

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

DISCIPLINE COMMITTEE

IN THE MATTER OF: An Allegation against **RYAN M. KAGAN, CPA, CA**, a suspended member of the Chartered Professional Accountants of Ontario, under **Rule 104.2** of the CPA Ontario Code of Professional Conduct

BETWEEN:

**Chartered Professional Accountants of Ontario
Professional Conduct Committee**

-and-

Ryan M. Kagan

APPEARANCES:

For the Professional Conduct Committee:	Jean Iu, Counsel
For Mr. Kagan:	Not Present and Not Represented
Heard:	October 14, 2022
Decision and Order effective:	October 14, 2022
Release of written reasons:	November 14, 2022

REASONS FOR THE DECISION AND ORDER MADE OCTOBER 14, 2022

I. OVERVIEW

- [1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario (“PCC”) has made an Allegation that Mr. Kagan failed to cooperate with the regulatory process of the Chartered Professional Accountants of Ontario (“CPA Ontario”) by failing to reply promptly to communications from the Standards Enforcement department of CPA Ontario (“Standards Enforcement”) from September 24, 2021 to April 6, 2022. This hearing was held to determine whether the Allegation was established and whether the conduct breached Rule 104.2 of the CPA Ontario Code of Professional Conduct and amounted to professional misconduct.

II. THE COMPLAINT AND THE ALLEGATION

- [2] In early July 2021, CPA Ontario received a complaint from the Director, Practice Inspection that Mr. Kagan failed to maintain professional standards, reflecting adversely on his

professional competence. Standards Enforcement contacted him several times, requiring a response to the issues raised in the complaint. Mr. Kagan's responses to Standards Enforcement did not address the issues raised in the complaint.

- [3] The onus was on the PCC to show on a balance of probabilities that Mr. Kagan's conduct breached Rule 104.2 of the CPA Ontario Code of Professional Conduct and constituted professional misconduct.

III. PRELIMINARY ISSUES

- [4] Mr. Kagan did not attend the hearing nor did he have a representative attend on his behalf. In order to proceed in the absence of Mr. Kagan, the Panel had to be satisfied that he had received proper notice of the Allegation and the hearing. The Affidavit of Alyssa Grace Girardi, a Professional Standards Coordinator in the Investigations and Prosecutions department of the Professional Standards division of CPA Ontario, establishes that the Discipline Committee ordered that the Allegation be served by substituted service to the email addresses contained in the CPA Ontario records, and that Mr. Kagan was served in this manner on June 23, 2022 (Exhibit 3). The Affidavit also establishes that Mr. Kagan responded to subsequent communications from the Tribunals Office concerning, among other things, the scheduling of a pre-hearing conference.
- [5] On September 9, 2021, the Tribunals Office sent to Mr. Kagan the Notice of Hearing for this matter by email (Exhibit 1). The Notice of Hearing confirmed that the hearing was scheduled to proceed on October 14, 2022, by videoconference at 9:30 a.m. The Notice of Hearing indicated that if Mr. Kagan chose not to attend the hearing, the Discipline Committee may proceed in his absence. On September 19, 2022, Mr. Kagan replied to this email, indicating that he would not participate in the proceedings (Exhibit 2).
- [6] Based on the above evidence, the Panel was satisfied that Mr. Kagan had received proper notice of the Allegation and the hearing, and determined that it would proceed in his absence.

IV. ISSUES

- [7] The Panel identified the following issues arising from the Allegation:
- A. Did the evidence establish, on a balance of probabilities, the facts on which the Allegation by the PCC was based?
- B. If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did the Allegation constitute professional misconduct?

V. DECISION

- [8] The Panel found that the evidence established, on a balance of probabilities, the facts set out in the Allegation of professional misconduct.
- [9] The Panel was satisfied that the Allegation constituted a breach of Rule 104.2 of the CPA Ontario Code of Professional Conduct and having breached this Rule, Mr. Kagan committed

professional misconduct.

