

**IN THE MATTER OF a Proceeding under
the *Certified General Accountants Act, 2010* and By-Law Four**

**IN THE MATTER OF Robert Willman, 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 -

Robert Willman

DECISION AND REASONS FOR DECISION OF THE PROFESSIONAL CONDUCT TRIBUNAL

Members of the Professional Conduct Tribunal Panel:

Daniel Coghlan, CGA, Chair
Irwin Pinsky, CGA
Andria Spindel, Public Representative

Appearances:

Karen Jolley, Counsel for the Discipline Committee

Robert Willman, Member (arrived at the hearing at 1230 hours)

Lisa Braverman, Registrar and Independent Legal Counsel to the Professional Conduct Tribunal

Hearing Date:

August 23, 2010, Toronto

OVERVIEW

A panel of the Professional Conduct Tribunal of The Certified General Accountants Association of Ontario heard this matter on August 23, 2010, at Toronto. At the conclusion of the hearing, the panel reserved its decision.

PRELIMINARY MATTERS

The Professional Conduct Tribunal was set to begin the hearing at 1130 hours, the designated time established in the Notice of Hearing; however Mr. Willman was not present. Recognizing the member was not local to where the Hearing was being held, the Chair of the Tribunal delayed the beginning of the Hearing to allow the member additional time to arrive. During this time delay, the Chair requested that Ms. Braverman check her voice and e-mail messages and check with her office to ascertain whether there were any messages from Mr. Willman to indicate if he was planning to attend the Hearing but was delayed. Ms. Braverman reported back to the Tribunal that she did not have any messages from Mr. Willman.

At approximately 1200 hours, the Chair called the Professional Conduct Tribunal to order and asked Karen Jolley to proceed.

Ms. Jolley consented to the one hearing procedure. Later on, after Mr. Willman arrived at the Hearing, he also consented to the one hearing procedure.

There were no motions heard prior to the hearing.

OPENING STATEMENT

Karen Jolley was invited to make opening comments.

Ms. Jolley stated that a complaint against Mr. Willman was lodged with the Certified General Accountants Association of Ontario in March 2010 by his former employer. Ms. Jolley noted that Mr. Willman was served with a Request to Admit Facts and Documents in mid July 2010 with a requirement to respond by August 7, 2010. Mr. Willman was notified that the Discipline Committee of the Association would be seeking a penalty of expulsion from the Association, a fine of \$5,000 and contribution to the costs incurred by the Association. Ms. Jolley reported there was no response to the July correspondence; however the materials sent to Mr. Willman were signed for.

Ms. Jolley told the Tribunal that she will present to the Tribunal evidence that supports the complaint lodged against Mr. Willman, namely that while employed as the Vice President Finance for his employer he had access to records and through a series of schemes developed by Mr. Willman, sums of money were misappropriated from his employer; that in August 2009, an investigation into the allegations made against Mr. Willman was conducted; from the investigation, evidence was found that Mr. Willman made unauthorized deposits, issued blank cheques to benefit him and that he received reimbursement for membership fees paid to the Association when in fact Mr. Willman did not pay the Association for those fees; and that in aggregate Mr. Willman misappropriated money of approximately \$38,000 in aggregate.

ALLEGATIONS

Counsel for the Discipline Committee entered into evidence the Notice of Hearing dated July 14, 2010 contained in the Discipline Brief (exhibit 3), 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:

Code of Ethical Principles – Trust and Duties

Members shall act in the interests of their clients, employers, and interested third parties, and shall be prepared to sacrifice their self-interest to do so. Members shall honour the trust bestowed on them by others, and shall not use their privileged position without their principal's knowledge and consent. Members shall strive to be independent of mind and in appearance.

Rule 101 – Discredit

A member shall not permit the member's firm name or the member's name to be used with, participate in, or knowingly provide services to, any practice, pronouncement or act that would be of a nature to discredit the profession.

Rule 102 – Unlawful Activity

A member shall not permit the member's firm name or the member's name to be used with, participate in, or provide services to, any activity that the member knows, or which a reasonably prudent person would believe, to be unlawful.

R108 Conduct Unbecoming

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.

R401 Communication Issued in Connection with Financial Information

A member shall not issue 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.

R402 Association with Financial Information

A member shall not be associated with any letter, report, statement, representation, financial statement or tax filing, whether written or oral, which the member knows, or should know, is false or misleading, regardless of any disclaimer of responsibility.

