panel treated this as an admission by the member to the truth of the facts and to the authenticity of the documents in the Request to Admit Facts and Documents.

Based on the facts and documents admitted by the member at this hearing, the panel makes the following findings of fact:

### **Personal Facts, Relationship and Status with CGA Ontario**

1. Mr. Herrera became a member of CGA in 1986. In 1987 Mr. Herrera moved his registration from British Columbia to Ontario.
2. Mr. Herrera's CGA Ontario certificate number is 6604 and his CGA Canada certificate number is 220194.
3. In or about November 2010 Mr. Herrera applied to the Association to write the newly offered examination in AP1 (applications in public practice).
4. In conjunction with Mr. Herrera's application, on or about 9 November 2010 he submitted an Affidavit of Experience signed by Abraham Kaufman, a retired C.A. indicating that he had worked in his firm as a CA trainee-student from **7 May 1979 to 11 January 1980**. Mr. Herrera further confirmed in the cover letter that he had "36 wks @ 45 hours 1620 hours."
5. In order to write the AP1 examination, a member had to have completed a minimum of 2,500 hours and 30 months of full time, practical experience in public accounting in an approved training office at any time during one's career. The experience must have included:
  - (a) a minimum of 1,250 assurance hours with a minimum of 100 hours of reviews and 625 hours of audit;
  - (b) a minimum of 100 tax hours related to the above assurance hours;
  - (c) 1,150 hours in other related services; and
  - (d) be verified by a licensee from the approved training office where the experience was obtained.
6. The 1,620 hours reported by Mr. Herrera were not sufficient to meet the AP1 experience requirements.
7. The Association advised Mr. Herrera of the experience requirements on or about 9 November 2010.

8. By letter dated 18 November 2010 Mr. Herrera asked Kaufman to sign a Practical Experience Report for the period 7 May 1976 to 12 June 1981 and indicated to him that, by Mr. Herrera calculations, he had worked at this firm 9,000 hours over that 5 year period.
9. By letter dated 3 February 2011 Kaufman returned to Mr. Herrera, unsigned, the documents Mr. Herrera had asked him to sign and the Bay Gift card for \$100 that had been sent to Kaufman with the draft Practical Experience Report. Kaufman advised Mr. Herrera that he was unable to act on the documents Mr. Herrera had sent.
10. With a cover letter dated 4 April 2011, Mr. Herrera filed with the Association a "new" Affidavit of Experience purportedly signed by Kaufman that Mr. Herrera indicated he had just located, confirming that Mr. Herrera had worked at his firm as a CA student-trainee from **10 May 1976 to 12 June 1981**. (265 weeks rather than 36 weeks and 9,800 hours rather than 1,620 hours).
11. Mr. Herrera also submitted what he indicated was a letter from Kaufman dated 30 June 1981 that Mr. Herrera had just located wherein Kaufman confirmed that Mr. Herrera worked for his firm Abraham M. Kaufman & Co. from 10 May 1976 to 12 June 1981.
12. The information Mr. Herrera provided was inconsistent with records he had filed earlier with the Association that indicated he had worked for Kaufman from May 1979 to January 1980.
13. In the course of the investigation in the discrepancy in hours, Kaufman confirmed to the Association that Mr. Herrera did not work for him from 10 May 1976 to 12 June 1981. Mr. Herrera worked for him only from 7 May 1979 to 11 January 1980 as was indicated on the original Affidavit of Experience that Mr. Herrera had provided.
14. Kaufman further indicated that he would not have provided a letter dated 30 June 1981 on the letterhead of "Abraham M. Kaufman & Co." as the firm merged and changed names effective 1 March 1981 and thereafter operated as "Kaufman, Vasil & Associés". In addition, the firm phone number had changed with the merger from that on the letterhead that Mr. Herrera submitted to the Association.
15. Similarly, the first submitted Affidavit of Experience for the period 7 May 1979 to 11 January 1980 is under the name of Abraham M. Kaufman & Co. Chartered Accountants. As noted, until March 1981, this was the correct name of the firm.
16. The second submitted Affidavit of Experience that purports to be for the period 10 May 1976 to 12 June 1981 is also under the name of Abraham M. Kaufman & Co. Chartered Accountants. As noted, this was not the correct name of the firm by June 1981 nor was the telephone number noted the correct number after the firm merger. Kaufman would not have signed an Affidavit of Experience in June 1981 using his old firm name and an incorrect telephone number.
17. During the investigation Mr. Herrera indicated that he worked part time with Kaufman from 10 May 1976 to 6 June 1979 and part time from 12 January 1980 to 12 June 1981.
18. Kaufman advised the Association that he never hired part time employees.
19. Further, the hours Mr. Herrera submitted for the time he said he worked for Kaufman (40 hours per week or 2,000 hours per year) were inconsistent with a part time position.

