



The Association of Professional
Engineers and Geoscientists of Alberta

APEGA DISCIPLINE COMMITTEE DECISION

Dates of Hearing: February 6, 7 and 8, 2017
Date of Decision: July 12, 2017
APEGA Discipline Case Number: 16-011-FH

**IN THE MATTER OF A HEARING OF THE DISCIPLINE
COMMITTEE OF THE ASSOCIATION OF PROFESSIONAL
ENGINEERS AND GEOSCIENTISTS OF ALBERTA**
Pursuant to the *Engineering and Geoscience Professions Act*,
being Chapter E-11 of the Revised Statutes of Alberta 2000

Regarding the Conduct of AKINKUNLE O. BABALOLA, P.ENG.

INTRODUCTION

The hearing of the Discipline Committee took place on February 6, 7, and 8, 2017 in the Yamnuska Boardroom of the APEGA Calgary Office at 2200 Scotia Centre, 700 - 2 Street SW in Calgary, Alberta.

Appearances

The members of the Hearing Panel of the Discipline Committee ("the Hearing Panel") of the Association of Professional Engineers and Geoscientists of Alberta ("APEGA"):

Mr. David Evans, P.Geol., Chair
Mr. Joe Kostler, P.Eng., Member
Mr. Alex Bolton, P.Geo., Member
Mr. Naser Rabbani, P.Eng., Member
Ms. Muriel Dunnigan, Public Member

Ms. Katrina Haymond and Ms. Lisa K. Martens, Legal Counsel for the Investigative Committee of APEGA ("the Investigative Committee")

Mr. Frank Boehres, APEGA Director of Investigations

Mr. Akinkunle O. Babalola, P. Eng.
Mr. Lee Carter, Legal Counsel for Mr. Babalola

Ms. Jessica Vandenberghe, P.Eng., M.Sc., APEGA Director of Enforcement and Permits

Mr. David Jardine, Independent Legal Counsel for the Hearing Panel of the Discipline Committee

Opening of the Hearing – February 6, 2017

Preliminary Matters

1. The parties advised the Hearing Panel that there was no objection to the constitution of the Hearing Panel.
2. Mr. Carter advised that there was one preliminary matter. He indicated that Mr. Babalola wished to sit outside the hearing room when the other witnesses were testifying. After clarifying that Mr. Babalola was aware that he was entitled to be present and to hear the witnesses, the Hearing Panel agreed to Mr. Babalola's request to stay outside.

Opening Statement by Ms. Haymond

3. Ms. Haymond began by reviewing with the Hearing Panel the documents that the parties had agreed would be redacted from the binder containing the Investigative Committee's Index and documents. The Binder containing the Investigative Committee's documents set out in 54 tabs was entered by consent as Exhibit 1. Ms. Haymond then produced a binder containing Mr. Babalola's documents set out in 27 tabs and this Binder was entered as Exhibit 2.
4. A copy of the Notice of Hearing which set out the charges against Mr. Babalola was then entered as Exhibit 3. The allegations of unprofessional conduct set out in the charges were as follows:

1. On or about February to March 2012, Akinkunle O. Babalola, P. Eng. ("Babalola"), petroleum engineer, falsely or recklessly induced [REDACTED] or [REDACTED] to contribute \$10,000 to an oil investment scheme, particulars of which include:
 - a. Babalola induced [REDACTED] or [REDACTED] a corporation owned and directed by [REDACTED] to contribute \$10,000 ("the Contribution") to an oil investment scheme by informing [REDACTED] that the Contribution was a safe investment because the oil investment scheme was "100% doable" and the Contribution would be fully refunded if the oil investment scheme was not carried out;

- b. Babalola knew or ought to have known that the oil investment scheme was not guaranteed and that the Contribution would not be fully refunded if the oil investment scheme was not carried out;
 - c. The oil investment scheme was not actually carried out but Babalola failed to ensure that [REDACTED] or [REDACTED] received a full refund of the Contribution;
 - d. In engaging in the conduct set out at 1(a) to (c), Babalola represented himself as a professional engineer; and
 - e. Babalola knew or should have known that [REDACTED] or [REDACTED] relied on Babalola's reputation as a professional engineer when making the Contribution.
2. Between March 2012 and March 2016, Babalola failed to conduct himself with integrity with respect to a dispute between [REDACTED] and EI-Parazim over [REDACTED] claim for a refund of the Contribution from EI-Parazim, particulars of which include:
- a. Between April 2012 and February 2016, Babalola falsely or recklessly assured [REDACTED] or its agent that he took responsibility for the refund of the Contribution, then failed to refund the Contribution;
 - b. When [REDACTED] filed a civil claim against EI-Parazim for the refund of the Contribution, Babalola filed a frivolous counterclaim on behalf of EI-Parazim for \$27,500 against [REDACTED] as part of EI-Parazim's defence against the civil claim; and
 - c. After [REDACTED] won default judgment of \$11,508.06 and the counterclaim was struck, Babalola falsely informed the Court and APEGA¹ that [REDACTED] or [REDACTED] had changed the date of the hearing without advising EI-Parazim of the new date and therefore [REDACTED] or [REDACTED] was to blame for EI-Parazim's failure to appear at the trial; and
 - d. On or around March 15, 2016, Babalola, after repeatedly promising refund of the Contribution, informed [REDACTED] that EI-Parazim had been struck or dissolved, that [REDACTED] no longer had legal recourse against EI-Parazim, and that the only way Babalola would refund any part of the Contribution was if [REDACTED] withdrew his complaint to APEGA against him.

IT IS FURTHER ALLEGED that the above-referenced conduct constitutes unprofessional conduct or unskilled practice by the Member, as set out in section 44(1)

¹ By agreement during the hearing, the words "and APEGA" were deleted from this clause.

of the *Engineering and Geoscience Professions Act*, and contravenes one or more of Rules of Conduct 3, 4 and 5 of APEGA's Code of Ethics.

5. Ms. Haymond briefly reviewed the charges and noted that only the matters specifically identified in the charges were before the Hearing Panel. She then reviewed the witnesses that she would be calling. She noted that the role of the Hearing Panel would be to determine whether the charges were factually proven and, if so, whether the proven conduct was unprofessional conduct as defined in section 44 of the *Engineering and Geoscience Professions Act* ("the EGP Act"). Ms. Haymond then briefly reviewed section 44 of the EGP Act and Rules of Conduct 3, 4, and 5 of APEGA's Code of Ethics.

6. Ms. Haymond noted that in this case the issues do not arise directly from the practice of engineering. She advised that the question for the Hearing Panel would be whether the conduct occurred as alleged, and whether it was connected in some way to the profession of engineering. She noted that even if the conduct was not related to the practice of engineering, the additional question would be whether this conduct was more reprehensible as a member of the engineering profession and whether the conduct was unprofessional conduct, given the norms and expectations of the profession.

7. Ms. Haymond concluded by noting that the burden of proof was on the Investigative Committee. She advised that the Investigative Committee had to prove the allegations on a balance of probabilities and noted that the member did not have to prove his innocence.

Opening Statement by Mr. Carter

8. Mr. Carter asked the Hearing Panel to note that the case did not involve any allegations of unskilled practice and it did not involve engineering or the practice of engineering as defined in the *EGP Act*. He noted that the matter in issue involved a business transaction and a subsequent civil lawsuit. He pointed out that Mr. Babalola was not personally a party to either the business transaction or the lawsuit. He suggested that the Hearing Panel was being asked to discipline the member for conduct that was wholly outside of his professional practice.

9. Mr. Carter then reviewed the allegations contained in the Charges and related them to the evidence he suggested the Hearing Panel would hear. He emphasized that the parties to the oil transaction were businessmen who understood the nature of the transaction and did not necessarily rely on the fact that Mr. Babalola was a professional engineer.

10. In respect to the second charge, Mr. Carter suggested that Mr. Babalola had no legal, ethical or professional obligation to repay debts owed by a corporation and was entitled to rely on the limited liability of his corporation. He suggested that the evidence the Hearing Panel would hear would show that the allegations in this second charge were not supported by the evidence of what actually happened. Finally, he submitted that even if the charges were factually proven, the conduct did not rise to the notorious or criminal degree required for the discipline committee to discipline a member acting wholly outside of his professional capacity.