VI. REASONS FOR THE DECISION ON MISCONDUCT

Findings Regarding the Conduct of Mr. Kagan

- [10] Evidence in support of the Allegation is contained in the Affidavit of Andrea Figueira Fadel, a Standards Enforcement Officer with CPA Ontario (Exhibit 4).
- [11] On July 6, 2021, CPA Ontario received a complaint against Mr. Kagan from the Director, Practice Inspection, on behalf of the Practice Inspection Committee. The Practice Inspection Committee alleged that Mr. Kagan failed to maintain professional standards, which were sufficiently serious that it reflected adversely on his professional competence.
- [12] By letter dated July 16, 2021, a Standards Enforcement Officer wrote to Mr. Kagan to notify him of the substance of the complaint, identifying the deficiencies found in the practice inspection, and noting that advertising for his firm implies he employs other individuals. A written response to the issues raised in the complaint was requested by August 6, 2021. The letter indicates that failure to respond could result in allegations of professional misconduct.
- [13] On August 1, 2021, Mr. Kagan replied by email. His email outlined personal problems that he was facing, but did not respond to the issues raised in the letter dated July 16, 2021.
- [14] On September 24, 2021, a Standards Enforcement Officer wrote to Mr. Kagan, acknowledging his correspondence, and requesting: a list of his assurance clients and the services provided to them from 2019 to date; the steps he has taken to address the practice inspection findings; and clarification as to whether other individuals are employed at his firm, as implied by his advertising. This information was requested by October 15, 2021.
- [15] Mr. Kagan did not respond to this correspondence by the requested date.
- [16] Consequently, on October 22, 2021, a Standards Enforcement Officer wrote again to Mr. Kagan, requiring that he respond to the September 24, 2021 letter by November 5, 2021, lest the matter be referred to the Professional Conduct Committee, which may result in allegations of professional misconduct against Mr. Kagan for failure to cooperate. The letter included specific reference to Rule 104 of the CPA Ontario Code of Professional Conduct, setting out the requirement to cooperate.
- [17] A Standards Enforcement Officer attempted to contact Mr. Kagan by telephone on two occasions on November 9, 2021, and two occasions on November 25, 2021. The calls resulted in a 'busy' signal and did not provide an option to leave a voicemail message.
- [18] On December 16, 2021, a Standards Enforcement Officer re-sent the letter of October 22, 2021 to Mr. Kagan.
- [19] On December 17, 2021, Standards Enforcement received an email from a person identified as "Lineth Lina." The message stated that Mr. Kagan was on medical leave due to traumatic events, was not attending to his emails, and that Mr. Kagan's psychiatrist's contact information could be forwarded for additional detail.

