

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

**IN THE MATTER OF Najmi Muhammad, 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 -

Najmi Muhammad

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

Members of the Professional Conduct Tribunal Panel:

Alexis Perera, CGA, Chair

John Biancucci, CGA

Catherine Kenwell, Public Representative

Appearances:

Karen Jolley, Counsel for the Discipline Committee

Najmi Muhammad, Member

Lisa Braverman, Independent Legal Counsel to the Professional Conduct Tribunal

Hearing Date:

August 27, 2013, Toronto

OVERVIEW

A panel of the Professional Conduct Tribunal of The Certified General Accountants Association of Ontario heard this matter on August 27, 2013, at Toronto. At the conclusion of the hearing, the panel reserved its decision.

PRELIMINARY MATTERS

Motion

On July 26, 2013, the Professional Conduct Tribunal heard the motion by Ms. Karen Jolley, counsel for the Discipline Committee. The motion was for:

1. An order that Najmi Muhammad provide to the Discipline Committee, within 14 days of the decision of the Tribunal, a list of his clients with address and telephone number for each of the calendar years that he had operated a professional practice, including at least the years 2008 to 2013 in the form of the schedule attached to the Discipline Committee's notice of motion, including an indication next to each client name, of the particulars and extent and nature of the work performed (for example, personal income tax return, corporation income tax return, income statement, balance sheet and the taxation years for which the tax return was completed).
2. An order that within 5 days of the decision of the Tribunal, Najmi Muhammad sign an authorization in the form prepared by the Discipline Committee and delivered to him on or about June 11th, 2013, authorizing CRA to release to the Discipline Committee, information concerning the number of income tax returns e-filed or paper filed by Mr. Muhammad during the calendar years 2008-2013.
3. An order for costs of the motion.

Najmi Muhammad opposed the motion.

Decision of the Panel

Having considered the motion materials including the notice of motion and the affidavits of James Yakimovich and Lana Tom and the submissions of both Ms. Jolley and Mr. Muhammad, the Professional Conduct Tribunal orders the following:

1. The Professional Conduct Tribunal panel orders that Najmi Muhammad provide to the Discipline Committee, within 14 days of today's date, on or before August 9th, 2013, a list of his clients with address and telephone number for each of the calendar years that he operated a professional practice including at least the years 2008 to 2013 in the form of schedule A attached to the Discipline Committee's notice of motion, including an indication next to each client name, of the particulars and extent and nature of the work

performed (for example, personal income tax return, corporation income tax return, income statement, balance sheet and the taxation years for which the tax return was completed).

2. The Professional Conduct Tribunal panel orders that on today's date, July 26th, 2013, Najmi Muhammad sign an authorization in the form prepared by the Discipline Committee and delivered to him on or about June 11th, 2013, marked as Exhibit 3, on this motion, authorizing CRA to release to the Discipline Committee information concerning the number of income tax returns e-filed or paper filed by Mr. Muhammad during the calendar years 2008-2013.
3. The Professional Conduct Tribunal panel orders that Najmi Muhammad pay \$3000 in costs for this motion to the Discipline Committee.

ALLEGATIONS

Counsel for the Discipline Committee entered into evidence the Notice of Hearing dated June 28, 2013 (exhibit 1), and the Affidavit of Service (exhibit 2), relating to the Notice of Hearing.

The allegations against the member were 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.

R509 Advertising and Other Forms of Solicitation

A member shall not seek to obtain clients by advertising or other form of solicitation, which:

- (a) is false or deceptive.
- (e) is demonstrably false or inaccurate.
- (f) is either misleading, confusing, or deceptive, or likely to mislead, confuse or deceive.
- (g) is not in the best interests of the public, inconsistent with a high standard of professionalism or contravenes professional good taste.

R509.1 Misleading Name of Firm or Style of Practice

A member shall not engage in a professional practice or the practice of public accounting under a name or style that is misleading as to the nature of the entity (proprietorship, partnership or professional corporation) or the nature of the functions performed or that may erroneously lead the public to believe that the entity or practice is that of a Certified General Accountant.

Rule 514 Registration

For the period 2008 to June 2010:

A member shall, if engaged in a professional practice or the practice of public accounting part-time or full-time, register in accordance with the requirements prescribed by the Association. This rule also shall apply to members who own, operate or control a professional corporation engaged in a professional practice or the practice of public accounting.