Witnesses

11. The Hearing Panel heard evidence from the following witnesses on February 6 and 7, 2017:

- [REDACTED] – the complainant – February 6, 2017
- [REDACTED] – February 6, 2017
- [REDACTED] – February 6, 2017
- [REDACTED] – February 7, 2017
- Akinkunle O. Babalola, P.Eng. – February 7, 2017 – the investigated person

12. On February 8, 2017, the Hearing Panel heard final submissions from Ms. Haymond and Mr. Carter.

Exhibits

13. The following Exhibits were entered at the hearing:

Exhibit 1 – A binder containing 54 tabs of the Investigative Committee's documents

Exhibit 2 – A binder containing 27 tabs of Mr. Babalola's documents

Exhibit 3 – A copy of the Notice of Hearing and Charges

Exhibit 4 – A copy of a Dispute Note filed in Provincial Court on August 17, 2012

Exhibit 5 – A bundle of email documents dated between March 12, 2012 and February 24, 2012

Exhibit 6 – Affidavit in Response to an Application for Set Aside

Exhibit 7 – Order of the Provincial Court filed June 15, 2016

Exhibit 8 – Invoice showing beneficiary as [REDACTED]

Decision on the Charges of Unprofessional Conduct

Introduction

14. The Hearing Panel heard the evidence of five witnesses, including the investigated person, Mr. Babalola, over two days. It has also reviewed all of the documents contained in the Exhibits entered at the hearing and considered the final submissions made by Ms. Haymond and Mr. Carter.

15. The evidence of the witnesses resulted in over 400 pages of transcript and the Hearing Panel does not intend to summarize this evidence in any detail. Instead, the Hearing Panel

intends to provide a basic outline of the events that resulted in this hearing, and will reserve any detailed discussion of the evidence for when it considers each of the Charges and Particulars in this matter.

Outline of the Events

16. While the evidence of the witnesses differed in some respects, and there were clearly strong negative feelings between Mr. Babalola and some of the other witnesses, the Hearing Panel finds that combined evidence of all the witnesses and the documents entered as exhibits provided a basic outline of the events which resulted in this hearing.

17. The complaint by [REDACTED] arose out of a transaction that was discussed and then entered into in late February and early March 2012. The proposed transaction involved the purchase of a tanker of D2 (a particular form of oil) in Rotterdam to be delivered to a Nigerian company, represented by [REDACTED] company, [REDACTED]

18. Mr. Babalola through his company El-Parazim Groups Inc. was to implement the agreement and to obtain the necessary letters of credit and financial instruments to facilitate the transaction.

19. [REDACTED] had been introduced to Mr. Babalola by [REDACTED]. All of these individuals were interested in becoming involved in oil and gas transactions. They had discussions about entering into a transaction together. Mr. Babalola agreed to become part of the transaction but indicated that he required \$10,000 to be paid to help obtain the necessary financing arrangements. [REDACTED] did not have \$10,000 so he approached [REDACTED] and asked him to invest in the transaction. [REDACTED] was also involved in these discussions.

20. [REDACTED] met with Mr. Babalola, [REDACTED] and [REDACTED] lawyer. The initial outline of the agreement was set out in an email from Mr. Babalola of February 25, 2012 and later set out in a joint venture agreement and participation agreement prepared by [REDACTED] lawyer. [REDACTED] paid the sum of \$10,000 through his company [REDACTED] to Mr. Babalola's company, El-Parazim Groups Inc.

21. [REDACTED], [REDACTED] and [REDACTED] all understood that the agreement was that [REDACTED] company would receive a refund of his \$10,000 if the transaction did not proceed. Mr. Babalola agreed that the money was to be refunded, if after 45 days, he was unable to arrange for the D2 to be "lifted" in Rotterdam.

22. Shortly after the agreement was entered into, [REDACTED] and [REDACTED] became concerned about what they saw as a lack of progress in the transaction. On April 1, 2012, [REDACTED] sent an email to Mr. Babalola advising that he and [REDACTED] wished to cancel the agreement. On April 13, 2012, Mr. Babalola advised that "I have no problem with the cancellation of the transaction". Mr. Babalola confirmed that he would be refunding the \$10,000 without interest.

23. When his company had not received the \$10,000 by July 2012 ██████████ filed a civil claim in Provincial Court against El-Parazim Groups Inc. On August 17, 2012, Babalola filed a dispute note and a counterclaim for \$27,500 on behalf of El-Parazim Groups Inc.

24. After a pre-trial conference in February 2013, the trial of the civil action was set for November 2013. Prior to that date, ██████████ retained ██████████ and ██████████ company ██████████ to act as his court agent to obtain an adjournment of the trial in November 2013 because ██████████ would be working out of the country.

25. ██████████ contacted Mr. Babalola who consented to the adjournment. A new trial date was set for July 11, 2014. ██████████ sent an email to Mr. Babalola confirming that the trial had been adjourned to July 11, 2014. Mr. Babalola acknowledged receipt of this email.

26. The trial was held on July 11, 2014. Mr. Babalola did not attend. ██████████ obtained judgment on behalf of ██████████ against El-Parazim Groups Inc. The counterclaim was dismissed by the Provincial Court.

27. In September 2014, ██████████ filed a complaint with APEGA concerning Mr. Babalola.

28. Mr. Babalola filed an application with an affidavit in support on April 17, 2015 seeking to set aside the judgment. This application was set for May 29, 2015. ██████████ filed an affidavit opposing the application. At the application on May 29, 2015, Mr. Babalola and ██████████ attended Provincial Court and the application was dismissed.

29. There were a series of contacts between Mr. Babalola and ██████████ discussing possible payments by Mr. Babalola in respect to the judgment against El-Parazim Groups Inc. but no monies were ever paid by Mr. Babalola.

30. On March 15, 2016, Mr. Babalola sent an email to ██████████ advising that El-Parazim Groups Inc. had been dissolved. In the email, Mr. Babalola stated:

It's past two years from the mail received from the Government of Alberta. I am no longer responsible or accountable for this old company. However, in good faith, I'm willing to pay you a thousand dollars in good faith exchange for dropping all charges against me.

31. The APEGA investigation proceeded and eventually resulted in a referral to the APEGA Discipline Committee that resulted in this hearing.

Discussion and Consideration of the Charges

Standard of Proof

32. In coming to its decision in this matter, the Hearing Panel recognizes that the onus is on the Investigative Committee to prove the factual allegations made in the Charges contained in the Notice of Hearing to satisfy the "balance of probabilities" standard of proof. This standard of proof requires that any allegation be proven as more probable than not. If some or all of the factual allegations are proven, the Investigative Committee must also establish on the same balance of probabilities standard of proof that the proven allegations constitute unprofessional conduct or unskilled practice by Mr. Babalola.

33. This decision will therefore review the allegations, and the particulars of the allegations, set out in each Charge and consider whether the evidence establishes whether it is more probable than not that each factual allegation has been proven as required by the balance of probabilities standard of proof. Based on its conclusions on the factual allegations, the decision will then consider whether any proven allegations constitute unprofessional conduct or unskilled practice.

Charge 1

34. Charge 1 (set out in Paragraph 4 above) alleges that "On or about February to March 2012, Akinkunle O. Babalola, P. Eng. ("Babalola"), petroleum engineer, falsely or recklessly induced [REDACTED] or [REDACTED] to contribute \$10,000 to an oil investment scheme". It then provides five particulars of Mr. Babalola's conduct. This decision will review each of the five particulars to determine whether or not the allegations in the particulars have been proven on a balance of probabilities. The decision will then consider whether it has been proven on a balance of probabilities that the actions taken by Mr. Babalola were false or reckless as alleged in the Notice of Hearing.

Particular 1 a: Babalola induced [REDACTED] or [REDACTED], a corporation owned and directed by [REDACTED], to contribute \$10,000 ("the Contribution") to an oil investment scheme by informing [REDACTED] that the Contribution was a safe investment because the oil investment scheme was "100% doable" and the Contribution would be fully refunded if the oil investment scheme was not carried out;

35. The evidence is clear and undisputed that [REDACTED] did provide \$10,000 through his company [REDACTED] as part of an oil investment transaction. All of the witnesses, other than [REDACTED] whose evidence dealt with his role in the subsequent civil claim, agree on this point and it is supported by the documents in Exhibit 1 reviewed by the Hearing Panel. The evidence is also clear that the \$10,000 was provided to Mr. Babalola's company, El-Parazim Groups Inc. It is also clear and acknowledged that it was Mr. Babalola who indicated that he required the \$10,000 before he was prepared to carry out his role in the oil investment transaction.

