

**CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO
DISCIPLINE COMMITTEE**

Rebecca Huang, LL.B. (Chair of Panel)]
(Public Member)]
Anne Mackenzie, CMA,]
Hesham Shafie, CMA]

Tuesday, 28 May 2013

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

AND IN THE MATTER of a Hearing of a matter regarding the conduct of Stephanie Lockman Sobol as directed by the Complaints Committee of Certified Management Accountants of Ontario (the "Corporation") to be held according to the *Act* and Bylaws of the Corporation and the Rules of Procedure of the Discipline Committee of the Corporation.

BETWEEN:

Certified Management Accountants of Ontario

(Applicant)

-and-

Stephanie Lockman Sobol

(Respondent)

DECISION AND ORDER

THIS HEARING was heard at Victory Verbatim, Ernst & Young Tower, 9th floor, 222 Bay Street, Toronto, Ontario M5K 1H6, on Tuesday, the 28th day of May 2013, in the presence of the lawyer for the Applicant, and the Respondent who was self-represented.

UPON READING the Notice of Hearing filed by the Applicant;

AND UPON reading the Agreed Statement of Facts filed by the Applicant;

AND UPON reviewing the exhibits filed by the Applicant;

AND UPON hearing the submissions of the lawyer for the Applicant and the submissions of the Respondent,

AND UPON the consent of the Applicant and the Respondent to this Order,

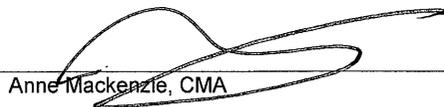
1. THE DISCIPLINE COMMITTEE FINDS AND DECLARES that the Respondent Stephanie Lockman Sobol is guilty of professional misconduct as defined in Section 2(2)(b) of the *Professional Misconduct and Code of Professional Ethics Regulation*:

August 22, 2008, and in breach of sections 2(1)(a), 2(1)(c), and 2(4)(b) of the *Professional Misconduct and Code of Professional Ethics Regulation: August 22, 2008*.

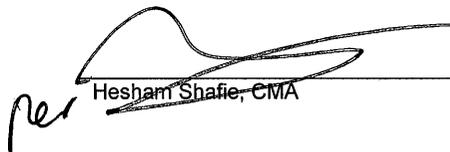
2. THE DISCIPLINE COMMITTEE ISSUES, under paragraph 6 of section 35(4) of the *Act*, a reprimand with this Order and DIRECTS that the reprimand be recorded on the Respondent's record.
3. THE DISCIPLINE COMMITTEE DIRECTS, under paragraph 8 of Section 35(4) of the *Act* and Section 20.3 of the Discipline Committee Rules of Procedure, that the Respondent pay a fine of one thousand dollars (\$1,000); and SPECIFIES that such payment be made on or before the 30th day of November 2013.
4. THE DISCIPLINE COMMITTEE ORDERS, under paragraph 11 of section 35(4) of the *Act*, and in accordance with section 20.6 of the Discipline Committee Rules of Procedure, that:
 - (a) notice of the Decision and Order of the Discipline Committee disclosing the name of Stephanie Lockman Sobol and brief particulars of the professional misconduct be published and distributed to the Board and to the Members in the CMA Ontario on-line monthly e-newsletter, *Leading Indicator*; and
 - (b) the decision and order of the Discipline Committee disclosing the name of Stephanie Lockman Sobol, together with the written reasons for the decision with brief particulars of the finding of professional misconduct, be published and maintained in the public area of CMA Ontario's website.
5. THE DISCIPLINE COMMITTEE makes no order as to costs.



Rebecca Huang, LL.B.
Chair of the Panel of the Discipline Committee



Anne Mackenzie, CMA



Hesham Shafie, CMA

**CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO
DISCIPLINE COMMITTEE**

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

AND IN THE MATTER of a Hearing of a matter regarding the conduct of Stephanie Lockman Sobol as directed by the Complaints Committee of Certified Management Accountants of Ontario (the "Corporation") to be held according to the *Act* and Bylaws of the Corporation and the Rules of Procedure of the Discipline Committee of the Corporation ("Rules").

BETWEEN:

Certified Management Accountants of Ontario

(Applicant)

-and-

Stephanie Lockman Sobol

(Respondent)

REASONS

At the commencement of the Hearing on Tuesday, the 28th day of May 2013, Ms. Jennifer Cooper, counsel for CMA Ontario, moved to make two amendments to the Notice of Hearing.

First, she withdrew the following allegation on the basis that the Respondent's reaching of a settlement agreement with the Ontario Securities Commission did not constitute a misconduct.

