THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF	
TIMOTHY D. CLAIRMONT,	CFP Board Case No.: 2019-53546
Respondent.	December 12, 2023

ORDER

I. PROCEDURAL HISTORY

CFP Board granted Respondent the right to use the CFP®, CERTIFIED FINANCIAL PLANNER™, and certification marks ("CFP® marks") on May 28, 2002, and he has maintained his certification since that date. (DEC Book[1] at 23.)

On July 10, 2020, CFP Board Enforcement Counsel delivered a Notice of Investigation ("NOI") to Respondent regarding:

- 04/29/2004 Customer Dispute Settlement - $16,783.78
- 10/22/2013 Customer Dispute Settlement - $95,000.00
- 12/14/2018 Customer Dispute Settlement - $95,000.00

(*Id*. at 62.)

Respondent delivered his acknowledgment and Response to the NOI on July 16, 2020, providing certain documents and information. (*Id.* at 66-72.) CFP Board delivered a Request for Additional Information ("RFAI") on October 6, 2020 (*id.* at 73-76), to which Respondent delivered his acknowledgement and Response to the RFAI on October 8, 2020 (*id.* at 77-81). CFP Board delivered a Second RFAI on March 15, 2021 (*id.* at 82-85), to which Respondent delivered an undated but presumed timely Response to the Second RFAI (*id.* at 96-386).

On July 7, 2021, Enforcement Counsel conducted an Oral Examination of Respondent in accordance with Article 3 of the *Procedural Rules*, and Respondent appeared and provided testimony on the record and was represented by two attorneys from the same law firm—one of whom is counsel to Respondent in the hearing on this matter, discussed below. (*Id.* at 993-1264.)

On August 19, 2021, Enforcement Counsel delivered to Respondent a Preliminary Determination to Take Formal Action (*id.* at 1346-1347), to which Respondent delivered a Voluntary Written Statement in response on September 28, 2021 (*id.* at 1348-1367.)

[1] The DEC Book and any exhibits to the DEC's final Order are not subject to publication under Article 17.7 of the *Procedural Rules.*

IN THE MATTER OF TIMOTHY D. CLAIRMONT
CFP Board Case No. 2019-53546
December 12, 2023

On July 21, 2022, CFP Board Enforcement Counsel delivered a Notice of Complaint[2] and Complaint to Respondent pursuant to Article 3 of the *Procedural Rules*, which set forth grounds for sanction based on Respondent's conduct that gave rise to alleged violations of the *Rules of Conduct.* (*Id.* at 5-19.) The Notice of Complaint preliminarily set the hearing for the Commission's October 2022 meeting, which was to occur October 19, 20, or 21, 2022. (*Id*. at 7.)

On October 31, 2022, Respondent filed a Motion to Continue Hearing Dates ("Motion") with the Chair of the Commission, to which Enforcement Counsel responded on November 14, 2022 and Respondent replied on November 21, 2022. (*See* Exhibit A.) In an order issued on December 5, 2022, the Commission Chair denied the Respondent's request to continue the hearing as premature but ordered the parties to "meet and confer" about potential hearing dates and provide to the Commission at least three proposed hearing dates in 2023 for which the parties and counsel were available for a hearing. (*Id*.) On December 16, 2022, the parties submitted a report about their "meet and confer" and provided potential hearing dates in response to the Chair's request. (*Id*.) Then, on January 10, 2023, the Chair of the Commission issued an Order Setting Hearing Dates and Deadlines stating the hearing would be held on May 8 and/or 9, 2023 and providing deadlines for the parties to make other filings in the case pursuant to the *Procedural Rules*. (*Id*.)

Pursuant to Article 3 of the *Procedural Rules* and consistent with the Order Setting Hearing Dates and Deadlines, Respondent filed an acknowledgement and Answer on February 10, 2023, and requested a hearing before the Commission. (*Id.* at 1321-1337). Respondent subsequently, and presumably timely, filed an undated Written Statement and an undated Document Submission in accordance with Article 10.3. (*Id.* at 1342-1399, 1400-2386.)

On March 30, 2023, Enforcement Counsel provided a Notice of Hearing to Respondent, setting the hearing for May 8, 2023 by video conference for 7.5 hours of hearing time. (*Id.* at 2393-94.) On April 18, 2023, the parties submitted a proposed "Hearing Breakdown" for the use of the time allocated for the hearing on the Complaint, which the Hearing Panel accepted. (*See* Exhibit B.)

On May 4, 2023, Enforcement Counsel moved to supplement the DEC Book with an additional document comprised of demonstrative exhibits to aid their presentation at the hearing but otherwise containing no new information; Respondent did not object and it was added to record as "Exhibit C".

On May 8, 2023, a Hearing Panel of the Commission convened by video conference to review the above-described CFP Board Complaint. (Transcript of Hearing of Timothy D. Clairmont, CFP[®], May 8, 2023 ("Tr.") at 1.) CFP Board Enforcement Counsel appeared for CFP Board, DEC Counsel appeared for the DEC and for a Hearing Panel of the Commission, and two lawyers from two different law firms appeared as co-counsel for Respondent—one of whom represented Respondent prior to the hearing, including during the Oral Examination described above. (*Id.*)

[2] Enforcement Counsel filed a Second Notice of Complaint to revise certain dates on the first, on August 1, 2022. (DEC Book at 1316-1320.)

During the hearing, the Hearing Panel requested Respondent supplement the DEC Book with his updated BrokerCheck® Report by FINRA.[3] (*See id.* at 106-116.) Enforcement Counsel did not object, and the document was added to the record as "Exhibit D."

Later during the hearing, Respondent's co-counsel moved to supplement the DEC Book with a demonstrative exhibit to aid presentation at the hearing, which, they asserted, was based on Enforcement Counsel's demonstrative exhibit and contained no new information. (*Id.* at 203-212.) Enforcement Counsel objected that the document had not be produced to the parties or the Hearing Panel and the DEC prior to the hearing. (*Id.* at 203-204.) The Hearing Panel Chair heard from both parties and, after consulting with DEC Counsel off the record, the Hearing Panel Chair admitted the document into the record as "Exhibit E". (*Id.* at 203-212.)

The Commission considered the Hearing Panel's recommendation, and then issued this final Order on December 12, 2023.

II. FINDINGS OF FACT

A. Respondent's Background

Respondent passed the following financial services industry examinations: Series 26 - Investment Company Products Variable Contracts Principal Examination (1997); Series 6 (1997); Series 63 (1997); Series 65 (1998); Series 7 (2001); Series 24 - General Securities Principal Examination (2018); Series 79TO - Investment Banking Registered Representative Examination (2021); and Series 53 - Municipal Securities Principal Examination (2022). (Exhibit D; DEC Book at 34.)

Respondent also displayed the MSFS™ (Master of Science in Financial Services) and LACP™ (Life and Annuity Certified Professional) designations on many of his communications during the relevant period, but these designations are not identified on his BrokerCheck Report. (Exhibit D; DEC Book at 28-45; *see also, e.g., id.* at 725-825, 1400-2386.)

Respondent was previously registered and employed as an investment advisor representative with Firm-A from 2017 to 2021 and, prior to that, Firm-B from 1997 to 2017. (Exhibit D; *see also* DEC Book at 30, 36.) Respondent began his relationship with Client-1 while Respondent was registered and employed with Firm-B, discussed below, but most of the conduct at issue in this matter occurred while Respondent was registered and employed with Firm-A, from 2017 to 2021. The signature block on the majority of Respondent's emails in the record during the relevant period indicate Respondent was doing business as President, then Founder & Chief Executive Officer ("CEO") of "**[Firm-C] Financial Partners**"—described below—while he offered securities and investment advisory services through Firm-B and later through Firm-A. (*See, e.g.,* DEC Book at 725-825, 1400-2386.)