36. [REDACTED], [REDACTED], and [REDACTED] all agree that [REDACTED] was contacted by [REDACTED] who asked [REDACTED] to provide the \$10,000 required by Mr. Babalola. [REDACTED], [REDACTED] and [REDACTED] all agree that [REDACTED] made clear that he was providing the \$10,000 on the basis that if the oil investment scheme did not complete, [REDACTED] would receive his \$10,000 back. They all agree he was given this assurance by both [REDACTED] and Mr. Babalola.

37. [REDACTED] indicated that Mr. Babalola advised him that he was guaranteed to get his money back and that there was no way if the deal did not happen that he would not get the money back. His understanding was that if the deal did not go ahead he would get his money back with a 10% fee. His understanding was that if the deal went ahead, he would receive a 5% fee of the gross profits which he understood would be about \$80,000.00 to \$100,000.00 US.

38. [REDACTED] advised that he did not have \$10,000.00 so after discussing the matter with [REDACTED], he arranged a meeting with [REDACTED] during which he told [REDACTED] about the proposed deal. He indicated that [REDACTED] initially turned him down because [REDACTED] was worried that this was some form of scam. However, after [REDACTED] told him that Mr. Babalola was an engineer who lived in Calgary, [REDACTED] agreed to meet with Mr. Babalola. [REDACTED] felt that he could rely on Mr. Babalola as a legitimate business person because he was an engineer and worked for a prominent company in downtown Calgary.

39. [REDACTED] advised that, in his discussions with Mr. Babalola, he was concerned about the \$10,000.00 being provided. He recalled that Mr. Babalola confirmed that the \$10,000.00 was fully refundable if there had not been a transaction in 45 days and that if anything went wrong, [REDACTED] would get his \$10,000.00. [REDACTED] confirmed that Tab 18, Exhibit 1 confirmed this understanding.

40. An important document for the Hearing Panel in relation to this issue is an email sent by Mr. Babalola on February 25, 2012 to [REDACTED] and [REDACTED] which was Tab 18 of Exhibit 1. In this email Mr. Babalola made the following statements:

The D2 Deal is 100% doable. I am not sure of the offer from the Italy group but I know I can get D2 from real credible buyers.

1. I will collect the \$10,000.00 make payable to EL-Parazim Groups Inc. I will sign for it from your lawyer. this money is 100% refundable with a 1% interest if within 45 days your buyer don't lift D2 in Rotterdam.

The email was signed by "Kunle Babalola (Baba), M.Eng., P.Eng, EL-Parazim Groups Inc."

41. All witnesses, except [REDACTED] (who was not involved at this point), agreed that a copy of this email was shown to [REDACTED] at a meeting he attended with Mr. Babalola, [REDACTED], [REDACTED] and [REDACTED] lawyer, although memories differed on exactly when this meeting occurred. All parties also agreed that a handwritten notation was added to the email and signed by [REDACTED] that stated the following:

██████████ undertakes and agrees with ██████████ that in the event the buyer fails to purchase and pay for D2 pursuant to the Sale and Purchase Agreement and the sum of \$10,000 becomes refundable ██████████ will refund the sum of \$10,000 with interest to ██████████

It was acknowledged and agreed that ██████████ was ██████████ company.

42. In his evidence, Mr. Babalola indicated that after a couple of meetings about a potential contract and how it could be executed he prepared the email of February 25, 2012 [Exhibit 1, Tab 18] to set out the basic agreement. He stated: "So being an engineer, we --- we theoretically agree on how the business was going to be structured". He also indicated that in his opinion "after crossing my Ts and dotting my Is, I said the D2 deal is doable". Mr. Babalola also acknowledged the portion of the email where he stated "This money is 100% refundable if, within 45 days, your buyer don't lift D2 in Rotterdam." He advised that this was intended to confirm that if he could not deliver the contract within 45 days, he would refund the investor's \$10,000 with applicable interest.

43. It is clear that it was Mr. Babalola who required the \$10,000 investment to proceed with the proposed oil investment transaction. It is also clear that ██████████ was assured by Mr. Babalola directly at the meeting, and through ██████████ and by the February 25, 2012 email that the oil investment transaction was "100% doable" and that his \$10,000 would be "100% refundable, if within 45 days, your buyer don't lift the D2 in Rotterdam."

44. Based on this evidence, the Hearing Panel therefore finds that it is more probable than not that Mr. Babalola did induce ██████████ to invest \$10,000 through his company by advising ██████████ that the Contribution was a safe investment because the oil investment scheme was "100% doable" and the Contribution would be fully refunded if the oil investment scheme was not carried out. This allegation has therefore been proven on a balance of probabilities.

Particular 1 b: Babalola knew or ought to have known that the oil investment scheme was not guaranteed and that the Contribution would not be fully refunded if the oil investment scheme was not carried out

45. In his evidence, Mr. Babalola took the position that he was confident that he could carry out his part of the transaction and that it was fully "doable". He also confirmed that he was committed to refunding the \$10,000 if he did not arrange for the delivery of the D2 in Rotterdam within 45 days. He suggested that he had almost guaranteed the lifting of the oil in Rotterdam when the contract was terminated after 23 days. He also suggested that the potential seller identified by ██████████ was not a legitimate supplier.

46. However, when Ms. Haymond asked whether Mr. Babalola had ever been involved in a successful transaction prior to his meeting with ██████████ and ██████████ Mr. Babalola admitted that prior to meeting with ██████████ and ██████████ he had

never made any money on any oil deals that had succeeded. He advised that in 2011 he had been involved in two deals in which he opened a couple of letters of credit worth \$100,000,000, but he acknowledged that these deals did not go through and that the deals did not succeed.

47. Mr. Babalola was therefore representing a level of past experience that was not supported by past successful transactions. The Hearing Panel notes that none of the documents provided by Mr. Babalola in Exhibit 2 show any confirmed arrangements were in place or in process for the financing of the transaction. There are no documents to support Mr. Babalola's suggestion that he had almost guaranteed the lifting of the D2 in Rotterdam when the contract was terminated. The only documents relating to a possible supplier of the D2 are the documents from a Malaysian company addressed to [REDACTED] and then emails asking Mr. Babalola to provide the necessary banking arrangements.

48. The Hearing Panel notes that despite his statements that he was experienced in these types of sophisticated transactions and his suggestions that he had financial support in place based on the financier's assessment of his "potential," Mr. Babalola did not provide any evidence of completed or nearly completed banking arrangements for this proposed transaction. There was no specific evidence either in his testimony or through his documents that demonstrated any substantial progress in the 23-day period before he was advised by [REDACTED] that he and [REDACTED] wished to cancel the transaction.

49. The Hearing Panel specifically questioned Mr. Babalola about his evidence that he had arrangements with [REDACTED] which he stated allowed him to obtain a \$30,000,000 letter of credit for the proposed transaction. He was asked why he could get this letter of credit without any history of successfully completing deals in the past. He suggested this was because they saw his potential. He was also asked why he had not produced any hard evidence from [REDACTED] or [REDACTED] to prove that he had access to this kind of credit facility and a letter of credit for \$30,000,000. Mr. Babalola suggested he had already shown this in his previous dealing and so "I didn't feel it was something I had to put into evidence." He also suggested that, in this transaction, he did not get to the point where he had received a letter of credit before the transaction was terminated.

50. Mr. Babalola, in response to questions from Mr. Carter, stated that the \$10,000 that El-Parazim Groups Inc. received from [REDACTED] company was intended to be used for paying bank premiums, insurance payments and Society for Worldwide Interbank Financial Telecommunications ("SWIFT") charges in obtaining the letter of credit for \$30,000,000 and using the SWIFT system. He did not explain how he could guarantee that these funds would be returned if the transaction did not proceed if they were needed to pay the fees to start the transaction process.