On May 18, 2011, the Respondent entered into a Settlement Agreement with the Ontario Securities Commission based, in part, on the conduct outlined below, in which she acknowledged that her conduct while an employee of Nelson Financial Group Ltd. was contrary to the public interest, thereby committing an act discreditable to the profession, contrary to section 2(4)(b), of the Professional Misconduct and Code of Professional Ethics Regulations, Approved: August 2008.

As the Respondent did not object, this proposed amendment was granted.

Ms. Cooper then proposed to amend allegation 2(b) by adding, at the end, the words "*and about continuing to offer securities to the public when Nelson Financial was operating at a deficit*", so that allegation 2(b) would read:

Failed to raise concerns with the directing mind of Nelson Financial about projections that the company would be profitable in 4-5 years beyond the Material Time, and about continuing to offer securities to the public when Nelson Financial was operating at a deficit; and

Again, as the Respondent did not object, the second proposed amendment was also granted.

The Respondent then confirmed to the Panel that she pleaded guilty to the charges laid by CMA Ontario.

Facts

The parties have signed an Agreed Statement of Facts the relevant portions of which are reproduced below:

Member's Background

1. The Member became a member of CMA Ontario in 2004. She has never been the subject of a finding of professional misconduct by CMA Ontario.
2. Between 2004 and 2007, the Member was employed by the Canadian office of a large multinational technology and consulting corporation as a Senior Financial Analyst.
3. Between 2007 and June 2011, the Member was employed by Nelson Financial Group Ltd. ("Nelson Financial") first as the Corporate Controller and then as General Manager.
4. Since early 2012 the Member has been employed by a large Canadian pulp and paper company as the Controller.

Nelson Entities

5. Nelson Financial provided vendor assisted financing for the purchase of home consumable products, either through a vendor or directly to the consumer (consumer loans).
6. Nelson Investment was incorporated in Ontario on September 14, 2006 and sold securities of Nelson Financial.
7. Marc Boutet was at all material times listed as the sole officer and director of Nelson Financial and Nelson Investment (together, the "Nelson Entities"). Boutet was the

directing mind of the Nelson Entities and was registered with the Ontario Securities Commission.¹

8. In May 2007, the Member was hired as the Controller for Nelson Financial. In May 2008, the Member became the General Manager.

Ontario Securities Commission —Acting Contrary to the Public Interest

9. In May 2011, the Member entered into a settlement agreement with the OSC wherein she admitted that while acting as a senior finance employee at Nelson Financial and as a fact Chief Operating Officer of Nelson Financial, she acquiesced in Nelson Financial's continued distribution of securities and continued acceptance of new investor capital in circumstances that was contrary to the public interest. ...
10. At paragraphs 10 through 20 of the OSC settlement agreement, the Member admitted to the following facts:
 - a) Between December 2006 and January 31, 2010 (the "Material Time") and through Nelson Investment, Nelson Financial raised approximately \$82 million through the sale and distribution of securities of Nelson Financial to (almost exclusively) Ontario investors. As of February 28, 2010, there were approximately 500 Nelson investors with a total investment amount outstanding of approximately \$51.2 million, net of redemptions.
 - b) The securities sold and distributed by Nelson Financial were in the form of fixed term promissory notes and preferred shares and were offered by Nelson Financial at fixed/guaranteed annual rate of return of 12% and 10%, respectively, typically paid to investors on a monthly basis.
 - c) Nelson Financial relied on investors' funds for liquidity throughout the relevant period.
 - d) In soliciting investors, the Nelson Entities expressly and implicitly represented to investors that Nelson Financial's business model, and consequently the success of the Nelson Financial investments, was premised upon applying investor capital to fund the Consumer Loans so that Nelson Financial would generate a higher return on the Consumer Loans than the returns promised to investors, as follows: a) investors' funds are used directly to fund the Consumer Loans; b) the Consumer Loans are extended at interest rates ranging from 29.9%; c) the fixed rate of return of 10-12% on the securities are paid to investors from the high interest rates earned on the Consumer Loans; and d) the "remaining spread" is used by Nelson Financial for "portfolio management, administration, underwriting and profit".
 - e) Throughout the Material Time, Nelson Financial made all of its monthly interest and "dividend" payments to investors and, for those who elected to redeem their investments upon maturity or otherwise, Nelson Financial repaid investors their full principal.

¹ Boutet was first registered with the OSC as a trading officer under the category of limited market dealer with Nelson Investment and then subsequently as the ultimate designated person and chief compliance officer under the firm registration category of exempt market dealer.

