

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
THE CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF ONTARIO
CERTIFIED GENERAL ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE AND PROFESSIONAL CONDUCT TRIBUNAL

IN THE MATTER OF: Allegations against **WILLIAM BENAZZI JR.**, a suspended member of CPA Ontario and CGA Ontario, under **Rule 301** of the CGA Ontario Rules of Conduct.

TO: Mr. William Benazzi, Jr.

AND TO: The Professional Conduct Committee of CPA Ontario

AND TO: The Discipline Committee of CGA Ontario

REASONS

(Decision and Order made October 17, 2016)

1. This tribunal of the Discipline Committee of CPA Ontario and the Professional Conduct Tribunal of CGA Ontario (collectively "the Tribunals") met on October 17, 2016 to hear allegations of professional misconduct brought by the Professional Conduct Committee of CPA Ontario and the Discipline Committee of CGA Ontario (collectively "the Applicants") against William Benazzi Jr., a suspended CPA, CGA member.

2. Mr. Paul Farley appeared on behalf of the Applicants, accompanied by Ms. Karen Ho James, the investigator for the Applicants. Mr. Benazzi attended with his counsel Mr. Jordan Sobel. Mr. Robert Peck attended the hearing as counsel to the Tribunals.

3. The decision of the Tribunals was made known at the conclusion of the hearing on October 17, 2016, and the written Decision and Order was sent to the parties on October 25, 2016. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegations, the decision, the order, and the reasons of the Tribunals for its decision and order.

Allegations

4. The following allegations were made against Mr. Benazzi by the Applicants on October 15, 2015:

The Discipline Committee of CGA Ontario hereby makes the following allegations against William Benazzi, a suspended member of CPA Ontario and CGA Ontario:

1. THAT the said William Benazzi, in or about the period June 1, 2010 through June 30, 2013, while the accountant for L.T. and the sole shareholder and Director of WB Capital Inc., failed to provide professional services for which he had the necessary capabilities, competencies and current skills contrary to Rule 301 of the Rules of Conduct and the predecessor Rules in that he accepted approximately \$360,000 from his client L.T. for investment in WB Capital for the purpose of placing in short term mortgages through a third party D.S.:
 - a) without advising L.T. of the potential risks of such investments;

- b) without advising L.T. that the investment monies were not secured by a specific mortgage but were pooled with monies from other investors;
- c) without advising L.T. that the mortgages were for five year terms knowing that the intention of L.T. was to invest in short term mortgages;
- d) without advising L.T. to obtain independent legal advice;
- e) without obtaining a written understanding or agreement between WB Capital and the third party recipient of the monies, D.S., which detailed the responsibilities of D.S. with respect to the monies provided;
- f) without maintaining books and records of WB Capital to record the investment or at all;
- g) without obtaining/retaining bank statements to support the monies invested;
- h) without obtaining copies of mortgage documents or reviewing same and without ensuring that mortgages were actually in place;
- i) without ensuring that the investment monies were properly secured;
- j) without properly overseeing the monies in the hands of D.S.;
- k) without taking any steps to protect investors monies when told by D.S. in an email dated June 20, 2012 that D.S. had not "...figured out how to account for some of it [the investment monies] properly...";
- l) without ensuring WB Capital was licensed as required by the *Mortgage Brokerages, Lenders and Administrators Act, 2006* section 2(2);
- m) without ensuring WB Capital was registered as an *investment advisor* as required by the *Securities Act* section 25(3) and without following the statutory requirements applicable to an *investment advisor*.

2. THAT the said William Benazzi, in or about the period June 1, 2010 through June 30, 2013, while the accountant for P.T. and the sole shareholder and Director of WB Capital Inc., failed to provide professional services for which he had the necessary capabilities, competencies and current skills contrary to Rule 301 of the Rules of Professional Conduct, and the predecessor Rules, in that he accepted approximately \$320,000 from his client P.T. for investment in WB Capital for the purpose of placing in short term mortgages through a third party D.S.:

- a) without advising P.T. of the potential risks of such investments;
- b) without advising P.T. that the investment monies were not secured by a specific mortgage but were pooled with monies from other investors;
- c) without advising P.T. that the mortgages were for five year terms knowing that the intention of P.T. was to invest in short term mortgages;
- d) without advising P.T. to obtain independent legal advice;
- e) without obtaining a written understanding or agreement between WB Capital and the third party recipient of the monies, D.S., which detailed the responsibilities of D.S. with respect to the monies provided;
- f) without maintaining books and records of WB Capital to record the investment or at all;
- g) without obtaining/retaining bank statements to support the monies invested;
- h) without obtaining copies of mortgage documents or reviewing same and without ensuring that mortgages were actually in place;
- i) without ensuring that the investment monies were properly secured;
- j) without properly overseeing the monies in the hands of D.S.;

- k) without taking any steps to protect investors monies when told by D.S. in an email dated June 20, 2012 that D.S. had not "...figured out how to account for some of it [the investment monies] properly...";
- l) without ensuring WB Capital was licensed as required by the *Mortgage Brokerages, Lenders and Administrators Act, 2006* section 2(2);
- m) without ensuring WB Capital was registered as an investment advisor as required by the *Securities Act* section 25(3) and without following the statutory requirements applicable to an investment advisor.

5. The following allegation was made against Mr. Benazzi by the Applicants on July 25, 2016:

The Discipline Committee of CGA Ontario hereby makes the following allegation against William Benazzi, a suspended member of CPA Ontario and CGA Ontario:

1. THAT the said William Benazzi, in or about the period August 1, 2007 through June 30, 2013, while the accountant for B.I. Limited, B.S.I. Inc., Bena P. and Benny P. and the sole shareholder and Director of WB Capital Inc., failed to provide professional services for which he had the necessary capabilities, competencies and current skills contrary to Rule 301 of the Rules of Conduct and the predecessor Rules in that he accepted monies from his clients for investment in WB Capital for the purpose of placing in short term mortgages through a third party D.S.:
 - a) without advising his clients that WB Capital was not a proper securities advisor in Ontario and an investment with it would lack the proper protections of Ontario's securities regulatory laws;
 - b) without advising his clients to obtain independent legal advice;
 - c) without recognizing he had a conflict of interest and/or without giving his clients fair and full advice as to whether to participate in the investments at all due to his conflict of interest;
 - d) without maintaining books and records of WB Capital to record the investments;
 - e) without obtaining/retaining bank statements to support the monies invested;
 - f) without obtaining copies of mortgage documents or reviewing same and without ensuring that mortgages were actually in place;
 - g) without ensuring that the investment monies were properly secured;
 - h) without properly overseeing the monies in the hands of D.S.;
 - i) without taking any steps to protect investors monies when told by D.S. in an email dated June 20, 2012 that D.S. had not "...figured out how to account for some of it [the investment monies] properly...";
 - j) without ensuring WB Capital was licensed as required by the *Mortgage Brokerages, Lenders and Administrators Act, 2006* section 2(2);
 - k) without ensuring WB Capital was registered as an *investment advisor* as required by the *Securities Act* section 25(3) and without following the statutory requirements applicable to an *investment advisor*;
 - l) without advising his clients of the lack of safety, and the illegality, of the investment mechanism he proposed.

Plea

6. Mr. Benazzi entered a plea of guilty to Allegation Nos. 1 and 2, dated October 15, 2015 and Allegation No. 1 dated July 25, 2016.

Submissions of the Applicants

7. Mr. Farley advised the Tribunals that the case for the Applicants would be presented by way of an Agreed Statement of Facts, and there would be no other evidence submitted by the parties on the issue of professional misconduct. He then filed the Agreed Statement of Facts (Exhibit 1) signed by Mr. Benazzi on his own behalf, and by Mr. Farley on behalf of the Applicants, as well as a Document Brief (Exhibit 2).

8. In presenting the case for the Applicants, Mr. Farley reviewed the Agreed Statement of Facts, which also included references to documents contained in the Document Brief. No other evidence was called on behalf of the Applicants.

The relevant facts

9. The relevant facts are fully set out in the Agreed Statement of Facts.

10. Mr. Benazzi, a Certified General Accountant and member of CPA Ontario, has been operating an accounting practice for about 20 years offering preparation of tax returns, financial statements and business advisory services. Since 2007, Mr. Benazzi has been running a mortgage investment fund WB Capital as the sole officer, director and shareholder.