20. Additionally, the information Mr. Herrera submitted concerning his employment with Kaufman was inconsistent with additional information he had filed with the Association and with the Certified General Accountants of British Columbia indicating that he had worked elsewhere from January 1980 to January 1982.
21. In a resume Mr. Herrera submitted to the Association on or about 14 June 1987 he indicated he worked for Kaufman from May 1979 to January 1980 as a CA trainee. Mr. Herrera did not indicate that he worked for Kaufman from May 1976 to June 1981. His resume indicated no employment from May 1976 to July 1977, indicated he was employed by Machine Products Corporation from July 1977 to September 1977 and indicated no employment from September 1977 to May 1979. For the period January 1980 to April 1982 it indicated he was employed at The Sherwin Williams Co.
22. In a Practical Experience Questionnaire filed with the Certified General Accountants of British Columbia Mr. Herrera indicated that he worked for Kaufman as a CA trainee from 1979 to 1980. He indicated that he worked for Sherwin Williams from 1980 to present (1985). Mr. Herrera also indicated that in the period 1976 to 1979, he was enrolled both at Concordia University (p/f time – BA) and at Vanier College (p/f time – certificate – finance). It did not indicate that he worked for Kaufman from 1976 to 1979 or from 1980-1981.
23. On Mr. Herrera's Application for Admission Questionnaire for the Certified General Accountants of British Columbia, he indicated that he worked for Kaufman as a CA Trainee from 7 May 1979 to 11 January 1980 and that, from 28 January 1980 to 15 January 1982, he worked for Sherwin Williams. Mr. Herrera did not list any employment prior to 1979.
24. Sherwin Williams confirmed in a general letter dated 18 March 1982 and in a further letter to CGA-BC dated 1 August 1986 that Mr. Herrera worked for them since 28 January 1980 as staff auditor responsible for financial and operational audits of its retail store locations and was based in Toronto, Montreal and Vancouver from January 1980 to April 1982.
25. Machine Products Corporation confirmed in a letter dated 30 September 1977 that Mr. Herrera worked there from 21 July 1977 to 23 September 1977 as a student working approximately 42.5 hours per week.
26. Rule 101 of the Code of Ethical Principles and Rules of Conduct (the "Code") – Discredit – states:

*A member shall not participate in, or knowingly provide services to, any practice, pronouncement or act that would be of a nature to discredit the profession.*
27. By (a) misrepresenting his work experience to the Association and, specifically in misrepresenting his hours worked in an attempt to meet the experience requirements for AP1, (b) creating and submitting false documentation to the Association to support his alleged experience requirements and (c) requesting Kaufman to provide false information to the Association so that he could satisfy the AP1 experience requirements and in providing him with a \$100 gift certificate to do so, Mr. Herrera violated Rule 101 of the Code.
28. Rule 102 of the Code – Unlawful Activity - states:

*A member shall not participate in, or provide services to, any activity that the member knows, or which a reasonable and informed third party would believe, to be unlawful.*

29. By (a) misrepresenting his work experience to the Association and, specifically in misrepresenting his hours worked in an attempt to meet the experience requirements for AP1, (b) creating and submitting false documentation to the Association to support his alleged experience requirements and (c) requesting Kaufman to provide false information to the Association so that he could satisfy the AP1 experience requirements and in providing him with a \$100 gift certificate to do so, Mr. Herrera violated Rule 102 of the Code.

30. Rule 108 of the Association's Code – Conduct Unbecoming – states:

*It shall be unethical for a member, while acting in a professional capacity or otherwise, to engage in misconduct of a reprehensible or serious nature which reflects on the member's or student's honesty, integrity, or trustworthiness or, is relevant to the person's suitability as a member of the profession.*

31. By (a) misrepresenting his work experience to the Association and, specifically in misrepresenting his hours worked in an attempt to meet the experience requirements for AP1, (b) creating and submitting false documentation to the Association to support his alleged experience requirements and (c) requesting Kaufman to provide false information to the Association so that he could satisfy the AP1 experience requirements and in providing him with a \$100 gift certificate to do so, Mr. Herrera violated Rule 108 of the Code.

