

**DISCIPLINE COMMITTEE
OF THE COLLEGE OF OPTICIANS OF ONTARIO**

PANEL:

Robert Vezina, Chairperson
Mike Smart, Member
David Milne, Public Member
Bryan Todd, Member
Eve Hoch, Public Member

BETWEEN:

| | | |
|---------------------------------|---|---------------------------------|
| COLLEGE OF OPTICIANS OF ONTARIO |) | |
| |) | <u>Rebecca Durcan</u> |
| |) | College of Opticians of Ontario |
| - and - |) | |
| |) | <u>Ramy Marco</u> |
| |) | Appearing in Person |
| |) | |
| RAMY MARCO, C-1592 |) | |
| |) | <u>Luisa Ritacca</u> |
| |) | Independent Legal Counsel |
| |) | |
| |) | |
| |) | Heard: April 11-12, 2016 |

DECISION AND REASONS

This matter came for hearing before a panel of the Discipline Committee on April 11, 2016 at the College of Opticians of Ontario (the "College") at Toronto.

The Allegations

The allegations against the Member as stated in the Notice of Hearing dated May 4, 2015 are as follows:

1. Ramy Marco ("Mr. Marco") has been a member of the College of Opticians of Ontario ("the College") since approximately 1987.
2. At all material times, Mr. Marco was employed by Hakim Optical, located at 1270 Finch Avenue West, North York.
3. At all material times, the Complainant, SC, worked at Hakim Optical as a student optician. At all or certain times, Mr. Marco was her supervisor.

4. Between approximately May 2, 2013 and August 22, 2014, Mr. Marco and SC began speaking through Facebook messenger and text message.
5. It is alleged that Mr. Marco sent SC inappropriate messages through Facebook and text message.
6. It is alleged that some of the messages Mr. Marco sent to SC include:
 - a. On or about May 12, 2013, Mr. Marco says to SC in Facebook messenger: “Good morning and happy Mother’s Day hope all is well. I know you’re a busy lady but just a reminder to send me your pics and u can send it to rm5636@rogers.com instead of my cell. Hope u have a great day and speak to u soon.”
 - b. On or about June 13, 2013, Mr. Marco says to SC after she asks him “how’s work??” in Facebook messenger: “Slow and Ruth is working here today. Now that’s exciting. She is making me so horny.”
 - c. On or about June 13, 2013, Mr. Marco says to SC after asking her about her boyfriend in Facebook messenger: “That’s great I’m happy for u but I guess that puts me on hold for now.”
 - d. On or about June 13, 2013, Mr. Marco says to SC in Facebook messenger: “So what happened to my private show u promised?”
 - e. On or about June 13, 2013, Mr. Marco says to SC after asking her about her boyfriend in Facebook messenger: “Ok how about a pic at least to keep me happy.”
7. As a result of the above, the College alleges that Mr. Marco engaged in the following acts of professional misconduct as set out in Ontario Regulation 828/93, section 1:
 - a. He contravened a standard of practice of the profession (paragraph 2); and/or
 - b. He engaged in conduct or performed an act, in the course of practicing opticianry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional (paragraph 28).
- h. Further particulars of the specified allegations of professional misconduct relied upon by the College are contained in the documentary disclosure provided to Mr. Marco in support of the allegations in the Notice of Hearing.

The Member’s Plea

At the outset of the hearing, Mr. Marco confirmed that he wished to proceed in the absence of legal counsel and that he intended to dispute the allegations as set out in the Notice of Hearing.

