



IN THE MATTER of the *Certified Management Accountants Act, 2010*, Statutes of Ontario 2010, C.6, Schedule B, as amended;

AND IN THE MATTER of the *Statutory Powers Procedure Act*, Revised Statutes of Ontario 1990, c.S.22, as amended;

AND IN THE MATTER of a disciplinary proceeding pursuant to Sections 32 and 33 of the Bylaws of the Certified Management Accountants of Ontario, as to complaints regarding the conduct of or actions of David Lobb.

BETWEEN:

Certified Management Accountants of Ontario
("CMA Ontario")

(Applicant)

-and-

David Lobb (the "Respondent")

(Respondent)

DECISION, ORDER AND REASONS OF THE DISCIPLINE COMMITTEE

The Discipline Committee held a Hearing at Victory Verbatim, Ernst & Young Tower, Suite 900, 222 Bay St., Toronto, Ontario M5K 1H6, on Thursday, 6 October 2011, to hear evidence, and submissions and argument and to deliver its decision; all to consider matters arising out of a complaint regarding the conduct of David Lobb, a Member of Certified Management Accountants of Ontario.

The panel of the Discipline Committee conducting the hearing was composed of:

Eran Goldenberg, FCMA (Chair)

James Karas, (Public Member)

Betty Wong, CMA

Counsel for the Applicant was Ms. Catherine M. Patterson of Ferguson Patterson Professional Corporation, Barristers & Solicitors.

The Respondent was present in person with his counsel, Michael B. Fraleigh, of Fogler Rubinoff LLP, Barristers & Solicitors.

Counsel for the Discipline Committee was Mr. Hugh M. Kelly, Q.C., of Miller Thomson LLP, Barristers & Solicitors.

Ms. Patterson tendered a Notice of Return of Hearing in this matter dated August 25, 2011; this was marked as Exhibit 1.

Charges

Ms. Patterson read the charges (as set out in the Notice of Return of Hearing, Exhibit 1), as follows:

That David Lobb failed to report Continuous Professional Learning and Development activities for the period from July 1, 2004 to June 30, 2007, as was required by Section 19 of the Bylaws of the Corporation in 2005, 2006 and 2007.

By reason of the foregoing, it is alleged that David Lobb is guilty of professional misconduct as that term is defined in Section 20(2)(b) of the Bylaws of the Corporation in effect in 2005, 2006 and 2007 and is currently defined in Section 2.2(b) of the Professional Misconduct and Code of Professional Ethics Regulation, and is in breach of Section 19 of the Bylaws of the Corporation in effect in 2005, 2006 and 2007, and Section 30 of the current Bylaws of the Corporation.

The Respondent herein pleaded guilty to the charges.

Statute

The *CMA Act* provides in part:

17. Subject to the by-laws, a member of the Corporation has the right to use the designations "Certified Management Accountant", "comptable en management accrédité", "Registered Industrial Accountant" and "comptable en administration industrielle", and to use the initials "C.M.A.", "CMA", "R.I.A." and "RIA".

35. (1) The discipline committee shall hear every matter referred to it by the complaints committee.

(3) The discipline committee shall find a member or firm guilty of professional misconduct if in the committee's opinion the member or firm is guilty of professional misconduct as defined in the by-laws.

(4) If the discipline committee finds a member or firm guilty of professional misconduct, it may by order do one or more of the following:

...

6. Issue a reprimand and, if the committee considers it appropriate, direct that the reprimand be recorded in the register.

...

8. Direct the member or firm to pay a fine and specify the timing and manner of payment.

...

11. Make any other order that the committee considers appropriate in the circumstances.

(5) Unless the discipline committee orders otherwise, a final decision or order of the committee under this section takes effect on the day on which the time to appeal ... expires, if no notice of appeal is filed with the appeal committee in accordance with that subsection.

By-laws

The Bylaws of CMA Ontario in effect in 2005, 2006 and 2007 provided in part as follows:

19. Rules of Conduct

All Members will comply with and their conduct will be governed by the by-laws and Code of Professional Ethics of the Corporation and rules established by the Board from time to time.

20. Professional Misconduct

(2) For the purposes of the by-laws, "professional misconduct" means:

- ...
- (b) a breach by a Member of the Act or the by-laws; ...

The current By-laws of CMA Ontario provide in part as follows:

22. Rules of Conduct Governing Members

All Members shall be familiar with and comply with the bylaws, regulations and Code of Professional Ethics of the Corporation and the rules and standards established or adopted by the Board from time to time. The "Code of Professional Ethics" of the Corporation is set forth in the regulations.