For the period June 2010 to present:

A member shall, if engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time, register in accordance with the requirements prescribed by the Association. This rule also shall apply to members who own, operate or control a professional corporation engaged in the practice of public accounting or the preparation of compilation engagements or tax returns.

Rule 515 Practice Inspection Requirements

For the period 2008 to present:

A member shall comply with, and adhere to, the practice inspection requirements of the Association and the standards contained therein.

Rule 516 Professional Liability Insurance

For the period 2008 to June 2010:

A member engaged in a professional practice or the practice of public accounting shall maintain professional liability insurance as specified, and provide evidence as required, by the Association.

For the period June 2010 to present:

A member engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time shall maintain professional liability insurance as specified, and provide evidence as required, by the Association.

Principle - Responsibilities to the Profession

Members shall always act in accordance with the duties and responsibilities associated with being members of the profession and shall carry on work in a manner that will enhance the image of the profession and the Association. A member shall comply with the *Association Bylaws* and the *Code of Ethical Principles and Rules of Conduct* of the Association as amended from time to time, and with any order or resolution of the board of directors or its committees, under the *Association Bylaws*.

R610 Requirement to Reply in Writing

A member shall reply promptly in writing to any request from the Association in which a written reply is specifically required.

R611 Assistance to the Board

A member shall, when required, comply with the request of the board or its committees in the exercise of their duties in matters of the *CGA Ontario Act*, the *Association Bylaws* or the *Code of Ethical Principles and Rules of Conduct*, and when required, produce any documents in the member's possession, custody or control, subject to Rules R104.2, R104.3 and R201.

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

Particulars on the Practice Charges – Rules 514, 515, 516:

1. Najmi Muhammad ("Muhammad") became a certified general accountant in 2004.
2. Muhammad's CGA Canada certificate number is 356893 and his CGA Ontario certificate number is 18113.
3. For the period 2008 to 2013, inclusive, Muhammad prepared personal income tax returns for clients when he was not registered with the Association to do so.
4. For the period 2008 through 2013, inclusive, Muhammad prepared or offered to prepare corporate tax returns for clients when he was not registered with the Association to do so.
5. For the period from at least October 2011, Muhammad advertised that he offered e-filing services.
6. Muhammad offered to provide balance sheet and income statement preparation for clients.
7. A review of the income tax forms prepared by Muhammad in 2013 revealed that Muhammad prepared in the range of 170 returns, not accounting for spousal or family returns.
8. By preparing income tax returns, Muhammad was operating a practice that required registration pursuant to Rule 514 of the *Code*.
9. Muhammad did not register his income tax practice for any of 2009, 2010, 2011, 2012 or 2013.
10. On or about 29 April 2013 Muhammad registered his income tax practice.
11. By offering to prepare balance sheet and income statements, Muhammad was operating a compilation practice that required registration pursuant to Rule 514 of the *Code*.
12. Muhammad did not register that compilation practice at any time.
13. Muhammad earned income from carrying on the practice that he was operating in violation of the *Code*.

14. Rule 515 of the *Code* requires a member to adhere to the practice inspection requirements of the Association.
15. Muhammad did not undergo a practice inspection with the Association as he had not registered his practice as he was required to do.
16. Rule 516 of the *Code* requires a member engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time to maintain professional liability insurance.
17. Muhammad did not maintain insurance for his full time practice for any of the years in question, namely 2008 to 2013.
18. When he purported to obtain insurance effective 22 May 2013, he represented that he had only a part time practice with gross billings under \$15,000.
19. The total cost of professional liability insurance for the years 2008 to 2013 inclusive for the period he prepared income tax returns was \$5,381.10 inclusive of tax.
20. Muhammad was required to but did not purchase the Public Practice Manual (the "PPM") or the CICA Handbook (the "Handbook") for the years 2009 to 2013 inclusive when he was engaged in preparing or offering to prepare compilation engagements including preparation of balance sheets and income statements.
21. The total cost of the PPM and applicable renewals was \$1,482.30 inclusive of tax for the years in question.
22. The total cost of the Handbook was \$2,963.65 inclusive of tax for the years in question.