The Evidence

The College did not call any witnesses and instead filed an Agreed Statement of Facts (Exhibit #2), which provided as follows:

The parties agree that the following facts may be accepted as true:

1. Ramy Marco ("Mr. Marco") has been a member of the College of Opticians of Ontario ("the College") since approximately 1987.
2. Mr. Marco does not have a previous discipline history with the College.
3. At all material times, Mr. Marco was employed by Hakim Optical, located at 1270 Finch Avenue West, North York (the "Store") as the Manager.
4. If Mr. Marco were to testify, he would advise the Panel that he met the Complainant, SC, when she was a receptionist at another Hakim Optical location.
5. In 2014, SC was studying opticianry at Seneca College. While studying opticianry, SC worked at Hakim Optical.
6. If Mr. Marco were to testify, he would advise the panel that he met SC, as set out in paragraph 4, well in advance of her opticianry studies.
7. If Mr. Marco were to testify, he would acknowledge that SC worked at the Store, but only on one occasion, which was on or about September 22, 2014.
8. Between approximately May 2, 2013 and August 22, 2014, Mr. Marco and SC communicated through Facebook messenger and text message. Attached as Exhibit "A" is a copy of the Facebook and text messages sent by Mr. Marco and SC.
9. If Mr. Marco were to testify, he would advise the Panel that SC initiated the Facebook messenger and text message communications by sending Mr. Marco a nude photo of herself. However, Mr. Marco does not have the photo or text or message to provide to the Panel.
10. The College and Mr. Marco have not come to an agreement on whether the above agreed facts constitute professional misconduct.

The College called no additional evidence.

The Member testified on his own behalf. He explained to the panel that while he agreed that the text and Facebook message communications contained in the Agreed Statement of Facts had been exchanged between him and SC, those communications represented only a small piece of his relationship with SC.

The Member testified that he began exchanging text messages and speaking on the phone with SC sometime in 2013. He explained that SC would share intimate details about her life with him, including when her husband was murdered and that she worked as a stripper after hours. The Member stated that he never had a direct working relationship with SC, except for a 2 or 3 day period in September 2014 when she came to work in his store as a "floater" staff. He was not in a position of authority over her; however he agreed in cross-examination that he was in a higher position than SC within the Hakim Optical company.

The Member further testified that he believed that SC's complaint was part of a larger plan she had to extract money from Hakim Optical and that she was a willing participant in their text message exchange. He stated that SC never complained to him about the nature of their conversation and that it was she who initiated the discussion by sending him a nude photo of herself.

The Member also submitted a number of letters of reference from some of his past students and co-workers to show that he was well liked and respected. The Member also stated that he had been a member of the College for a long period of time and had never had any issues with the College before.

The Member stated he is active in his community as a coach and involved with his children's extra curricular activities.

Decision

The panel concluded that the Member engaged in professional misconduct as set out in paragraph 7(b) of the Notice of Hearing in that having regard to all of the circumstances, the conduct of the Member would reasonably be regarded by members of the profession as unprofessional.

The panel made no finding against the Member in relation to the allegation set out in 7(a) and further did not find that the Member's conduct rose to the level of dishonourable or disgraceful as set out in paragraph 7(b).

Reasons for Decision

The College failed to show the panel how the Member contravened a standard of practice of the profession. The panel concluded that it could not make a finding against the Member as no standard was presented to substantiate this.

The Panel did find that the Member, over an extended period of time, engaged in conduct that would be considered to be unprofessional by members of the profession. Repeatedly asking SC for pictures or a "private show" is not acceptable. While the Member was not SC's direct superior, he was in a higher position than her in the company and as such had a responsibility to act professionally in his dealings with her. Further, commenting that a fellow employee "Ruth, is working here today. Now that's exciting. She is making me so horny." is inappropriate and does not reflect the professional conduct expected of opticians.

PENALTY

Evidence and Submissions of the Parties on Penalty

The College sought the following sanctions:

1. A reprimand to be delivered within 30-days of the date of the panel's Order;
2. A two (2)-months suspension, to commence on a date to be set by the Registrar;
3. The imposition of specific terms, conditions and limitations on the Member's certificate, requiring the Member to successfully complete, in the opinion of the Registrar, a course, approved by the Registrar, in boundaries, the costs of which shall be borne by the Member;
4. The imposition of specific terms, conditions and limitations on the Member's certificate prohibiting the Member from acting as supervisor to female opticianry students for a period of two years; and
5. A requirement that the Member notify his employer of the outcome of this matter, including providing the employer with a copy of the Notice of Hearing, the panel's order, and a copy of these Reasons, once available.