- f) Throughout the Material Time, however, Nelson Financial's operations did not generate sufficient revenue for it to cover its operating expenses, nor its interest, "dividend", and principal repayment obligations to investors. During the Material Time, Nelson Financial relied on the receipt of new investor capital to meet its obligations to investors.
 - g) In addition to its on-going working capital requirements, Nelson Financial used at least part of the new investor funds that it obtained to offset its growing accumulated losses, to pay other investors their monthly returns and to repay investors their principal upon redemption.
 - h) Nelson Financial's continued acceptance of new investor funds in order to meet its obligations to investors was contrary to investor interests and the public interest. By using new investor funds in this fashion, during the Material Time, new investor funds were at risk because the total amount due to investors always exceeded Nelson Financial's total assets.
 - i) While Nelson Financial was making statements to investors that it was successful, at no time did [the Member] advise investors that Nelson Financial was in fact operating at a deficit or that their funds would be used either in whole or in part to pay interest or repay other investors. Moreover, [the Member] did not raise concerns with her direct report, Boutet, about continuing to offer securities during the Material Time.
 - j) On or about January 31, 2010, due to regulatory concerns raised by [the OSC] following its on-site compliance review, Nelson Financial temporarily suspended the distribution of any of its securities.
11. By engaging in the conduct described above, the Member admitted in the OSC Settlement Agreement that she acted contrary to the public interest.

Ontario Securities Commission Order

12. On May 18, 2011, upon review of the Settlement Agreement and upon hearing submissions from counsel for both parties, the OSC approved the terms of the settlement agreement and issued an Order which includes that the Member is prohibited from acting as a director or officer of an issuer for a period of six years from the date of the Order. (The Order was attached to the Exhibit at Tab 2, reproduction of which in these Reasons is unnecessary).
13. As part of the terms of the Settlement Agreement, the Member also made a voluntary payment of \$10,000 to the OSC to be distributed to the benefit of third parties. The Member provided a certified cheque to the OSC for the full amount on May 17, 2011. (Proof of payment was attached to the Exhibit at Tab 3, reproduction of which in these Reasons is unnecessary).

During the hearing, the Respondent made some statements that seemed to resile from paragraph 12(i) immediately above. When we sought clarifications from her, she confirmed her agreement to all of the facts as set out in the Agreed Statement of Facts. In light of her confirmation, we concluded that there was no dispute as to the facts in this case, and accepted the facts as set out in the Agreed Statement of Facts.

Findings

Based on the facts and evidence before us, we found that Ms. Sobol is guilty of professional misconduct as defined in Section 2.2(b) of the *Professional Misconduct and Code of Professional Ethics Regulation* (Approved: August 2008) and that she

- failed to act with responsibility for and fidelity to the public needs, contrary to section 2(1)(a) of the *Professional Misconduct and Code of Professional Ethics Regulations* (Approved: August 2008);
- failed to act at all times with competence through devotion to high ideals of personal honour and professional integrity, contrary to section 2(1)(c) of the *Professional Misconduct and Code of Professional Ethics Regulations* (Approved: August 2008); and
- committed an act or acts discreditable to the profession, contrary to section 2(4)(b) of the *Professional Misconduct and Code of Professional Ethics Regulations* (Approved: August 2008).

Submissions on Penalty

The parties have signed a Joint Submission As To Penalty. In addition, CMA Ontario relied on the penalty principles set out below by the Discipline Committee in a recent CMA decision, *Certified Management Accountants of Ontario v. Mariana Dimova* ("Dimova"):

1. CMA Ontario regulates the profession of Management Accountants in the public interest.
2. Disciplinary orders are directed toward four main purposes
 - a) Specific deterrence: the penalty must dissuade the member from repeating her conduct in the future;
 - b) General deterrence: the penalty must persuade other members that similar conduct will not be tolerated;
 - c) Improved competence, rehabilitation and/or restitution: the penalty should lead other Members generally, and the member in particular, to improved competence and rehabilitation, and
 - d) Maintaining public confidence in the profession of Management Accounting: the penalty must help to ensure public confidence in the integrity, probity and trustworthiness not only in Members generally, but also in CMA Ontario as the self-regulatory body of Management Accountants.

3. Public confidence in the profession of Management Accountants is more important than the fortunes of any one member.
4. Public confidence is based on such matters as a member's credibility, integrity, character, repute, and fitness. While mitigating factors and compassion for a member may have a place, they should not compromise an impartial adjudication of those matters.
5. The ability to practise as a Management Accountant or provide accounting services is not a right but a privilege.