- [20] On January 19, 2022, a Standards Enforcement Officer wrote to Mr. Kagan requesting his authorization to communicate with Lineth Lina about the complaint and requesting information from a licensed medical professional concerning his medical condition, by February 2, 2022. Mr. Kagan was also reminded of his professional obligation to cooperate under Rule 104 of the CPA Ontario Code of Professional Conduct.
- [21] On February 7, 2022, a Standards Enforcement Officer telephoned Mr. Kagan. The call went directly to voicemail, and a message was left for Mr. Kagan indicating that CPA Ontario had not received a response to its correspondence, and reminding him of his professional obligation to cooperate in accordance with Rule 104 of the CPA Ontario Code of Professional Conduct.
- [22] On February 16, 2022, a Standards Enforcement Officer wrote to Mr. Kagan to advise that CPA Ontario had not received a response to its earlier correspondence and reminding him of his professional obligation to cooperate under Rule 104 of the CPA Ontario Code of Professional Conduct. That same day, a Standards Enforcement Officer telephoned Mr. Kagan, and left a voicemail message indicating that CPA Ontario had not received a response to its correspondence and reminding him of his professional obligation to cooperate in accordance with Rule 104 of the CPA Ontario Code of Professional Conduct.
- [23] On February 17, 2022, Mr. Kagan responded by email, making reference to personal problems in his life, stating that he was no longer capable of continuing to work as an accountant, and stating that his father has taken over his professional responsibilities.
- [24] On March 1, 2022, a Standards Enforcement Officer wrote to Mr. Kagan, requiring that he either respond to the information requested in the September 24, 2021 letter or with medical information as requested in the January 19, 2022 letter, by March 15, 2022. Mr. Kagan was again reminded of his professional obligation to cooperate in accordance with Rule 104 of the CPA Ontario Code of Professional Conduct.
- [25] On March 2, 2022, a Standards Enforcement Officer telephoned Mr. Kagan and left a voicemail message indicating that CPA Ontario had not received a response to its correspondence and reminding him of his professional obligation to cooperate in accordance with Rule 104 of the CPA Ontario Code of Professional Conduct.
- [26] On March 3, 2022, Mr. Kagan replied by email, stating that he could not follow what was going on, and that he was not sure “being a CPA” was for him anymore.
- [27] In response, on March 3, 2022, Standards Enforcement wrote to Mr. Kagan to set up a phone call to discuss the matter, and also attempted to reach Mr. Kagan directly by telephone, leaving a voicemail message.
- [28] On March 25, 2022, a Standards Enforcement Officer wrote to Mr. Kagan, outlining the correspondence he had not responded to, and requesting information previously sought respecting the practice inspection, or the information previously sought respecting his medical condition. Mr. Kagan was advised that failure to respond with this information by April 1, 2022 would result in a referral to the Professional Conduct Committee with a recommendation to pursue allegations of professional misconduct pursuant to Rule 104 of the CPA Ontario Code

of Professional Conduct.

- [29] As of April 6, 2022, Mr. Kagan had not responded and had not provided the required information.
- [30] The facts in the Fadel Affidavit establish that Mr. Kagan communicated multiple times with CPA Ontario during the course of the investigation, but that he did not substantively respond to the questions asked by Standards Enforcement arising from his practice inspection, and did not address the question of whether anyone else was employed in his firm.
- [31] The Panel was satisfied that the above undisputed evidence clearly and cogently demonstrated that the facts set out in the Allegation were established on a balance of probabilities.

Finding of Professional Misconduct

- [32] The professional obligation of a member to cooperate with the regulatory process under Rule 104 is clear and unequivocal. To properly investigate a complaint, an investigator must be able to access the relevant facts in a timely manner. CPA Ontario's ability to fulfill its mandate of governing the profession in the public interest is frustrated if members fail to respond promptly and completely to communications from Standards Enforcement.
- [33] In his communications with CPA Ontario during his period of non-cooperation, Mr. Kagan referred to difficult personal circumstances, and to medical issues that he was facing. He stated at one point that he was not capable of continuing to work as an accountant and that his father would be taking over his practice. In response, Standards Enforcement requested that he provide evidence of his medical condition by a qualified medical professional. As set out in the Affidavit of Andrea Figueira Fadel (Exhibit 4), he did not do so.
- [34] As set out in the Affidavit of Alyssa Grace Girardi (Exhibit 3), among the communications from Mr. Kagan to CPA Ontario after he was served with the Allegation, was a letter he wrote to CPA Ontario dated September 6, 2022. In this letter, Mr. Kagan stated that he suffered extreme harm in his personal life, including relocation to another country, which resulted in his inability to properly respond to the requirements of the practice inspection and the subsequent investigation. In his letter, Mr. Kagan was highly critical of CPA Ontario staff for what he described as their unempathetic approach to him. The Girardi Affidavit also notes that the previous day, the PCC received an email from Dr. Gary Shomair who stated that he was Mr. Kagan's doctor. Mr. Kagan had provided no authorization for the PCC to share or distribute the email, and provided no such authorization in his subsequent communications with CPA Ontario and with the PCC the following day, on September 6, 2022. The PCC counsel advised the Panel that for privacy reasons she did not include the content of the email as part of the Affidavit, and she confirmed on the record that the content of the email did not address issues relating to Mr. Kagan's capacity.
- [35] Absent credible evidence that demonstrates that a member was unable to respond due to an illness or disability, the failure of a member to respond promptly and completely constitutes a breach of Rule 104. In spite of the requests by CPA Ontario, Mr. Kagan did not provide evidence to support a finding that he was incapable, or was unable to respond due to an illness or disability. Accordingly, this Panel finds Mr. Kagan's failure to cooperate, in violation