Particulars on the Advertising and Style of Practice Charges - Rules 509 and 509.1

23. Muhammad maintained two websites, www.iconfinancials.com, for Icon Financial and Accounting and www.pioneeraccounting.com, for Pioneer Accounting, where on each he offered to provide tax and accounting services, including personal and corporate income tax return preparation and general ledger, trial balance, income statement (profit & loss) and balance sheet preparation.
24. Muhammad is a director of each of Icon Financial and Accounting and Pioneer Accounting.
25. In May 2013 Muhammad purported to obtain professional liability insurance in the name of Icon Financial & Accounting Ltd. and then to list himself on the schedule to the Certificate of Insurance as the designated professional accountant.
26. Muhammad represented to the public through his use of the "certified general accountant" designation on (a) signage on the front entry door of Icon Financial and Accounting, (b) LED signage in the window of the office; (c) marketing pamphlets, (d) his business card and (e) the display of his CGA Ontario and CGA Canada certificates in his office, that he was a Certified General Accountant.
27. Muhammad was not permitted to use his designation in connection with his income tax practice or his offered compilation practice, as the use of the designation may lead to the

impression in the minds of the public that he was registered with the Association to carry on an income tax practice and a compilation practice when he was not so registered.

28. Muhammad was not permitted to offer professional services including taxation services and accounting services as Icon Financial and Accounting or as Pioneer Accounting.

Particulars on the Failure to Assist Charges – Rules 610, 611

29. In his initial meeting with the investigator appointed by the Discipline Committee (the "22 April 2013 meeting"), the investigator noted that Muhammad had approximately 170 income tax clients in 2013 for the taxation year 2012 based on his count of the client listings in Muhammad's "taxprep" software program.
30. Muhammad advised the investigator during the 22 April 2013 meeting that he had prepared roughly the same number of income tax returns for the taxation years 2009, 2010 and 2011.
31. Muhammad advised that he prepared only a few income tax returns in 2008.
32. The investigator requested copies of client lists for the years 2008 to 2012 inclusive along with related information. Muhammad agreed to have those lists ready for the second meeting which they then scheduled for 29 April 2013 (the "29 April 2013 meeting").
33. In the 29 April 2013 meeting, Muhammad provided a bundle of T183 forms for the 2012 taxation year prepared in 2013 but refused to provide a client listing or similar T183s for the taxation years 2009-2011 inclusive. Muhammad then denied providing income tax services in those years.
34. Follow up contact with certain clients noted on the T183 forms confirmed that Muhammad had in fact prepared income tax returns for the public prior to 2013 and at least as early as 2008.
35. At a follow up meeting held 6 May 2013 (the "6 May 2013 meeting"), Muhammad refused to access his computer and its tax return preparation work to demonstrate the extent of his income tax preparation. Further, he advised the investigator that he would not provide any further documentation beyond the T183s that he had prepared in 2013.
36. After Muhammad was advised that the Association had contacted a sampling of clients based on the 2013 T183s, Muhammad contacted at least some of those clients and advised them to advise the Association, if they were contacted, that he had not prepared income tax returns for them prior to 2013 when he had in fact done so.
37. When asked about the signage in the window advertising e-filing services, Muhammad advised the investigator that he had installed the signage in 2013.
38. The signage advertising e-filing services was in place at least since October 2011.
39. At a further meeting held 6 June 2013 (the "6 June 2013 meeting"), the investigator served Muhammad with a letter requiring access to the income tax filing information on his computer. Muhammad advised that he had been the victim of a recent virus and his files had been destroyed and then turned on the computer to demonstrate that there

were no files. He advised he kept no back up data and did not keep a paper copy of client tax returns.

40. At a final meeting held 11 June 2013 the investigator delivered to Muhammad a letter requesting him to sign an attached Authorization to CRA authorizing CRA to deliver to the Association information concerning the number of e-filed returns and paper returns prepared by Muhammad.
41. Muhammad refused or neglected to sign the Authorization.
42. Muhammad refused or neglected to provide the committee with the information requested concerning his clients or concerning the nature and extent of the services he rendered to them.
43. Muhammad has interfered with the conduct of the Association's investigation.
44. Muhammad has counselled his clients to lie to the Association about the services he provided to them.
45. Muhammad's conduct has brought discredit to the profession.
46. Muhammad's conduct amounts to professional misconduct.

MEMBER'S PLEA

The member admitted the allegations set out in the Notice of Hearing.