Rule 606 - 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. From September 2007 until your termination for cause in September 2009, you were Vice President, Finance for Braebon Medical Corporation ("Braebon" or "your employer").
2. In that capacity, you were responsible for preparation of monthly and annual financial statements, preparation of the financial and business trend analysis of the company's operating results, assisting in obtaining additional financing for the organization, preparing an annual operating plan and budget, preparing cash flow projections, supervising accounts receivable collection and establishing internal controls, among other things.

3. In that capacity you owed your employer duties of good faith, trust and loyalty.
4. Contrary to those obligations, commencing in 2008 and continuing until your termination, you misappropriated funds and assets from your employer.
5. By letter dated 31 August 2009 your employer placed you on paid leave as a result of uncovering "strong evidence of numerous irregularities and wrongdoing in your dealings with the Company's finances."
6. Braebon detailed its findings to you and asked you to respond no later than Wednesday 2 September 2009.
7. After continuing its investigation, by letter dated 3 September 2009 Braebon terminated you for cause for misappropriation of funds.
8. According to the company's records, you misappropriated \$36,549.26 from your employer through a series of unauthorized actions. These included unauthorized deposits to your bank account both electronically and by cheque, payment of expenses either not incurred or not approved, including purported payment of CGA annual dues, and unauthorized appropriation of Braebon assets including cell phones, iPhones and related charges.
9. In respect of a salary advance, you recorded an advance of \$2,452.00 as an expenditure for office supplies.
10. You either mischaracterized the nature of the expense or did not correct that characterization, in the event it was entered by a company bookkeeper, in order to suppress the company's liability for the salary advance.
11. By letter dated 11 September 2009 you advised your employer that you did not object or dispute to anything in their letters to you of 31 August 2009 and 3 September 2009.

MEMBER'S PLEA

The member admitted the allegations set out in the notice of hearing.

FACTS AND EVIDENCE

The hearing proceeded without any testimony from witnesses. Counsel for the Discipline Committee presented an Affidavit of Service (exhibit 2), establishing that the member was served on July 16, 2010 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 (exhibit 5), 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, the panel makes the following findings of fact based on the contents from exhibit 5:

Personal Facts, Relationship and Status with CGA Ontario

1. Mr. Willman's address on the CGA Ontario register is 220 Muskan Street, Nepean, Ontario, K2J 0C6.
2. He became a member of CGA Ontario (the "Association") in 2002. His CGA Ontario certificate number is 16209. His CGA Canada certificate number is 350046.
3. From September 2007 until his termination for cause in September 2009, Mr. Willman was the Vice President, Finance for Braebon Medical Corporation ("Braebon" or "his employer").
4. In that capacity, he was responsible for preparation of monthly and annual financial statements, preparation of the financial and business trend analysis of the company's

operating results, assisting in obtaining additional financing for the organization, preparing an annual operating plan and budget, preparing cash flow projections, supervising accounts receivable collection and establishing internal controls, among other things.

5. In that capacity he owed his employer duties of good faith, trust and loyalty.
6. Contrary to those obligations, commencing in 2008 and continuing until his termination, he misappropriated funds and assets from his employer.
7. By letter dated 31 August 2009 his employer placed Mr. Willman on paid leave as a result of uncovering "strong evidence of numerous irregularities and wrongdoing in his dealings with the Company's finances."
8. Braebon detailed its findings to Mr. Willman and asked him to respond no later than Wednesday 2 September 2009.
9. In particular Braebon alleged that Mr. Willman fraudulently diverted \$5,000 of its funds to his account in July 2009 by electronic deposit to his own account and purported to justify the diversion by claiming it was reimbursement for another employee's moving expenses. He did not use the money to reimburse the employee for his moving expenses as Mr. Willman alleged.
10. Braebon also alleged that Mr. Willman fraudulently diverted \$4,950 from Braebon to his own account by filling in his name and the amount of \$4,950 on a blank cheque that had been signed by the principals for an emergency and left with the company when they were out of the country.

11. Braebon also alleged that Mr. Willman fraudulently diverted \$1,258.88 from Braebon to his account by writing a cheque in that amount to himself alleging it was to reimburse him for a business expense when it was not.
12. Braebon alleged that while Mr. Willman was given a salary advance, one for \$2,452 and one for \$5,000, he purported to mischaracterize the first as an expense for office supplies on the company's books and records to suppress the existence of that liability.
13. Braebon alleged that Mr. Willman purported to give himself an unauthorized \$15,000 salary increase which was reversed when discovered in August 2009.
14. Braebon alleged that Mr. Willman had an employee mark up an invoice by \$500 and he received the excess \$500 that was paid.
15. Braebon alleged that Mr. Willman used company phones to pay for cell phones, iPhones and Blackberries for his personal use and/or to pay for their related services when he was not authorized to do so.
16. Braebon alleged that Mr. Willman did not make the regular and necessary financial reports and filings with its bank, Royal Bank of Canada since June 2009 placing Braebon offsite its covenants with the bank.
17. After continuing its investigation, by letter dated 3 September 2009 Braebon terminated him with cause for misappropriation of funds.
18. Mr. Willman advised Braebon that he did not dispute any of the allegations. Instead, he apologized for his conduct and alleged that his judgment was "clouded due to personal matters" and offered restitution.