Respondent is currently registered as an investment advisor representative and employed as Managing Member & Chief Compliance Officer with **(1) [C] Financial Advisors, Inc.** and

[3] The Financial Industry Regulatory Authority, Inc. ("FINRA").

employed as CEO of **(2) [C] Financial Securities, Inc.** (*Id.*) Respondent also is employed as the sole owner and proprietor of **(3) [C] Financial Partners, Inc.**, incorporated in 2014, which is an entity named in relation to his "[C]"-branded financial-planning related products and activities described below and the entity through which Respondent conducts all retail activities related to his sales and service of fixed insurance products, which he has been effecting since 1997 as an insurance agent operating under his namesake **(4) "Tim Clairmont, CFP[®], MSFS"**. (Exhibit D; *see also* DEC Book at 36-37.) Respondent also operates [C] Financial Partners, Inc. for his investment properties ownership and management as owner of **(5) [C] Investment Properties, Inc.** (*Id.*) Respondent reports other business activities including **(6) Tim Clairmont – Author & Speaker**, by which he engages in research, writing, publishing, and selling his books and giving speeches, some of which are investment related; **(7) [C] Franchising, LLC**, of which he is owner/CEO and packages and shares intellectual property for business coaching that is also investment related, and where his duties include initiating, implementing, monitoring, designing, selling and teaching a coaching program for professional financial advisors; and **(8) [C] IP, LLC**, of which he is also owner/CEO and owns and manages the intellectual property created by Tim Clairmont and by all "[C]" companies. (Exhibit D; *see also* DEC Book at 37.)

During the hearing on this matter, Respondent stated: "I was really proud of my CFP[®] designation. I've had my CFP[® certification] since 2002, over 20 years, [b]ut the persecution that I've undergone in the last three years at my own personal time and financial expense, I don't -- I don't feel the same about my CFP[®] designation anymore. And I don't like that." (Tr. at 225.)

B. Respondent Establishes a Financial Planning Relationship with Client-1

1. Respondent is Introduced to Client-1 and Learns of Her $4 to $6 Million Inheritance

In or about July 2015, Respondent first encountered Client-1 during a tandem skydiving jump. (DEC Book at 69; Tr. at 139.) According to Respondent, Client-1 asked Respondent to stay in touch with her as a prospective client, because Client-1 was not a sophisticated investor but was about to receive a life-changing inheritance. (DEC Book at 69, 984, and 987: where Client-1 wrote "I'm feeling overwhelmed by the inheritance I'll be receiving. I hate anything that has to do with money or numbers!! I never want to lose sight of simplified living!!"; *see also* Tr. at 139.) A few days later, Respondent's office contacted Client-1 to offer a complimentary consultation with Respondent. (DEC Book at 725-726.)[4]

[4] Shortly after first encountering Client-1 and throughout the relevant period that followed, Respondent and his firm used Client Relationship Management ("CRM") software to maintain a thorough log of detailed personal notes, voice transcriptions, emails, summaries of calls and meetings and other contact with Client-1 or with others regarding Client-1, in addition to the other documentary records and information collected from Client-1 or collected from others but pertaining to Client-1. (DEC Book at 726-826.) The Commission understands that the CRM notes do not conclusively reflect the entire universe of potential communications between Respondent and others, and that Respondent therefore conceivably may have had communications with others that were not logged in his CRM notes, where he so indicated in the record. (*See* Tr. at 135-136.) However, Respondent's CRM notes were so incredibly detailed that they provided substantial evidence to support the Commission's presumption that Respondent *would have* kept documents and notes of all potential communications regarding Client-1, and where Respondent indicated otherwise in the record, the Commission weighed the credibility of Respondent's testimony against this reasonable presumption.

On July 27, 2015, Client-1's mother died, and Client-1 stood to inherit an estate of $4 to $6 million dollars. (*Id.* at 685, 726, 728, 1085; Tr. at 143-144.) Client-1's inheritance consisted of the following assets:

(a) **Private Stock**: Approximately $1 to $2 million dollars in stock that was valued at $299 per share at the time of the mother's death, of a large company that was at the privately held, but which Respondent was aware "might go IPO or get bought" ("Stock");
(b) **Family Farm**: Approximately $2.5 million in the form of a 25% interest in a farm valued at approximately $10 million, which provided a $300,000 per year income in the recent prior years and which she did not intend to sell at the time of her inheritance; and
(a) **Other Estate Assets**: Approximately $400,000 to $1 million dollars in the form of distributions of cash from the sale of other estate assets.

(*Id.* at 685-687, 1085-1086, 1322.)

Respondent noted that he looked forward to establishing a relationship with Client-1 and that she was aware she would be among his firm's top 50 clients, but Respondent stated he believed Client-1 was unaware that she would be the firm's *highest* net worth client. (DEC Book at 730.)

2. Client-1's Investment Goals and Risk Tolerance

In advance of their first meeting, Respondent had Client-1 complete document that was, according to a blurb at the top of the document, a "comprehensive, personal financial planning summary" designed to help a client to "take inventory and assign realistic values to … personal assets and liabilities." (*Id.* at 708-716.) The document also asked Client-1 to provide investment statements, pension statements, and a copy of her most recent tax return. (*Id.* at 708.) While Respondent stated that he received some of this documentation, he admitted that he did not review her credit card balance or her existing stock portfolio, and only received a tax return after her 2018 tax return was filed. (*Id.* at 1051-1054.)

At the time, Client-1 was 46 years old, single, had no children, and indicated that she was just establishing her own business. (*Id.* at 708-709.) She did not have income, and she listed her current assets as approximately $54,500 in cash, $364,000 in non-qualified assets, and $29,000 in a money market. (*Id.* at 710.) Her approximate monthly expenses were $2,500, and investment income was $3,000, and she indicated that she was "thinking of buying a house." (*Id.* at 711, 714.)

Client-1 had no pension and had very limited investment experience. (*Id.* at 711.) She indicated that she wanted to gain a better understanding of investments and the stock market and that she wanted to create and maintain a solid budget. (*Id.* at 715.) On a scale of 1 to 10, with "1" being the lowest priority and "10" being the highest, Client-1 indicated a "10" for the following four goals:

- Reducing her tax burden;

- Financial security at retirement;
- Minimizing the cost of probate and estate taxes; and
- Funding charitable endeavors.

(*Id.* at 715.)

Respondent testified during the investigation that he was prepared to assist Client-1 with all the goals listed on the page, including those Client-1 specifically identified as a "10" priority. (*Id.* at 1076.)

3. Respondent's First Professional Meeting with Client-1 on August 21, 2015

Respondent first met with Client-1 professionally on August 21, 2015. (*Id.* at 730-731.) Respondent's CRM notes on that date indicate that Respondent wanted to craft a financial plan designed to provide Client-1 with different streams of income that would "kick in" at different ages: One stream of income that would cover years zero to five (0-5), six to ten (6-10), ten to fifteen (10-15), and then 15 and beyond (15+). (*Id.* at 730.) Respondent noted: "Given that she is in her mid-forties we're going to want to do a combination of various annuities. We might consider an immediate annuity as well with some of this because she likes the idea of a guaranteed income stream." (*Id.*)

In his Answer to the Complaint, Respondent admitted that he provided financial planning services to Client-1. (DEC Book at 1323.) Respondent also stated he believed that Client-1 was a sophisticated investor. (*Id.* at 1322; Tr. at 141: "she also was very motivated to learn … She knew a lot about investing at that time as it relates to her existing [$]75,000 that she had in her investment account, as far as mutual funds and things like that, but she wanted to learn more about other types of investing.") Respondent testified at the hearing that he informed Client-1 of all the available options after "educating" her. (*Id.* at 150-153.) Respondent described Client-1 as conservative—she did not want to lose money in the stock market and was attracted to fixed indexed annuity. (Tr. at 140-141, 147-149.)

4. Respondent's "Clock Presentation" and "[C] Income Plan"

Respondent testified during the hearing that he has developed his own proprietary financial planning process he calls the "Clock Presentation," and a proprietary process for retirement planning he calls the "[C] Income Plan." (*Id.* at 261-262.) Respondent explained that the Clock Presentation consists of the image of a clock that he draws on a whiteboard in his office, which he uses to categorize his clients' income and assets, then he takes a photo of the image and provides it to the client. (*Id.* at 280.)

During the hearing, when the Hearing Panel asked Respondent whether the Clock Presentation was a comprehensive financial plan that exhibited material elements of financial planning, Respondent answered affirmatively but admitted that the plan is diagrammatic and does not contain written paragraphs. (*Id.* at 309: "Q: It sounds like you don't provide a comprehensive written financial plan. You have maybe a series of components that you produce, but not a comprehensive written financial plan. A: I guess it depends on how you define written. They get the [C] Income plan, and they get the image of the clock. I mean, those are transcribed in writing. It's not necessarily words in the sense of a paragraph format, but they get an image of a clock, and they get the [C] Income Plan. I would argue that is a written financial plan."; *see, e.g., id.* at 272-274, 278: "But there's no written Word doc that goes along with it. It's self-explanatory, once they have the [C] Income plan and they have the clock image. That's adequate for them to understand what it says.")