FACTS AND EVIDENCE

Counsel for the Discipline Committee presented an Affidavit of Service (exhibit 7), establishing that the member had been served on July 15, 2013 with a Request to Admit Facts and Documents (exhibit 5), 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 not respond to the Request to Admit Facts and Documents. Based on the facts and documents deemed to be admitted by the member at this hearing from the Request to Admit Facts and Documents, the Tribunal makes the following findings of fact:

1. Najmi Muhammad ("Muhammad") became a member of CGA Ontario in 2004.
2. Muhammad's CGA Ontario certificate number is 18113 and his CGA Canada certificate number is 356893.
3. For the period 2008 to 29 April 2013 inclusive, Muhammad was not registered with the Association to prepare personal or corporate income tax returns or to prepare or offer to prepare balance sheets or income statements for clients.

Muhammad's Practice during the period 2008-2013

4. For the period 2008 to 2013, inclusive, Muhammad prepared personal income tax returns for clients when he was not registered with the Association to do so.
5. For the period 2008 through 2013, inclusive, Muhammad prepared or offered to prepare corporate tax returns for clients when he was not registered with the Association to do so.
6. For the period from at least October 2011, Muhammad advertised that he offered e-filing services.
7. Muhammad offered to provide balance sheet and income statement preparation for clients.
8. In 2013 Muhammad prepared in the range of 170 returns, not accounting for spousal or family returns.
9. By preparing income tax returns, Muhammad was operating a practice that required registration pursuant to Rule 514 of the Code of Ethical Principles and Rules of Conduct (the "*Code*").
10. Muhammad did not register his income tax practice for any of 2009, 2010, 2011, 2012 or 2013.
11. On or about 29 April 2013 Muhammad registered his income tax practice.
12. By offering to prepare balance sheet and income statements, Muhammad was operating a compilation practice that required registration pursuant to Rule 514 of the *Code*.
13. Muhammad did not register that compilation practice at any time.
14. Muhammad earned income from carrying on the practice that he was operating in violation of the *Code*.
15. Rule 515 of the *Code* requires a member to adhere to the practice inspection requirements of the Association.
16. Muhammad did not undergo a practice inspection with the Association as he had not registered his practice as he was required to do.
17. Rule 516 of the *Code* requires a member engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time to maintain professional liability insurance.
18. Muhammad did not maintain insurance for his full time practice for any of the years in question, namely 2008 to 2013.
19. When he purported to obtain insurance effective 22 May 2013, he represented that he had only a part time practice with gross billings under \$15,000.

20. The total cost of professional liability insurance for the years 2008 to 2013 inclusive for the period he prepared income tax returns was \$5,381.10 inclusive of tax.
21. Muhammad was required to but did not purchase the Public Practice Manual (the "PPM") or the CICA Handbook (the "Handbook") for the years 2009 to 2013 inclusive when he was engaged in preparing or offering to prepare compilation engagements including preparation of balance sheets and income statements.
22. The total cost of the PPM and applicable renewals was \$1,482.30 inclusive of tax for the years in question.
23. The total cost of the Handbook was \$2,963.65 inclusive of tax for the years in question.

Particulars on the Advertising and Style of Practice Charges - Rule 509 and 509.1

24. Muhammad maintained two websites, www.iconfinancials.com, for Icon Financial and Accounting and www.pioneeraccounting.com, for Pioneer Accounting, where on each he offered to provide tax and accounting services, including personal and corporate income tax return preparation and general ledger, trial balance, income statement (profit & loss) and balance sheet preparation.
25. Muhammad is a director of each of Icon Financial and Accounting and Pioneer Accounting.
26. In May 2013, Muhammad purported to obtain professional liability insurance in the name of Icon Financial & Accounting Ltd. and then to list himself on the schedule to the Certificate of Insurance as the designated professional accountant.
27. Muhammad represented to the public through his use of the "certified general accountant" designation on (a) signage on the front entry door of Icon Financial and Accounting, (b) LED signage in the window of the office; (c) marketing pamphlets, (d) his business card and (e) the display of his CGA Ontario and CGA Canada certificates in his office, that he was a Certified General Accountant.
28. Muhammad was not permitted to use his designation in connection with his income tax practice or his offered compilation practice, as the use of the designation may lead to the impression in the minds of the public that he was registered with the Association to carry on an income tax practice and a compilation practice when he was not so registered.
29. Muhammad was not permitted to offer professional services including taxation services and accounting services as Icon Financial and Accounting or as Pioneer Accounting.