19. Mr. Willman misappropriated approximately \$38,000 from Braebon through a combination of unauthorized deposits to his bank account both electronically and by cheque, payment of expenses either not incurred or not approved, including purported payment of CGA annual dues, and unauthorized appropriation of Braebon assets.
20. After the misappropriation was discovered, Mr. Willman paid Braebon \$38,000 in restitution.
21. The Code of Ethical Principles and Rules of Conduct (the "Code") -Trust and Duties provides as follows:

Trust and Duties

Members shall act in the interests of their clients, employers, and interested third parties, and shall be prepared to sacrifice their self-interest to do so.

Members shall honour the trust bestowed on them by others, and shall not use their privileged position without their principal's knowledge and consent.

Members shall strive to be independent of mind and in appearance.

22. By taking the actions set out above, Mr. Willman did not act in the interests of his employer and did not honour the trust bestowed upon him.
23. Rule 101 of the Code provides as follows:

Rule 101-Discredit

A member shall not permit the member's firm name or the member's name to be used with, participate in, or knowingly provide services, to any practice, pronouncement, or act that would be of a nature to discredit the profession.

24. By misappropriating funds from his employer and by taking steps to cover up the misappropriation Mr. Willman acted in a nature that discredited the profession.

25. Rule 102 of the Code provides as follows:

Rule 102 -Unlawful Activity

A member shall not permit the member's firm name or the member's name to be used with, participate in, or provide services to, any activity that the member knows, or which a reasonably prudent person would believe, to be unlawful.

26. By misappropriating funds from his employer and by taking steps to cover up the misappropriation Mr. Willman acted in a nature that a reasonably prudent person would believe to be unlawful.

27. Rule 108 of the Code provides as follows:

R108 Conduct Unbecoming

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.

28. By misappropriating funds and goods from his employer on numerous occasions, Mr. Willman engaged in misconduct of a reprehensible and serious nature that reflected on his honesty, integrity and trustworthiness and was of a nature that was relevant to his suitability as a member of the profession.

29. Rule 401 of the Code provides as follows:

R401 Communication Issued in Connection with Financial Information

A member shall not issue 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.

30. By instructing employees to issue false invoices, by mischaracterizing salary advances as office supplies, by submitting expense back up for expenses that he either did not incur or which were personal in nature and obtaining company funds as a result of his actions, he issued communications in relation to financial information that had a tendency to be misleading.
31. Rule 402 of the Code provides as follows:

R402 Association with Financial Information

A member shall not be associated with any letter, report, statement, representation, financial statement or tax filing, whether written or oral, which the member knows, or should know, is false or misleading, regardless of any disclaimer of responsibility.

32. By issuing false invoices or directing they be issued, by submitting false expense reports or misrepresenting the nature of expenses incurred to his employer and by mischaracterizing his salary advance as office supplies to disguise his repayment obligation, Mr. Willman was associated with representations that he knew or ought to have known were false or misleading.
33. Rule 606(a) of the Code provides as follows:

Rule 606 -Detrimental Actions

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

34. By misappropriating funds from his employer and by taking steps to cover up the misappropriation, Mr. Willman participated in actions that were detrimental to the Association and the profession.

Ms. Jolley provided evidence from The Discipline Brief (exhibit 3), to support each allegation made by Braebon against Mr. Willman.

At approximately 1230 hours Mr. Willman arrived at the hearing.

The Chair interrupted Ms. Jolley to address Mr. Willman. The Chair described to Mr. Willman the point at which the Tribunal was at in the Hearing. The Chair inquired from Mr. Willman as to whether he was in receipt of the documents that were already presented to the Tribunal. Mr. Willman acknowledged he was in receipt of the documentation. The Chair asked Mr. Willman if he agreed to the allegations made against him. Mr. Willman responded that he agreed to the allegations made against him. Mr. Willman indicated that he was only disputing one issue.

Ms. Jolley asked if she and Mr. Willman could speak outside of the hearing to determine what the issue was that was in dispute.