In describing his financial planning processes at the hearing, Respondent explained that he goes through a four-step process: (1) Education, (2) Choice, (3) Transparency, and (4) Empathy. (*Id.* at 260.) Respondent stated that through this process, he educates his clients on what their options are, lets the clients make the decisions while he is transparent about the pros and cons of each investment, and, if they ask for his help in making a decision, makes "an empathetic recommendation based on how [he has] come to understand his clients at a human level…." (*Id.*)

Respondent stated that he teaches the Clock Presentation to other financial advisors. (*Id.* at 261-262.) He also sells and teaches a coaching program for financial advisors related to his [C] Income Plan and his "[C]" companies described in II.A. of this order. (Exhibit D at 10-11; *see also* DEC Book at 37.)

C. Respondent's Recommendations to Client-1 and Notable Events That Should Have Informed Respondent's Recommendations to Client-1

1. Respondent Recommends Client-1 Purchase a New Annuity

In June 2016, Respondent recommended, and Client-1 applied for, an equity indexed annuity from for $300,000 ("Annuity"). (DEC Book at 203-204, 738.) On the product suitability forms Client-1 completed, she indicated that she had monthly income of $7,166, monthly expenses of $5,000, and liquid assets of $2,197,000. (*Id.* at 203.) Client-1 also indicated that she was purchasing the product for its growth potential, that her risk tolerance was moderately aggressive, and that she would seek her first distribution through free/systemic withdrawals in 1 to 5 years. (*Id.* at 204.) Respondent stated the purpose of recommending this annuity was to produce lifetime income after age 60, and make sure Client-1 "wasn't going to lose any money because it couldn't go down in value." (*Id.* at 1103.)

2. Valuation Reveals Stock is Worth Less than Expected

On August 11, 2016, the accountant handling the estate of Client-1's mother ("Accountant") called Client-1 to discuss the Stock. (*Id.* at 768.) Accountant explained that the heirs would each receive 4,927 shares of Stock. (*Id.*) He also indicated that he had received an appraisal for the Stock with an alternate valuation date of January 27, 2016, with a value of **$163.93** per share. (*Id.*) That is a $135 per share difference, or nearly *half* the value, from the date of death valuation, which was **$299.00** per share. (*Id*. at 687.) On August 29, 2016, Respondent spoke with Accountant, confirmed that the cost basis was $163.93 per share, and learned that Accountant was holding

$800,000 to cover any additional estate tax burden. (*Id.* at 770.) Respondent specifically noted: "We need [to] make sure that when they're sold she pays long-term capital gains taxes." (*Id.*)

3. Respondent Recommends Client-1 Add Assets to the Annuity

On November 18, 2016, Respondent recommended Client-1 add $300,000 to her existing annuity, which she did, because she wanted to increase the guaranteed income she would receive from the annuity after age 60 to her death. (DEC Book at 355-357, 1114.) Respondent noted that with additional investments in the Annuity, Client-1 could obtain $100,000 in annual income for the rest of her life after age 59.5. (*Id.* at 777.)

4. Client-1 Purchases a Home and Respondent Underestimates Client-1's Tax Liabilities Related to Stock

In February 2017, Client-1 purchased a house, clear title, without a mortgage. (*Id.* at 781.) Respondent noted that Client-1 had $190,000 remaining in her bank account, of which he recommended she reserve $100,000 for capital gains taxes he expected Client-1 would need to pay on her previous year's $266,000 Stock dividend. (*Id.*) Respondent noted that Client-1 could reinvest the difference between the $100,000 and the amount she paid in taxes, indicating that Respondent expected Client-1 would owe ***less than*** **$100,000** in capital gains taxes. (*Id.*) Respondent made this assumption without consulting Client-1's accountant, without consulting the accountant handling Client-1's estate, and without consulting any other person or authority with expertise or knowledge of the capital gains Client-1 would owe from the Stock dividend, nor did he attempt to himself calculate the amount with specificity. (*Id.*) Respondent testified: "We discussed how much money to set aside for potential taxes [from the sale of Stocks], and [Client-1] was working with her accountant and [the accountant handling her mother's estate], and she believed, we believed $100 thousand would probably be adequate, but we didn't run any numbers on it. We didn't receive communication from [the accountant handling Client-1's mother's estate] about the cost basis of the potential tax consequences. And we didn't receive communication from her accountant either." (*Id.* at 1160-1161.)

5. Accountant Advises Respondent's Firm Should Contact a Tax Professional

On March 24, 2017, an employee at Respondent's firm contacted Accountant to obtain the cost basis of the Stock. (DEC Book at 784.) Accountant—who was only the accountant to the estate—stated he could provide the value per share that was included in estate, but he, very specifically, advised that the employee of Respondent's firm should consult with Client-1's tax professional because the distribution Client-1 received in 2016 would affect the cost basis of the Stock and would likely cause increased taxes: "[T]he distribution … will reduce cost basis, however, [Stock company] is going to send out a corrected 1099 Div later in 2017 … that will impact [Client-1's] return and will probably need to amend and will again impact basis as the change in the dividend classification will likely cause increased taxes for [Client-1] but will also increase her basis." (*Id.*) Accountant added that the Stock value that was used to prepare the estate tax return was $163.93 per share. (*Id.*) Respondent testified that he "probably" received this email and asked Accountant for the cost basis of the Stock, but never received the cost basis. (*Id.* at 1117-1118.) In June 2017, Client-1 sold the first portion of her Stock for $1.35 million. (*Id.* at 786-787, 790.)

6. *Respondent Recommends Client-1 Invest in Additional Annuities and an Indexed Universal Life ("IUL") Insurance Policy with the Proceeds of Her First Sale of Stock*

In June 2017, Respondent met with Client-1 to discuss what she would do with the $1.35 million in cash generated by her first sale of the Stock. (*Id.* at 789.) Respondent recommended that Client-1 place a large portion of the proceeds into two "new" Annuity Company contracts and an overfunded "Index Universal Life" ("IUL") policy. (*Id.* at 790.) Respondent then indicated that he would place the remaining $350,000 in proceeds from the sale of the Stock in cash or managed portfolios. (*Id.*)

a. Two $250,000 Annuities

On June 20, 2017, Respondent recommended, and Client-1 applied for, two $250,000 annuities from Annuity Company. (*Id.* at 358-359, 377-378.) The annuities were the same annuity that Client-1 had previously purchased. (*Id.*) In connection with the application for the two annuities, Respondent and Client-1 submitted a financial inventory that indicated that after these annuity transactions, she would hold $1.1 million in annuities, $2.5 million in the farm property, and approximately $1.5 million in Stock. (*Id.* at 353.) The financial inventory also indicated that Client-1's household income was $4,000 per month and her household expenses were approximately $1,800 a month. (*Id.*)

According to Respondent, he recommended that Client-1 purchase two different annuity contracts so she could draw out 10 percent from one contract while she allowed the other one to continue to grow, thereby achieving a higher withdrawal percentage if she waited to touch the second one until she was 70. (*Id.* at 1122-1123.)

b. IUL Policy with $7 Million Death Benefit

Respondent also recommended, and Client-1 applied for, an IUL policy with a death benefit of approximately $2.7 million. (DEC Book at 106-117, 137.) Client-1 made an initial premium payment of $128,737 and placed $371,261.49 into a Premium Deposit Account for future premium payments. (*Id.* at 118; 1125-1127.) Respondent designed the policy to allow her to have additional flexibility to add to the policy in years five through seven. (*Id.* at 163, 1130.) As Respondent testified, "the first priority was to produce for herself; tax-free income later on. The second priority would be for the death benefit to be left behind to her heirs … The third priority was … minimizing probate and estate tax consequences." (*Id.* at 1131-1132.)