Particulars on the Failure to Assist Charges – Rules 610, 611

30. In his initial meeting with the investigator appointed by the Discipline Committee (the "22 April 2013 meeting"), the investigator noted that Muhammad had approximately 170 income tax clients in 2013 for the taxation year 2012, based on his count of the client listings in Muhammad's "taxprep" software program.
31. Muhammad advised the investigator during the 22 April 2013 meeting that he had prepared roughly the same number of income tax returns for the taxation years 2009, 2010 and 2011.

32. Muhammad advised that he prepared only a few income tax returns in 2008.
33. The investigator requested copies of client lists for the years 2008 to 2012 inclusive along with related information. Muhammad agreed to have those lists ready for the second meeting which they then scheduled for 29 April 2013 (the "29 April 2013 meeting").
34. In the 29 April 2013 meeting, Muhammad provided in excess of 218 T183 forms for the 2012 taxation year prepared in 2013 but refused to provide a client listing or similar T183s for the taxation years 2009-2011 inclusive. Muhammad then denied providing income tax services in those years.
35. Follow up contact with certain clients noted on the T183 forms confirmed that Muhammad had in fact prepared income tax returns for the public prior to 2013 and at least as early as 2008.
36. At a follow up meeting held 6 May 2013 (the "6 May 2013 meeting"), Muhammad refused to access his computer and its tax return preparation work to demonstrate the extent of his income tax preparation. Further, he advised the investigator that he would not provide any further documentation beyond the T183s that he had prepared in 2013.
37. After Muhammad was advised that the Association had contacted a sampling of clients based on the 2013 T183s, Muhammad contacted at least some of those clients and advised them to advise the Association, if they were contacted, that he had not prepared income tax returns for them prior to 2013 when he had in fact done so.
38. When asked about the signage in the window advertising e-filing services, Muhammad advised the investigator that he had installed the signage in 2013.
39. The signage advertising e-filing services was in place at least since October 2011.
40. At a further meeting held 6 June 2013 (the "6 June 2013 meeting"), the investigator served Muhammad with a letter requiring access to the income tax filing information on his computer. Muhammad advised that he had been the victim of a recent virus and his files had been destroyed and then turned on the computer to demonstrate that there were no files. He advised he kept no back up data and did not keep a paper copy of client tax returns.
41. At a final meeting held 11 June 2013 the investigator delivered to Muhammad a letter, requesting him to sign an attached Authorization to CRA authorizing CRA to deliver to the Association information concerning the number of e-filed returns and paper returns prepared by Muhammad.
42. Muhammad refused or neglected to sign the Authorization.
43. Muhammad refused or neglected to provide the committee with the information requested concerning his clients or concerning the nature and extent of the services that he rendered to them.
44. Muhammad has interfered with the conduct of the Association's investigation.
45. Muhammad has counselled his clients to lie to the Association about the services he

had provided to them.

46. Muhammad's conduct has brought discredit to the profession.
47. Muhammad's conduct amounts to professional misconduct.

R101 Discredit

48. Rule 101 of the *Code* provides as follows:

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.

R509 Advertising and Other Forms of Solicitation

49. Rule 509 of the *Code* provides as follows:

A member shall not seek to obtain clients by advertising or other form of solicitation, which:

- (a) is false or deceptive.
- (e) is demonstrably false or inaccurate.
- (f) is either misleading, confusing, or deceptive, or likely to mislead, confuse or deceive.
- (g) is not in the best interests of the public, inconsistent with a high standard of professionalism or contravenes professional good taste.

R509.1 Misleading Name of Firm or Style of Practice

50. Rule 509.1 of the *Code* provides as follows:

A member shall not engage in a professional practice or the practice of public accounting under a name or style that is misleading as to the nature of the entity (proprietorship, partnership or professional corporation) or the nature of the functions performed or that may erroneously lead the public to believe that the entity or practice is that of a Certified General Accountant.

Rule 514 Registration

51. For the period 2008 to June 2010, Rule 514 of the *Code* provided as follows:

A member shall, if engaged in a professional practice or the practice of public accounting part-time or full-time, register in accordance with the requirements prescribed by the Association. This rule also shall apply to members who own, operate or control a professional corporation engaged in a professional practice or the practice of public accounting.

52. For the period June 2010 to present, Rule 514 of the *Code* provides as follows:

A member shall, if engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time, register in accordance with the requirements prescribed by the Association. This rule also shall apply to members

who own, operate or control a professional corporation engaged in the practice of public accounting or the preparation of compilation engagements or tax returns.

Rule 515 Practice Inspection Requirements

53. For the period 2008 to present, Rule 515 of the *Code* provides as follows:

A member shall comply with, and adhere to, the practice inspection requirements of the Association and the standards contained therein.