The Chair called a recess to the hearing at approximately 1235 hours.

The Chair reconvened the hearing at approximately 1312 hours.

The Chair asked Ms. Jolley and Mr. Willman if they were able to accomplish a common understanding of the difference that Mr. Willman referred to prior to the recess. Ms. Jolley replied that they had and that the issue that Mr. Willman was disputing referred to an element of the penalty. Mr. Willman agreed that he was not disputing the allegations made against him, but would like an opportunity to speak to one of the penalties being requested by the Association. The Chair replied to Mr. Willman that he will have an opportunity to address the Tribunal on the issue of penalty during the hearing.

The Chair asked Ms. Jolley to continue with the presentation of evidence.

Ms. Jolley continued by repeating her last two statements from the Request to Admit Facts and Documents.

Ms. Jolley concluded her presentation of evidence relating to the allegations and wrongdoings of Mr. Willman. The Chair provided an opportunity for Mr. Willman to respond to the information presented. Mr. Willman did not challenge or question the evidence. The Chair asked the members of the Tribunal if they had any questions about what was entered into evidence. There were no questions from the members of the Tribunal.

The Chair invited Ms. Jolley to continue with the penalty submission.

PENALTY SUBMISSIONS

Referring to exhibit 4, Ms. Jolley stated that the Association was seeking from the Professional Conduct Tribunal, a penalty order that consisted of:

1. Expelling Mr. Willman from membership in the Association
2. A fine of \$5,000.00
3. And a contribution to the costs incurred by the Association, which have been determined to be \$5,000.

In support of the penalty that the Association is seeking, Ms. Jolley referred the Tribunal to a Sentencing Brief that contained decisions made by Professional Conduct Tribunals that had to do with misappropriations and where expulsions were ordered. In the Sentencing Brief, Ms. Jolley highlighted a number of decisions made by the Association's Professional Conduct Tribunals as well as decisions made by the Law Society of Upper Canada and the ICAO Tribunals. Ms. Jolley drew similarities in the facts from these decisions in her presentation to demonstrate that the penalty that she was seeking was consistent with the cases.

Ms. Jolley reiterated that the Association was seeking the following penalty order:

1. Expulsion from the membership in the Association with the return of the certificates to the Association
2. A fine in the amount of \$5,000
3. Costs in the amount of \$5,000.

Ms. Jolley concluded her presentation on the issue of penalties.

The Chair asked Mr. Willman, prior to making his presentation on penalty, if he had any questions of what Ms. Jolley had presented. He did not.

The Chair asked the Tribunal if they had any questions on what Ms. Jolley had presented. The Chair questioned the need for an investigator in this case; Ms. Jolley referred to exhibit 3, tab 4 and stated

that there was a need to obtain sufficient and specific evidence to support the allegations against Mr. Willman and not just rely on general statements made.

The Chair invited Mr. Willman to make his presentation about penalty.

Mr Willman stated that he deeply regretted his actions and that he could “kick himself” for all his actions. He told the Tribunal he has no excuse for his actions. He stated he was in the midst of a difficult marriage during that time period and has since separated from his wife. He did not state that was the reason for his wrongdoing but rather that was some of the pressure on his life at that time. Mr. Willman did not dispute the penalties sought by the Association in terms of the fine and the costs but he did ask that he be shown some leniency concerning expulsion from the Association. He could not provide any evidence to argue why he should not be expelled from the Association but stated that his errors occurred during a difficult time in his life.

The Chair asked Ms. Jolley if she had any questions of Mr. Willman given his presentation. There were no questions.

The Chair asked the Tribunal if there were any questions of Mr. Willman. One of the questions the Tribunal asked was if Mr. Willman was presently working. Mr. Willman replied that he is currently working for a family member.

CLOSING ARGUMENTS

The Chair invited Ms. Jolley to present her closing arguments. Ms. Jolley stated that expulsion seems to be the only issue outstanding. The Association must have as its prime consideration, protection of the

public and that in situations such as this, there is no room for anything but expulsion. Ms. Jolley stated that expulsion is the only remedy for a self regulated body.

Mr. Willman was asked to make his closing argument. Mr. Willman stated he could not offer anything more than what he already stated.

The Chair asked the Tribunal if they had any questions for either Ms. Jolley or Mr. Willman. There were no questions.

The Chair called a recess at approximately 1410 hours to allow the Tribunal to confer with their legal counsel. Everyone except the members of the Tribunal and Lisa Braverman left the room.