32. Rule 606(a) of the Association's Code – Detrimental Actions – states:

*A member shall not participate in any action that is detrimental to the Association or the profession.*

33. By (a) misrepresenting his work experience to the Association and, specifically in misrepresenting his hours worked in an attempt to meet the experience requirements for AP1, (b) creating and submitting false documentation to the Association to support his alleged experience requirements and (c) requesting Kaufman to provide false information to the Association so that he could satisfy the AP1 experience requirements and in providing him with a \$100 gift certificate to do so, Mr. Herrera violated Rule 606(a) of the Code.

34. Mr. Herrera's conduct amounted to professional misconduct.

As part of Ms. Jolley's case she called one witness to testify at this hearing, Ms. Beth Deazeley. Ms. Deazeley holds the position of registrar at the Certified Management Accountants of Ontario (CMA). Ms. Deazeley testified under affirmation and provided the following information:

- She is the registrar for the CMA and in her capacity maintains the CMA member records
- She was summoned to this hearing and was instructed to bring any documents that the CMA held on Mr. Herrera’s application to become a member of the CMA
- She confirmed that she had searched her records electronically, which covers records from 1984 going forward. For prior years, she looked at the CMA’s Microfilm files and paper files for information on Mr. Herrera.
- Ms. Deazeley confirmed that Mr. Herrera was a member of the CMA and that in his application the following details of employment were noted:
  - From May 1979 to January 1980 Mr. Herrera was employed by Mr. A. Kaufman located in Quebec
  - From January 1980 to January 1982 Mr. Herrera was employed by Sherwin Williams located in Cleveland Ohio
  - From February 1982 to April 1982 Mr. Herrera was employed by the Federal Government of Canada located in Vancouver
  - From April 1982 to “present” with the application date noted as March 1984 Mr. Herrera was employed by Sherwin Williams located in Panama
- She confirmed that to the best of her knowledge the CMA had no policies governing part-time work
- She confirmed that she found no other information on Mr. Herrera working for Mr. Kaufman during the time period of 1976 to 1981 and that according to her records the only duration that Mr. Herrera worked for Mr. Kaufman was for the period between May 1979 to January 1980

Ms. Deazeley was excused.

The Panel found Ms. Deazeley to be a credible witness providing answers to the questions directly and without bias. She provided the records requested and was knowledgeable of these records in responding to Ms. Jolley’s questions. Ms. Deazeley’s testimony was consistent with the documents that were made exhibits at the hearing including CMA’s records such as exhibit #4, Mr. Herrera’s application for membership with CMA.

## **DECISION**

The Discipline Committee has the onus of proving the allegations in the Notice of Hearing in accordance with the civil standard of proof. The standard of proof applied by the panel of the Professional Conduct Tribunal was a balance of probabilities based on clear, convincing and cogent evidence.

Having considered the evidence and the submissions and the onus and standard of proof, the panel of the Professional Conduct Tribunal finds that the member breached the following provisions of the Code of Ethical Principles and Rules of Conduct:

### **R101 Discredit**

A member shall not participate in, or knowingly provide services to, any practice, pronouncement or act that would be of a nature to discredit the profession.

### **R102 Unlawful Activity**

A member shall not participate in, or provide services to, any activity that the member knows, or which a reasonable and informed third party would believe, to be unlawful.

### **R108 Conduct Unbecoming**

It shall be unethical for a member or student, while acting in a professional capacity or otherwise, to engage in misconduct of a reprehensible or serious nature which reflects on the member’s or student’s honesty, integrity, or trustworthiness or, is relevant to the person’s suitability as a member of the profession.

## **R606 Detrimental Actions**

(a) A member shall not participate in any action that is detrimental to the Association or the profession.

The panel of the Professional Conduct Tribunal also finds the member guilty of professional misconduct.

### **REASONS FOR DECISION**

The Panel relied heavily on the admission by Mr. Herrera to the facts found in the Request to Admit Facts and Documents, the evidence provided by Ms. Deazeley and the documentation that Ms. Jolley put forward.

