

**CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
(THE CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO)
CERTIFIED MANAGEMENT ACCOUNTANTS ACT, 2010**

IN THE MATTER OF: An Allegation against **DAN W. YANAKY, CPA, CMA**, a member of CPA Ontario and CMA Ontario, under **Section 3.1(c)** of the Professional Misconduct and Code of Professional Ethics Regulation of CMA Ontario.

TO: Mr. Dan W. Yanaky

AND TO: The Complaints Committee of CMA Ontario
The Professional Conduct Committee of CPA Ontario

**REASONS
(Decision and Order made November 29, 2016)**

1. This tribunal of the Discipline Committee of CMA Ontario and CPA Ontario met on November 29, 2016 to hear an allegation of professional misconduct brought by the Complaints Committee of CMA Ontario and the Professional Conduct Committee of CPA Ontario (collectively "the Applicants") against Dan W. Yanaky, a Member.

2. Ms. Tamara Center appeared on behalf of the Applicants, accompanied by Ms. Jodie Wolkoff, the investigator. Mr. Yanaky was not represented by counsel and did not attend. Mr. Glenn Stuart attended the hearing as counsel to the Discipline Committee.

3. The decision of the tribunal was made known at the conclusion of the hearing on November 29, 2016, and the written Decision and Order was sent to the parties on December 1, 2016. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegation, the decision, the order, and the reasons of the tribunal for its decision and order.

Proceeding in Mr. Yanaky's absence

4. Ms. Center filed a Correspondence Brief (Exhibit 1) containing documents reflecting the efforts that the Applicants had made to bring these proceedings to Mr. Yanaky's attention and encourage his participation. By email, dated May 6, 2015 (Tab 2), Mr. Yanaky confirmed that he would be attending for an interview with the Applicants on June 23, 2015. By letter, dated July 13, 2015 (Tab 3), Mr. Farley, then counsel for the Applicants, advised Mr. Yanaky that the Applicants had instructed Mr. Farley to draft allegations of misconduct.

5. On July 20, 2015, Mr. Yanaky wrote to the CEO of CPA Ontario attempting to resign his membership in CPA Ontario and CMA Ontario (Tab 4). In a response dated July 24, 2015 (Tab 5), Mr. Yanaky was advised that under the Regulations he was unable to resign due to his involvement in the disciplinary process. Later the same day, Mr. Yanaky indicated by email (Tab 6) that he "really [did] not care what your by-laws say", unless there was a court order, he was resigning.

6. In an Affidavit of Service, sworn November 6, 2015 (Exhibit 1, Tab 7, and Exhibit 2), Mervyn Archdall, a process server, deposed that he had personally served the Allegation of Professional Misconduct on Mr. Yanaky, who had acknowledged his identity to Mr. Archdall. Under cover of a letter, dated November 12, 2015 (Exhibit 1, Tab 8), Mr. Yanaky returned the

package to CPA Ontario, indicating that he had resigned, was no longer under CPA Ontario jurisdiction and could not be requested to attend a hearing.

7. Ms. Center reviewed further correspondence contained in Exhibit 1, which indicated efforts by the Applicant to provide Mr. Yanaky with further hearing date information or disclosure. In each case, Mr. Yanaky returned the material sent to him with an indication that he had resigned. By further letter, dated March 20, 2016, to the CEO of CPA Ontario (Tab 12), Mr. Yanaky indicated his unwillingness to have further communication with counsel to the Applicants, again stating that he had resigned.

8. In response to further correspondence, dated August 10, 2016, from Ms. Center to the Adjudicative Tribunals Secretary and Mr. Yanaky (Tab 13), concerning the setting of hearing dates, Mr. Yanaky again indicated that he had resigned (Tab 14). Ms. Center responded to Mr. Yanaky the following day to reiterate that he was unable to resign and that the matter would be proceeding. After a further email exchange (Tab 14), Mr. Yanaky acknowledged that he had been told he could not resign, but he believed that the investigation was over. He also indicated that he was unaware of the allegation, but he thought that there was no reason for a hearing. The Allegation had been in one or more of the packages he returned to the Applicants.