After a brief consult with Ms. Braverman, the Chair reconvened the Hearing at approximately 1425 hours.

The Chair thanked both Mr. Willman and Ms. Jolley for returning and stated that he wanted all parties present to hear Ms. Braverman's advice to the Tribunal.

The Chair invited Ms. Braverman to address the Tribunal.

Ms. Braverman stated that the burden of proof is on the Association or the Discipline Committee. She stated that the standard of proof in these types of cases is balance of probabilities that it is more likely the event occurred than that of the event not occurring. She went on to state that based on F.H. v. McDougall from the Supreme Court of Canada that there is only one civil standard of proof and that is

proof on a balance of probabilities and evidence must always be sufficiently clear, convincing and cogent.

Ms. Braverman reminded the Tribunal that they must only consider what has been provided to them today and that the Tribunal must find that Mr. Willman breached one or more of the seven provisions of the Code of Ethical Principles and Rules of Conduct before considering what penalty to impose.

In relation to the penalty, Ms. Braverman indicated that section 18 of By-Law Four states that the Tribunal may decide on a penalty of:

- 1) Reprimand
- 2) A review under the practice inspection program
- 3) Complete Professional Development
- 4) Restrict the Member
- 5) Conduct a re-investigation
- 6) Suspend the member
- 7) Suspend the member with conditions
- 8) Required the practice of the member to be under active supervision of another member
- 9) Expulsion
- 10) Revoke the licence of the member
- 11) Compensate the aggrieved party
- 12) Fine the member and/or assess costs
- 13) Other penalties or actions as deemed appropriate.

Ms. Braverman indicated that, in this circumstance, Ms. Jolley is seeking expulsion, fine, costs and return of certificates. Mr. Willman is asking for leniency on the issue of expulsion, and no objection

to issues of fine and costs. The Tribunal may wish to give consideration to those affected by the decision as such:

- The public is a party to this and as such the penalty order decided upon must be adequate to protect the public.
- The profession is affected by the decision and the Tribunal needs to determine whether the decision made by the Tribunal carries with it a general deterrent to other members.
- The decision obviously impacts on the member and the Tribunal needs to determine whether the decision is sufficient to deter the member from engaging in similar activity and to allow for him to be rehabilitated.

Ms. Braverman reminded the Tribunal that it is not bound to follow the previous decisions but that the Tribunals usually do so that there is consistency for penalty based on the misconduct of the member.

Ms. Braverman suggested the Tribunal can consider the following factors when making our decision:

- the nature and gravity of the proven allegations
- the age and experience of the practitioner
- the previous character of the practitioner and in particular the presence or absence of any prior complaints or convictions
- the number of times the offence was proven to have occurred
- the role of the practitioner in acknowledging what had occurred
- whether the practitioner had already suffered other serious financial or other penalties as a result of the allegations having been made
- the impact of the incident

- the presence or absence of any mitigating circumstances
- the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of the profession
- the need to maintain the public's confidence in the integrity of the profession
- the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct
- the range of sentence in other similar cases

Ms. Braverman concluded with reminding the Tribunal that the decision made should be based only on the facts and evidence presented today.

The Chair asked Mr. Willman if he had any questions of what Ms. Braverman stated. He did not.

The Chair asked Ms. Jolley if she had any questions of what Ms. Braverman stated. She did not.

The Chair asked the members of the Tribunal if they had any questions of Ms Braverman. They did not.

The Chair thanked Mr. Willman and Ms. Jolley for attending the Professional Conduct Tribunal Hearing today and indicated that the Tribunal was reserving their decision for today and will release their written decision with reasons within 90 days of the hearing date.

The Chair adjourned the hearing at approximately 1445 hours.

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 is a balance of probabilities based on clear, convincing and cogent evidence.

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

Code of Ethical Principles – Trust and Duties

Members shall act in the interests of their clients, employers, and interested third parties, and shall be prepared to sacrifice their self-interest to do so. Members shall honour the trust bestowed on them by others, and shall not use their privileged position without their principal's knowledge and consent. Members shall strive to be independent of mind and in appearance.

Rule 101 – Discredit

A member shall not permit the member's firm name or the member's name to be used with, participate in, or knowingly provide services to, any practice, pronouncement or act that would be of a nature to discredit the profession.

Rule 102 – Unlawful Activity

A member shall not permit the member's firm name or the member's name to be used with, participate in, or provide services to, any activity that the member knows, or which a reasonably prudent person would believe, to be unlawful.

R108 Conduct Unbecoming

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.

R401 Communication Issued in Connection with Financial Information

A member shall not issue 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.