51. Based on this evidence, the Hearing Panel has determined that it is more probable than not that Mr. Babalola knew or ought to have known that the oil investment transaction was not "100 % doable" and that, despite his past efforts, he had never successfully completed an oil investment transaction. It has also been proven that it is more probable than not that he also knew or ought to have known that he intended to use the \$10,000 to pay the fees and costs

associated with arranging financing and that these funds would be spent and not be available to return if the oil investment transaction was not complete. The Hearing Panel therefore finds that Particular 1 b has been proven on a balance of probabilities.

Particular 1 c: The oil investment scheme was not actually carried out but Babalola failed to ensure that [REDACTED] or [REDACTED] received a full refund of the Contribution

52. While the witnesses disagree as to who was at fault, there is no dispute that the oil investment transaction was not carried out and was fully terminated approximately 23 days after it began. There is also no dispute that Mr. Babalola and El-Parazim Groups Inc. did not provide a full refund of the \$10,000 to [REDACTED] or to his company [REDACTED]. The reasons for this, and whether Mr. Babalola or his company were required to do this, were disputed, but it is clear that [REDACTED] and his company never received any portion of the \$10,000 despite many promises from Mr. Babalola that the money would be repaid.

53. Given these admitted facts, the factual allegation in Particular 1 c has been proven on a balance of probabilities.

Particular 1 d: In engaging in the conduct set out at 1(a) to (c), Babalola represented himself as a professional engineer;

54. All witnesses, except [REDACTED] (who was not involved at this point), agree that, in the discussions leading to the proposed oil investment transaction and the investment by [REDACTED], Mr. Babalola stated that he was a professional engineer who had experience in these types of oil transactions, he had the experience and financial backing to initiate and facilitate this type of sophisticated oil transaction and to obtain the necessary financial instruments necessary to securely facilitate transfers of funds to acquire the oil and to provide it to the ultimate purchaser.

55. [REDACTED] indicated that he was introduced to Mr. Babalola by [REDACTED] who advised him that he needed some "seed money" of \$10,000.00 for a "really good deal" and that Mr. Babalola was an engineer in Calgary who had experience in these oil transactions. [REDACTED] did not have any previous experience in investing in the oil industry.

56. [REDACTED] advised that he met Mr. Babalola within a few days of February 25, 2012 at the house of a lawyer named [REDACTED] who was going to help put the deal together. [REDACTED] stated that Mr. Babalola said he was "the go-to guy" and that he was an engineer and a professional who did this every day of the week. [REDACTED] indicated that he was very familiar with engineers and had worked with them for 30 years.

57. In response to a question from the Hearing Panel, about what he was told by Mr. Babalola, [REDACTED] mentioned that "he represented himself as, you know, being a racehorse, being the go-to guy" and stated that Mr. Babalola suggested he had contacts all over the world, "accounts with banks all over the place", "he knew guys in Malaysia, he knew guys in Nigeria".

58. ██████ indicated that he first met Mr. Babalola in 2009 or 2010. He was introduced to Mr. Babalola by an acquaintance when he was trying to establish his consulting business. Mr. Babalola showed him banking documentation that Mr. Babalola suggested showed that he would be able to assist ██████ to get oil out of Nigeria. ██████ indicated that there were a number of meetings off and on after this first meeting.

59. ██████ was asked for his impressions of Mr. Babalola when he met him. ██████ advised that he knew Mr. Babalola was an engineer and he had been told that Mr. Babalola was working on a project as an engineer. He also was shown documentation from a bank in New York and told by Mr. Babalola that Mr. Babalola had facilitated these types of transactions in the past. He was also told that Mr. Babalola was working on his own vessel transaction.

60. ██████ advised that ██████ arranged a number of meetings with Mr. Babalola. At the meetings, Mr. Babalola stated that he was an engineer and that he had done previous transactions involving crude oil and the financing of such transactions. Mr. Babalola advised that he had a relationship with an American bank and had a line of credit of \$300,000,000² with which he could obtain the necessary financial instruments to carry out the proposed transaction as a SWIFT bank to bank transaction. He indicated that he had done such transactions before.

61. In response to questions from Mr. Carter, Mr. Babalola described how he came to meet ██████ and how this contact led to a meeting with ██████. He indicated that he described at the meeting some past letters of credit, letters of guarantees that he had received based on contacts and meetings he had with financial institutions. He indicated that he did this to show his capacity to facilitate oil and gas transactions and not just that he was an engineer. Mr. Babalola indicated that ██████ had been turned down by the ██████ and did not have the financial capacity to obtain the necessary credit facilities.

62. In his cross-examination, Mr. Babalola acknowledged that he advised ██████ and ██████ of his experience doing oil and gas transactions and stated that this was evidence of his capability of what he had done in the past. He agreed that he advised them that he was an engineer. He also agreed that he was clearly more experienced than ██████ or ██████ in these transactions.

63. Mr. Babalola also agreed that he told ██████ and ██████ that he had the financial capability to provide the credit facility for the proposed transaction to go ahead. He also agreed that he advised them that he needed \$10,000 to proceed and said he suggested that this was a processing fee.

64. It is therefore clear that throughout this proposed transaction, Mr. Babalola was representing that he was a professional engineer who had prior experience in his work as an engineer with an oil and gas transaction of the type that was being discussed. He was also

² While ██████ recalled Mr. Babalola stating that he had a \$300,000,000 line of credit, Mr. Babalola referred in his evidence to a \$30,000,000 line of credit and the Hearing Panel accepts that the figure discussed was likely \$30,000,000.

representing that out of this experience he had developed the knowledge, the contacts and the access to financial arrangements that would enable him to facilitate and carry out the proposed oil investment transaction.

65. The Hearing Panel therefore finds that that it is more probable than not that Mr. Babalola represented himself as a professional engineer in his dealings in this matter, and that Particular 1 d has therefore been proven on a balance of probabilities.

Particular 1 e: Babalola knew or should have known that [REDACTED] or [REDACTED] relied on Babalola's reputation as a professional engineer when making the Contribution

66. While all the witnesses, except [REDACTED] agreed that Mr. Babalola stated that he was a professional engineer with experience in oil and gas and experience with transactions such as the oil investment transaction that was proposed, there was disagreement on whether this was a significant part of the discussion or whether [REDACTED] or his company relied on Mr. Babalola's reputation as a professional engineer when making his \$10,000 investment.

67. [REDACTED] was asked to identify the factors that he considered in becoming involved in the transaction and providing the \$10,000 to Mr. Babalola and El-Parazim. He identified the following factors:

- Mr. Babalola seemed to handle himself well and stated that he was a professional engineer "who did it every day of the week";
- [REDACTED] and [REDACTED] thought Mr. Babalola was good and the lawyer, [REDACTED], had no objection to him;
- [REDACTED] had worked with engineers a long time and understood that they have an obligation to follow through;
- Mr. Babalola identified himself as an engineer and this reference appeared on various documents and emails;
- The El-Parazim website indicated Mr. Babalola's background as a P.Eng. with an extensive background in oil and gas and this was what he did for a living;
- The fact that Mr. Babalola was a P.Eng. was an important factor because it made him credible to [REDACTED] based on his extensive experience in working with engineers.

68. [REDACTED] was asked for his impressions of Mr. Babalola when he met him. [REDACTED] advised that he knew Mr. Babalola was an engineer and he had been told that Mr. Babalola was working on a project as an engineer. He also was shown documentation from a bank in New York and told by Mr. Babalola that Mr. Babalola had facilitated these types of transactions in the past. He was also told that Mr. Babalola was working on his own vessel transaction.

69. ██████████ advised that in the beginning he assessed Mr. Babalola as trustworthy. He confirmed that part of that conclusion was based on the fact that Mr. Babalola was an engineer and working on a project for ██████████

70. ██████████ was asked if he had asked if Mr. Babalola had completed any previous transactions. He indicated that he was shown documents from some transactions Mr. Babalola was working on and he recalled Mr. Babalola talking about having done many of these transactions in the past. He confirmed that he had not had any previous business dealings with Mr. Babalola.

71. ██████████ indicated that he met Mr. Babalola through ██████████. He advised that in 2011 ██████████ contacted him and advised him that they had a buyer who was willing to do a transaction and he found out that this buyer was capable of buying the products. However, he did not have the financial strength and capability to carry on this transaction. He indicated that in 2012, ██████████ approached him and wanted to introduce him to Mr. Babalola. ██████████ indicated that Mr. Babalola was an engineer living in Calgary who did oil transactions and was a seller.