9. A package containing further disclosure was sent to Mr. Yanaky by courier on September 15, 2016 (Tab 15). Mr. Yanaky returned this package to Ms. Center the following day. In his cover letter (Tab 16), Mr. Yanaky indicated that he was not aware of the nature of the allegations but they were without merit because he had resigned from CPA Ontario.

10. Mr. Yanaky was sent a formal notice of hearing by email and regular mail from the Adjudicative Tribunal Secretary on September 26, 2016 (Tab 17). In an Affidavit, sworn November 17, 2016 (Exhibit 3), Diane Williamson, the Adjudicative Tribunals Secretary, confirmed that the Notice of Hearing had been mailed and emailed to Mr. Yanaky at his address of record on September 26, 2016. The mail was not returned by Canada Post. Ms. Williamson received an email from Mr. Yanaky the same day indicating that he had resigned from CPA Ontario in 2015, had never been advised of any misconduct against him and would not be attending the hearing. Ms. Williamson stated that, on October 3, 2016, she received a copy of her cover letter on which Mr. Yanaky had indicated that he needed a court order that he could not resign.

11. Ms. Center sent an email to Mr. Yanaky on September 27, 2016 (Exhibit 1, Tab 18) advising that the hearing would proceed in his absence and enclosing a copy of the allegation which had originally been provided to him in November 2015. Mr. Yanaky promptly responded by email that he had resigned, CPA Ontario could not say he did not resign and a court order would be needed to say he could not resign.

12. The tribunal had to address two preliminary issues on the evidence: first, whether the tribunal could proceed in Mr. Yanaky's absence; and, second, whether the tribunal still had jurisdiction to proceed in any event or whether Mr. Yanaky had resigned his membership.

13. Based on all of the evidence in Exhibits 1 to 3, the tribunal was satisfied that Mr. Yanaky had been properly served with the notice of the hearing and the allegation against him, among numerous other items of correspondence. Mr. Yanaky had chosen, after receiving notice of the hearing, to not attend. In those circumstances, the tribunal concluded that it was appropriate to proceed in Mr. Yanaky's absence.

14. With respect to Mr. Yanaky's purported resignation, Ms. Center provided a Brief of Authorities (Exhibit 4) containing CMAO Regulation 4-3, CMAO Professional Misconduct and

Code of Professional Ethics Regulation 3.1 and Rule 18 of the CPA Ontario Rules of Practice and Procedure. Ms. Center submitted that under Regulation 4-3, section 13-15, the Registrar could not accept the resignation of a member who was the subject of an investigation, proposed settlement agreement or allegations. Ms. Center submitted that Mr. Yanaky was not able to resign during the investigation or the discipline process.

15. The evidence indicated that the investigation of the allegation against Mr. Yanaky had commenced by at least May 1, 2015. Mr. Yanaky's first attempt to resign was July 20, 2015. The tribunal concluded that, based on this evidence, Mr. Yanaky was not eligible to resign his membership because he was under investigation at the time he offered his resignation. Although there were no previous cases directly considering the relevant provisions, the tribunal found that the language of CMAO Regulation 4-3, s. 14.2 was clear: "[t]he Registrar shall not accept any application under section 13 [to resign or surrender membership] if the person ... is the subject of an investigation, proposed settlement agreement or Allegation by the Professional Conduct Committee". The tribunal decided that the hearing should proceed on its merits.