The Committee in *Dimova* went on to enumerate eight factors that are relevant to the determination of what penalty should be imposed in a given case. We adopted the five principles in *Dimova* and applied the eight factors to the facts in this case as follows:

- **The existence or absence of a prior disciplinary record.** In this case, Ms. Sobol has no prior disciplinary record.
- **The existence or absence of remorse, acceptance of responsibility or an understanding of the effect of the misconduct on others.** In this case, Ms. Sobol was remorseful and accepted responsibility for her misconduct.
- **Whether the member has since complied with his/her obligations by responding to or otherwise co-operating with CMA Ontario.** In this case, Ms. Sobol fully cooperated with CMA Ontario.
- **The extent and duration of the misconduct.** In this case, the professional misconduct occurred over a period of more than two and a half (2½) years, from approximately May 2007 through January 2010.
- **The potential impact of the member's misconduct upon others,** considering not just the merits of the complaints that prompted CMA Ontario to intervene but whether and how the member's unresponsiveness did or might reasonably be expected to affect a client's interests. In this case, there was no evidence of any impact of Ms. Sobol's conduct upon any other person.
- **Whether the member has admitted misconduct,** obviating the necessity of a more lengthy hearing required to prove the misconduct. In this case, Ms. Sobol admitted her misconduct, thereby resulting in a relatively short hearing.

- **Whether there are extenuating circumstances (medical, family-related or others) that might explain, in whole or in part, the misconduct.** In this case, there was no evidence of any extenuating circumstances.
- **Whether the misconduct is out-of-character or, conversely, likely to recur.** In this case, there was no evidence that the misconduct would likely recur.

Ms. Sobol made no submissions on the facts or factors we should consider in deciding the penalty in this case.

As a general rule, joint submissions as to penalty are encouraged and should be respected unless it would bring the administration of justice into disrepute, as stated by the Court of Appeal of Ontario in *R. v. Dorsey*.²

[11] It is well established that a trial judge is not bound by a joint submission. The trial judge must, of course, give serious consideration and respect to a joint submission. The submission should be departed from only where the trial judge considers the joint submission to be contrary to the public interest and a submission which, if accepted, would bring the administration of justice into disrepute.

This principle was affirmed again by the Court of Appeal case in *R. v. Cersuolo*³:

This is a high threshold and is intended to foster confidence in an accused, who has given up his right to a trial, that the joint submission he obtained in return for a plea of guilty will be respected by the sentencing judge.

...

While we cannot over emphasize that these agreements are not to fetter the independent evaluation of the sentences proposed, there is no interference with the judicial independence of the sentencing judge in requiring him or her to explain in what way a particular joint submission is contrary to the public interest and would bring the administration of justice into disrepute.

In our view, the test pronounced by the Ontario Court of Appeal with respect to joint submission as to penalty is applicable in this case. We concluded that the penalty as agreed to is reasonable under the circumstances and is consistent with the five principles of penalty in CMA discipline proceedings. There is no reason to depart from it as it would not bring the administration of justice into disrepute.

² (1999) 123 O.A.C. 343, 1999 CanLii 3759

³ (2001) 151 CCC (3d) 445, 140 OAC 114, 2001 CanLii 24172

Penalties Imposed

Accordingly, we order the following:

1. Under paragraph 6 of Section 35(4) of the *Act*, a Reprimand will be imposed upon Stephanie Lockman Sobol, and such Reprimand shall be recorded on her record.
2. Under paragraph 8 of section 35 of the *Act* and Section 20.3 of the Rules, Stephanie Lockman Sobol shall pay a fine of one thousand dollars (\$1,000) payable on or before the 30th day of November 2013.
3. Under paragraph 11 of section 35(4) of the *Act*, and in accordance with section 20.6 of the *Discipline Committee Rules of Procedure*:
 - a) notice of the Decision and Order of the Discipline Committee disclosing the name of Stephanie Lockman Sobol and brief particulars of the professional misconduct shall be published and distributed to the Board and to the members in the CMA Ontario on-line monthly e-newsletter, *Leading Indicator*, and
 - b) the decision and order of the Discipline Committee disclosing the name of Stephanie Lockman Sobol, together with the written reasons for the decision with brief particulars of the finding of professional misconduct, shall be published and maintained in the public area of CMA Ontario's website.
4. There shall be no order as to costs.

The Committee wishes to thank counsel for her very helpful submissions, and Ms. Sobol for her cooperation.

All of which is respectfully submitted this 28th day of May 2013



Rebecca Huang, LL.B.
Chair of the Panel of the Discipline Committee



per Anne Mackenzie, CMA



per Hesham Shafie, CMA