25.6 Whenever the Discipline Committee finds a Member is guilty of professional misconduct, unless an appeal of the decision and order has been filed with the Chair of the Appeal Committee,

- (a) notice of the decision and order of the Discipline Committee, disclosing the name of the Member and brief particulars of the professional misconduct, will be published and distributed to the Board and to the Members and may at the discretion and by Order of the Discipline Committee be published in the local or daily newspaper of the community or communities where the Member resides and/or carries on business; and
- (b) the decision and order of the Discipline Committee, together with the written reasons for the decision and the name of the Member with brief particulars of the finding of professional misconduct, will be published and maintained in the public area of the Corporation's website;

unless the Discipline Committee determines that disclosure of the name of the Member in any or all of the above publications is not required in the public interest and its disclosure would be unfair to the Member.

32. Continuous Professional Learning and Development

32.1 Every Certified Member shall undertake continuous professional learning and development relevant and appropriate to the Certified Member's work and professional responsibilities, as required by Section 32 and the

regulations, and shall demonstrate compliance with the requirements as set out in Section 32 and the regulations, unless the Certified Member is exempt from such requirements under the provisions of the regulations.

- 32.2 The content and required minimum amount of continuous professional learning and development, the penalties and procedures applicable to non-compliance with the continuous professional learning and development provisions of Section 32 and the regulations and the exemptions available from the continuous professional learning and development obligations are set forth in the regulations.
- 32.3 Every Certified Member subject to the continuous professional learning and development requirement of Section 32 and the regulations shall submit annually, on or before the due date prescribed in the notice sent by the Corporation by mail, by electronic mail, or published in a publication of the Corporation generally circulated to its Members, a declaration in the prescribed form attesting whether the requirements of Section 32 and the regulations have been met.

Professional Misconduct and Code of Professional Ethics Regulation

The Professional Misconduct and Code of Professional Ethics Regulation of CMA Ontario (the "Code") provides in part as follows:

1. Professional Misconduct

(2) For the purposes of the by-laws, "professional misconduct" means:

...

(b) a breach by a Member of the Act or the by-laws; ...

Agreed Statement of Fact

Ms. Patterson tendered a document titled "Agreed Statement of Facts"; this was marked as Exhibit 2, the substantial content of which is as follows:

Mr. Lobb is a CMA and has been since 1985. He was aware of the CPLD requirements but did not think that they applied to him because he had accepted a severance package from his employer and was not working.

When Mr. Lobb learned that this matter had been referred to the Complaints Committee and to the Discipline Committee, he contacted Katharine Harvey who advised him to contact the CPLD staff member (at that time Ann Henderson). Mr. Lobb was in communication with CMA staff and advised CMA Ontario that he was essentially retired although he did not qualify for Retired Member status because of his age.

The CPU policy provides that CMA staff can make an exemption to the Policy for Members who have retired from employment but are not eligible for Retired Member status. Mr. Lobb has provided CMAO with his declaration that for the years 2004 through 2007 he was not working or looking for work and was essentially retired. He has made the same declaration for all subsequent years.

CMA Ontario has accepted those declarations and granted to Mr. Lobb an exemption from the CPLD policy.

Accordingly, Mr. Lobb is now in compliance with the CPLD policy.

For the Respondent, Mr. Fraleigh confirmed these facts.

Submissions on Penalty

As set out in the Agreed Statement of Fact (Exhibit 2), the Corporation and Mr. Lobb made a joint submission as to penalty: that it is appropriate to treat Mr. Lobb similarly to those Members who brought themselves into compliance with the CPLD policy after they were served with the Notice of Hearing but before the actual Discipline Hearing. Accordingly the penalty proposed is:

1. \$1,000 fine;
2. A recorded reprimand;
3. The usual order as to publication of the matter including Member's name published in the members' publication and on the website;
4. No order as to publication in a paper of general circulation and no order for costs.

With respect to number 2 above, Ms. Patterson tendered a document titled "Reprimand"; this was marked as Exhibit 3.

Findings on the Charges

On the basis of the plea of guilty and the Agreed Statement of Fact (Exhibit 2), the Discipline Committee is satisfied that CMA Ontario has established the facts supporting the charge and the allegations set out in the Notice of Return of Hearing (Exhibit 1). Accordingly, the Discipline Committee finds that the Respondent failed to comply with the By-laws and Code of Professional Ethics of CMA Ontario in that:

contrary to the requirements of the "Continuous Professional Learning and Development (CPLD)" Policy approved by the Board of Governors of CMA Ontario on May 8, 2004, the Respondent failed to report the required Continuous Professional Learning and Development for the period July 1, 2004 through June 30, 2007;

such failures constituting professional misconduct by the Respondent as that term is defined in the By-laws, and the Professional Misconduct and Code of Professional Ethics Regulation of CMA Ontario.