Allegation

16. The following Allegation was made against Mr. Yanaky by the Complaints Committee of CMAO (the Professional Conduct Committee of CPA Ontario) on October 14, 2015:

1. THAT, the said Dan W. Yanaky, in or about the period April 1, 2009 to August 31, 2011, while a Member of CMA Ontario, and an investment advisor to John and Janice B., failed to act with competence through devotion to high ideals of personal honour and professional integrity, contrary to section 3.1 (c) of the Professional Misconduct and Code of Professional Ethics Regulation of August 2011 and predecessor Regulations in that:
 - a) He advised John and Janice B. to invest approximately \$511,000 into an investment referred to as "the Western Project" and promised them they would earn \$2.25 million on their investment over two years without carrying out sufficient due diligence to satisfy himself that the 'investment' in the Western Project was legitimate or suitable to John and Janice B.;
 - b) He assured John and Janice B. that the investments were prudent and would generate a high rate of return without any reasonable support for that assurance;
 - c) He solicited funds from John and Janice B. to invest in the Western Project when there was no reasonable prospect that they would recover the funds invested;
 - d) He directed John and Janice B. to deposit money into the account of David DB. without knowing David DB and without conducting any due diligence to ensure their deposits were secure;
 - e) He made representations to John and Janice B. regarding the status of their investment in the "Western Project" and various court or regulatory proceedings said to be pertinent to that investment with no documentary support for the representations he was making;
 - f) He made assurances to John and Janice B. that they would recover funds they had entrusted to him for investment in the Western Project when he had no reasonable basis for doing so.

Plea

17. A plea of not guilty to the Allegation was entered on Mr. Yanaky's behalf.

Evidence tendered by the Applicants

18. Ms. Center filed an email exchange on October 7 and 8, 2016 (Exhibit 5) with the complainant JB, who indicated that her husband had now died, and due to a confidentiality agreement as part of her court settlement in this matter, she believed that she could not attend and act as a witness at the hearing. JB indicated that she could not afford to jeopardize the settlement due to her financial situation. The Applicants decided not to summon JB in light of this position and proceeded to call evidence through Ms. Jodie Wolkoff, the investigator for the Applicants and a Document Brief (Exhibit 6).

19. Ms. Wolkoff advised that she had been appointed in 2014, along with another investigator who has since left CPA Ontario, to investigate the outcome of allegations made by the Mutual Fund Dealers Association (MFDA) and Mr. Yanaky's role in an investment project known as the Western Project. Mr. Yanaky's position at the time was that there should not be CPA Ontario involvement while the matter was before the courts and the MFDA, and that this was a personal endeavor, not a professional matter.

20. Ms. Wolkoff referred to an Interview Brief (Exhibit 7) containing transcripts of the interviews conducted with Mr. Yanaky on October 8 and 21, 2014, and a summary of an interview on May 8, 2015. Mr. Yanaky became a CMA in 1975 and a Certified Financial Planner (CFP) in 1999. His position as a mutual fund salesperson with an investment corporation was terminated in 2012 as a result of the MFDA hearing. While employed with the investment corporation, Mr. Yanaky did not disclose his involvement in the Western Project. He currently does some tax work and financial planning.

21. In 2005, Mr. Yanaky became involved personally in the Western Project through a minister friend who was trying to create a trust fund to help battered women. The basic premise of the project was that a person serving time in jail wanted to make amends for his crimes. The Federal Court was apparently holding money that was the proceeds of crime in a trust account and the courts were going through legal manoeuvres to free up the funds, totaling approximately \$32 million, to be used for charitable purposes. Mr. Yanaky told Ms. Wolkoff that over five or six years, he used approximately \$400,000 of his own money to support this project. The money was put into a bank account and handled by WNM, a church member, who was spearheading the project. Mr. Yanaky was told the money was used for paying legal fees to Q, a lawyer in Vancouver, and registering documents with the courts. As this was considered by Mr. Yanaky to be a personal matter, he did not do any other due diligence or corroboration of what he was being told by WNM. Mr. Yanaky simply relied on his friends' advice that this was a good investment.

22. Mr. Yanaky told Ms. Wolkoff that he understood the money would be established in a charitable trust fund that he would be able to access to direct money to assist battered women and their children in his local community. Mr. Yanaky said his contributions were to be paid back to him, but he would not receive any interest. Mr. Yanaky had no paperwork or loan agreements, and his investments were supposedly kept track of by the minister of his church.