72. As noted above in the discussion of Particular 1 d above, ██████████ and ██████████ presented Mr. Babalola to ██████████ as a professional engineer with experience in the type of oil investment proposed. ██████████ testified to the statements made to him by Mr. Babalola concerning his experience as an engineer in these types of transactions.

73. Mr. Babalola acknowledged that in his meetings with the other witnesses and in his email of February 25, 2012 he described himself as an engineer and advised that he had prior experience though his work with these types of transactions. However, he suggested that what the other individuals needed from him was not his experience as an engineer, but his access to the necessary financing facilities, his contacts, his experience and what he referred to as "the strength of my proven capability". He downplayed the importance of him being an engineer to the discussions.

74. In assessing this issue, the Hearing Panel considered the evidence given on this point by ██████████ to be clear and credible. His evidence was supported by the evidence of ██████████ and ██████████ on this point. The evidence also showed that the parties understood that Mr. Babalola's prior experience in oil and gas transactions flowed from his work as an engineer.

75. The Hearing Panel also noted that Mr. Babalola made frequent reference in his own evidence to the fact that he was a professional engineer. When he was asked about the email of February 25, 2012 he stated "So being an engineer, we -- we theoretically agreed on how the business was going to be structured." When he was asked about the emails in Tabs 24 and 25 of Exhibit 1 where cancellation of the agreement was discussed he stated: "So when I got this email, as an honourable gentleman and as an engineer, I held my words. I say "Look, I don't have any problem refunding the money."

76. In cross-examination, when he was asked by Ms. Haymond about his email of April 13, 2012 [Tab 24, Exhibit 1], he stated that after the contract was terminated "As a professional, you take responsibility. It's not the end of the world. A man of integrity stands by his words."

77. On several occasions in his evidence, Mr. Babalola emphasized and contrasted his education and experience with that of the other witnesses. He noted that "I don't know, the mistake I did was that I didn't do due diligence on [REDACTED] background to know his level of educational experience and how -- whether he knows how to handle contracts or not." He also stated "[REDACTED] demonstrated some shallow understanding of contractual obligations..." and "we were going to be the one to execute the contract our way because he had a proven track record that he was not capable or competent to execute such contracts". Later he referred to "the people that entered into the contract were probably because of their background or their low -- their low experience".

78. A similar example occurred in cross-examination when Mr. Babalola stated:

I mean it's, to be honest with you, I'm sorry to say but [REDACTED]--- [REDACTED] is a cleaner, I think he cleans, and [REDACTED] I think he works in the -- on these things. So they might not understand contractual obligations. They might not understand what a contract means. And the way that they handled it was what was -- what was -- wasn't making me feel happy. And the best that I could do because the more we are on different pedestals.

79. Mr. Babalola's evidence shows that he perceived and presented himself as the expert -- the person with the education, professional status as an engineer and experience to structure and carry out the transaction. He states that he made this clear to [REDACTED] and that this was how the agreement was structured. This provides support for [REDACTED] evidence that Mr. Babalola presented himself as the "go-to guy" and that he was an engineer and a professional who did this "every day of the week".

80. At the hearing, Mr. Babalola saw himself and [REDACTED] and [REDACTED] as "on different pedestals". In the view of the Hearing Panel this provides support for the evidence of [REDACTED], [REDACTED] and [REDACTED] that Mr. Babalola did emphasize his status as a professional engineer as an important part of why [REDACTED] could rely on Mr. Babalola and the assurances he gave.

81. Based on its assessment of this evidence, the Hearing Panel finds it more probable than not that Mr. Babalola knew or should have known that [REDACTED] was relying upon his experience and reputation as a professional engineer as an important factor in making the decision to invest his \$10,000. Therefore, the Hearing Panel finds that Particular 1 e has been proven on a balance of probabilities.

Charge 1 -- Determination of whether Mr. Babalola acted "falsely or recklessly"

82. While the Hearing Panel has determined that each of the five particulars of Charge 1 have been proven on a balance of probabilities, the allegation in Charge 1 is that Mr. Babalola "falsely or recklessly induced [REDACTED] of [REDACTED] to contribute

\$10,000 to an oil and gas investment scheme". This means that the Hearing Panel must consider whether the Investigative Committee has proven that it is more probable than not that the conduct of Mr. Babalola was "false or reckless".

83. The Hearing Panel asked both legal counsels to comment on the terms "falsely" and "recklessly" used in Charge 1. Ms. Haymond submitted that these words did not require some level of intentionality – false simply meant inaccurately. She suggested that "reckless" meant "without paying due care and attention." Mr. Carter suggested that the Hearing Panel needed to turn its attention to whether Mr. Babalola acted falsely or recklessly. He submitted that this required a mental element to show that Mr. Babalola acted purposely or with a complete disregard for the truth.

84. The Hearing Panel does not find that the Investigative Committee has proven that it is more probable than not that Mr. Babalola "falsely" induced ██████████ to contribute \$10,000. In the opinion of the Hearing Panel, the term "falsely" as used in Charge 1 must mean more than "inaccurate" particularly when the word is used as part of an allegation of unprofessional conduct. In this context, the Hearing Panel agrees that the word "falsely" does imply some degree of deliberation or intent.

85. While the Hearing Panel has determined that Mr. Babalola seriously overstated his prior experience and his expertise and financial capacity to structure and implement the proposed oil investment transaction, Mr. Babalola's evidence at the hearing did not seem to indicate that he intended to mislead or to misrepresent his experience and abilities. Instead the evidence showed that he had and continued to have a very inflated and unjustified belief in his own abilities and experience. Mr. Babalola was arrogant and dismissive of the other witnesses in relation to their education and experience but failed to appreciate that his own testimony and the documents placed in evidence showed his own lack of experience and judgment.

86. The Hearing Panel recognizes that it is possible that Mr. Babalola was aware that some of the statements he was making were not accurate. However, the Hearing Panel is not satisfied that it has been proven that it is more probable than not that Mr. Babalola "falsely" induced ██████████ to invest.

87. While the Hearing Panel has found that the Investigative Committee has not proven that Mr. Babalola acted "falsely" the Hearing Panel finds that the Investigative Committee has proven that it is more probable than not that Mr. Babalola acted "recklessly". In its consideration of each of the five particulars of Charge 1, the Hearing Panel has set out the facts that show that Mr. Babalola seriously overstated his prior experience and ability to successfully structure, implement and complete a complex transaction such as the proposed oil investment transaction. It has also found that he overstated his prior experience and that he had never successfully completed a similar transaction and had participated in at least two transactions that failed.

88. Despite this experience and prior knowledge, Mr. Babalola stated in his February 25, 2012 email and in his discussions with ██████████ that the transaction was "100 doable" and

that his company would refund the \$10,000 in full if the transaction did not proceed. He made these statements knowing that he intended to use the \$10,000 to fund some of the steps involved in trying to obtain the necessary credit facilities. Mr. Babalola presented himself as a professional engineer who was an expert in structuring and implementing this type of transaction with a proven track record and recognition by lenders of his capacity to complete such transactions. Based on the evidence heard by the Hearing Panel, Mr. Babalola had no reasonable basis for making these representations.

89. The evidence showed that it is more probable than not that these representations were reckless and that they were intended to, and did, induce ██████████ to contribute \$10,000. The Hearing Panel has therefore concluded that the Investigative Committee has proven that it is more probable than not Mr. Babalola "recklessly induced ██████████ or ██████████ ██████████ to contribute \$10,000 to an oil investment scheme".

90. The Hearing Panel has therefore determined that the factual allegations made in Charge 1 have been proven on a balance of probabilities. The Hearing Panel must therefore determine if the proven factual allegations constitute unprofessional conduct.

Has the Investigative Committee Proven Unprofessional Conduct in respect to Charge 1?

i. The Position of the Parties

91. Ms. Haymond noted that in this case the issues do not arise directly from the practice of engineering. Ms. Haymond submitted that section 44 of the *EGP Act* did not require that the conduct be related to the technical aspects of engineering or geoscience and that it was broad enough to include conduct that might arise in activities not directly arising from the practice of engineering. She advised that the question for the Hearing Panel would be whether the conduct occurred as alleged, and whether it was connected in some way to the profession of engineering. She noted that even if the conduct was not related to the practice of engineering, the additional question would be whether this conduct was more reprehensible in a member of the engineering profession. She also submitted that such conduct was unprofessional conduct, given the norms and expectations of the profession.