D. Respondent Meets with Client-1 to Discuss Her Income Plan, Including How to Reinvest Proceeds from Her Second Sale of Stock

After Respondent recommended and sold Client-1 the two additional Annuity Company annuities and the IUL, he and Client-1 met several times to discuss Client-1's income plan and how to reinvest proceeds from her second sale of Stock. (DEC Book at 792, 795.) As Respondent wrote: "Our plan at this point, as soon as he has the 1.5 million available to sell of [Stock] in mid-August, our plan will be to sell. We'll keep enough liquid to cover taxes. We'll discuss that with [her accountant]." (*Id.*)

1. July 2017 Meeting

On July 5, 2017, Respondent noted that he discussed with Client-1 the idea of trying to create distributions of $120,000 per year through age 59 ½. (*Id.*) Respondent also noted that it may make sense to recommend to Client-1 that she obtain another $100,000 annuity contract to cover ages 60 to 70, so that when Client-1 turns 70, her annuity contracts could generate income for the rest of her life. (*Id.*) Respondent also discussed the possibility of using any proceeds from the sale of the farm to invest in a Delaware Statutory Trust ("DST") portfolio and a second IUL policy with a larger death benefit. (*Id.*)

2. October 2017 Meeting

In October 2017, Respondent and Client-1 met again to discuss the income plan. (*Id.* at 795.) Respondent indicated that he discussed with Client-1 the strategy for producing income for the immediate 10 years prior to Client-1 turning 60. (*Id.* at 558-563, 795.) Respondent noted that Client-1 had approximately $330,000 total in two-managed 100% stock portfolios. (*Id.* at 795.) Respondent expected Client-1 to receive an additional $710,000 in proceeds from the sale of the remainder of her Stock and an additional $250,000 from the estate. (*Id.*) Respondent noted that he planned to place $500,000 into a DST portfolio and place the remaining $450,000 into the managed portfolio. (*Id.*) His goal was for the DST portfolio to generate $25,000 in income per year, and Client-1 would withdraw the remaining $75,000 in income she needed from her portfolio. (*Id.*) Respondent noted that he also considered looking at an immediate 10-year annuity to generate the $75,000 in income, but it is unclear what steps, if any, Respondent took to evaluate or recommend this solution to Client-1. (*Id.*)

3. November 2017 Meeting

In November 2017, Respondent and Client-1 met again to discuss the income plan. (*Id.* at 799.) In Respondent's notes, he indicated that his "vision" for the immediate 10 years was for Client-1 to "pull out" $6,000 per month from her brokerage account portfolio. (*Id.*) Respondent further noted that he would put $150,000 into a money market account that would allow Client-1 to draw $8,000 per month until her DST income stream is in place. (*Id.*) Once the DST income started, Respondent would reduce the monthly draw from Client-1's account to $6,000 per month. (*Id.*) Respondent would evaluate whether to "refuel" the money market account from Client-1's managed portfolio at Respondent's firm, which Respondent planned to fund with an additional $380,000. (*Id.*) Respondent again discussed with Client-1 that he would like to build a DST portfolio to generate income and satisfy the rest of her need by drawing down on the managed portfolio and other liquid assets available to her. (*Id.*) Respondent also discussed with Client-1 various DST options he thought would work for Client-1. (*Id.*) In November 2017, Client-1 sold her remaining Stock. (*Id.* at 796-797.)

E. Respondent Recommends Client-1 Invest in a State Multifamily DST ("State DST")—a Private Placement

On December 8, 2017, Respondent recommended, and Client-1 applied for, a $480,000 interest in a State Multifamily DST ("State DST"). (DEC Book at 297.) In connection with her purchase of the State DST, Respondent and Client-1 submitted paperwork indicating that Client-1's risk exposure was "High-Risk," her account investment objectives were "Income" and "Long-Term Growth," her time-horizon was 5-10 years, and her liquidity needs were "Low." (*Id.* at 338.) Client-1 also indicated that her net worth was $5,121,000 and that her liquid net worth was $1,521,000. (*Id.*) Respondent indicated that the purpose of the investment was to obtain portfolio diversification as well as the income generated from the distributions of the property. (*Id.* at 298.)

F. Respondent Meets with Client-1 Again to Discuss her Income Plan, Client-1 Resolves to Sell Farm Interest to Cover Liquidity Shortfall

In December 2017, Respondent and Client-1 met again to discuss her income plan. (*Id.* at 804.) During this discussion, Respondent acknowledged that he anticipated Client-1 would need to take $720,000 in distributions over the next 10 years but the liquid accounts had only $590,000 in assets. (*Id.*) As a result, Respondent stated that he would need to generate returns of $130,000 to cover that shortfall. (*Id.*) Respondent noted that the farm would be generating $30,000 in income and it was possible that Client-1 could sell her interest in the farm to obtain additional cash. (*Id.*) Respondent further noted that if Client-1 sold her interest in the farm, she would be coming into $2.5 million in proceeds from the sale of her farm interest, which he would invest. (*Id.*) This would eliminate the need for the distributions from the money market account. (*Id.* at 810.)

In February 2018, Respondent and Client-1 communicated about her liquidity and Client-1 informed Respondent that she may want to purchase properties on either side of her home. (*Id.* at 808.) Respondent replied that she could do so if she would sell her farm interest, otherwise, he would need to do "some magic restructuring." (*Id.*)

In March 2018, Respondent and Client-1 met again to discuss the income plan. (*Id.* at 810.) Respondent noted that Client-1 had resolved to sell her interest in the farm and Respondent discussed options for the proceeds, which were dependent on what taxes Client-1 would owe from the sale. (*Id.*)

G. Client-1 Overspends and Requires Cash to Meet her Financial Obligations

There were several instances known to Respondent where Client-1 had overspent and needed cash infusions to meet her financial obligations. (DEC Book at 766.) First, Respondent noted on July 29, 2016 that stock was liquidated to accommodate Client-1's request for $20,000, because she fell below the minimum balance in her checking account. (*Id.*) Respondent had written in an earlier entry on June 2, 2016 that Client-1 had $60,000 in her checking that should last her through the end of the year. (*Id.* at 762.)

Second, Respondent noted on September 28, 2016, that Client-1 spent $11,000 in August 2016, more than the $8,000 per month Client-1 purportedly claimed she typically would spend to live comfortably. (*Id.* at 773.) Respondent noted on September 28, 2016, that he told Client-1 that he was concerned about her spending. (*Id.*)

Third, less than 30 days after Respondent expressed concern about Client-1's spending, Respondent noted on October 21, 2016, that Client-1 requested another $30,000. (*Id.* at 774.)

Fourth, Respondent noted on August 10, 2017, that Client-1 emailed to withdraw $30,000 from her investment account. (*Id.* at 793.) Respondent noted that Client-1 had $330,000 in the account at the time. (*Id.* at 795.)

Fifth, Respondent noted on December 18, 2017: "We only have $590,000 in that account with [$]720,000 of anticipated distributions. In order to have that all work, we are going to need about $130,000 of interest earnings over the next 10 years [Client-1W's] plan is to not do anything crazy over the next 90 to 120 days and we'll do another meeting at the end of March or the beginning of April and we'll decide how her budgeting is working and what her expenditures are looking like." (*Id.* at 804-805.) Respondent also noted that the $8,000 per month distribution to Client-1 for living expenses would begin on January 1, 2018, which would deplete the account every month, and the account was already underfunded. (*Id.*)

Sixth, Respondent noted on March 5, 2018 where Client-21 requested an additional $20,000 distribution from her money market account, which was already underfunded. (*Id.* at 809.)

H. Client-1 Incurs Predictable Tax Consequences from the Sale of Her Stock

In April 2018, Client-1 discovered that the cost basis on the Stock she sold was only **$600,000** and she owed taxes on over **$1.4 million** in long-term capital gains. (*Id.*) According to Respondent, this caused Client-1 to incur approximately **$450,000** in taxes. (*Id.*) As Respondent explained: "the cost basis on her [Stock] last year was only $600,000 on about a $ 2 million sale, we were expecting a cost basis step up on the full $2 million; therefore we didn't anticipate any kind of long term capital gains taxes…." (*Id.*)

Respondent indicated that, at the time, Client-1 had approximately $550,000 liquid between her investment accounts and her money market account, and Respondent decided to liquidate her investment accounts to cover the tax bill. (*Id.*) As a result of these moves, Respondent indicated that Client-1 had "completely liquidated all of her liquid assets…" and had approximately **$80,000** to live on for the next eight months. (*Id.* at 813.) Respondent reviewed several options to address this liquidity crisis, including the following: (a) Respondent expected Client-1 to sell her interest in the farm, which would allow her to replenish her liquid assets; (b) If Client-1 did not sell the farm within the next six to eight months, Respondent indicated that Client-1 would look at getting a home equity line of credit to fund her income needs until the farm sold, at which she could pay off the home equity line of credit; and (c) If Client-1 did not sell the farm and chose not to obtain a home equity line of credit, Respondent indicated that he would need to look at possibly raiding the life insurance Premium Deposit Account. (*Id.*) Respondent indicated that he presented these options to Client-1 and noted that Client-1 was going to rely on her savings for a few months and set up a home equity line of credit if she needed it. (*Id.* at 815.)

