

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-

Name withheld by Order of the Discipline Committee

(Respondent)

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## REASONS FOR DECISION OF THE DISCIPLINE COMMITTEE

### ABRIDGED CONTENT OF DECISION

#### PRELIMINARY MATTERS

2009 hearing held at Victory Verbatim, Ernst & Young Tower, Suite 900 – 222 Bay St., Toronto, ON M5K 1H6. The person charged agreed that he/she received notice of hearing.

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

Counsel for the Discipline Committee was Ms. Elizabeth K. Ackman of Miller Thomson, Barristers & Solicitors.

Certified Member, defendant.

This matter was heard before the Society disciplinary panel, which consisted of the following individuals:

J. Allan Thom, CD, FCMA (Chair)

Cliff Bilyea (Public Member)

Ted Brabers, CMA

Ken Diebel, FCMA

Eran Goldenberg, FCMA

Ed Hazell, FCMA

Ray Jones, FCMA

Anne Mackenzie, CMA

The defendant appeared in person, and brought Party A to represent him/her as his/her agent.

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 the Member improperly accessed the confidential records of Party B and Party C and the personal information of Party D without their permission or consent and without legal authority.

By reason of the foregoing, it is alleged that the Member is guilty of professional misconduct as that term is defined in Section 22 of the Bylaws and Sections 1(2)(b), 2 (1)(a), (1)(c), (3)(a) and (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. The Member pleaded not guilty.

#### CASE FOR THE PROSECUTION

Counsel for the prosecution presented the Committee with a brief of documents for the use in the hearing (Exhibit 2). With the concurrence of counsel the Notice of Hearing with proof of service was marked as Exhibit 1.

Counsel for the prosecution then called the following witness.

Party B witness appeared and was sworn in.

*Text redacted by Order of the Discipline Committee.*

Counsel for the prosecution called her second witness.

Party C and Party D witness appeared and was sworn in.

*Text redacted by Order of the Discipline Committee.*

#### CASE FOR DEFENCE

Party A appearing for the defendant, the Member was sworn in.

*Text redacted by Order of the Discipline Committee.*

## SUBMISSIONS

Prosecution argued that the Member had accessed Party B's, C's and D's confidential information.

Defence (the Member) admitted he/she had but had not derived any benefit from the information.

## FINDINGS OF FACT

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

1. That the Member has committed professional misconduct in that the charges of accessing the confidential information without consent of the parties is in violation of the Society's Code of Professional Ethics.
  - 1(2)(b) The Committee finds that the Member breached the Act and/or the by-laws.
  - 2(1)(a) The Committee finds that the Member did not act with responsibility for and fidelity to public needs.
  - 2(1)(c) The Committee finds that the Member let his/her personal feelings stand in the way of his/her devotion to the high ideals of personal honour and professional integrity.
  - 2(3)(a) The Member used his/her position to obtain confidential information, the fact that it wasn't used was still a breach of the Code of Professional Ethics.
  - 2(4)(b) The Committee finds what the Member did was an act discreditable to the profession.

## SENTENCING

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

1. The Member is hereby reprimanded for his/her conduct pursuant to Section 25.1(a) of the Society's Bylaws, and such letter of reprimand shall remain on his/her record. However any publication of this reprimand shall not make any reference to the Member or any other party personally in accordance with Section 25.6 as to do so is not required in the public interest and disclosure in the circumstances of this case would be unfair to the Member.
2. The Member to be levied a fine of \$2,000.00 (two thousand dollars) to be paid on or before *date redacted by Order of the Discipline Committee.*