92. Ms. Haymond suggested that in this case Mr. Babalola represented himself and emphasized his designation as an engineer and a trustworthy professional. She noted that he continued to confirm this in his testimony. She submitted that the evidence clearly showed that the parties to the transaction placed their trust in Mr. Babalola in large part because he was a professional engineer. She also submitted that the Code of Ethics was fundamental to the profession and clearly suggested that members of the profession are required to elevate their conduct to a higher standard in their dealings. She referred to Rules of Conduct 3 and 5 which state that professional engineers "shall conduct themselves with integrity, honesty, fairness, and objectivity in their activities" (Rule 3) and "will uphold and enhance the honour, dignity and reputation of the profession" (Rule 5).

93. Ms. Haymond then referred briefly to certain cases in her materials and referred to the case of *Erdmann v Complaints Inquiry Committee* where a chartered accountant was found to have acted unprofessionally in her personal disputes with a property manager of her residential condominium and with the condominium's property manager. She noted that the Alberta Court of Appeal stated that "private behaviour that derogates from the high standards of conduct essential to the reputation of one's profession cannot be condoned."

94. Mr. Carter noted that the hearing did not involve any engineering services or the practice of engineering as defined in the *EGP Act*. He suggested that it involved a business transaction to buy, ship and sell petroleum products and a subsequent lawsuit when the transaction did not transpire. He noted that Mr. Babalola was not a party to the transaction or the civil lawsuit. He submitted that the Hearing Panel was being asked to discipline Mr. Babalola for conduct wholly outside of his professional capacity.

95. Mr. Carter suggested that the authority of the Discipline Committee was expressed by and limited to the provisions of the *EGP Act* and noted the comments of ██████████ during the investigation when ██████████ suggested that APEGA did not typically investigate matters that arose out a member's personal life and suggested that contractual issues should be and were dealt with by the civil courts.

96. Mr. Carter submitted that none of the cases referred to by Ms. Haymond related to engineers. He suggested that there was no case law showing APEGA disciplining a member for conduct outside of their professional capacity because this broad authority was not given under the *EGP Act*.

97. Mr. Carter submitted that even if the charges were factually proven, and even if the discipline committee had the authority in very rare cases to discipline a member acting wholly outside of his professional capacity, the conduct in this case did not rise to the notorious or criminal degree required for the Hearing Panel to find unprofessional conduct.

98. The Hearing Panel asked both parties to respond to the opinion expressed on the record by independent legal counsel that the Supreme Court and the Alberta Court of Appeal had endorsed a broad view of the scope of professional discipline statutes. Ms. Haymond agreed with this opinion. On this point, Mr. Carter responded that while the Discipline Committee had the authority to discipline members outside of their professional capacity, this conduct must still be significantly more reprehensible.

ii. Decision of the Hearing Panel

99. In the opinion of the Hearing Panel, the *EGP Act* is an act for the protection of the public and should be interpreted broadly to accomplish that objective. This means that in appropriate cases, an engineer or geoscientist can be disciplined for unprofessional conduct that does not arise directly from the practice of engineering or geoscience. The Hearing Panel therefore does not accept the position of Mr. Carter that the Discipline Committee lacks this authority under the *EGP Act*.

100. The Hearing Panel finds that, in this case, while Mr. Babalola's conduct did not arise directly out of a practice issue, it was connected to the fact that Mr. Babalola was a professional engineer. The Hearing Panel has determined that, in his dealings with [REDACTED] Mr. Babalola represented himself as a professional engineer who had significant prior experience and expertise in this type of oil transaction and this was an important factor in inducing [REDACTED] to contribute his \$10,000 in the oil investment. The Hearing Panel has also found that Mr. Babalola recklessly made statements and assurances that he should have known could not be made.

101. The Hearing Panel notes that Mr. Babalola acknowledged that in some of the documents he sent on behalf of EI-Parazim he stated that he was a professional engineer and that he used this reference, and sometimes a reference to his master's degree in engineering in his communications. He also acknowledged that as a member of APEGA there was a higher standard of integrity and honesty in his dealings with people. On this point he stated: "I've always maintained that. I try to do that to the best of my ability."

102. The Hearing Panel finds that when a professional engineer presents himself as a professional engineer and makes reckless statements to induce an individual to invest funds, the professional engineer must be held to ethical and professional standards set out in the Rules of Conduct contained in the Code of Ethics. Rule of Conduct 3 requires that a professional engineer "shall conduct themselves with integrity, honesty, fairness, and objectivity in their activities". Rule of Conduct 5 requires that a professional engineer "will uphold and enhance the honour, dignity and reputation of the profession".

103. In the opinion of the Hearing Panel, the proven factual allegations in Charge 1 and its five particulars prove on a balance of probabilities that Mr. Babalola breached both Rule of Conduct 3 and Rule of Conduct 5. The reckless actions taken and assurances given by Mr. Babalola to [REDACTED] were conduct that did not meet the requirements of integrity, honesty, fairness and objectivity required by Rule of Conduct 3. In addition, these actions, taken by an individual representing himself as a professional engineer failed to uphold the honour, dignity and reputation of the profession as required by Rule of Conduct 5.

104. In the opinion of the Hearing Panel, this proven conduct and these proven breaches of the Code of Ethics are serious enough to constitute unprofessional conduct under section 44 of the *EGP Act*. In particular, the Hearing Panel finds that this proven conduct is detrimental to the best interests of the public [section 44(1)(a)], contravenes the Code of Ethics [section 44(1)(b)] and harms or tends to harm the standing of the profession generally [section 44(1)(c)].

105. The Hearing Panel therefore finds that Charge 1 has been proven and that Mr. Babalola has engaged in unprofessional conduct.

Charge 2

106. Charge 2 (set out above at paragraph 4) relates to events that occurred after the oil investment transaction was cancelled and a dispute arose between [REDACTED] company,

██████████ and Mr. Babalola's Company, El-Parazim Groups Inc., regarding the attempts by ██████████ to collect the \$10,000 that ██████████ had paid to El-Parazim Groups Inc. as part of the cancelled oil investment transaction. It is alleged that Mr. Babalola failed to conduct himself with integrity in relation to this dispute. There are four particulars alleged in respect to Charge 2.

Particular 2 a: Between April 2012 and February 2016, Babalola falsely or recklessly assured ██████████ or its agent that he took responsibility for the refund of the Contribution, then failed to refund the Contribution

107. It is clear from the evidence in this matter that after receiving the email from ██████████ on April 1, 2012 advising that he and ██████████ were cancelling the agreement and further emails asking for a response, Mr. Babalola sent an email dated April 13, 2012 stating in part:

Since the transaction was cancelled before the expiration of the 45 days that I took responsibility for, I will return the \$10,000K (without the 10% interest as promised).

I shall contact ██████████ to drop the certified cheque with him as soon as possible.

108. After an email inquiry from ██████████ asking when the funds would be returned, Mr. Babalola sent an email on April 17, 2012 stating:

Your money will be returned back in certified cheque (as I collected it). It will be handed over to the lawyer (who I collected it from) and the same place I collected it (██████████ home office).

I have contacted him and made arrangements to meet him when I am back at home.

He will contact you once I drop of the cheque with him as we have agreed.

109. There was considerable conflicting evidence between Mr. Babalola and ██████████ as to whether or not there was a basis for cancelling the agreement and whether or not Mr. Babalola or his company were legally obligated to pay the \$10,000. However, these emails are clear, and Mr. Babalola confirmed at the hearing that, even though he did not agree that the agreement was legally cancelled, he did promise to repay the \$10,000 in these emails and he continued to make these promises.

110. Ms. Haymond noted to Mr. Babalola that he made three promises to repay the \$10,000 between April 13 and April 17, 2012. Mr. Babalola responded that "I mean you don't get to this level as a professional or as an engineer, and you play with your integrity. The motives were there, I had no objections." He went on to suggest that he was willing to pay back the money but he did not have the funds to do so. He acknowledged that despite further promises made to repay the funds, no funds had been repaid.