According to Respondent's CRM notes, Respondent was aware and noted on numerous occasions that Client-1 would need to pay capital gains taxes on the sale of the Stock, but rather than checking on the cost basis with the accountant or waiting for tax guidance from the accountant, Respondent appeared to the Commission to instead hastily invest Client-1's assets in illiquid investments. (DEC Book at 770, 781, 788-790, 792.[5]) There is no documentary evidence that Respondent informed Client-1's accountant of the plan to sell all of Client-1's Stock nor directly sought the accountant's advice, as Respondent emphasized numerous times in his CRM entries. (DEC Book at 895, 1234-1236; Tr. at 170-171.[6])

At the hearing and in his Answer, Respondent stated that Client-1 had substantial liquidity both before and after the tax event. (Tr. at 180, 182-186, 348-353; DEC Book at 1331-1334: "even without including the imminent cash influx she would receive from selling her interest in the farm … Client-1 had access to over $1 Million (and likely closer to $1.2 Million) in combined assets and income available to her for the next 10 years….") In his Answer to the Complaint, Respondent stated that he did not know the true cost basis for Client-1 because he is not an estate planning attorney or a CPA, and he completely relied on the two CPAs who handled the tax matters estate. (*Id.* at 1328-1331; *see also id.* at 80: "the capital gains taxes were expected to be much lower [but her] personal accountant failed to acquire correct information….") Respondent stated that those

---

[5] *Compare* DEC Book at (1) 770 (August 29, 2016 entry: "We need to determine how long [Client-1] is holding it, make sure that when they're sold she pays long-term capital gains taxes. I think it would be best to double-check that with [the accountant], her accountant who is also my accountant."), (2) 781 (February 20, 2017 entry: "[Client-1] is aware of the tax ramifications of that. She will be long-term capital gains taxes because she has held the stock for over a year at this point. Might want to double check with [Accountant] just to verify though. I don't think that is really bad. *It is probably not a bad thing just to send an email just to let him know her plan is to sell the stock at this time. I just want to be 100% sure of it.*") (emphasis added)), (3) 790 (June 27, 2017 entry where Respondent noted the need to check with Client-1's accountant on the cost basis from the sale of the Stock), and (4) 792 (July 5, 2017 entry: "Our plan at this point, as soon as [Client-1] has the 1.5 million available to sell of [JW] in mid-August, our plan will be to sell. We'll keep enough liquid to cover taxes. We'll discuss that with [the accountant].") *with* (5) *id. at* 788-790 (three weeks after Client-1 sold some of her Stocks and earned $1.35 million from the proceeds, Respondent advised Client-1 to invest $500,000 in two annuities and discussed the idea of overfunding an IUL with $300,000), and (6) 792 (as soon as Client-1 sells the remainder of Stock for $1.5 million, Respondent wants to invest the proceeds to create $120,000 a year distribution to Client-1 through age 59 ½ and possibly purchase another $100,000 annuity contract to cover years 60-70).

[6] *Compare* DEC Book at 895 (Email from the accountant to Client-1 on April 12, 2018, wherein he wrote '[W]hat an interesting tax return you have!! Did not realize you had sold all this stock in 2017 - - I could have saved you some tax dollars if I would have know[n] how large this was – but – we are done now[.]", *with id. at* 1234-1236 (Respondent testifying that he advised Client-1 to discuss the sale of the Stock with the accountant and shifting blame but admitting he was out of the loop with respect to whether Client-1 followed up with [the accountant] regarding the cost basis), and Tr. at 170-171 (Respondent testified that he would go on walks with Client-1's accountant who was also his accountant early in the morning for approximately an hour when they discussed clients and other matters, and added that they went on a walk on August 4, 2017 and September 15, 2017).

two CPAs gave erroneous advice on which he and Client-1 relied. (Tr. at 172, 188, 247; DEC Book at 1235-1237, 1331.)[7] Respondent stated at the hearing that he "still cannot fathom why her tax bill was as high as it was … because it just doesn't make any sense [and] it's still inexplicable." (Tr. at 382.)

I. Client-1 Files a FINRA Arbitration Against Respondent and Firm-A with FINRA and Settles for $95,000.00 Dollars

On December 11, 2018, Client-1 filed an arbitration with the FINRA, naming Firm-A and Respondent personally in the Statement of Claim and claiming $205,351.77 in damages for Respondent's alleged Securities Violations, Negligence, and Breach of Fiduciary Duty. (*Id.* at 97-103.) On November 26, 2019, the parties settled the matter for $95,000, which was paid by Respondent's firm through its errors & omissions insurance, with Respondent's contribution of $5,000 for the deductible. (*Id.* at 387-396.)

Respondent testified that Client-1 did not blame him for the tax consequences she incurred after selling the Stock, and Client-1 did not include these tax consequences in her Statement of Claim against Respondent in the FINRA arbitration. (Tr. at 196.) Respondent added that his broker-dealer thoroughly vetted the investment products he recommended and sold to Client-1, and no state or federal regulator or self-regulatory organization ever investigated Respondent or inquired about Client-1's allegations against Respondent. (*Id.* at 199-201.) Respondent further speculated that another financial advisor may have encouraged Client-1 to file the arbitration. (*Id.* at 27-28.)

Respondent stated during his hearing before the Commission that he was not motivated by compensation when he recommended certain investments to Client-1, and he took the lowest up-front fee possible, which he described was far less than the average advisor's fee.[8] (*Id.* at 152, 199-

[7] Tr. at 172: "Her stock had sold for less than $2 million. We expected a cost basis step-up of $2 million, so we were not anticipating any additional tax consequences from the sale of the stock. That's what I had been told by [Client-1's accountant] and by [the accountant for Client-1's mother] and by [Client-1] throughout the entire process of all of our previous discussions"; 188: "My point is I was relying on two credentialed accountants who communicated to me that the step-up was going to be a couple million dollars, as well as my client, and I was relying on that information"; 247: "At the end of the day, I'm helping [these accountants] save face after the fact with what's happened…."; *e.g.*, DEC Book at 1235-1237, 1331: "At no time prior to the three days before taxes were due in April 2018 did Client-1, [Client-1's accountant] or [Client-1's mother's accountant] ever advise [Respondent] that a step up to the original estimated values provided by [Client-1] and [Client-1's mother's accountant] would no longer apply to [Client-1] Indeed, it was not until months after the taxes were paid in April 2018 that [Client-1] even learned of and understood the low valuation [Client-1's mother's accountant] elected and attributed to her shares from the estate."

[8] According to Respondent's records, Respondent earned the following commissions from his work with Client-1:

- $17,100 with an ongoing commission of 1% of the Asset Under Management (AUM) per year from the annuity purchased in July 2016 for $600,000;
- $9,500 with an ongoing commission of 1% of AUM from the two annuities purchased in July 2017 for $500,000;
- $24,500 related to the IUL purchased in October 2017 for $500,000;
- $22,800 from investing $480,000 in the State DST in December 2017; and
- 1.3% AUM from money market/managed portfolio sold at various dates with a max amount of $590,000 in December 2017.

201.) Communications from Client-1 and her Statement of Claim against Respondent evidence that Client-1 was surprised that Respondent's fees were high. (*See* DEC Book at 877, where Client-1 wrote to Respondent: "quarterly statement dated October 2, 2017 to January 1, 2018 showed policy charges of $19,949.88. Could you please give me more details as to why those charges are so high? It also showed a surrender charge of $62,921.60. I'm trying to grasp what all of this means as I was stunned to see such high numbers"; *see also id.* at 1415, where Client-1 alleged unsuitable sales and high commissions from 2016 to 2018 in her Statement of Claim).

Respondent reflected on whether he made mistakes while working with Client-1: "The biggest mistake I made, I think, would be engaging with [Client-1] in the first place. I wish I could have known that she would be as fickle as she was. But by the time I learned that, we were too deep into the relationship. I mean, her behavior wasn't so severe that I would've fired her as a client, but it definitely isn't the typical type of client that I work with. So yeah, I wish I hadn't worked with her…"[9] (DEC Book at 1237.) Respondent testified that Respondent did not believe he did anything wrong. (*See, e.g.*, Tr. at 194: "I didn't do anything wrong in [Client-1]'s situation…. This just doesn't make any sense to me. None of this makes any sense.") Since he did not feel he did anything wrong, instead of changing his practice, Respondent stated that he will document better next time if he is going to rely on the verbal advice from another professional for something as important as cost basis. (Tr. at 328: "The fact that I don't have adequate documentation for my dictations about some of the pieces that [really] occurred bothers me. That will never be the case again. I will absolutely have better documentation going forward, and I will absolutely make sure that I know what the cost basis is on a situation like this.") Yet, the Commission found Respondent's documentation to be extraordinarily thorough.