The Discipline Committee finds that the Respondent is guilty of professional misconduct as that term is defined in Section 20(2)(b) of the Bylaws of CMA Ontario in effect in 2005, 2006 and 2007, as is currently defined in Section 2.2(b) of the Professional Misconduct and Code of Professional Ethics Regulation, and is in breach of Section 19 of the Bylaws of CMA Ontario in effect in 2005, 2006 and 2007 and Sections 30 and 39 of the current Bylaws of CMA Ontario.

Order

Having found the Respondent guilty of professional misconduct as noted above, the Discipline Committee unanimously orders as follows:

1. Under the authority of paragraph 6 of s.35(4) of the *Certified Management Accountants Act, 2011*, the Discipline Committee orders that David Lobb be reprimanded the particulars of which Reprimand are attached to this Order, and that such Reprimand be recorded on the Respondent's record.
2. Under the authority of paragraph 8 of s.35(4) of the *Certified Management Accountants Act, 2011*, the Discipline Committee imposes a fine of one thousand dollars (\$1,000) payable in a lump sum on or before 31 December 2011.
3. Under the authority of paragraph 11 of s.35(4) of the *Certified Management Accountants Act, 2010*, the Discipline Committee Orders that:

notice of the decision and order of the Discipline Committee and brief particulars of the professional misconduct be published and distributed to the Board, and to the Members in the CMA Ontario journal; and

the decision and order of the Discipline Committee, together with the written reasons for the decision and the name of the Member with brief particulars of the finding of professional misconduct, will be published and maintained in the public area of CMA Ontario's website;

Decision and Order rendered on the 6th day of October 2011.

Respectfully submitted



Eran Goldenberg, FQMA
Chair of Discipline Committee

In concurrence:



James Karas E.G.



Betty Wong, CMA E.G.

LIST OF EXHIBITS

- 1 Notice of Return of Hearing dated August 25, 2011
- 2 Agreed Statement of Fact dated October 6, 2011
- 3 Form of Reprimand dated October 6, 2011

IN THE MATTER of the *Certified Management Accountants Act, 2010*, Statutes of Ontario 2010, C.6, Schedule B, as amended;

AND IN THE MATTER of the *Statutory Powers Procedure Act*, Revised Statutes of Ontario 1990, c.S.22, as amended;

AND IN THE MATTER of a disciplinary proceeding pursuant to Sections 32 and 33 of the Bylaws of the Certified Management Accountants of Ontario, as to complaints regarding the conduct of or actions of David Lobb.

BETWEEN:

Certified Management Accountants of Ontario

-and-

David Lobb

REPRIMAND

You are hereby reprimanded for your breach of the Bylaws ("Bylaws") of Certified Management Accountants of Ontario ("CMA Ontario"), and Professional Misconduct and Code of Professional Ethics Regulation ("Code"), CMA Ontario, as found by the Discipline Committee,

for your failure to report Continuous Professional Learning and Development ("CPLD") activities for the period from 1 July 2004 through 30 June 2007

professional misconduct that is defined in:

Section 20(2)(b) of the Bylaws in force in 2005, 2006 and 2007;

Section 1(2)(b) of the Code in force currently;

which is a breach of:

Section 19 of the Bylaws in force in 2005, 2006 and 2007, and

Section 30 of the Bylaws in force currently.

In reaching its decision in this matter, the Discipline Committee acknowledged that you have now met the CPLD requirement. The Discipline Committee noted that compliance with CPLD requirements is very important as it affects the standards of competence of all CMA Members and upholds the public trust in the CMA designation. It is therefore the decision of the Discipline Committee to impose this reprimand because of your past failure to report your CPLD credits or

apply for an exemption from such reporting requirements on a timely basis, and to underline the importance of your future timely reporting in the event that you recommence practice as a CMA.

You are warned that any further infraction of the Bylaws or Code will result in more serious charges and potentially more severe penalties.

A copy of this Reprimand shall remain in the records of Members of CMA Ontario.

Dated at Toronto, Ontario this 6th day of October 2011, and signed on behalf of the Discipline Committee by the Chair of the Committee.


Eran Goldenberg, FCMA