11. In 2007, Mr. Benazzi sought to raise a pool of \$25 million through another entity under the terms of an offering memorandum to capitalize the mortgage investment business with registered funds. Although that effort failed, Mr. Benazzi determined that some of his accounting practice clients had funds to invest and he utilized WB Capital to run an investment business with unregistered funds.

12. All funds invested with WB Capital were directed by Mr. Benazzi to be sent to a lawyer, DS, to be held in trust pending investment. WB Capital was DS' client. Mr. Benazzi would review the mortgage applications and grant approvals. DS was responsible for preparing the paperwork and registering the mortgages. Mr. Benazzi does not know what mortgages, if any, were ever registered as he never reviewed the paperwork or requested copies of the mortgages.

13. There was no written agreement with Mr. Benazzi, WB Capital and DS detailing the investment responsibilities of DS but there was an understanding that DS and Mr. Benazzi would take a half share of the investment management fees.

14. Mr. Benazzi created investment statements for investors based solely on his knowledge of the principal amount provided by the investor and the investment terms from the investment agreement, although he had no actual knowledge of the investments or the status of the mortgages.

15. WB Capital did not have a bank account but used the trust account of DS. This was to give clients confidence that the funds were being held by a lawyer, and lawyers are not required to register as mortgage brokers. Under the *Mortgage Brokerages, Lenders and Administrators Act*, WB Capital was required to have a brokerage licence. As it did not have a licence, it was illegal to act as a mortgage broker.

16. The investors' funds were not segregated but co-mingled in a pool from which mortgages were purportedly obtained by lending from the pool. Clients were not made aware that their individual investments were not secured by a specific mortgage.

17. WB Capital is required to be registered as an investment dealer and investment advisor under the *Securities Act*. WB Capital was and is not so registered, and Mr. Benazzi, as an officer, director and employee, was not registered as an investment dealer or advisor, making it illegal to act as an advisor or dealer. Mr. Benazzi's clients were not informed that WB Capital was unregistered and that there was a lack of protections under regulatory laws. There were no safeguards in place to protect the clients' funds and WB Capital did not comply with the requirements of the *Securities Act*.

18. No separate records were kept of the loans made out of DS' trust account and there were no records of mortgages held by WB Capital. No copies of relevant documents were obtained from DS and no steps were taken to ensure that investment monies were secured.

19. When the relationship eventually broke down, Mr. Benazzi failed to obtain an accounting from DS. As he had no records, Mr. Benazzi did not know how much money was being held by DS, how much was invested in mortgages and how much money was just gone. For the past four years, WB Capital has unsuccessfully attempted to induce DS to account for the funds he allegedly was holding on WB Capital's behalf.

20. Mr. Benazzi's complaint to the Law Society indicated he had become aware that DS could not reconcile the investment funds by June 2012. Despite Mr. Benazzi expressing "grave concern" and his feeling that "something nefarious may be at hand here" to the Law Society, he did not follow up with DS until eight months later. In the meantime, Mr. Benazzi did not convey his concerns to the investors and took no steps to protect their money. Mr. Benazzi estimated that there is between \$2.5 and \$3 million of investor funds not accounted for.

21. Mr. Benazzi failed to give his clients fair and full advice concerning the investments, did not disclose his conflict of interest, and did not advise his clients to obtain independent legal advice.

22. One of Mr. Benazzi's long-standing clients, for whom he performed professional accounting services, had invested over \$1 million. The clients and their companies subsequently sued Mr. Benazzi and WB Capital for the return of their investments. A judgment was obtained but no payment has been made by Mr. Benazzi. Another client and their family made a similar investment and their monies were not returned by Mr. Benazzi.

Submissions

23. Mr. Farley submitted that the admitted facts as set out in the Agreed Statement of Facts and the guilty plea constitute enough evidence to support a finding that Mr. Benazzi failed to comply with the Rules of Conduct.

24. Mr. Sobel submitted that Mr. Benazzi had relied heavily on DS, an experienced lawyer and officer of the court, who had advised Mr. Benazzi that registration as an investment dealer was not needed.