J. Respondent Files a Second FINRA Arbitration to Expunge Client-1's Claims from Respondent's FINRA Central Registration Depository ("CRD") Record

On January 19, 2022, Respondent filed a Statement of Claim seeking expungement of the underlying claims in Client-1's FINRA arbitration. (*Id.* at 2438-2440.) On November 1, 2022, a second FINRA arbitration panel held a hearing on the matter, and on November 22, 2022, issued an award finding "[Client-1's] claim of unsuitability was false" and recommended Client-1's arbitration be expunged from Respondent's Form U-4 on his FINRA Central Registration Depository ("CRD") record ("Award-2").[10] (*Id.* at 2456, 2438-2525.) Respondent provided

---

(*See* Exhibit C at 8, reflecting primary-source information from DEC Book at 74, 80, 791.)

[9] The Commission was disappointed to discover at least one instance of Respondent improperly using the CFP® marks, ironically addressed to CFP Board in response to Enforcement Counsel's preliminary determination to take formal action against Respondent, where he signed off with "Respondent's first and last name CFP, MSFS". (DEC Book at 1378.)

[10] Specifically, the panel's Award stated, in relevant part:

> The annuity did not produce high commissions. Claimant testified he received a 2% upfront payment and an annual payment of about 1%, similar to what he would have made to manage Client-1's

evidence that his attorneys sent notice of the hearing to Client-1 via certified mail, but Client-1 was not present at the second FINRA arbitration hearing, nor did Client-1 submit any documents or otherwise participate in the matter. (*Id.* at 2445-2452.) Award-2 indicates the second FINRA hearing panel relied solely on Respondent's testimony and documents Respondent submitted and, in relevant part, focused only on the single issue of whether Client-1's claim that the annuities Respondent recommended to her were unsuitable. (*Id.* at 2456.) Award-2 indicates the second FINRA panel did not address certain additional issues before the Commission, such as Respondent's financial plan or his IUL and DST recommendations to Client-1, and the Commission therefore found that the probative value of the second FINRA arbitration panel's recommendation for expungement is strong but limited in scope. (*Id.*)

During the hearing in this matter, Respondent's counsel stated that a local court had recently entered a judgment confirming Award-2, that they had filed the judgment with FINRA, and they would submit Respondent's updated BrokerCheck record to the Commission to demonstrate Client-1's arbitration had indeed been expunged. (Tr. at 106-116; *see* DEC Book at 40-41 and *c.f.* Exhibit D at 13-15, where Client-1's arbitration no longer appears on Respondent's BrokerCheck Report; *see also* Tr. at 115, where the Hearing Panel Chair stated: "we're willing to accept that representation that it's been expunged as authentic.")

K. Respondent Submits an Inaccurate Ethics Declaration to CFP Board

On April 22, 2020, Respondent submitted an Ethics Declaration with his 2020 CFP® certification Renewal Application, as part of the requirements to renew his CFP Board certification. (DEC Book at 1267-1268.) In response to Question 6, which asked "[h]ave you ever been a defendant or respondent in a civil action including, but not limited to, a lawsuit, arbitration or mediation?" Respondent's Ethics Declaration indicated "No." but it should have indicated "Yes." because Client-1 had named Respondent in a FINRA arbitration—that Respondent had settled less than six months prior. (*Id.* at 1268; *see also id.* at 97.)

During the hearing, Respondent stated that he admitted and took responsibility for submitting an inaccurate Ethics Declaration to CFP Board,[11] but also blamed his staff and testified that his former

---

> money. Client-1's net worth and liquid assets were growing as she received distributions from the estate of over $5,000,000.00 and sold inherited stock. Recommending she invest roughly 20% of her net worth in an annuity that satisfied her stated retirement goals, while protecting 20% of her inheritance and providing a lifetime retirement annual income of $120,000.00 was not unsuitable or unreasonable. Client-1's claim of unsuitability was false…. The Panel also noted that although Claimant contributed to the settlement amount, expungement is still warranted as the settlement was paid by Claimant's errors and omissions insurance carrier to avoid the cost of litigation and Claimant was required to contribute the deductible.

(DEC Book at 2455-2456.)

[11] In April 2018, Respondent had previously submitted a different Ethics Declaration in connection with his 2018 CFP® certification Renewal Application, wherein he made disclosures unrelated to the instant matter, concerning issues dating from 2001, 2004, and 2016. (*Id.* at 1265-A1266.) Respondent asserted that accurately making required disclosures on prior Ethics Declarations should indicate that he did not intentionally make an inaccurate statement on his 2020 Ethics Declaration. (Tr. at 133, 214.) The Commission disagreed.

administrative assistant had completed his Ethics Declaration without his knowledge or authorization. (Tr. at 214-215; *see also id.* at 224: "It happened on my watch. I own that.") Respondent explained that his administrative staff would renew his insurance licenses and his CFP® certification, and his staff had access to his login credentials to upload any Continuing Education credits and make payments. (*Id.* at 363-365.) However, the Hearing Panel did not find Respondent credible in his testimony, and found that despite his attestations, Respondent gave his staff access to his login credentials to complete his Continuing Education requirements for him, then Respondent deliberately lied on his 2020 Ethics Declaration; the Commission agreed. (*Id.*) Respondent stated he no longer delegates renewal tasks to his staff, which the Hearing Panel did find credible, and the Commission agreed. (*Id.* at 215-216: "I found out [my Ethics Declaration was inaccurate] from the deposition, I made sure that my team understood never to touch anything related to CFP [Board] stuff ever again [and] I handle all of my renewals on everything now personally….")

III. DISCUSSION OF RESPONDENT'S MISCONDUCT

To impose a sanction on Respondent, the Commission must find grounds for sanction. The Commission found grounds for sanction under CFP Board's *Procedural Rules* because it determined that Respondent violated CFP Board's *Rules of Conduct*, as discussed below. The Commission made its decision based on the authority granted to it in Article 12 of the *Procedural Rules*.

First Ground for Sanction

CFP Board Enforcement Counsel's Complaint alleged that there are grounds to sanction Respondent for a violation of Rule 1.4 of CFP Board's *Rules of Conduct*, which provides that a certificant shall at all times place the interest of the client ahead of his or her own. When the certificant provides financial planning or material elements of financial planning, the certificant owes to the client the duty of care of a fiduciary as defined by CFP Board. CFP Board defines fiduciary as one who acts in the utmost good faith, in a manner he or she reasonably believes to be in the best interest of the client.

Respondent was a CFP® professional at times relevant to this alleged violation.

Respondent provided financial planning or material elements of financial planning to Client-1. Respondent failed to act in good faith and in a manner he reasonably believed to be in the best interest of Client-1 when he recommended that Client-1 invest in products he intended to be illiquid for the immediate 10-year period following their purchase and failing to plan for the potential tax consequences of Client-1's sale of assets she inherited from her mother's estate, including the Stock, despite having sufficient information to know he needed to do so.

Moreover, as a fiduciary providing financial planning or material elements of financial planning, Respondent had an obligation to comply with CFP Board's *Financial Planning Practice Standards ("Practice Standards")* to meet his fiduciary obligation under Rule 1.4. Respondent violated *Practice Standard 400-2* which states that the financial planning practitioner shall develop the recommendation(s) based on the selected alternative(s) and the current course of action in an effort to reasonably meet the client's goals, needs and priorities. Respondent failed to (1) fully investigate and set aside funds for Client-1's tax liability, and (2) appropriately determine Client-1's cash flow needs in relation to her immediate income needs. Therefore, Respondent failed to develop recommendations based on financial planning alternatives that reasonably met Client-1's goals, needs and priorities.

Thus, Respondent violated Rule 1.4 of the *Rules of Conduct*.

Second Ground for Sanction

CFP Board Enforcement Counsel's Complaint alleged that there are grounds to sanction Respondent for a violation of Rule 4.4 of CFP Board's *Rules of Conduct*, which provides that a certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients.

Respondent was a CFP® professional at times relevant to this alleged violation.

Respondent failed to exercise reasonable and prudent professional judgement when he recommended that Client-1 invest in products that he intended to be illiquid for the immediate 10-year period following their purchase and failing to plan for the potential tax consequences of Client-1's sale of assets she inherited from her mother's estate, including the Stock, which Respondent knew would occur in the immediate 10-year period.

Thus, Respondent violated Rule 4.4 of the *Rules of Conduct*.