R402 Association with Financial Information

A member shall not be associated with any letter, report, statement, representation, financial statement or tax filing, whether written or oral, which the member knows, or should know, is false or misleading, regardless of any disclaimer of responsibility.

Rule 606 - Detrimental Actions

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

REASONS FOR DECISION

Code of Ethical Principles – Trust and Duties

Members shall act in the interests of their clients, employers, and interested third parties, and shall be prepared to sacrifice their self-interest to do so. Members shall honour the trust bestowed on them by others, and shall not use their privileged position without their principal's knowledge and consent. Members shall strive to be independent of mind and in appearance.

Mr. Willman made decisions and conducted himself in a manner that was not in the interests of his employer but was instead in his self-interest. He misappropriated funds on multiple occasions through various schemes he developed and acted on. He misrepresented transactions so that he could benefit from the outcome of the transaction. Mr. Willman breached the trust placed in him as a CGA and as a senior financial officer of Braebon when he misappropriated assets of his employer.

Rule 101 – Discredit

A member shall not permit the member's firm name or the member's name to be used with, participate in, or knowingly provide services to, any practice, pronouncement or act that would be of a nature to discredit the profession.

Mr. Willman held a senior financial officer role in his company, something that would not be unusual for a CGA to hold. It is not hard to imagine that Mr. Willman gained access to that role based on his professional qualifications, namely being that of a CGA. It was while he occupied that role, holding a CGA designation, that Mr. Willman misappropriated approximately \$38,000 from Braebon through, among other things, a combination of unauthorized deposits to his personal bank account on multiple occasions. This occurred through a series of schemes including: electronic payments, cheques, and reimbursement for expenses that were either not incurred or not approved.

There were multiple occasions that misappropriations occurred and Mr. Willman tried to cover them up while employed as a CGA. Mr. Willman's actions are in direct contradiction to how a CGA must act. There must be no doubt as to the high professional standards that CGA's are called upon through our Code of Ethical Principles and Rules of Conduct. The misappropriations that occurred and the steps taken to cover up the misappropriations grieve the good name of the Association and discredit the profession.

Rule 102 – Unlawful Activity

A member shall not permit the member's firm name or the member's name to be used with, participate in, or provide services to, any activity that the member knows, or which a reasonably prudent person would believe, to be unlawful.

The misappropriations of monies of approximately \$38,000 and assets and the manner in which the misappropriations occurred are all of the nature that a reasonably prudent person would believe to be unlawful, specifically:

- Mr. Willman diverted Braebon's money to his bank account.
- Mr. Willman gave himself a salary advance and then mischaracterized it as an office expense on the company's books and records to suppress the existence of that liability.
- Mr. Willman gave himself a second salary advance of \$5,000 without the approval from his manager.
- Mr. Willman gave himself an unauthorized salary increase of \$15,000.
- Mr. Willman instructed an employee to mark-up an invoice by \$500 and then he directed the mark-up to be paid to himself.
- Mr. Willman used the company phones to pay for cell phones, iPhones and Blackberries for his personal use and/or to pay for their related services even though he was not authorized to do so.

All of these actions and the steps taken to cover them up are in the nature of what a reasonably prudent person would believe to be unlawful.

R108 Conduct Unbecoming

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.

In his role Mr. Willman had access to financial assets of the company and he used that authority entrusted to him to commit the misappropriations of approximately \$38,000. During one of the misappropriations Mr. Willman breached the trust that was placed in him as a senior financial officer and as a CGA when he paid to himself an amount of \$4,950 using a blank cheque left in his care by his employer for emergency purposes while the principals were out of the country.

Mr. Willman also used his authority or influences to direct others to be involved in his wrongdoing. Specifically, Mr. Willman had an employee mark up an invoice by \$500 so that Mr. Willman could receive the additional \$500. The fact that Mr. Willman committed the misappropriations in itself is reprehensible but to draw others into his schemes either through direction or influence to help carry out his misappropriations further illustrates Mr. Willman's lack of honesty, integrity and trustworthiness as a financial leader in his organization. As a CGA we are called to act without reproach. The trust placed by leadership and in this case as a CGA, must be treated with respect, not abused for self gain which is what Mr. Willman did.

R401 Communication Issued in Connection with Financial Information

A member shall not issue 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.