Rule 516 Professional Liability Insurance

54. For the period 2008 to June 2010, Rule 516 of the *Code* provided as follows:

A member engaged in a professional practice or the practice of public accounting shall maintain professional liability insurance as specified, and provide evidence as required, by the Association.

55. For the period June 2010 to present, Rule 516 of the *Code* provides as follows:

A member engaged in the practice of public accounting or the preparation of compilation engagements of tax returns part-time or full-time shall maintain professional liability insurance as specified, and provide evidence as required, by the Association.

Principle - Responsibilities to the Profession

56. The *Code* provides as follows:

Members shall always act in accordance with the duties and responsibilities associated with being members of the profession and shall carry on work in a manner that will enhance the image of the profession and the Association. A member shall comply with the Association Bylaws and the Code of Ethical Principles and Rules of Conduct of the Association as amended from time to time, and with any order or resolution of the board of directors or its committees, under the Association Bylaws.

R610 Requirement to Reply in Writing

57. Rule 610 of the *Code* provides as follows:

A member shall reply promptly in writing to any request from the Association in which a written reply is specifically required.

R611 Assistance to the Board

58. Rule 611 of the *Code* provides as follows:

A member shall, when required, comply with the request of the board or its committees in the exercise of their duties in matters of the Act, By-Law Four or the Code of Ethical Principles and Rules of Conduct, and when required, produce any documents in the member's possession, custody or control, subject to Rules R104.2, R104.3 and R201.

There was a typographical error in the Request to Admit Facts and Documents (exhibit 5). In paragraph 2, the CGA Canada certificate number 256893 should be changed to CGA Canada certificate number 356893. The Tribunal relied on section 21.1 of the *Statutory Powers Procedure Act* which states: A tribunal may at any time correct a typographical error, error of calculation or similar error made in its decision or order. The Tribunal relied on this section to correct this typographical error.

Ms Jolley did not call any witnesses.

In his evidence, Mr. Muhammad testified about the nature of his practice, including the fact that he didn't make enough money from doing taxes and that he was mostly doing mortgages at the time. In addition, Mr. Muhammad asked that a package of documents be marked as Exhibit 16, in support of his argument that he shared his e-file number with another person, Mr. Eshan. He said that the CRA number included both his and Mr. Eshan's e-file returns. He also explained that in the list he had provided to the Discipline Committee, he had listed members of a whole family under one line and hence the difference with the number provided by the CRA.

Mr. Muhammad did not call any other witnesses.

The Tribunal determined that Mr. Muhammad was not a credible witness. Mr. Muhammad's evidence was inconsistent with the documents introduced as exhibits at the hearing. For example, Mr. Muhammad testified about the nature of his practice, including the fact that he didn't make enough money from doing taxes, but that testimony was inconsistent with the information obtained from the CRA about the number of accepted EFILE transmissions from 2007-2012, as contained in Exhibit 9. In addition, Mr. Muhammad asked that a package of documents be marked as Exhibit 16 in support of his argument that he shared his e-file number with another person, Mr. Eshan. However the panel was not able to find anything in Exhibit 16 to demonstrate that he in fact, shared his e-file number with Mr. Eshan. Mr. Muhammad's evidence relating to Exhibit 16 did not make any sense to the panel.

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 admissions made by the member, the evidence and the submissions of the parties, and the onus and standard of proof, the panel of the Professional Conduct Tribunal finds that Mr. Muhammad 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.

R509 Advertising and Other Forms of Solicitation

A member shall not seek to obtain clients by advertising or other form of solicitation, which:

- (a) is false or deceptive.
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R509.1 Misleading Name of Firm or Style of Practice

A member shall not engage in a professional practice or the practice of public accounting under a name or style that is misleading as to the nature of the entity (proprietorship, partnership or professional corporation) or the nature of the functions performed or that may erroneously lead the public to believe that the entity or practice is that of a Certified General Accountant.

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A member shall, if engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time, register in accordance with the requirements prescribed by the Association. This rule also shall apply to members who own, operate or control a professional corporation engaged in the practice of public accounting or the preparation of compilation engagements or tax returns.

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R610 Requirement to Reply in Writing

A member shall reply promptly in writing to any request from the Association in which a written reply is specifically required.