The College argued that the penalty proposed appropriately addressed the key principles of sentencing, in that what was proposed was well within the public interest, addressed concerns of both specific and general deterrence, and fairly considered the need for remediation. In support of its position, the College provided the panel with a number of cases involving various sexual abuse and harassment findings in other health professional fields.

In response to the College's position, the Member argued that the proposed penalty was too onerous and that a more appropriate penalty would be a reprimand only. He also argued that the cases relied upon by the College were inappropriate in that they dealt with much more significant issues of sexual abuse and boundary violations.

Penalty Decision

The panel deliberated and decided to make the following order:

- 1) The Member is required to appear before a Panel of the Discipline Committee to be reprimanded within 30 days of the date of this order.
- 2) The Discipline Committee shall direct the Registrar to impose specified terms, conditions and limitations on the Members certificate of registration requiring:
 1. The Member to successfully complete, in the opinion of the Registrar, a course, approved by the Registrar, in Boundaries. The cost of which will be borne by the Member. This Boundary course is to be completed within 12 Months of the date of this order, unless the Registrar agrees that additional time is required because a suitable course is not available in the time ordered.
 2. That the Registrar forwards to the member's employer a copy of The Panel's Order and a copy of the Panel's Decision and Reasons, once available.

Reasons for Penalty Decision

The College provided the panel with a Penalty brief which included some prior cases. The panel considered these cases, both how they were similar and different from the present circumstance. The panel found that the cases referred to were much more extreme than the present one. The College suggested that the Member does not get it, that he does not understand that what he did is wrong and that a serious penalty was warranted.

The Member stated that this has taken a toll on his personal life. It has been a strain on him for the last 18-months and felt that a reprimand was more than sufficient. He stated that he does a lot of volunteering, and has no past history, not even a speeding ticket. The Member also stated the texts were never aggressive and that there was no need for any remedial action .

The Panel heard from both the College and the Member that he was a member in good standing and the College stated that his ability to interact professionally with the public was never in question. In view of these facts the Panel felt that the penalty proposed by the College was too onerous.

Taking into the prior cases and the submission of the parties, the Panel concluded that the penalty ordered adequately meets the need for specific and general deterrence, and also offers the Member an opportunity to learn from his mistake. While the panel recognizes that its order is less restrictive than that proposed by the College, it has concluded that the penalty is most appropriate.

COSTS

Evidence and Submissions of the Parties on Costs

The College filed a bill of costs in excess of \$28,000.00.

The College originally intended to seek \$18,000.00 in costs from the Member, but after the Panel delivered its decision, it reduced its request to \$12,000.00.

The Member argued that he is simply not in a position to pay high costs to the College and that he is only an Optician making \$18.00 an hour, plus a few incentives. He explained that he has children in school and could not afford to pay a \$12,000.00 costs order.

The panel considered the parties' submissions with respect to costs and decided to award the College its costs as follows.

The panel makes the following order:

- a. The Member shall pay costs to the College in the amount of \$4,500.00 (four thousand five hundred dollars).
- b. The amount shall be payable in 3 equal yearly installments, of \$1,500 starting September 30, 2016.

Reasons for Costs Decision

Having found the Member to have engaged in only one count of the misconduct alleged, the Panel concluded that a modest award for costs was appropriate.

I, **Rob Vezina**, sign this Decision and Reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:



Rob Vezina, Chairperson and Professional Member

May 2, 2016

Date

Mike Smart, Professional Member
David Milne, Public Member
Bryan Todd, Professional Member
Eve Hoch, Public Member