The Tribunal found the following examples of how Mr. Willman violated this part of The Code:

- Mr. Willman gave himself a salary advance of \$2,452 and he mischaracterized it as an expense for office supplies on the company's books and records to suppress the existence of that liability.
- Mr. Willman also had an employee mark up an invoice by \$500 and directed the excess \$500 to be paid to himself.
- Mr. Willman claimed for reimbursement of his CGA membership dues when in fact no payment was ever made to the Association, therefore it is likely the amounts paid to Mr. Willman were inappropriately recorded as an expense when there was no expense incurred for the reimbursement paid to Mr. Willman.

Mr. Willman conducted his actions in such a manner that financial information, whether for publication or not, was prepared in a manner that may have a tendency to be misleading.

R402 Association with Financial Information

A member shall not be associated with any letter, report, statement, representation, financial statement or tax filing, whether written or oral, which the member knows, or should know, is false or misleading, regardless of any disclaimer of responsibility.

The Panel found that Mr. Willman violated this part of the Code in that he disguised a salary advance that he gave to himself and mischaracterized it as office supplies, he incorrectly submitted a claim for reimbursement when he did not incur expenses as he stated to his employer and he gave direction to

issue false invoices so that he would benefit from that direction. Mr. Willman should have known that each of these actions or directions were false or misleading.

Rule 606 - Detrimental Actions

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

Mr. Willman's actions to commit misappropriations from Braebon on multiple occasions in aggregate of \$38,000 and his actions to cover up the misappropriations compounded by the breach of the trust placed in him while he held the designation of a CGA is detrimental to the Association and the profession.

PENALTY DECISION

The panel deliberated and decided not to accept either the Discipline Committee's or the member's submissions in terms of penalty. Accordingly, the panel orders the following penalty:

1. Mr. Willman shall be expelled from the membership in the Association
2. Mr. Willman shall return his CGA Ontario and CGA Canada certificates of membership to the Association
3. Mr. Willman shall pay a contribution to the costs incurred by the Association in the amount of \$5,000
4. Mr. Willman shall pay a fine of \$2,500 to the Association

REASONS FOR PENALTY DECISION

The panel reviewed the previous decisions made and referenced to by the Association. A summary of the previous decisions referred to the panel is shown below.

Parties	Length of time over which misappropriation	Date	Amount of misappropriation	Expulsion	Fine	Costs	Crim. Conv.
CGA Ontario v. Brodie	34 months	Nov 20, 2000	\$47,953	yes	\$1,000	\$1,500	Yes
CGA Ontario v. Conway	26 months	Oct 30, 1998 Apr 22, 1999	\$72,727	yes	no	no	Yes
CGA Ontario v. Dressing		Mar 1, 2000	\$112,200	yes	no	\$5,000	No
CGA Ontario v. Joseph		Mar 12, 2001 Nov 22, 2001	\$212,421	yes	\$1,000	\$1,500	Yes
CGA Ontario v. Stanleigh		May 24, 2005		yes	\$2,500	\$2,500	No
CGA Ontario v. Chan		Mar 8, 2006	>\$400,000	yes	\$2,000	\$5,000	Yes
CGA Ontario v. Samad		Jun 23, 2010	\$45,000	yes	\$2,500	\$10,000	No
Law Society of Upper Canada v. Kopyto				yes			
ICAO v. Lapedus	2 years	Jun 1991		Yes	\$1,000		
ICAO v. Silverman		Jun 1991	\$100,000	Yes	\$25,000		
ICAO v. Kwiatkoski		Oct 1997		Yes	\$3,000		Yes

The panel gave significant weight to the previous decisions made by the Association. The Panel could not give the same weight to the decisions made by other professional bodies as details of their codes of professional conduct and ethics were not fully known to the members of the panel.

In ordering the penalty of expulsion the panel considered in this instance the fact that Mr. Willman breached the Code of Ethical Principles and Rules of Conduct's Trust and Duties and six Rule violations. He did this over a prolonged period of time with multiple occasions of misappropriations and he drew others into his schemes by way of influence or direction. The panel considered Mr. Willman's request

for leniency given his personal circumstances and while the panel were empathetic to his circumstances it does not excuse or justify the actions taken by Mr. Willman to misappropriate funds and assets from his employer.

The panel referred to the previous decisions provided by Ms. Jolley and it was clear that expulsion from the Association is the most significant form of discipline that the Tribunal can order. Each of the previous decisions of the Association included expulsion for a similar type of conduct. The panel also referred to the argument made by Ms. Jolley that the Association must have as its prime consideration, protection of the public and that in situations such as this, there is no room for anything but expulsion. Ms. Jolley stated that expulsion is the only remedy for a self regulated body. The panel concurred with the Association on this penalty.