23. In or about 2009, Mr. Yanaky approached JB, a financial planning client since 2000, and her husband about investing in the Western Project. Mr. Yanaky had been asked by WNM if he knew any people who would be willing to invest in the cause with a possible financial reward of up to 400 percent once the trust was established. By that time, Mr. Yanaky had no further money himself to contribute to the project. The funds received from JB and her husband were deposited through the bank account of a chartered accountant, DB, who was also a contributor

and a member of the church. The monies were then disbursed in cash, bank draft or note, or paid to a credit card, usually on the same day. The funds were allegedly then flown to British Columbia and hand delivered to an individual, RS, who turned it over to Q. Mr. Yanaky never met the individuals located in British Columbia, and he told Ms. Wolkoff that he thought he heard that RS was now deceased. Over a two-year period, JB and her husband provided over \$450,000 for investment in the project at Mr. Yanaky's encouragement. JB and her husband subsequently launched and settled a civil suit against Mr. Yanaky, his former employer and others involved in the project.

24. Between 2009 and 2013, Mr. Yanaky solicited and accepted over \$1 million from eight clients and one other individual for investment in the Western Project. Mr. Yanaky had told clients it was an opportunity which would yield huge investment returns. No clients ever received a return on their investment, and there was no evidence that the Western Project was a legitimate investment opportunity.

25. Ms. Wolkoff stated that over a period of two years over 30 deposits totaling nearly \$500,000 were made by Mr. Yanaky for JB through DB's bank account, with Mr. Yanaky indicating to her that there was a promised return of \$2.2 million. Mr. Yanaky did not know DB personally, did not keep records of the client investments and followed the instructions of the church minister for the deposit of the money. Ms. Wolkoff stated that Mr. Yanaky did no due diligence. He only had the names of the people involved and did no background checks.

26. Ms. Wolkoff stated that over the two-year period, requests were continually made for further contributions from JB and her husband with assurances from Mr. Yanaky that he trusted the people involved in the project and that investment returns would be forthcoming. Ms. Wolkoff referred to a series of emails between Mr. Yanaky and JB and her husband where he referred to documents being issued by a judge to release the funds. When questioned by Ms. Wolkoff on these documents, Mr. Yanaky said he never saw these documents.

27. Ms. Wolkoff stated that Mr. Yanaky said he never knew the name of the Vancouver lawyer, only referred to as Q, and had never met RS, who dealt with the money in BC. Mr. Yanaky had been told by WNM that few people had access to any information. Ms. Wolkoff referenced the transcript of the sentencing proceedings for WNM after he was found guilty of fraud by a jury in relation to the Western Project. WNM was sentenced to a four-year jail term. WNM had a prior criminal record for fraud.

28. Ms. Wolkoff stated that Mr. Yanaky's position was that accounting rules and regulations were irrelevant to his involvement in the Western Project as he was acting in a personal capacity helping battered women and their children. Mr. Yanaky indicated he still had hope that the Western Project would come to fruition, but he was not aware that any money had ever been repaid.

29. Ms. Wolkoff stated that information provided by Mr. Yanaky concerning the \$400,000 Mr. Yanaky said he had invested did not prove where the money had come from and where it was disbursed to, especially since a number of the transactions were done in cash. Ms. Wolkoff stated that it was difficult to conclusively determine if the transactions were done with Mr. Yanaky's own money or the money of client

30. The MFDA launched an investigation, which resulted in a disciplinary proceeding against Mr. Yanaky for his failure to cooperate in writing concerning a complaint made by JB and her husband. Mr. Yanaky took the position with the MFDA that the Western Project was a personal charitable venture and the persons involved were friends. He also submitted that due to the outstanding civil proceedings, written responses to the MFDA did not need to be provided. The

MFDA hearing resulted in penalties prohibiting Mr. Yanaky from conducting securities related business, a fine and costs. Mr. Yanaky's appealed the MFDA decision to the Ontario Securities Commission (OSC), which dismissed his appeal.

