

IN THE MATTER of the Society of Industrial and Cost Accountants of Ontario Act, 1941, Statutes of Ontario 1941, c.77; as amended by Statutes of Ontario 1967, c.129; Statutes of Ontario 1971, c.126; Statutes of Ontario 1981, c.100; and Statutes of Ontario 2004, c.8;

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 25 and 26 of the Bylaws of The Society of Management Accountants of Ontario, as to complaints regarding the conduct of or actions of Peter Moorhouse

BETWEEN:

The Society of Management Accountants of Ontario

(Applicant)

-and-

Peter Moorhouse

(Respondent)

DECISION, AND REASONS FOR DECISION OF THE DISCIPLINE COMMITTEE

In this redacted version of the Decision and Reasons, identifying personal information and certain other information, neither of which is necessary for an understanding of the Decision and Reasons, has been suppressed.

The Discipline Committee held a hearing at Victory Verbatim, Ernst & Young Tower, Suite 900, 222 Bay St., Toronto, Ontario M5K 1H6, on December 18, 2009 to consider matters arising out of a complaint regarding the conduct of or actions of the Respondent.

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

J. Allan Thom, CD, FCMA (Chair)
Ted Brabers, FCMA
Ken Diebel, FCMA
Eran Goldenberg, FCMA
Ed Hazell, FCMA
Ray Jones, FCMA
James Karas, Public Member

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

The Respondent was present in person but was not represented by counsel.

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

Ms. Patterson tendered the Affidavit of Andrew Hainsworth, sworn the 17th day of December 2009, confirming service of the Notice of Hearing upon the Respondent; this Affidavit was marked as Exhibit 1. The Respondent acknowledged that he received Notice of Hearing.

As no objections were raised against the matter proceeding or as to the jurisdiction of the Discipline Committee to hear the matter, the hearing commenced.

Ms. Patterson tendered the Notice of Hearing, which was marked as Exhibit 2.

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

1. That despite numerous requests by Complainant A or counsel acting on his behalf that he do so, Peter Moorhouse failed or refused to turn over financial documents and records to which Complainant A was entitled;
2. That despite numerous requests from Complainant A and other partners that he do so, Peter Moorhouse, who was a partner with Complainant A in, and Chief Financial Officer of, a partnership called Company A, failed or refused to fulfil his obligations to Company A and its partners by preparing financial reports in a timely fashion;
3. That Peter Moorhouse agreed with two of the other four partners of Company A that upon the dissolution of the partnership, they would close the partnership's bank account and divide the money obtained from that bank account to their own credit without the knowledge or consent, and to the prejudice of the remaining partner Complainant A;
4. That Revenu Quebec requested justification documentation from Complainant A regarding Company A's financial activities which documents are in Peter Moorhouse's possession but which he has failed or refused to provide to either Revenu Quebec or Complainant A despite numerous requests; and
5. That Peter Moorhouse failed to reply in writing to a letter from the Society which specifically requested a reply within thirty (30) days of the date of receipt of such letter.

By reason of the foregoing, it is alleged that Peter Moorhouse is guilty of professional misconduct as that term is defined in Sections 1(2)(b) and 1(2)(e) of the Professional Misconduct and Code of Professional Ethics Regulation (the "Regulation") and is in breach of Sections 2(1)(b); 2(1)(c); 2(2)(a); 2(3)(c); 2(4)(b); and 2(5)(a) of the Regulation and Sections 22 and 31 of the Bylaws of the Society.

The Respondent pleaded “Guilty” to Sections 1(2)(b); 1(2)(e); 2(4)(b); and 2(5)(a) of the Regulation and Sections 22 and 31 of the Bylaws of the Society (the “Bylaws”). The Respondent pleaded “Not Guilty” to Sections 2(1)(b); 2(1)(c); 2(2)(a); and 2(3)(c) of the Regulation.

Ms. Patterson tendered bound documentation titled “Document Brief”, which was entered as Exhibit 3, containing a draft partnership agreement showing the Respondent as Chief Financial Officer (CFO) of Company A, a Dissolution Agreement signed by the Respondent with respect to Company A and correspondence from the complainant to the Respondent repeatedly requesting production of financial statements and supporting documentation in the possession of the Respondent that the complainant urgently required for submission to the Quebec taxation authorities.

Ms. Patterson called and examined the complainant, Complainant A. During his examination in chief a complete copy of the memorandum found at page 22 of the Document Brief marked as Exhibit 3 was entered as Exhibit 4, setting out certain decisions of the partners of Company A and describing the Respondent as a participating partner.

Complainant A’s evidence was that the Respondent accepted the position of CFO of Company A, and was a partner but failed to keep proper accounts of the partnership. Complainant A believes a partnership agreement was signed, although only the unsigned draft contained within Exhibit 3 was produced. There was no payment for the role of CFO. Mr. Moorhouse would have received 5% of the profits of the partnership.

Complainant A made repeated requests for production of financial statements and supporting documentation in the possession of the Respondent which were urgently needed by Complainant A for submission to Revenu Quebec. Complainant A had to hire a lawyer to try to get the supporting documents back from Mr. Moorhouse which Revenu Quebec required. Despite repeated promises, Mr. Moorhouse failed to deliver the source documents until December 6, 2009, two weeks before this hearing. As a result of the Respondent’s delay, Revenu Quebec has frozen all of Complainant A’s returns.