In particular, the Panel relied on the following facts and documents in making its findings that Mr. Herrera breached Rules 101, 102, 108 and 606(a) of the Code of Ethical Principles and Rules of Conduct:

- In the Request to Admit Facts and Documents, paragraph 4, it states that on or about November 9 2010 Mr. Herrera submitted an application with an Affidavit of Experience signed by Mr. Kaufman stating that he had worked for Mr. Kaufman from May 1979 to January 1980.
- After learning that he had inadequate experience to sit the Public Accounting License - AP1 examination, Mr. Herrera asked Mr. Kaufman to sign a Practical Experience Report that expanded the employment period to read May 1976 to June 1981. (tab 8 of the Discipline Brief)
- On February 3, 2011 Mr. Kaufman returned the unsigned documents to Mr. Herrera noting that he was unable to act on the documents. (tab 9 of the Discipline Brief)
- On 4 April 2011, Mr. Herrera filed with the Association a "new" Affidavit of Experience purportedly signed by Mr. Kaufman, confirming that Mr. Herrera had worked at his firm as a CA student-trainee from **10 May 1976 to 12 June 1981**. (tab 10 of the Discipline Brief)
- The content of the "new" Affidavit of Experience is not consistent with records filed by Mr. Herrera.
- Under tab 10 in the covering letter for the AP1 application sent to Mr. Contractor, Mr. Herrera states that he found a letter that Mr. Kaufman wrote dated June 30 1981. The letter confirms the fact that Mr. Herrera was a "C.A. student-trainee for the period May 10, 1976 to June 12, 1981" and "worked for us approximately 10, 000 hours".
- Yet under tab 11 of the Discipline Brief in the CGA British Columbia Practical Experience Questionnaire - Employment History, it notes that Mr. Herrera worked for Mr. Kaufman between 79' – 80' and that under Education, Mr. Herrera attended Concordia University and later Vanier College between 1972 and 1979.
- Again, under tab 12 of the Discipline Brief in Mr. Herrera's Membership transfer request to CGA Ontario dated June 14, 1987, it states in the Resume provided under the heading Experience that Mr. Herrera worked for Mr. Kaufman as a C.A. Trainee between May 1979 – January 1980.
- Under tab 14 of the Discipline Brief in a letter to Lana Tom dated May 25 2011 it states that the work for Mr. Kaufman between May 1976 and May 1979 and between January 1980 and June 1981 was part-time work. Yet the hours submitted are inconsistent with part-time work. Under tab 17 of the Discipline Brief, Mr. Kaufman noted that he did not hire part-time staff.
- In fact, in a letter from Mr. Kaufman to Mr. Ted Wigdor at the CGA Ontario office under tab 17 of the Discipline Brief, it states the following points to the best of his knowledge:
  - Mr. Kaufman stated "I first met Mr. Herrera when I interviewed him for a full time position. The interview would have taken place shortly before May 7, 1979."
  - On March 1, 1981 the company Abraham M. Kaufman & Co. entered into a partnership with another Chartered Accountant and ceased operating under the name Abraham M. Kaufman & Co. and correspondence requiring his signature would have been signed on behalf and in the name of the new partnership. He confirmed this information with his former partner. He also provided a document showing the new name and the new telephone number.
  - Mr. Kaufman made it clear that he did not hire part-time staff.

- Mr. Herrera worked for Mr. Kaufman from May 7, 1979 to January 11, 1980 (as noted in the Affidavit of Experience that was attached to Mr. Kaufman's letter. This was the original Affidavit of Experience provided by Mr. Herrera with the initial AP1 application.)
- From January 1980 to November 2010 Mr. Kaufman had no contact with Mr. Herrera.
- Mr. Kaufman confirmed his recollections with a former employee, Mr. Aizer, regarding the approximate time period Mr. Herrera worked for Mr. Kaufman.
- Mr. Kaufman's former partner confirmed to him that he had no knowledge of Mr. Herrera working for the partnership.

The Panel concluded that Mr. Herrera had violated the following provisions of the Code of Ethical Principles and Rules of Conduct:

**R101 Discredit**

A member shall not participate in, or knowingly provide services to, any practice, pronouncement or act that would be of a nature to discredit the profession.

