

THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF

JOHN M. DERBIN, JR., CFP[®],

Respondent.

CFP Board Case No. 2021-63059

February 7, 2025

ORDER

I. PROCEDURAL HISTORY

Certified Financial Planner Board of Standards, Inc. (“CFP Board”) granted Respondent the right to use the CFP[®], CERTIFIED FINANCIAL PLANNER[®],  and  certification marks (“CFP Board marks”) on February 3, 2011, and he has been certified since that date. (DEC Book at 12.)¹

On October 23, 2023, CFP Board Enforcement Counsel filed a Complaint with CFP Board’s Disciplinary and Ethics Commission (“Commission” or “DEC”) alleging that there are grounds to sanction Respondent for violations of Standards A.8.a. and D.2.a. of the *Code of Ethics and Standards of Conduct* (“Code and Standards”). (*Id.* at 5-9.) The Complaint cites Respondent’s suspension by his firm and a May 24, 2022 Letter of Acceptance, Waiver and Consent (“AWC”) with the Financial Industry Regulatory Authority, Inc. (“FINRA”). (*Id.* at 6-7.)

Respondent answered the Complaint in May 2024, admitting all material allegations. (*Id.* at 42-44.) On October 16, 2024, a Hearing Panel formed under Article 10.6 of the *Procedural Rules* convened by video conference to hear testimony, and to review and consider documents, information, and argument relevant to the Complaint. (Transcript of Hearing of John Derbin, CFP[®], October 16, 2024 (“Tr.”) at 1.) Enforcement Counsel appeared for CFP Board; DEC Counsel appeared for the Commission and for the Hearing Panel; Respondent appeared on his own behalf.

II. FINDINGS OF FACT

A. Background

Respondent has passed the following FINRA examinations: (a) Series 7 – General Securities Representative Examination (1999); (b) Series 31 – Futures Managed Funds Examination (1999); (c) SIE – Securities Industry Essentials Examination (2018); and (d) Series 66 Uniformed Law Examination (2011). (DEC Book at 22.) Respondent maintains insurance licenses with multiple states, including Michigan. (*Id.* at 38-39.) Respondent has been associated with his firm as an independent advisor since November 2018. (*Id.* at 24.)

¹ The DEC Book and any other exhibits to this Order will not be published under Article 17.7 of the *Procedural Rules*.

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B. Respondent Identifies Himself as His Client

On August 27, 2021, Respondent attempted a three-way call with his client and her retirement plan provider. (DEC Book. at 82.) Respondent's client was a public-school teacher who wanted to transfer her retirement plan to a new provider. The purpose of the call was to determine the type of retirement account she had. (*Id.*) Although Respondent had attempted to hold the three-way call, his client was not present when Respondent spoke with the plan provider. (*Id.*) During the call, Respondent identified himself as his client and sought to verify account credentials by providing the plan provider his client's date of birth, social security number, birth name and account number. (*Id.*) The plan provider did not share with Respondent the information he was seeking and instead requested a call back number, which Respondent did not provide. The plan provider terminated the call and subsequently alerted Respondent's firm. (*Id.* at 55.)

C. Respondent's Suspension by his Firm

Respondent's firm conducted an investigation into his call with the plan provider. During the investigation, Respondent misrepresented to his firm that he believed the client had been on the line when the call to the plan provider was initiated. (*Id.* at 82, 57.) On September 16, 2021, Respondent's firm concluded that he knowingly and intentionally impersonated the client in the phone call to the plan provider. (*Id.* at 58.)

Respondent's firm imposed the following discipline on him:

- (a) a suspension for a period of no less [sic] than 30 days, with all commissions during that period forfeited;
- (b) a fine in the amount of \$5,000;
- (c) mandatory in-person conferences with members of the compliance and operations departments; and
- (d) completion of continuing education courses.

(*Id.*) Respondent's firm reported the suspension and fine to FINRA. (*Id.* at 59.)