31. Ms. Wolkoff reviewed an exchange of emails between Ms. Wolkoff and JB (Exhibit 8) when Ms. Wolkoff had attempted to interview JB to obtain additional information. Although JB felt Mr. Yanaky should be punished for his actions, due to the death of her husband, which she attributed to the stress of the Western Project matter, and her fear of losing her settlement, JB declined further involvement. Ms. Wolkoff, referencing legal proceedings before the Superior Court brought by JB and her husband, stated that the money invested by JB had been from an inheritance, but Mr. Yanaky had suggested that she also remortgage her home, take out a line of credit and cash in mutual funds to invest in the Western Project. The court awarded damages to JB and her husband, ruling that they had been defrauded and lost their lives' savings by a breach of fiduciary duty, breach of contract or negligence by Mr. Yanaky and others named in the lawsuit.

32. Ms. Center, in her closing submissions, submitted that the uncontested evidence was clear, cogent and compelling that Mr. Yanaky failed to act with honour, competence and integrity. Over a period of two years, he encouraged his clients to continue to invest in a venture when he had no proof of the legitimacy or suitability of the project. Mr. Yanaky, as a member of CMA Ontario and an investment advisor, was in a position of trust that he abused by encouraging his clients to invest more and more money in a project where he never met or spoke to the key players and never saw any documentation. As a professional, Mr. Yanaky ought to have known that there was extreme risk to his clients. His client JB felt that the devastating loss of finances and subsequent litigation contributed to the death of her husband.

33. Ms. Center submitted that, based on the information presented, Mr. Yanaky should be found guilty of professional misconduct.

The Decision

34. The tribunal found, on the uncontested evidence, that the Allegation had been proven. After deliberating, the tribunal announced the following decision:

THAT having determined to proceed with the hearing in the absence of Mr. Yanaky, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to the Allegation, and having seen, heard and considered the evidence, the Discipline Committee of CMA Ontario finds Dan W. Yanaky guilty of the Allegation and guilty of professional misconduct.

Reasons for Decision

35. Having seen and considered the evidence provided on behalf of the Applicants by Ms. Center, the tribunal concluded that the evidence was clear, cogent and convincing to prove the allegation on a balance of probabilities and found Mr. Yanaky guilty of professional misconduct for the following reasons.

36. The evidence included copies of Mr. Yanaky's emails to the complainants, JB and her husband, over a span of approximately two years, as well as evidence of monies deposited by the complainants in bank accounts as directed by Mr. Yanaky or his associates (Exhibit 6). The series of emails clearly demonstrate that Mr. Yanaky enticed JB and her husband into advancing further monies on the unfounded promise that they would receive lucrative financial rewards. For example, on July 24, 2009, JB's husband emailed Mr. Yanaky to tell him that no more funds would be advanced by them. Subsequent emails from Mr. Yanaky still pleaded for

more money, with financial rewards being offered. Giving in to these pleas, and relying on their trust in Mr. Yanaky as their professional advisor, JB and her husband advanced more money. An email, dated October 14, 2009, indicated JB and her husband were beginning to realize that they may not get their money back from the Western Project and would be looking to Mr. Yanaky for the return of their money. But, in the face of Mr. Yanaky's continuing pleas and their trust in him, they put their doubts aside and continued to advance substantial sums.

37. Mr. Yanaky said that he did not keep track of the monies advanced by the complainants. JB and her husband were directed to deposit their advances into two bank accounts, one in the name of DB and the other to RS. Mr. Yanaky did not know the recipients of these payments nor did he inquire into the individuals promoting the Western Project or carry out any other due diligence procedures into the *bona fides* of the operation (Exhibit 6). He explained to Ms. Wolkoff in his interview that the reason he did not do any due diligence regarding the Western Project was because it was a personal matter, a personal exercise, and nothing to do with business (Exhibit 6). Mr. Yanaky said he got his information from WNM and relayed it to the complainants by email or telephone.

38. The evidence shows that Ms. Wolkoff was able to document the complainants' deposits to two individuals' bank accounts (referred to as DB and RS) totaling \$511,500. Specifically, Ms. Wolkoff was able to identify payments made by the complainants to both DB's bank account (\$476,300), and to RS's bank account (\$35,200) (Exhibit 6).