of Rule 104, constitutes professional misconduct.

VII. DECISION AS TO SANCTION

- [36] After considering the evidence, the law and the submissions of the PCC, the Panel concluded that the appropriate sanction was a written reprimand, a fine of \$5,000 payable within 30 days, and an order that Mr. Kagan respond to the correspondence from Standards Enforcement within 30 days.
- [37] In the event that Mr. Kagan fails to comply with the Order, the Panel ordered that his membership with CPA Ontario shall be suspended until such time as he does comply, provided that he complies within 30 days from the date of the suspension, failing which Mr. Kagan's membership will be revoked.
- [38] The Panel also ordered that if Mr. Kagan's membership were revoked, notice of the revocation would be published in a newspaper distributed in the area of Mr. Kagan's residence or practice.

VIII. REASONS FOR THE DECISION AS TO SANCTION

- [39] The PCC submitted that there were no reasons in this case to vary from the standard sanctions for failure to cooperate. The PCC emphasized that the questions asked of Mr. Kagan by Standards Enforcement were not difficult questions, and that he had not attempted to answer even one of them in his many subsequent communications with CPA Ontario. Instead of cooperating with the investigation, Mr. Kagan provided excuses for why he would not cooperate, but failed to provide evidence from a qualified medical professional to support his reasoning. Furthermore, in his later communications, Mr. Kagan denigrated CPA Ontario staff for the manner in which they treated him.
- [40] The Panel accepted that there were no reasons in this case to vary from the standard sanctions for failure to cooperate. The written reprimand will impress upon Mr. Kagan the seriousness of his misconduct, and that membership in CPA Ontario includes important responsibilities as well as benefits. The fine of \$5,000 is consistent with prior decisions for failure to cooperate, and serves as a deterrent, both to Mr. Kagan and to the general membership. The Order to cooperate provides Mr. Kagan with a final opportunity to demonstrate that he is willing to cooperate by either responding to the questions arising from the complaint, or by providing evidence from a qualified medical practitioner demonstrating that he was unable to respond to those questions due to an illness or disability. This provision is also necessary to ensure there is not an indefinite period of non-cooperation.
- [41] The PCC requested that the fine be required to be paid immediately, but the Panel felt it was more fair to Mr. Kagan to provide 30 days to pay the fine, the same amount of time that he has to provide a response to the correspondence from Standards Enforcement.

IX. COSTS

- [42] The PCC asked the Panel to award its full costs incurred in the prosecution of this matter, as reflected in the Costs Outline (Exhibit 5). The total amount set out in the Costs Outline was \$5,374.30. However, the Panel felt that there was no reason in this case to vary from the

standard approach in which the Member is not responsible for the entire cost of the prosecution. Accordingly, the Panel decided that an order for costs in the amount of \$4,000 was appropriate in all the circumstances. The Panel ordered that Mr. Kagan pay costs in the amount of \$4,000 within 30 days of the Order.

DATED this 14th day of November, 2022

A handwritten signature in black ink, appearing to read 'R. Adamkowski', enclosed within a large, loopy oval shape.

Randal Adamkowski, CPA, CA
Discipline Committee – Chair

Members of the Panel

Alexander Metaxas-Mariatos, CPA, CMA
Brian Mbesha, CPA, CGA
Soussanna Karas, Public Representative

Independent Legal Counsel

John Dent, Barrister & Solicitor