Decision

25. After deliberating, the Tribunals found, on the uncontested evidence, that the allegations had been proven. The Tribunals announced the following decision:

THAT having heard the plea of guilty to Allegation Nos. 1 and 2 dated October 15, 2015 and Allegation No. 1 dated July 25, 2016, and having seen and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee of CPA Ontario and the Professional Conduct Tribunal of CGA Ontario (collectively "the Tribunals") find William Benazzi Jr. guilty of the three Allegations of professional misconduct.

Reasons for Decision

26 The Tribunals thoroughly reviewed and considered the evidence and arguments contained in the Agreed Statement of Facts and found the evidence to be clear, cogent and convincing and supportive of a finding of guilt on all three allegations. Mr. Benazzi's actions and subsequent inactions directly caused his clients financial harm when they had placed faith in him as their financial advisor.

Submissions on Sanction

27 Mr. Farley, stated that there was no evidence to file on sanction and that the parties would make a joint submission on sanction. Mr. Farley, on behalf of the Applicants and Mr. Benazzi, submitted that an appropriate sanction in this matter would be: a written reprimand; a fine in the amount of \$10,000, suspension for a period of four months, that Mr. Benazzi take three CPA Canada professional development courses, and full publicity to all members and the public, including newspaper publication in the *Toronto Star*. Mr. Farley stated that the parties had agreed on approximately one-half of the costs incurred in the amount of \$23,000 and that the PCC had no objection to the fine and costs being paid in quarterly installments starting May 15, 2017.

28 Mr. Farley submitted that the professional development courses recommended will assist in the rehabilitation of Mr. Benazzi. The recommended courses offered through CPA Canada are *Professional Ethics*, *Ethics 24/7* (online courses) and *Ethics for the Tax Practitioner*. The fine, suspension and publicity will address specific and general deterrence, and will be significant enough to protect the public interest.

29 Mr. Farley submitted that the aggravating factors are that Mr. Benazzi, over a period of six years, was involved in the operation of a mortgage investment fund, investing his clients' monies without protecting their interests or providing them with advice. Mr. Benazzi abdicated his responsibility to a third party and did not satisfy himself as to the legality of the venture or how the monies were used. The amount of money involved was significant, with little chance of recovery. Mr. Farley stated that when Mr. Benazzi became concerned about DS' actions, he did not alert his clients.

30 Mr. Farley submitted that the mitigating factors are that Mr. Benazzi cooperated fully with the investigation of the Applicants. Mr. Benazzi has pleaded guilty to the allegations and has proceeded by way of an Agreed Statement of Facts and a joint submission as to sanction. Mr. Benazzi has been under an emergency suspension since March 2015 under Section 35 of the *Certified General Accountants Act, 2010*, and the additional four months proposed will mean his suspension will have lasted almost two years.

31 Mr. Farley referred to the CPA Ontario cases of *Isabella*, *McWilliams* and *Becker*, that involved investment of client's money without the client's knowledge or instructions.

32 Mr. Farley filed a Costs Outline (Exhibit 3), noting that the actual costs were \$45,907.49. The amount of \$23,000 had been agreed to by the parties.

33 Mr. Sobel submitted that Mr. Benazzi's income has been greatly diminished by his continued suspension and permitting him to make quarterly payments commencing in May 2017 will allow him to obtain the necessary cash flow.

Order

34 After deliberating, the Tribunals made the following order:

IT IS ORDERED in respect of the Allegations:

1. THAT Mr. Benazzi be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Benazzi be and he is hereby fined the sum of \$10,000, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") on a quarterly basis commencing May 15, 2017, as follows:
 - (a) \$2,500 due May 15, 2017
 - (b) \$2,500 due August 15, 2017
 - (c) \$2,500 due November 15, 2017; and
 - (d) \$2,500 due February 15, 2018.
3. THAT Mr. Benazzi's membership in the Chartered Professional Accountants of Ontario and The Certified General Accountants Association of Ontario be and it is hereby suspended for a period of four (4) months from the date this Decision and Order is made.
4. THAT Mr. Benazzi surrender his CGA and CPA certificates to the adjudicative tribunals secretary within ten (10) days from the date this Decision and Order is made to be held during the period of suspension and thereafter returned to Mr. Benazzi.
5. THAT Mr. Benazzi be and he is hereby required to complete, by paying for and attending in their entirety the following professional development course made available through **CPA Canada**, within twelve (12) months from the date this Decision and Order is made:
 - Professional Ethics – current challenges, underlying values
 - Ethics 24/7 for CPAs
 - Ethics for the Tax Practitioner
 or, in the event the courses listed above become unavailable, the successor courses which take their place.
6. THAT notice of this Decision and Order, disclosing Mr. Benazzi's name, be given in the form and manner determined by the Tribunals:
 - (a) to all members of CPA Ontario; and
 - (b) to all provincial bodies;
 and shall be made available to the public.