39. As well, there is an email in which JB and her husband documented not only their advances but also a calculation of the "financial reward" (as it was referred to by Mr. Yanaky in his interview) that they were to receive on completion of the Western Project. Mr. Yanaky's comment was that upon completion of the project they would sit down and "re verify" the "financial reward" number (Exhibit 6). JB and her husband calculated the total amount owed to them, including the promised "financial rewards," to be \$2,250,000. Mr. Yanaky said in the interview that the two individuals receiving the money (DB and RS) were known by WNM and dealt with BMO as did JB and her husband, so this banking arrangement was convenient for paying advances using BMO bank drafts. Mr. Yanaky said he did not know the two individuals but did convey the contact information to JB and her husband. The tribunal concluded that, essentially, DB and RS were "laundering" the money through their bank accounts before it was paid elsewhere.

40. Mr. Yanaky met with JB and her husband in Mr. Yanaky's office in early May of 2009. During this meeting, Mr. Yanaky told them about the Western Project. Mr. Yanaky described the Western Project as one where he was putting in a lot of money to try to set up a charitable trust fund to help battered women in York region. He had run out of money, and WNM, an associate who was also involved in the project, had asked him if he knew of anybody who would be willing to advance money and once the trust was established, the people advancing the money would be rewarded. JB and her husband provided \$15,000 at that time.

41. In an email sent after their meeting, dated May 5, 2009, (Exhibit 6), Mr. Yanaky said "So, now we are scrambling to find another \$35,000! So if you know anyone who wishes to turn \$35,000 into \$70,000 the offer is there." (Exhibit 6). Mr. Yanaky claimed the money was required for lawyers to register some documents released by a court so that the funds held in trust could be released to a charity trust that Mr. Yanaky was promoting. JB and her husband paid the additional \$35,000 expecting to be repaid the initial \$15,000, the \$35,000 second payment, along with the \$35,000 reward money. Mr. Yanaky referred to this type of payment as "reward money" in his interview with Ms. Wolkoff (Exhibit 7). This same "offer" was repeated in his October 6, 2009, email to JB and her husband indicating a payment of \$25,000 would result in a repayment of \$75,000.

42. The only information Mr. Yanaky had about the Western Project came from WNM, who was soliciting funds. There were no documents or information available to JB and her husband or provided by Mr. Yanaky. The panel concluded that JB and her husband were enticed by Mr. Yanaky into investing in the Western Project by the lure of exceptional returns promised by Mr. Yanaky. Unfortunately, at the time of making those promises, Mr. Yanaky had conducted no diligence and made no inquiries into this purported investment.

43. In the interview with Ms. Wolkoff, Mr. Yanaky denied ever referring to payments as an investment; however, the MFDA found, in its disciplinary hearing of a proceeding against Mr. Yanaky, that Mr. Yanaky referred to the Western Project as "a 'special investment opportunity' which would yield huge investment returns."

44. The May 5, 2009 email was the first of a series of emails over two years from Mr. Yanaky to JB and her husband. Many of these were asking for more money. In each email, Mr. Yanaky wrote about an additional snag or scenario that prevented the money from being released to repay the investors and fund the charity being promoted by Mr. Yanaky and his associates. Mr. Yanaky referred to "we" when describing the difficulties being encountered, indicating that he was part of the group trying to get money being held in trust by the court. In his email, dated May 5, 2009, Mr. Yanaky opens with "I am extremely comfortable with this group. I know several very well." (Exhibit 6).

45. In his September 12, 2010 email, in response to the complainant's concern that promised repayments had not been made to them, Mr. Yanaky stated "My overriding concern was that your principle [sic] be fully protected, as would the principle [sic] of anyone else I would involve in the strategy."

46. Mr. Yanaky told Ms. Wolkoff that he considered the Western Project a private matter between JB and her husband and him and did not involve his employer. His employer had no knowledge of this Western Project activity.

