

IN THE MATTER of the Society of Management Accountants of Ontario Act,

AND IN THE MATTER of a disciplinary proceeding pursuant to Sections 25 and 26 of the Bylaws of The Society of Management Accountants of Ontario

BETWEEN:

The Society of Management Accountants of Ontario

(Applicant)

-and-

Ms. Naomi de Souza

(Respondent)

REASONS FOR DECISION OF THE DISCIPLINE COMMITTEE – December 8, 2008

CONTENT OF DECISION

PRELIMINARY MATTERS

December 8, 2008 hearing held at Victory Verbatim, Ernst & Young Tower, Suite 900 – 222 Bay St., Toronto, ON M5K 1H6 with Ms. Naomi de Souza. The person charged agreed that she received notice of hearing.

Prosecutor for the Society was Ms. Catherine M. Patterson of Ferguson Patterson, Barristers & Solicitors.

Counsel for the Discipline Committee, Mr. Mark R. Frederick of Miller Thomson, Barristers & Solicitors.

Ms. Naomi de Souza, Student Member, Defendant.

This matter was heard on the 8th day of December, 2008 at 10:00 o'clock in the forenoon before the Society disciplinary panel, which consisted of the following individuals:

J. Allan Thom, CD, FCMA (Chair)

Cliff Bilyea (Public Member)

James Karas (Public Member)

Ted Brabers, CMA

Ken Diebel, FCMA

Brian Goard, FCMA

Eran Goldenberg, FCMA

Ray Jones, FCMA

Anne Mackenzie, CMA

The respondent, Ms. Naomi de Souza, appeared in person representing herself.

Proof of service of the Notice of Hearing was filed and no objections were raised concerning matter proceeding or on jurisdiction to hear the matter.

At the outset of the hearing, all counsel were asked if there were any issues relating to bias or conflict of interest involving the Committee.

The parties were further asked if there were any issues that needed to be dealt with prior to the hearing commencing.

No issues having been raised, the hearing proceeded.

CHARGE

The Respondent was charged as follows:

That Naomi de Souza submitted two multiple choice examinations to be re-marked, after she had changed some of her responses on the two examinations to reflect the correct answers which were posted by the Society on its website and she represented to the Society that her original responses on the examinations had been marked incorrectly originally.

By reason of the foregoing, it is alleged that Naomi de Souza is guilty of professional misconduct as that term is defined in Section 22 of the Bylaws and Sections 1(2)(b), 2(1)(c) and 2 (4)(b) of the Professional Misconduct and Code of Professional Ethics Regulation.

In response to the charge, the Respondent was asked to plead to the charges read and denied all charges.

CASE FOR THE PROSECUTION

Counsel for the prosecution presented the Committee with a brief of documents for use in the hearing. With the concurrence of counsel of the brief showing that the Notice of Hearing was served is marked as Exhibit 1.

Counsel for the prosecution then called the following witnesses:

1. Mr. Brian Lindblom, forensic scientist. Sworn in.

Qualified as an expert witness.

Many years with RCMP.

Brian Lindblom presented the counsel with the tests in question as Exhibits 2, 3, 4 and 5.

Strong support, changes made subsequent due to pattern of pencil usage. His opinion was that it was indicative of the Respondent's test forms having been altered.

Distinct difference was noted between what was corrected and what was not. Different pencil used exclusively to make changes.

2. Mr. Jacques Maurice, Professor, Carleton University in Ottawa. Sworn in.

Testified by video conferencing.

He wrote the Accelerated Program, wrote the exams and marked the exams for correspondence students.

Noticed a difference in the answers on the original Scantron multiple choice exam sheets and the sheets that he was being asked to be re-marked. The changes would have all been to Ms. de Souza's benefit and would have given her substantially better grades.

It was his experience that Scantron machine that is used to mark multiple choice questions has never erred in twenty-two years.

No other student came forward to disagree with Scantron results.

3. Ms. Lisa Robinson, Manager of Candidate Support for the Accreditation Program. Sworn in.

Ms. de Souza's request for re-marking her tests was accepted by Ms. Robinson and mailed to Mr. Maurice.

Test papers were kept in a secure place until mailed to the re-marker.

CASE FOR THE DEFENCE

Ms. de Souza pleaded her own case. Sworn in.

Her only defence given to the Committee was, because of her hectic schedule she didn't have the time to change the answers. She did not know who did or why.

Ms. de Souza swore that she never tampered with the exam results. She "entrusted" them to the Society. She had no evidence to suggest anyone else who could have tampered with her papers. She requested that her September 26, 2008 letter to Dr. George Gekas, Chair of the Complaints Committee, be provided to the Committee and it was entered and distributed as Exhibit 6. Ms. de Souza did not present as a forthright witness in her explanation. The Committee chose not to accept her evidence.

Ms. de Souza was asked at the end of her submission if she had any other witnesses or evidence she wished to bring forward.

She answered no.

SUBMISSIONS

Prosecution argued that their witness, Brian Lindblom, reported that the marks had been changed from the original.

Jacques Maurice claimed under oath that the marks on the original and the re-mark were different. There were more correct answers on the re-mark.

Defence (Ms. de Souza) said that somebody else must have changed the answers on the re-mark. She swore she didn't tamper with the answers.

FINDINGS OF FACT

Having heard from the parties and having considered all the material and evidence submitted to us, the Committee finds:

1. That Ms. de Souza has committed professional misconduct in that the charges of submitting two multiple choice examinations to be re-marked, after she had changed some of her answers on the two examinations to reflect the correct answers which were posted by the Society on its website are proven as violations of the Society's Code of Professional Ethics in particular

2(1)(c) submitting answers changed and asking to be re-marked is tantamount to fraud.

2. As to the second charge that she represented to the Society that her original responses on the examinations had been marked incorrectly originally, we find this allegation was not proven due to lack of evidence.

2(4)(b) altering documents is a discredit to the profession.

SENTENCING

Discipline Committee finds that Ms. de Souza is guilty of professional misconduct and pursuant to the Society's Bylaws merits the following sanctions:

- 25.1(c) She shall have her membership cancelled and she shall be removed from the record of Members.
- 25.4 She may re-apply for membership after a period of five years from the date of the decision, but must complete a course acceptable by the Society in "ethics".
- 25.1(d) She must pay a fine of \$10,000.00 forthwith and in any event prior to any re-application.