111. The evidence showed that when no funds were paid, ██████████ filed a Civil Claim in Provincial Court in July 2013 on behalf of ██████████

112. Mr. Babalola was asked by Mr. Carter whether he returned the money. Mr. Babalola stated that he did not return the money because without any discussion a civil action was commenced against him. Mr. Babalola confirmed that he filed a Dispute Note and Counterclaim to the civil claim that he received. He suggested that this was because the contract was cancelled illegally by email alone and that he felt he was entitled to the costs he had incurred in executing the contract. He estimated these costs at \$27,500 which was the amount he claimed in his counterclaim.

113. After ██████████ ultimately obtained a judgment from the Provincial Court in respect to the Civil Claim, the evidence showed that there were extensive discussions between Mr. Babalola and ██████████ regarding arrangements to pay the judgment. In his evidence ██████████ provided details of ongoing communications with Mr. Babalola in which Mr. Babalola continued to suggest that he would make arrangements to repay the debt. ██████████ testified that none of these assurances or potential payment arrangements were finalized and confirmed that no money was ever paid by Mr. Babalola or his company.

114. The evidence showed that these communications continued until Mr. Babalola sent an email on March 15, 2016 [Exhibit 1, Tab 51]. In that email Mr. Babalola indicated that he had become aware that his company had been struck and that since two years had passed "I am no longer responsible or accountable for this old company."

115. It is clear from this evidence that Mr. Babalola did assure either ██████████ or ██████████ on numerous occasions that he took responsibility for the refund of the \$10,000. It is also clear that Mr. Babalola did not make any payment to ██████████ or ██████████ either before or after the judgment was obtained in Provincial Court.

116. Mr. Carter pointed out that at all times it was El-Parazim Groups Inc. that received the \$10,000.00 and that the civil claim and the judgment were between ██████████ and El-Parazim Groups Inc. There was also evidence that by sometime in 2014 El-Parazim Groups Inc. was effectively bankrupt and had no assets. Mr. Babalola confirmed that in 2014 El-Parazim Groups Inc. was struck for failure to file annual reports because he could not afford the yearly charge from his lawyers for preparing the annual reports. However, Mr. Babalola testified that he did not become aware of this until early 2016 when he received a communication from the Canada Revenue Agency.

117. Particular 2 a alleges that Mr. Babalola "falsely or recklessly assured ██████████ or its agent that he took responsibility for the refund of the Contribution [the \$10,000]". There is no doubt that Mr. Babalola did provide this assurance on numerous occasions after the agreement concerning the oil investment was cancelled. However, the allegation is that these assurances were made "falsely or recklessly".

118. After carefully considering the evidence, the Hearing Panel has concluded that this allegation is not proven on a balance of probabilities. There are a number of reasons for this decision.

119. The first reason is that this particular is really a continuation of Charge 1 a regarding the representation that the \$10,000 would be fully refunded if the transaction did not proceed. The Hearing Panel has already determined in considering Charge 1 that this statement that the \$10,000 would be fully refunded was made recklessly but not falsely and that it was unprofessional. To make a second finding of unprofessional conduct for the same type of assurances made after the agreement was cancelled would impose a second finding of unprofessional conduct for what is a continuation of the same conduct.

120. A second reason for this finding is that there is evidence that Mr. Babalola was in difficult financial circumstances for much of this period. There is also evidence that he did make efforts through a lawyer to raise some funds and discussed various settlement agreements and repayment arrangements. The Hearing Panel notes that Mr. Babalola was making these efforts and giving these assurances despite the fact that the legal action and the judgment obtained was only against EI-Parazim Groups Inc. and that company was insolvent and had no assets.

121. Mr. Babalola testified under oath that while he had the intention to pay these funds as he expressed in his emails immediately after the agreement was cancelled, he never was in a position where he had the funds to do this. The evidence indicates that while Mr. Babalola was unsuccessful in raising the funds, he was continuing to acknowledge the debt. While there are other actions taken by Mr. Babalola that raise significant doubts about realistic prospects of this alleged intention, these doubts do not establish on a balance of probabilities that it is more probable than not that the assurances he gave of his intention to pay these funds were false or that he was recklessly making assurances that he knew he was unlikely to ever be able to complete.

122. Since the onus of proof that these assurances were made falsely or recklessly is on the Investigative Committee, and since this allegation is in some respects a continuation of Charge 1 a, the Hearing Panel has determined that this particular is not proven on a balance of probabilities.

Particular 2 b: When ██████ filed a civil claim against EI-Parazim for the refund of the Contribution, Babalola filed a frivolous counterclaim on behalf of EI-Parazim for \$27,500 against ██████ as part of EI-Parazim's defence against the civil claim

123. This particular alleges that Mr. Babalola filed a frivolous counterclaim on behalf of EI-Parazim for \$27,500 against ██████ as part of EI-Parazim's defence against the civil claim. There is no dispute that this counterclaim was filed along with the dispute note.

124. The counterclaim was dismissed at the trial on July 14, 2014 when Mr. Babalola did not attend the trial.

125. At the hearing there was considerable evidence given regarding the alleged damages contained in the counterclaim. Ms. Haymond cross-examined Mr. Babalola on the details of the claim for \$27,500. Mr. Babalola could not provide any convincing explanation as to why his company would be able to claim the alleged damages against ██████ or provide a clear

explanation of why he would be able to claim these damages when he agreed to the cancellation of the agreement.

126. The Hearing Panel is not prepared to make a finding that the counterclaim was frivolous and that, as a result, Mr. Babalola's action filing it constituted unprofessional conduct. In the opinion of the Hearing Panel, a decision that a pleading filed in court is frivolous is a decision that should be reserved for the courts. The Hearing Panel also believes that any sanction for filing a counterclaim determined by the courts to be frivolous should be left to the courts. As a result, the Hearing Panel has dismissed this allegation.

Particular 2 c: After [REDACTED] won default judgment of \$11,508.06 and the counterclaim was struck, Babalola falsely informed the Court that [REDACTED] or [REDACTED] had changed the date of the hearing without advising El-Parazim of the new date and therefore [REDACTED] or [REDACTED] was to blame for El-Parazim's failure to appear at the trial

127. This particular alleges that after [REDACTED] obtained a judgment in the civil action, Mr. Babalola "falsely informed the Court that [REDACTED] or [REDACTED] had changed the date of the hearing without advising El-Parazim of the new date and that therefore [REDACTED] was to blame for El-Parazim's failure to appear at the trial."

128. At the hearing there was no dispute that [REDACTED] on behalf of [REDACTED] asked Mr. Babalola to consent to an adjournment of the original trial date. Mr. Babalola provided an email consenting to the adjournment and the adjournment was granted. Mr. Babalola confirmed that he had agreed to this adjournment.

129. [REDACTED] advised that subsequently the Provincial Court set a new trial date of July 11, 2014. [REDACTED] confirmed that on November 1, 2013 he sent an email to Mr. Babalola advising him that the adjournment was granted and that the new trial date was July 11, 2014. He indicated that shortly after he sent the email, he received a reply from Mr. Babalola who indicated "Thank you, thank you, sir. This has to be resolved. I will call you to discuss this sometimes next few weeks, cheers." [REDACTED] advised that the practice of the Provincial Court is to have the clerk's office send out notices to the parties and that the clerk's office would use the address for service shown in the documents filed by the parties.

130. Mr. Babalola acknowledged receiving emails from [REDACTED] about the adjournment. He also acknowledged receiving [REDACTED] email of November 1, 2013 which stated:

Hi Kunle. The new court date is July 11, 2014 at 9:30 a.m. You'll receive a notice from Court on this date.

131. Mr. Babalola stated that he did not attend court on July 11, 2014 because he took [REDACTED] email with "a pinch of salt" and because he never received a notice from the Court.

132. Mr. Babalola subsequently filed an application to have the judgment granted on July 11, 2014 set aside. In support of that application, he filed an affidavit that contained the statement "... nor did the Plaintiff inform the Defendant of the date the original hearing was moved to after it was adjourned."

133. When questioned about this statement by Mr. Carter, Mr. Babalola suggested he had not received any notice from the courthouse that he was to appear on that date, maybe because of the "breakage from the lawyer in Edmonton". He also suggested that the affidavit was written by a clerk at the courthouse based on what he told the clerk.