Third Ground for Sanction

CFP Board Enforcement Counsel's Complaint alleged that there are grounds to sanction Respondent for a violation of Rule 6.2 of CFP Board's *Rules of Conduct*, which provides "[a] certificant, shall meet all CFP Board requirements, including continuing education requirements, to retain the right to use the CFP® marks."

Respondent was a CFP® professional at times relevant to this alleged violation.

Respondent was required to complete an Ethics Declaration as part of the requirements to renew his CFP® certification. On Respondent's Ethics Declaration dated April 22, 2020, he answered "No" to Question 6, which asked "[h]ave you ever been a defendant or respondent in a civil action including, but not limited to, a lawsuit, arbitration or mediation?" Respondent answered "No."

As of April 22, 2020, Client-1 had named Respondent a respondent in her arbitration filing. Therefore, he should have answered "Yes." By failing to correctly answer the question

Respondent made a misrepresentation to CFP Board while attempting to meet CFP Board's requirements to retain the right to use the CFP® marks.

Thus, Respondent violated Rule 6.2 of the *Rules of Conduct*.

IV. SANCTIONS IMPOSED

Pursuant to Article 12.3 of the *Procedural Rules*, the Commission must impose a sanction if it finds a violation that warrants a sanction. The Commission has discretion to impose any sanction under Article 11.1 of the *Procedural Rules.*

After careful consideration of the evidence in Respondent's matter, the Commission determined to **Suspend for Two Years and Six Months (Thirty (30) Months)** Respondent's right to use the CFP Board certification marks, **with Remedial Education or Work** in the form of three (3) hours of Continuing Education**.**

CFP Board issued its non-binding *Sanction Guidelines* to serve as guidance for determining an appropriate sanction. In arriving at its decision, the Commission considered the following conducts and guidance in the *Sanction Guidelines*:

- Conduct 5: Breach of Fiduciary Duty (Suspension for at least one year and one day).
- Conduct 14(a): Failure to Disclose to CFP Board (Private Censure)[12]

The Policy Notes to Conduct 5 state that the following should be considered aggravating and mitigating factors: "(1) What was the materiality of the breach? (2) Was it intentional or inadvertent? (3) What was the relative harm to the client?"

The Policy Notes to Conduct 14(a) state that the sanction imposed may be higher than Private Censure if it is determined that the Respondent's failure to disclose was intentional.

The Commission then reviewed the aggravating and mitigating factors to determine whether there were any materials factors, and, if so, what weight those factors may have in its decision.

In mitigation, the Commission cited that Respondent has no prior CFP Board disciplinary history.

In aggravation, the Commission cited that:

1. Respondent's breach was material—he appeared to lack awareness of, disclosure of, and management of his conflicts of interest when he invested Client-1's assets in illiquid products that generated commissions without fully investigating and setting aside funds for Client-1's tax liability and appropriately determining Client-1's cash flow needs in relation to her immediate income needs.

[12] The Commission also took into consideration Conduct 7: Conflict of Interest (Public Censure) and Conduct 11: Diligence (Private Censure).

IN THE MATTER OF TIMOTHY D. CLAIRMONT
CFP Board Case No. 2019-53546
December 12, 2023

2. Respondent's breach was material—he appeared to lack any awareness or concern for competently and diligently applying the *Practice Standards*.
3. Respondent acted at least recklessly—in multiple instances he had sufficient information to know that he needed to investigate the cost basis and plan for the taxation impacts from the sale of Stock, but he did not do so, despite have multiple opportunities.
4. Respondent's actions caused great relative financial harm and distress to Client-1.
5. Respondent did not appear to accept responsibility[13] or demonstrate remorse with respect to Client-1—he even blamed another financial advisor for the arbitration that Client-1 filed against him.
6. As stated above, Respondent's misstatement on his 2020 Ethics Declaration was intentional.
7. Respondent coaches and teaches other financial advisors to follow his "C" financial planning process, which, combined with his apparent lack of remorse, concerned the Commission about the risk of other past or future misconduct.

The Commission then consulted certain *Case Histories* (referred to as "ACHs" or "CHs") to determine if any *Case Histories* contained precedent that warranted a deviation from the *Sanction Guidelines*. Although the Commission did not find a particular *Case History* directly "on point," it reviewed a variety of relevant *Case Histories* and cited ACH 30337, ACH 30628, ACH 20996, ACH 21547, ACH 25732, and ACH 22866.

In ACH 30337, the Commission issued to a CFP® professional a suspension for one year. Similar to the instant matter, the CFP® professional in ACH 30337 violated CFP Board's *Standards of Professional Conduct* ("*Standards*") when he, among other things: (1) failed to act in the interest of the client and failed to exercise reasonable and prudent professional judgment in providing professional services, and (2) made misstatements to CFP Board on two Ethics Declaration Forms by failing to disclose a related FINRA arbitration settlement The investments at issue totaled approximately 55% of the client's net worth, were overconcentrated in alternative investments that overexposed the client's portfolio to the risks of the real estate market and made it difficult for the client to redeem principal to meet her income needs—the client was a 44-year old widow with two children who did not work and who had received approximately $1 million after her husband was killed by a drunk driver. The CFP® professional failed his client when he: (1) increased her concentration in illiquid assets over several years, (2) failed to discuss options regarding her lifestyle and the choices she had after her husband died, (3) made unsuitable recommendations for someone who had two young children and needed a combination of stable income and growth of assets, and (4) never had a clear and concise conversation regarding the client's spending as it became clear she was spending more than the income produced by her portfolio.

The facts and findings in the instant matter are similar to those in ACH 30337. The Commission noted that, like the client in ACH 30337, Client-1 was an unsophisticated investor, received a life-changing inheritance, and needed a stream of income to live on for the long-term. Like the CFP® professional in ACH 30337, Respondent also concentrated Client-1's assets in illiquid investments

[13] Although Respondent stated he was responsible for his misstatement on his Ethics Declaration, he also blamed his staff.

without appropriately determining her cash flow needs in relation to her immediate income needs and failed to advise on her spending habits and propose a budget to better spend within her means. As pointed out by Respondent's counsel, however, unlike this case, the Commission in ACH 30337 found the CFP® professional had recommended unsuitable investments, which is not alleged in this case, and the Commission in ACH 30337 found more grounds for sanction than the instant matter.

In ACH 30628, the Commission issued to a CFP® professional a two-year suspension. The Commission in ACH 30628 found the CFP® professional had repeatedly failed to act in the interest of his client over a 12-year period when he: (1) failed to provide the client with the financial planning services outlined in the Financial Planning Agreement; (2) failed to schedule annual portfolio reviews with the client to consider whether her current holdings matched her current priorities; and (3) failed to update the client's portfolio based upon her changed circumstances after she lost her job, became ill, and grew increasingly closer to retirement. The client filed a grievance with CFP Board wherein she alleged that the CFP® professional had made negligent misrepresentations, breached his fiduciary duties, made unsuitable recommendations, failed to provide the client with financial planning services, ignored the client's account, and collected fees for services that were never provided to the client. The client told the CFP® professional at the outset of the relationship that she was concerned about and wanted to explore long-term care. However, the CFP® professional did not address this until approximately 10 years into the financial planning relationship when she was ill, and it was too late for her to qualify for long-term care insurance coverage. Moreover, the CFP® professional did not address the client's need to complete estate planning documents or other areas of financial planning. Although the CFP® professional had discretion with respect to the client's account when he determined to sell the client's stock portfolio, the CFP® professional did not inform the client of what he was doing, nor did he adequately analyze or inform the client of the approximately $6,000 tax liability that would result. Although the conduct of the CFP® professional in ACH 30628 appears more egregious because it involved more grounds for sanction, it also involved a CFP® professional who failed to adequately plan for the tax consequences from the sale of stocks, where Respondent invested the proceeds in annuities without waiting for tax guidance from the accountants involved.

The Commission also considered ACH 20096, ACH 25732, and ACH 22866, but noted the age of the decisions. In ACH 20996, the Commission issued to a CFP® professional a suspension for two years. The CFP® professional violated CFP Board's *Standards* when he, among other things: (1) represented that an annuity maximization concept was appropriate and reasonably designed to meet a client's needs and goals; (2) failed to disclose the tax consequences of the sale of mutual funds; (3) failed to fully investigate the client's heir's tax liability by considering the state and federal inheritance tax exemptions and the cost basis of each individual annuity; and (3) failed to appropriately determine the client's cash flow needs in relation to her potential long-term care needs.[14] The CFP® professional left the client with approximately $120,000 of assets to meet unforeseen needs such as nursing home care, which was comparably low for the area, and the

[14] The Commission in ACH 20996 also found the CFP® professional (1) failed to disclose to Client that he received a commission due to his sale of a universal life insurance policy to her; (2) misrepresented Client's assets to obtain the universal life insurance policy; and (3) recommended a transaction that was inappropriate for Client but allowed Respondent to gain financially.