On the issue of returning the certificates of membership, it stood to be logical that if Mr. Willman is no longer a member of the Association that the certificates should be returned. This also was in concurrence with the proposed penalty recommended to the panel by the Association.

On the issue of ordering that Mr. Willman pay a contribution towards the costs incurred by the Association to bring this matter before the Professional Conduct Tribunal, the Association had provided sufficient evidence for the need of an investigator and the costs incurred by the Association specific to this matter. The panel also referred to the previous decisions and found sufficient precedent in which costs had been awarded to the Association. These previous decisions were for conduct of a similar nature and so they support this decision which was also consistent with the penalty sought by the Association.

On the issue of a fine, the panel engaged in significant discussion that considered the full spectrum of the proposed fine as a penalty. Considerable weight was given to all sides of the argument about the need for a fine, the value of a fine and the amount of a fine in this circumstance.

The Tribunal considered the fact that the Association was seeking a fine in the amount of \$5,000 and Mr. Willman did not object to the amount of the fine of \$5,000. The panel considered whether this was a joint submission on the issue of this element of the penalty or was it a submission from the Association with no objection by Mr. Willman. After close review of the notes from the Hearing it was determined that this was not a joint submission and represented a proposal from the Association in which Mr. Willman did not object. Having settled this argument the panel turned its attention to the issue of the need for a fine.

The panel considered all elements of the penalty and in particular the fact that expulsion from membership was one, if not, the most severe penalty that the Association can order. In this circumstance the panel had settled the issue of expulsion and decided it was appropriate. So why the need to order an additional financial penalty on the member? The panel considered the evidence that was presented during the Hearing and it was clear that Mr. Willman committed his misappropriations over a prolonged period of time and misappropriated multiple sums of money that in aggregate equalled approximately \$38,000. Mr. Willman involved others in his schemes through his influence or direction to misappropriate money from the company. Mr. Willman did not realize the error of his way after the first misappropriation and did not admit his wrongdoing to his manager, but developed more schemes to continue his misappropriations. The panel also reviewed the previous decisions referred to by Ms. Jolley. It appeared that it was common to order a fine and in particular even in a few cases when criminal convictions were also made against former members. In this circumstance the employer

decided not to pursue legal action but turned the matter over to the Association for action. Given the facts of this circumstance and that Mr. Willman was not charged criminally and that his employer looked to the Association to administer penalty, and that a fine was often ordered in the previous decisions, the panel concluded that a fine was appropriate.

The panel then turned its mind to the value of ordering a fine against the member and how a fine may act as a deterrent to other members. The panel considered that expulsion from the Association was the most significant of the penalties being considered in this case and that the fine should be considered by itself when considering the value of the total penalty on the member. Having decided that the actions taken by Mr. Willman warranted a penalty over and above expulsion, the panel concluded that a fine was appropriate to deter the member. The panel also agreed that the combination of a penalty that included both expulsion and a fine may be sufficient to act as deterrent to other members; however the panel also considered the circumstances surrounding misappropriations. The panel concluded that if a member is set on committing a misappropriation of funds and assets and if the threat of expulsion from membership does not curb the member's actions, the addition of a fine, unless it is significant, may not act as deterrent in itself. Notwithstanding that, the ordering of a fine is warranted given the nature and frequency of the misappropriations, the involvement of others, the amount of the misappropriations, and the fact that Mr. Willman was not penalized further through the criminal courts.

Finally the panel turned its mind to the amount of the fine as a penalty. The panel considered the amount of \$5,000 proposed by Ms. Jolley; however the panel did not find there to be compelling reason as to why the fine of \$5,000 was warranted, particularly when referenced to the previous Professional Conduct Tribunal decisions presented to the panel for review. It appeared from the previous

Professional Conduct Tribunals' decisions that the maximum fine of \$2,500 was the amount ordered in those cases even though the amounts of the misappropriations were in some cases larger.

There was no evidence of any previous violations carried on by Mr. Willman prior to this circumstance and when ultimately confronted by his employer Mr. Willman did not dispute the allegations and made full restitution for the misappropriations from Braebon. The Panel concluded that these elements did not warrant ordering a fine that was unusually high in this circumstance.

Absent a compelling argument from the Association that this circumstance warranted a fine in excess of \$2,500, the panel decided that a fine of \$2,500 shall be ordered against Mr. Willman.

Dated this 14 day of December, 2010

I, Daniel Coghlan, CGA 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.



Daniel Coghlan, CGA

NOTICE

This decision of the Professional Conduct Tribunal may be appealed to an Appeal Tribunal within thirty (30) days of the sending 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 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 By-Law Four, 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 invalid.