R611 Assistance to the Board

A member shall, when required, comply with the request of the board or its committees in the exercise of their duties in matters of the *CGA Ontario Act*, the *Association Bylaws* or the *Code of Ethical Principles and Rules of Conduct*, and when required, produce any documents in the member's possession, custody or control, subject to Rules R104.2, R104.3 and R201.

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

REASONS FOR DECISION

R101 Discredit

After Muhammad was advised that the Association had contacted a sampling of clients based on the 2013 T183s, Muhammad contacted at least some of those clients and advised them to tell the Association if they were contacted, that he had not prepared any income tax returns for them, prior to 2013, when he had in fact done so. In other words, Muhammad has counselled his clients to lie to the Association about the services he had provided to them. He has interfered with the conduct of the Association's investigation and therefore, Muhammad's conduct has brought discredit to the profession.

R509 Advertising and Other Forms of Solicitation

Muhammad maintained two websites, for Icon Financial and Accounting and for Pioneer Accounting, where on each he offered to provide tax and accounting services as a CGA. He was not registered with the Association to do so and was not permitted to use his designation in connection with his income tax practice or his compilation practice. Muhammad was not permitted to offer professional services including taxation services and accounting services as Icon Financial and Accounting or as Pioneer Accounting. Therefore, Muhammad was in breach of R509.

R509.1 Misleading Name of Firm or Style of Practice

Muhammad represented to the public through his use of the "certified general accountant" designation on (a) signage on the front entry door of Icon Financial and Accounting, (b) LED signage in the window of the office, (c) marketing pamphlets, (d) his business card and (e) the display of his CGA Ontario and CGA Canada certificates in his office, that he was a Certified General Accountant. Muhammad was not permitted to use his designation in connection with his income tax practice or his offered compilation practice, as the use of the designation may lead to the impression in the minds of the public that he was registered with the Association to carry on an income tax practice and a compilation practice when he was not so registered. Therefore, Muhammad was in breach of R509.1.

Rule 514 Registration

For the period 2008 to 2013, inclusive, Muhammad prepared personal income tax returns and prepared or offered to prepare corporate tax returns and had offered other accounting services

for clients when he was not registered with the Association to do so. Muhammad did not register his income tax practice for any of 2009, 2010, 2011, 2012 or 2013. By preparing income tax returns and by offering to prepare balance sheet and income statements, Muhammad was operating a practice that required registration pursuant to Rule 514 of the *Code*. Muhammad did not register that compilation practice at any time. Muhammad earned income from carrying on the practice that he was operating in violation of the *Code*. Therefore, Muhammad was in breach of Rule 514.

Rule 515 Practice Inspection Requirements

Rule 515 of the *Code* requires a member to adhere to the practice inspection requirements of the Association. Muhammad did not undergo a practice inspection with the Association as he had not registered his practice as he was required to do. Therefore, Muhammad was in breach of Rule 515.

Rule 516 Professional Liability Insurance

Rule 516 of the *Code* requires a member engaged in the practice of public accounting or the preparation of compilation engagements or tax returns part-time or full-time to maintain professional liability insurance. Muhammad did not carry such insurance for his full time practice for any of the years in question, namely 2008 to 2013. Therefore, Muhammad was in breach of Rule 516.

Principle - Responsibilities to the Profession

CGA Ontario members are expected always to act in accordance with the duties and responsibilities associated with being members of the profession and must carry on work in a manner that will enhance the image of the profession and the Association. A member is expected to comply with the *Association Bylaws* and the *Code of Ethical Principles and Rules of Conduct* of the Association. Muhammad has counselled his clients to lie to the Association about the services he provided to them and therefore breached the Principle – Responsibilities to the Profession.

R610 Requirement to Reply in Writing

A member is required to reply promptly in writing to any request from the Association in which a written reply is specifically required. A letter was hand delivered to Muhammad on April 22,

2013, by the Discipline Committee of the CGA Ontario, requesting information on several issues. Muhammad refused or neglected to provide the Discipline Committee with the information requested concerning his clients or concerning the nature and extent of the services he rendered to them. Therefore, Muhammad was in breach of R610.