CFP® professional unreasonably relied on the client's assertion that she would not need care because her daughter would provide it. The Commission cited as aggravating factors that the CFP® professional did not show any remorse for his actions and did not understand the universal life insurance policy or the risks associated with the policy. Likewise, the Commission in the instant matter determined Respondent failed to fully investigate and therefore did not understand or care to appropriately account for the cost-basis of the Stocks, which left Client-1 with a surprisingly large tax bill in contravention of her stated goals and objectives, which severely depleted her liquid assets and left her with approximately $80,000 to survive for the next eight months, then Respondent did not show any remorse for his actions.

In ACH 25732, the Commission issued to a CFP® professional a suspension for three years pursuant to a Settlement Agreement, wherein the CFP® professional agreed to findings that he violated CFP Board's *Standards* when he: (1) failed to present a client with a comprehensive financial plan designed to achieve the client's goals and objectives; (2) recommended an unsuitable risky asset allocation for the client; and (3) advised the client to make a loan to Respondent's acquaintance. The financial plan the CFP® professional presented to the client was not specifically tailored for the client, contained general information on transfer taxes, a Net Worth Statement, Estate Planning Flowchart, and a Summary of Suggested Planning Options that the client had already received. Furthermore, under the CFP® professional's guidance the client purchased a portfolio not aligned with the client's original stated goal to preserve his assets for his family, not growth, and the CFP® professional advised the client to make a loan to an acquaintance without addressing it in a financial plan, then the acquaintance defaulted on the loan. The Commission cited in aggravation that the CFP® professional did not grasp the importance of the financial planning process or ignored it. Similarly, the Commission in the instant matter found that Respondent failed to devise a comprehensive financial plan for Client-1 and took her on a course of action that was not aligned with her original stated goals and objectives, some of which were to minimize tax costs. Respondent also appeared to lack awareness of, disclosure of, and management of his conflicts of interest and appeared to lack any awareness or concern for competently and diligently applying the *Practice Standards*.

In ACH 22866, after appeal, the Appeals Commission affirmed the Commission's decision to issue a CFP® professional a suspension for one year and one day. The CFP® professional's clients were an elderly couple who had won $4 million dollars in a state lottery and sought the CFP® professional's advice on how to invest their lottery winnings. The CFP® professional violated CFP Board's *Standards* when he: (1) failed to disclose in the financial planning agreement that he had a material conflict of interest because his employer received financial bonuses for selling products from "preferred suppliers;" (2) failed to provide the clients with sufficient alternatives to his investment recommendations; (3) implemented his investment recommendations prior to presenting the clients with the initial financial plan; and (4) placed a majority of the clients' assets in deferred annuities, which did not provide a regular income stream to meet the clients' projected expenses and did not meet their goal of minimizing estate taxes. In addition, the CFP® professional did not properly counsel his clients regarding their spending and the negative effect caused by holding illiquid assets. Similar to ACH 22866, the Commission found that Respondent concentrated Client-1's assets in illiquid investments without adequately planning for the tax consequences, which did not meet Client-1's liquidity needs and did not meet Client-1's goal of minimizing taxes; that Respondent failed to provide Client-1 with sufficient alternatives to his investment recommendations; and that Respondent did not properly counsel Client-1 regarding her spending with respect to her holding illiquid assets.

Respondent's counsel proposed that ACH 21547 is "almost identical" to the instant matter and the Commission in ACH 21547 issued to a CFP® professional a Private Censure. In ACH 21547, the CFP® professional violated CFP Board's *Standards* when she: (1) invested the majority of a client's investment funds in a long-term Retirement Advisor Variable Annuity when one of the client's goals was liquidity; (2) did not inform the client of a federal tax benefit that would allow for liquidity; (3) did not disclose information about certain fees, charges, or commissions; and (4) did not disclose to the client that the CFP® professional was only authorized to sell long-term care insurance policies for one company. The client had listed four investment goals: (1) to have enough income to live out her life; (2) to minimize taxes her heirs would pay; (3) to purchase a condominium at a specific beach for personal and rental use; and (4) to have enough money to travel. The CFP® professional placed the majority of the client's assets in an IRA where the assets would be subject to taxation if removed, and therefore advised against the condominium because of the tax implications involved with the client taking a large lump sum or a payout from the IRA in excess of the allowed distribution. The client alleged that she was not involved in selecting the investments, she was told to sign a variable annuity application with the disclosures and agreement section already checked, she was not given any copies, and no other policies were offered to her for comparison because the CFP® professional's firm had an exclusive servicing agreement with a provider that only allowed the CFP® professional to present long-term care policies from the provider. The Commission found that by investing 71% of the client's investment funds in a 10-year Retirement Advisor Variable Annuity, the CFP® professional ignored the client's goals of liquidity for the purpose of buying a condominium and for travel. Moreover, the CFP® professional did not inform the client of an opportunity to use net unrealized appreciation, as allowed in the United States Tax Code, to increase her liquidity, which, the Commission determined, the CFP® professional should have known. The Commission noted the age of ACH 21547 and distinguished it from the instant matter because the CFP® professional in ACH 21547 was restricted to offering long-term care policies from one exclusive provider whereas Respondent had no such limitation.

The Commission weighed heavily Respondent's lack of remorse and personal responsibility for his actions with respect to Client-1, as well as his 2020 Ethics questionnaire. His decision to concentrate Client-1's assets in illiquid investments, his failure to address Client-1's need for liquidity in the first ten years of her plan, and the related tax consequences from the sale of her stock, were significant breaches of his fiduciary duty to the client. While Respondent's plan to allocate assets into various life stage buckets in theory appeared logical, he planned in reverse, and failed to consider the bucket for the "first ten years." As an experienced financial planner who knew or should have known better, Respondent should not have invested the proceeds from the sale of Stock when the tax calculations were merely months away. A decision to plot an investment strategy for a lifetime could certainly have waited a few months. Instead, Respondent hastily recommended that Client-1 invest in illiquid investments almost immediately after the liquidity event without waiting for tax guidance from the relevant accountants. The Commission found that Respondent's pecuniary interests impacted his recommendations to Client-1, and he did not appear contrite nor accept responsibility for it.

The Commission finds that the baseline sanction recommendation in Conduct 5 of a suspension for one year and one day for the breach of fiduciary duty would not be an adequate time frame for Respondent to fully contemplate and understand the requirements of CFP Board's *Code and Standards*. The Commission also considered that the breach was material, that Respondent acted at least recklessly (and certainly not inadvertently), and that the Respondent was significantly harmed. Furthermore, the Commission noted the sanctions recommended by the other *Sanction Guidelines* it considered for the other grounds for sanction, which have a cumulative effect here. The Commission believes that, during this suspension, Respondent shall consider that his practice and professional norms require a fundamental shift to, among other things, deliver financial plans to clients in accordance with the *Practice Standards*, appropriately implement and monitor such planning recommendations, and self-determine if such newly adopted practices comport with CFP Board's *Practice Standards* and *Code and Standards*.

Therefore, in light of the substantial evidence supporting the Commission's factual findings and the violations it found, and the weight of the aggravating and mitigating factors with respect to the *Sanction Guidelines* and the CHs it reviewed, the Commission issues to Respondent an **Order of Suspension for Two Years and Six Months (Thirty (30) Months) with Remedial Education or Work** in the form of three (3) additional hours of Continuing Education in the principal knowledge topic of "General Principals of Financial Planning."[15]

In addition, if Respondent seeks reinstatement, he should present to the Commission proof that he has completely rebuilt his financial planning delivery process from conversational clock sketches to coherent, concise, and clearly written financial planning documents that accurately memorialize his engagements, recommendations, and execution of his financial plans. Proof should include a sufficient body of portfolio examples to demonstrate that the quality of his deliverables to clients meet at least the basic requirements of the *Practice Standards*. The Commission views this as a critical and fundamental requirement for reinstatement.

Ordered by:

The Disciplinary and Ethics Commission
CFP Board

[15] As noted above, the Commission found evidence that Respondent misused the CFP® marks. Respondent should review CFP Board's Guide to Use of CFP Board Certification Marks, available on CFP Board's website at *https://www.cfp.net/career-and-growth/market-yourself/how-to-use-the-cfp-marks*. (Last accessed December 12, 2023.)