7. THAT notice of the suspension of membership, disclosing Mr. Benazzi's name, be given by publication on the CPA Ontario website and in the *Toronto Star*. All costs associated with the publication shall be borne by Mr. Benazzi and shall be in addition to any other costs ordered by the Tribunals.
8. THAT in the event Mr. Benazzi fails to comply with the requirements of this Order, he shall be suspended from membership in the Chartered Professional Accountants of Ontario and The Certified General Accountants Association of Ontario until such time as he does comply, provided that he complies within thirty (30) days from the date of his suspension. In the event he does not comply within the thirty-day period, his membership in the Chartered Professional Accountants of Ontario and The Certified General Accountants Association of Ontario shall thereupon be revoked, and notice of the revocation of his membership, disclosing his name, shall be given in the manner specified above, including in the *Toronto Star*. All costs associated with this publication shall be borne by Mr. Benazzi and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

9. THAT Mr. Benazzi be and he is hereby charged costs fixed at \$23,000, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") on a quarterly basis commencing May 15, 2017, as follows:
 - (a) \$5,750 due May 15, 2017
 - (b) \$5,750 due August 15, 2017
 - (c) \$5,750 due November 15, 2017; and
 - (d) \$5,750 due February 15, 2018.

Reasons for Sanctions

36. Mr. Benazzi has shown remorse and has an otherwise unblemished career. He is considered by the Tribunals to be capable of rehabilitation and it has been demonstrated that a letter of reprimand provides further impetus to this process.

37. A fine commensurate with the misconduct is needed in order to provide specific and general deterrence objectives. The fine ordered by the Tribunals is considered to be within the range of fines ordered for similar offences and is substantial enough to meet the deterrence objectives. The Tribunals considered the submissions regarding Mr. Benazzi's ability to pay and concluded the payment schedule provided a realistic opportunity to allow him to settle this obligation.

38. In making the order to suspend the CPA membership rights of Mr. Benazzi for a further four months, the Tribunals considered the emergency suspension that has been in force and considers the combined suspensions to be sufficient to meet general and specific deterrence objectives.

39. The courses ordered by the Tribunals are to help him in his rehabilitation process and as such to provide further protection to the public.

40. Notice is ordered because it is important to remind members of the consequences of

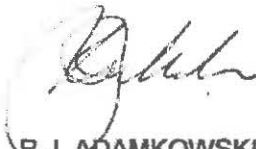
failing to practise within the Rules of Conduct and to inform the public that we take our responsibility to self police our profession seriously.

Reasons for Costs

41. The Tribunals considered the costs contained in the summary of costs to be reasonable. The Tribunals also considered the arguments presented about an appropriate sharing of these costs. After deliberation the Tribunals considered cost recovery of \$23,000 from the member to be appropriate.

42. As with the fine, the Tribunals considered the member's ability to pay and consequently ordered payments over time to enable Mr. Benazzi to settle this obligation and so avoid further repercussions.

DATED AT TORONTO THIS 17TH DAY OF JANUARY, 2017
BY ORDER OF THE DISCIPLINE COMMITTEE AND PROFESSIONAL CONDUCT TRIBUNAL



R.J. ADAMKOWSKI, CPA, CA – DEPUTY CHAIR
DISCIPLINE COMMITTEE AND PROFESSIONAL CONDUCT TRIBUNAL

MEMBERS OF THE TRIBUNALS:

J.C. BLACKWELL, CPA, CA
A.B. MINTZ, CPA, CA
N.J. RIVERS, CPA, CGA
B. SOLWAY (PUBLIC REPRESENTATIVE)