By (a) misrepresenting his work experience to the Association and, specifically in misrepresenting his hours worked in an attempt to meet the experience requirements for AP1, (b) creating and submitting false documentation to the Association to support his alleged experience requirements and (c) requesting Kaufman to provide false information to the Association so that he could satisfy the AP1 experience requirements and in providing Kaufman with a \$100 gift certificate to do so, Mr. Herrera violated Rule 101 of the Code.

**R102 Unlawful Activity**

A member shall not participate in, or provide services to, any activity that the member knows, or which a reasonable and informed third party would believe, to be unlawful.

By (a) misrepresenting his work experience to the Association and, specifically in misrepresenting his hours worked in an attempt to meet the experience requirements for AP1, (b) creating and submitting false documentation to the Association to support his alleged experience requirements and (c) requesting Kaufman to provide false information to the Association so that he could satisfy the AP1 experience requirements and in providing Kaufman with a \$100 gift certificate to do so, Mr. Herrera violated Rule 102 of the Code.

**R108 Conduct Unbecoming**

It shall be unethical for a member or student, while acting in a professional capacity or otherwise, to engage in misconduct of a reprehensible or serious nature which reflects on the member's or student's honesty, integrity, or trustworthiness or, is relevant to the person's suitability as a member of the profession.

By (a) misrepresenting his work experience to the Association and, specifically in misrepresenting his hours worked in an attempt to meet the experience requirements for AP1, (b) creating and submitting false documentation to the Association to support his alleged experience requirements and (c) requesting Kaufman to provide false information to the Association so that he could satisfy the AP1 experience requirements and in providing him with a \$100 gift certificate to do so, Mr. Herrera violated Rule 108 of the Code.

**R606 Detrimental Actions**

- (a) A member shall not participate in any action that is detrimental to the Association or the profession.

By (a) misrepresenting his work experience to the Association and, specifically in misrepresenting his hours worked in an attempt to meet the experience requirements for AP1, (b) creating and submitting false documentation to the Association to support his alleged experience requirements and (c) requesting Kaufman

to provide false information to the Association so that he could satisfy the AP1 experience requirements and in providing him with a \$100 gift certificate to do so, Mr. Herrera violated Rule 606(a) of the Code.

In the Request to Admit Facts and Documents, Mr. Herrera admitted to the following actions:

- (a) misrepresenting his work experience to the Association and, specifically in misrepresenting his hours worked in an attempt to meet the experience requirements for AP1,
- (b) creating and submitting false documentation to the Association to support his alleged experience requirements and
- (c) requesting Kaufman to provide false information to the Association so that he could satisfy the AP1 experience requirements and in providing him with a \$100 gift certificate to do so.

As a result, the panel of the Professional Conduct Tribunal found that Mr. Herrera performed actions that constituted actions of professional misconduct and therefore the member is found to be guilty of professional misconduct.

### **PENALTY SUBMISSIONS**

In Ms. Jolley's Sentencing Brief she laid out a number of cases where the member had breached their Association's Rules and brought discredit to the profession and committed unlawful acts.

Ms. Jolley provided a number of submissions about the facts and documents from the Request to Admit Facts and Documents and the Discipline Brief. Also, the cases below were cited due to the similar rules infractions and were all from the CGAO, namely:

- Mr. Brodie was found to be guilty by a Professional Conduct Tribunal of the Certified General Accountants Association of Ontario of violations under the Code of Ethics and Rules of Professional Conduct and the Code of Ethical Principles and Rules of Conduct, specifically; unlawful activity, discrediting his profession and professional misconduct. As a result, Mr. Brodie was expelled from the Association, ordered to pay costs of \$1,500 and a fine of \$1,000.
- Mr. Willman was found to be guilty by a Professional Conduct Tribunal of the Certified General Accountants Association of Ontario of violations under the Code of Ethical Principles and Rules of Conduct, specifically; discrediting his profession, unlawful activity and conduct unbecoming; among others. As a result, Mr. Willman was expelled, was ordered to return his certificates for both CGA Ontario and CGA Canada, was ordered to pay \$5,000 in costs and a fine of \$2500.
- Mr. Samuel was found to be guilty by a Professional Conduct Tribunal of CGAO of violations under the Code of Ethical Principles and Rules of Conduct, specifically; discrediting his profession, unlawful activity and detrimental actions. As a result, Mr. Samuel was expelled, ordered to return his certificates and ordered to pay \$10,000 in costs.
- Mr. Wa was found to be guilty by the Professional Conduct tribunal of the Certified General Accountants Association of Ontario of violations under the Code of Ethical Principles and Rules of Conduct, specifically; discrediting his profession, unlawful activity and professional misconduct among others. As a result, Mr. Wa was expelled, and ordered to pay \$1, 500 in costs.