Complainant A’s evidence was that the corporate credit card of Company A was in his name and that he was stuck with the debt that had built up on that credit card when the partnership was dissolved and the bank account was closed.

Thereafter Complainant A was cross-examined by Mr. Moorhouse. At the conclusion of his cross-examination the Discipline Committee offered Mr. Moorhouse the opportunity to review the documents over the luncheon recess in order to be sure that he had posed all the questions he wanted to ask. Mr. Moorhouse advised the Committee that he did not require this additional time and confirmed he had concluded his cross-examination of Complainant A.

Ms. Patterson called no further witnesses.

Mr. Moorhouse took the witness stand and gave evidence on his own behalf. During the course of his evidence a collection of documents was entered as Exhibit 5. It was his evidence that he never accepted the position of CFO, was not a partner and was an unofficial consultant only to the partnership. He acknowledged he could have done a better job for Complainant A but the partnership was fraught with other problems. He never received any payment. He did not sign anything to close the bank account but was present when it was closed. He thought Complainant

A would be better off if it was closed as the other partners had expenses that were greater than the credit card debt. He tried saying no to Complainant A's requests but the other partners pressed him and he felt he had no choice.

Mr. Moorhouse was cross-examined by Ms. Patterson. He was not able to explain why he had signed the Dissolution Agreement if he was not a partner. He acknowledged that he had likely received Exhibit 4 which lists him as a participating partner but admitted that he never told anyone he was not a partner. He acknowledged receipt of the emails sent by Complainant A. It took him until December 6, 2009 to deliver the box of documents to Complainant A because he was waiting for the other partners to direct him to do so.

Mr. Moorhouse called no other witnesses.

Having heard the evidence of Complainant A and observed him as he gave his evidence the Discipline Committee found his evidence to be credible and reliable. The Discipline Committee is satisfied that the Applicant has established the facts recited in paragraphs 1 through 5 of the Notice of Hearing.

Having heard the Respondent and observed him as he gave his evidence, the Discipline Committee is satisfied that the Respondent was straight-forward and candid in giving his evidence and in acknowledging responsibility for his actions.

Although the evidence established the factual allegations set out in the Notice of Hearing, in the opinion of the Committee the facts established did not support a finding that the Respondent had failed to maintain independence of thought and action contrary to s. 2(2)(a) of the Regulation or that he had received a fee without his client's or employer's knowledge contrary to s. 2(3)(c) of the Regulation. There was no evidence that he had received any money from the partnership at any time, including when the bank account was closed.

IT WAS THE DECISION OF THE DISCIPLINE COMMITTEE that the Respondent's plea of guilty to the following charges be accepted:

Section 1(2)(b) of the Regulation	The Committee finds that Mr. Moorhouse breached the Act and/or the By-laws.
Section 1(2)(e) of the Regulation	The Committee finds that Mr. Moorhouse failed to respond to a communication from the Society.
Section 2(4)(b) of the Regulation	The Committee finds that Mr. Moorhouse committed an act discreditable to the profession.
Section 2(5)(a) of the Regulation	The Committee finds that Mr. Moorhouse did not maintain the standards of competence expressed by the Board from time to time.
Section 22 of the Bylaws	The Committee finds that Mr. Moorhouse did not comply with the Bylaws, regulations and Code of

Professional Ethics of the Society.

Section 31 of the Bylaws

The Committee finds that Mr. Moorhouse did not reply to a letter from the Society in respect of professional conduct within thirty days of receipt.

IT WAS THE DECISION OF THE DISCIPLINE COMMITTEE that the Respondent is also guilty of the following charges:

Section 2(1)(b) of the Regulation

The Committee finds that Mr. Moorhouse did not act with fairness and loyalty to his associates.

Section 2(1)(c) of the Regulation

The Committee finds that Mr. Moorhouse did not act with devotion to high ideals of personal honour and professional integrity.

IT WAS THE DECISION OF THE DISCIPLINE COMMITTEE that the facts proven did not support a finding of guilt on the charges brought against Mr. Moorhouse under sections 2(2)(a) of the Regulation in relation to failure to maintain independence of thought and action and 2(3)(c) of the Regulation in relation to the obligation not to accept any fee or benefit without the knowledge of the client or employer and accordingly they are dismissed.

THE DISCIPLINE COMMITTEE ORDERS :

That under s. 25.1(a) of the Bylaws of The Society of Management Accountants of Ontario, Mr. Moorhouse is hereby reprimanded for lack of devotion to high ideals of personal honour and lack of professional integrity;

That under s. 25.1(b) of the Bylaws of The Society of Management Accountants of Ontario, the membership of Peter Moorhouse be suspended for a period of six months;

That under s. 25.1(d) of the Bylaws of The Society of Management Accountants of Ontario, Peter Moorhouse pay a fine of \$1,000.00 to the Society on or before June 30, 2010;

That under s. 25.1(f) of the Bylaws of The Society of Management Accountants of Ontario, the period of suspension be suspended upon the Member's signing and filing with the Society a written undertaking that the Member will immediately cease holding himself out to the public as a Certified Member in public practice, or alternatively, that the Member will immediately register with the Society as a Member in public practice.

Decision rendered on the 18th day of December 2009, and Decision and these Reasons released on the 11th day of March 2010.