134. In cross-examination, Ms. Haymond referred Mr. Babalola to the portion of his Affidavit for the application to set aside the judgment, where he stated "nor did the Plaintiff inform the Defendant of the date the original hearing was moved to after it was adjourned." She suggested that this statement was false. Mr. Babalola acknowledged that this statement was false but suggested that this was "based on the aggressive tactics that [REDACTED] was using to settle the case " and that "it was the same game that he was playing with me of trying to enforce -- settle the case." He acknowledged that he never contacted the court to check the new date set for the trial and he did not attend at the trial date on July 11, 2014.

135. The Hearing Panel has reviewed the Affidavit. It clearly states under oath that "nor did the Plaintiff inform the Defendant of the date the original hearing was moved to after it was adjourned." This statement under oath is clearly false since Mr. Babalola received and acknowledged the email from [REDACTED] advising him of the new date for the trial.

136. Whether or not Mr. Babalola decided not to accept the information about the new trial date sent to him by [REDACTED] he then chose to make a false statement under oath in an affidavit filed with the court in an attempt to have the judgment set aside.

137. In the opinion of the Hearing Panel, filing a false affidavit with the court is a serious matter. As noted earlier in this decision, Mr. Babalola acknowledged to Ms. Haymond that as a member of APEGA there was a higher standard of integrity and honesty in his dealings with people. On this point he stated: "I've always maintained that. I try to do that to the best of my ability."

138. Mr. Babalola was also asked by the Hearing Panel about his understanding of his duties as a professional engineer in respect to honesty and integrity. In reply he noted that he had been a registered member of APEGA for over seven years with no complaints and that he had also never had any complaints while working in the United Kingdom and Nigeria. He stated that his intentions were always to uphold the integrity of his profession which he held in high value. Mr. Babalola suggested that integrity and honesty were core values of engineering and that he was a proud registered engineer and that integrity and honesty were core values he tried to uphold. He also confirmed that he believed that his conduct in these matters complied with the rules of conduct for the profession.

139. In the opinion of the Hearing Panel, the public, APEGA and the Courts are entitled to expect that a professional engineer will act with honesty and integrity. Providing a false affidavit to the court is conduct that shows a serious lack of honesty and integrity. The Hearing Panel has therefore determined that this particular has been proven on a balance of probabilities and that it is more probable than not that Mr. Babalola made the false statements alleged in Particular 2 c.

Does the proven allegation in Charge 2c constitute unprofessional conduct?

140. The Hearing Panel has determined that this proven allegation constitutes a serious breach of Rule of Conduct 3 which requires that a professional engineer "shall conduct themselves with integrity, honesty, fairness, and objectivity in their activities" and Rule of Conduct 5 requires that a professional engineer "will uphold and enhance the honour, dignity and reputation of the profession."

141. In the opinion of the Hearing Panel, these proven breaches of the Rules of Conduct of the Code of Ethics are serious and constitute unprofessional conduct under section 44 of the EGP Act. In particular, the Hearing Panel finds that this proven conduct is detrimental to the best interests of the public [section 44(1)(a)], contravenes the code of ethics [section 44(1)(b)] and harms or tends to harm the standing of the profession generally [section 44(1)(c)].

Particular 2 d: On or around March 15, 2016, Babalola, after repeatedly promising refund of the Contribution, informed ██████████ that El-Parazim had been struck or dissolved, that ██████████ no longer had legal recourse against El-Parazim, and that the only way Babalola would refund any part of the Contribution was if ██████████ withdrew his complaint to APEGA against him

142. This allegation is based on the email that Mr. Babalola sent on or about March 15, 2016 [Exhibit 1, Tab 51]. There is no dispute that Mr. Babalola sent this email. There is also no dispute about the contents of this email. In the email, Mr. Babalola advised "I have obtained a CERTIFICATE OF DISSOLUTION from the Government of Alberta on El-Parazim Groups Inc. Within the law I am off the hook and no longer responsible or liable as a former partner."

143. Later in the email Mr. Babalola stated:

I am NO longer responsible or accountable for this old company, however in good faith, I am willing to pay you off \$1000 Cdn in good faith in exchange for dropping all charges against me.

This is the only offer I am giving in good faith due to the long this process has taken. Condition based on signing my document & dropping all allegations against me.

144. Ms. Haymond asked Mr. Babalola if he had purposefully dragged the matter out until El-Parazim was dissolved so that El-Parazim would not be responsible. Mr. Babalola denied that this was his intention and noted that El-Parazim was struck in 2014 but he did not become aware of this until 2016. The Hearing Panel notes that there was a Corporate Registry

document in the evidence confirming that El-Parazim Groups Inc. was struck in 2014 for failure to file annual returns.

145. This review of the email of March 15, 2016 makes clear that the alleged statements by Mr. Babalola were made. Therefore this particular has been proven on a balance of probabilities.

Does the proven allegation in Charge 2d constitute unprofessional conduct?

146. Mr. Carter suggested that El-Parazim was within its legal rights to claim it no longer owed the debt and that Mr. Babalola was not a party to the contract. He also submitted that Mr. Babalola's understanding at all times was that the complaint was an attempt by ██████████ to collect the debt and that, based on this understanding, it was not unreasonable for Mr. Babalola to make this offer.

147. The Hearing Panel has considered Mr. Carter's submission that it was not unreasonable for Mr. Babalola to make this offer. The Hearing Panel does not agree with this submission. In the opinion of the Hearing Panel the complaint investigation process is a very important part of the duty of APEGA to protect the public. Once a complaint is received and an investigation is commenced, a member such as Mr. Babalola has an obligation to cooperate with the investigation. Offering to pay money to the complainant on the condition that the complainant withdraw all allegations made in the complaint is a serious violation of this obligation and is an attempt to avoid the investigation.

148. In the opinion of the Hearing Panel this action on the part of Mr. Babalola was a violation of his professional and ethical obligation to cooperate with the investigation of the complaint and failure to act with integrity. The public interest and interest of the profession could be seriously impacted if members under investigation were permitted to offer payment to complainants to withdraw their allegations. Therefore in the opinion of the Hearing Panel this proven allegation is a breach of Mr. Babalola's ethical duties under Rule of Conduct 3 which requires that a professional engineer "shall conduct themselves with integrity, honesty, fairness, and objectivity in their activities" and Rule of Conduct 5 requires that a professional engineer "will uphold and enhance the honour, dignity and reputation of the profession.

149. In the opinion of the Hearing Panel, these proven breaches of the Rules of Conduct of the Code of Ethics are serious and constitute unprofessional conduct under section 44 of the EGP Act. In particular, the Hearing Panel finds that this proven conduct is detrimental to the best interests of the public [section 44(1)(a)], contravenes the code of ethics [section 44(1)(b)] and harms or tends to harm the standing of the profession generally [section 44(1)(c).

Conclusion

150. For the reasons set out in this decision, the Hearing Panel has determined that Charge 1 including all five particulars has been proven on a balance of probabilities and that this proven conduct constitutes unprofessional conduct.


151. In respect to Charge 2, the Hearing Panel has determined that Particulars 2 a and 2 b have not been proven and these allegations are dismissed. However, the Hearing Panel has determined that Particulars 2 c and 2 d have been proven on a balance of probabilities and that the proven conduct is unprofessional. Therefore the Hearing Panel has concluded that Charge 2 has been proven and that this proven conduct constitutes unprofessional conduct.

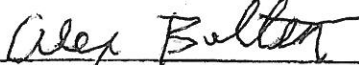
152. The Hearing Panel is prepared to receive submissions from legal counsel for the Investigative Committee and Mr. Babalola concerning what orders, if any, it should make pursuant to sections 63 and 64 of the EGP Act. The Hearing Panel is prepared to receive these submissions orally or in writing. After considering these submissions, the Hearing Panel will issue a decision in writing setting out what orders, if any, it has made.

153. The lawyers for the Investigative Committee and Mr. Babalola are instructed to contact the independent legal counsel for the Hearing Panel to advise how they wish to provide submissions and the independent legal counsel will then obtain instructions from the Hearing Panel on the process to be followed.

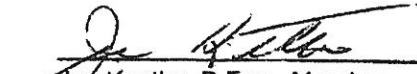
Dated this 12 day of July, 2017


On behalf of the Hearing Panel of the APEGA Discipline Committee


David Evans, P.Geol., Chair


Alex Bolton, P.Geo., Member


Muriel Dunnigan, Public Member


Joe Kostler, P.Eng., Member


Naser Rabbani, P.Eng., Member