Other cases from other Associations were also cited with similar infractions and outcomes.

In terms of penalty, counsel for the Discipline Committee submitted that the panel should make the following penalty order:

- Mr. Herrera shall have his membership revoked by the Association
- Mr. Herrera shall return his CGA Ontario and CGA Canada certificates of membership to the Association

- Mr. Herrera shall pay a contribution to the costs incurred by the Association in the amount of \$5,000
- Mr. Herrera shall pay a fine of \$5,000 to the Association

In a letter sent to Ms. Jolley dated April 9, 2012, (exhibit #8), Mr. Herrera requested leniency on the penalty for the following reasons:

1. Mr. Herrera has been a member for over 25 years.
2. This is the first and only time that he has been disciplined by any disciplinary committee.
3. He is over 65 years of age and was planning on retiring in the near future.

#### **PENALTY DECISION**

The panel deliberated and accepted the Discipline Committee's submissions in terms of penalty and accordingly orders the following penalty:

- Mr. Herrera shall have his membership revoked by the Association
- Mr. Herrera shall return his CGA Ontario and CGA Canada certificates of membership to the Association
- Mr. Herrera shall pay a contribution to the costs incurred by the Association in the amount of \$5,000
- Mr. Herrera shall pay a fine of \$5,000 to the Association

#### **REASONS FOR PENALTY DECISION**

The reason for the decision to revoke Mr. Herrera's membership is as follows:

In any profession and particularly in the certified general accounting profession the falsifying of documentation is a serious violation and undermines any credibility a member may hold. The general public must be able to rely on an Association to prescribe and enforce rules and regulations to ensure that the CGA Ontario members they hire meet the high standards the Association prescribes and can therefore perform to those standards. As a self-regulated profession, the CGAO must maintain the public's confidence in the profession by ensuring that these requirements are adhered to and that the standards developed to ensure the highest standards of professionalism that the Association sets are enforced.

Mr. Herrera did not adhere to the rules set out by the Association allowing members to sit the AP1 examination. In fact, he produced false documents in an attempt to deceive the Association to allow him to sit an exam to which he did not qualify. With his actions, Mr. Herrera demonstrated a lack of integrity that is inconsistent with the ethical and professional standards that are set by his Association and that have to be adhered to at all times to continue to be a member in this Association. His actions undermined:

- a. The general public by not gaining the type and amount of experience required for a particular accounting expertise and therefore he may not be adequately prepared to serve the public.
- b. His fellow members by suggesting that the rules do not apply to him. In fact through his actions he may have taken the place of another member in a course that had the appropriate type and amount of experience.
- c. The Association by not following the rules as they have set out and that as a member he has agreed to follow.

The panel, in coming to its decision believe that the overall penalty meets the level of deterrence and protection of the public that these types of infractions require. It also ensures that the member, other members of the Association and the general public clearly understand that as a self-regulating body, the CGA Ontario will not tolerate any actions that discredit the profession or may cause the general public to doubt the high standard of integrity that they expect when dealing with the certified general accountants.

Dated this 11<sup>th</sup> day of June 2012

I, David Handley sign this Decision and Reasons for Decision as Chair of the panel of the Professional Conduct Tribunal on behalf of the members of the panel that heard this matter.

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David Handley

**NOTICE**

**This decision of the Professional Conduct Tribunal may be appealed to an Appeal Tribunal within thirty (30) days of the date of this decision.**

**The Notice of Appeal must be in writing, addressed to the Secretary of the Association (Certified General Accountants of Ontario, 240 Eglinton Avenue East, Toronto, Ontario, M4P 1K8) and must contain the grounds for the appeal.**

**TAKE NOTE THAT, in an appeal, the Appellant bears the onus of obtaining and delivering copies of the transcript of the hearing before the Professional Conduct Tribunal for the Appeal Tribunal (4 copies) and for the Respondent (1 copy).**

**According to Article 9 of the Bylaws, a Notice of Appeal that fails to contain the grounds for the appeal, together with evidence that demonstrates that a transcript of the hearing giving rise to the appeal has been ordered, shall be void.**