47. Each of the emails sent by Mr. Yanaky to JB and her husband had an electronic signature section automatically printed with the following information: "Dan W. Yanaky CFP, CMA, Investment Planning Counsel", the business address, office, fax, toll free, and residence telephone numbers, as well as the company's website address and Mr. Yanaky's email address (Exhibit 6). It was clear to the tribunal that Mr. Yanaky was using his position as an agent of his employer to convince JB and her husband of the *bona fides* of this investment scheme. The tribunal found that the contention that these investments were a private matter was contrary to the evidence. Moreover, it did not take into account the fact the JB and her husband clearly relied on Mr. Yanaky as a professional and put their trust in him and his advice on that basis.

48. For these reasons, the tribunal concluded that the allegation had been proven.

Sanction

49. Ms. Center filed no additional evidence on sanction. Ms. Center, on behalf of the Applicants, submitted that an appropriate sanction in this matter would be: a written reprimand from the Chair of the tribunal; revocation of membership; a fine in the amount of \$25,000; and full publicity including newspaper publication. The Applicants also sought an order for costs for reimbursement of approximately two-thirds of the costs incurred.

50. Ms. Center submitted that Mr. Yanaky, a CMA with 40 years' experience, had jeopardized his clients' funds in a risky venture. Due to the nature of Mr. Yanaky's egregious behavior, rehabilitation must give way to specific and general deterrence in a matter involving integrity and public trust.

51. The aggravating factors, Ms. Center stated, are the trust of clients and the public in a CMA and CFP; the solicitation of funds from clients; the abdication of responsibility to perform due diligence; and the lack of knowledge of the parties, the investment status and lack of records. Mr. Yanaky's client, JB, had a devastating loss of about \$500,000 and, along with other clients, the total loss was over \$1 million. Over a period of two and a half years, there were 37 occurrences of funds requested from JB and her husband, actions which Mr. Yanaky could have stopped at any time. Mr. Yanaky repeatedly stated, incorrectly, that he was acting in a personal, not professional, capacity, and has shown a lack of remorse and accountability for his actions.

52. Ms. Center submitted that a mitigating factor is that Mr. Yanaky did self-report to CPA Ontario. He cooperated with the investigation and the Applicants. Mr. Yanaky has no prior history with the Discipline Committee.

53. Ms. Center noted that the aggravating factors far outweigh the mitigating factors.

54. Ms. Center stated that a reprimand addresses the seriousness of the professional misconduct of Mr. Yanaky and would act as a specific deterrent. The fine proposed would act as a specific and general deterrent to like-minded members, and there is no evidence of inability to pay. Revocation addresses specific and general deterrence, and protection of the public. Mr. Yanaky did attempt to resign, but this would not be appropriate given the nature of the misconduct, even if it had been permitted under the Regulations. Publication is the key to effective general and specific deterrence, and there is no evidence of any rare or unusual circumstances that would merit a consideration to withhold publication. Publication would serve to advise members of CPA Ontario and the public that Mr. Yanaky was no longer a member.

55. Ms. Center filed a Costs Outline (Exhibit 9) showing the costs to be just over \$84,000, of which the Applicants were seeking partial indemnity costs of \$56,000, approximately two-thirds. Ms. Center noted that, although the other investigator did spend a lot of time on this matter, her costs have not been included. Ms. Center submitted there is no evidence of Mr. Yanaky's inability to pay the costs which are an indemnification, not a penalty.

56. Ms. Center referred to the Settlement Agreement with respect to Mr. Den Boer (in Exhibit 6), who was also involved in the Western Project by authorizing the transfer of funds from investors through his bank account. Ms. Center submitted that Mr. Yanaky's involvement was more serious as he actively promoted the investment to his clients and solicited them to contribute funds, had tried to resign during an investigation and kept disorganized records of the transactions.

57. Ms. Center distributed a Case Brief noting that there were no similar CMA cases, but there were cases involving CPA members under Rule 201.1 of the Rules of Professional Conduct. Ms. Center referred to the Case Brief containing the decisions regarding *Delahaye*, *McWilliams* and *Doutre*. Ms. Center pointed out that the *Delahaye* case, which has similar elements, involved violation of the *Securities Act*, financial devastation to clients and resulted in revocation of membership.