R611 Assistance to the Board

Muhammad did not provide assistance to the Discipline Committee by not providing documents and information when requested. At a follow up meeting held May 6, 2013, Muhammad refused to access his computer and its tax return preparation work to demonstrate the extent of his income tax preparation. Further, he advised the investigator that he would not provide any further documentation beyond the T183s that he had prepared in 2013. When asked about the signage in the window advertising e-filing services, Muhammad advised the investigator that he had installed the signage in 2013, when in fact the said signage was in place at least since October 2011. At a final meeting held June 11, 2013, the investigator delivered to Muhammad a letter requesting him to sign an attached Authorization to CRA. This authorization would enable the CRA to deliver to the Association, information concerning the number of e-filed returns and paper returns prepared by Muhammad. Muhammad refused or neglected to sign the Authorization. Muhammad refused or neglected to provide the Discipline Committee with the information requested concerning his clients or concerning the nature and extent of the services he rendered to them. Therefore, Muhammad was in breach of R611.

Professional Misconduct

The Professional Conduct Tribunal finds that the breach of the above nine provisions of the Code of Ethical Principles and Rules of Conduct of the Association by Mr. Muhammad constituted actions of professional misconduct and therefore he is guilty of professional misconduct. In particular, he lied to the investigator appointed by the Discipline Committee and asked some of his clients to lie as well. This kind of unprofessional behavior tarnishes the public image of a CGA.

PENALTY SUBMISSIONS

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

- Mr. Muhammad's membership in the Association be revoked

- Mr. Muhammad's CGA Ontario (18113) and CGA Canada (356893) certificates of membership be returned to the Association
- Mr. Muhammad pay \$1,000 fine per violation for a total fine of \$9,000
- Mr. Muhammad pay \$9,827.05 fine as the costs of the Professional Liability Insurance, the Public Practice Manual and the CICA Handbook
- Mr. Muhammad pay \$3,000 in costs for this hearing
- Publication of this decision

In contrast, Mr. Muhammad made the following submissions on the penalty order:

- His membership in the Association should not be revoked and instead, his membership should be suspended
- The Tribunal decision should not be published
- He is prepared to pay any fine as long as he can pay in instalments
- There should be no costs
- He made a mistake and should be given a second chance

PENALTY DECISION

The Tribunal deliberated and considered the Discipline Committee's submissions in terms of penalty and the member's submissions in terms of penalty. Accordingly, the panel orders the following penalty:

- Mr. Muhammad's membership in the Association is revoked
- Mr. Muhammad must return his CGA Ontario (18113) and CGA Canada (356893) certificates of membership to the Association
- Mr. Muhammad pays \$1,000 fine per violation for a total fine of \$9,000
- Mr. Muhammad pays \$9,827.05 fine as the costs of the Professional Liability Insurance, the Public Practice Manual and the CICA Handbook
- Mr. Muhammad pays \$3,000 in costs for this hearing
- Publication of this decision

REASONS FOR PENALTY DECISION

It is the responsibility of the Tribunal to ensure that penalties are in keeping with the actions of the member including the proven violations. These penalties must address the seriousness of the violations and to act as a deterrent to others. Costs are awarded to compensate the successful party at least partly for fees, expenses and disbursements incurred. In this case the Tribunal concluded that the revocation of membership, return of the certificates, the fines and costs sought by the Discipline Committee were appropriate. The Panel concluded that

revocation of membership was the appropriate penalty under the circumstances of this case to protect the public.

A professional association must clearly define the standards required to be a member of that association and sets out the rules for membership. These rules must be adhered to, so that its members could perform their duties and hold themselves out to the standards expected by the association and the public. As a self-regulated profession, the Certified General Accountants of Ontario must maintain the public's confidence in the profession by ensuring that their members adhere to the Association's rules and standards. Mr. Muhammad has acted quite contrary to the high standards expected from a CGA. He had breached nine provisions of the Code of Ethical Principles and Rules of Conduct of the Association and was found guilty of professional misconduct.

Membership in the Certified General Accountants Association of Ontario also entails duties and responsibilities to the Association, to its members and to the public. Every member must not only have passed exams but must also possess the technical training and skills of accounting. In addition, every member must not only have integrity, honesty and professionalism but also must be seen to have the same qualities by the public. Through his actions, Mr. Muhammad has demonstrated a lack of integrity that is inconsistent with the ethical and professional standards of the profession. The penalties ordered against Mr. Muhammad are also meant to deter other members of the Association from engaging in similar misconduct. Through publication of this decision, the general public will be able to have confidence that they can rely on the Association, to ensure that its members they hire, meet the high standards expected of a Certified General Accountant.

Dated this _____ day of _____, 2013

I, Alexis Perera, 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.

Alexis Perera CGA

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 vice-president responsible for regulatory affairs 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.