Order

58. After deliberating, the tribunal made the following order:

IT IS ORDERED in respect of the Allegation:

1. THAT Mr. Yanaky be reprimanded in writing by the Chair of the hearing.

2. THAT Mr. Yanaky be and he is hereby fined the sum of \$25,000, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within twelve (12) months from the date this Decision and Order is made.
3. THAT Mr. Yanaky's membership in the Chartered Professional Accountants of Ontario and the Certified Management Accountants of Ontario be and it is hereby revoked.
4. THAT notice of this Decision and Order, disclosing Mr. Yanaky's name, be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of CPA Ontario; and
 - (b) to all provincial bodies;
 and shall be made available to the public.
5. THAT notice of the revocation of membership, disclosing Mr. Yanaky's name, be given by publication on the CPA Ontario website and in *The Globe and Mail* and in *The Hamilton Spectator* newspapers. All costs associated with the publications shall be borne by Mr. Yanaky and shall be in addition to any other costs ordered by the Discipline Committee.
6. THAT Mr. Yanaky surrender all certificates issued by CPA Ontario or its predecessor, including any membership certificate and certificate granting the Certified Management Accountant (CMA) and Chartered Professional Accountant (CPA) designation, to the Adjudicative Tribunals Secretary within ten (10) days from the date this Decision and Order is made.

IT IS FURTHER ORDERED:

7. THAT Mr. Yanaky be and he is hereby charged costs fixed at \$50,000, to be remitted to CPA Ontario within twelve (12) months from the date this Decision and Order is made.

Reasons for Sanction

59. A written reprimand serves to remind Mr. Yanaky of his professional misconduct in his actions as set out in these reasons. It serves as a constant reminder that he seriously harmed his clients, who he refers to as his friends.

60. The tribunal agreed with the Applicants that a fine in the amount of \$25,000 was appropriate in the circumstances and serves as a specific and general deterrent to Mr. Yanaky, other members and the public. His professional misconduct is not to be tolerated and caused serious financial harm to his clients. There was no submission by Mr. Yanaky requesting time to pay the fine, and the tribunal concluded that 12 months was appropriate.

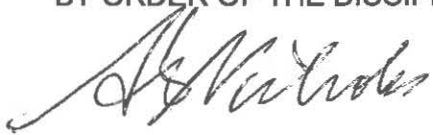
61. Revocation of Mr. Yanaky's membership serves as a specific and general deterrent by protecting the public and deterring any member from conducting themselves in an inappropriate manner. Revocation for this serious misconduct protects the reputation of CPA Ontario and CMA Ontario and advises the public that CPA Ontario does not condone this misconduct.

62. Publication serves as a notice to the public and members that Mr. Yanaky is no longer a member of CPA Ontario. It also serves to inform the public that CPA Ontario is diligent in upholding the high professional standards of the profession and the integrity of its members.

Costs

63. The Applicants submitted a bill of costs that totaled approximately \$84,000, the majority of which was for investigator fees. The tribunal recognized that it was Mr. Yanaky's misconduct that necessitated this hearing. It also recognized that the regulation of its members is a part of the functions of CPA Ontario and it should bear some of the costs. The Applicants submitted that an appropriate allocation of the costs would be approximately two-thirds of the cost to Mr. Yanaky. In its deliberations, the tribunal determined that the appropriate and reasonable amount of costs allocated to Mr. Yanaky was \$50,000. As with the fine, Mr. Yanaky has been given 12 months to pay the costs.

DATED AT TORONTO THIS 12TH DAY OF APRIL, 2017
BY ORDER OF THE DISCIPLINE COMMITTEE



A.D. NICHOLS, FCPA, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

J.E. EMUAN, CPA, CMA
G. KROFCHICK, CPA, CA
W.K. McDOUGALL, CPA, CA
G. HINTON (PUBLIC REPRESENTATIVE)