D. Respondent's FINRA AWC

On May 24, 2022, Respondent entered into an AWC with FINRA. (*Id.* at A72.) Respondent accepted and consented to findings, without admitting or denying them, that:

[Respondent's] customer, a public-school teacher, wanted to transfer her retirement plan from one fund provider to another. On August 27, 2021, [Respondent] attempted a three-way phone call with the existing fund provider, the customer and

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himself for the sole purpose of determining the type of retirement account the customer had. The customer, however, did not answer [Respondent's] attempted three-way call. On the ensuing call between [Respondent] and the fund provider, [Respondent] identified himself as the customer. He provided the fund provider with the customer's date of birth, social security number, maiden name, and account number to convince the fund provider that he was the customer. He then asked the fund provider to tell him what type of retirement plan the customer owned. The fund provider did not provide this information, and instead requested a call back number from [Respondent], which [Respondent] declined to provide. The fund provider refused to provide [Respondent] with the information and alerted [Respondent's firm]. When [Respondent's firm] confronted [Respondent], [he] twice falsely stated that he believed the customer was on the line when the call was made to the fund provider.

(*Id.* at 82.)

Respondent consented to FINRA's findings that by impersonating a client, he violated FINRA Rule 2010. (*Id.*) He consented to the imposition of a ten business-day suspension from associating with any FINRA member in all capacities, and a \$2,500 fine. (*Id.*)

E. Respondent's Testimony

In both Enforcement Counsel's investigation and the hearing in this matter, Respondent admitted to his misconduct and was remorseful for his lapse in judgment in impersonating his client. (Tr. at 30, 44-45; *see also* DEC Book at 113-114.) Respondent testified that his error in judgment happened "in the heat of the moment" (Tr. at 30; *see also* DEC Book at 105-106), and the Commission saw no evidence that it was premeditated.

Respondent testified that he had known his client and her husband for approximately seven years at the time of his misconduct. (Tr. at 31.) The husband and his chiropractic business became Respondent's clients in approximately 2014, and he began advising the couple jointly in 2019. (*Id.* at 33.)

Respondent testified that the couple had first expressed the desire to transfer certain of the wife's retirement accounts in 2019 but that the transfer was delayed due to logistical challenges and the onset of the COVID-19 pandemic. (DEC Book at 97-98.) Respondent testified that they finally submitted the transfer paperwork in August of 2021. (DEC Book at 98.) Respondent received notice that the paperwork was missing required information about the type of plan that was to be transferred. (*Id.*) Respondent tried to obtain this information from his client and her husband, but they had no records available that reflected the plan type. (*Id.*) So Respondent set about obtaining the information through a three-way call with his client and the plan provider. (*Id.*) After Respondent initiated the call, his client did not respond to the plan provider's questions:

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They were trying to verify that she was on the phone, that they were speaking with her and at that moment, it was in the heat of everything, I did say “Yes, this is her.” And that’s when things got out of control.

(DEC Book at 101.)

Q: Okay why did you go ahead and make the statement to [the fund provider] that you were [your client] as opposed to waiting to call back later with her?

A: In all honesty, I was in the car driving at the time and was trying to help the client just get this done, and I just had a lapse. I – it was just one of those things where, in the heat of it, it just happened, and I really don’t have a good explanation because it’s not something that has ever happened before.

* * *

I’ve been dealing with the client for, you know -- on this specific issue for over a year, and I knew they were frustrated that it wasn’t getting done, and I just – it was a -- to me, it was a benign question. I wasn’t trying to affect her account or do any sort of transaction. It was just a piece of information that she specifically told me to get, and I was just trying to do that and said – in the heat of it all, I just didn’t think. I just went with it.

(DEC Book at 106-107.)

Though his client and her husband are aware of Respondent’s misconduct, they both remain his clients; Respondent continues to manage the retirement plan he set up for the husband’s medical practice. (Tr. at 31.) Respondent testified that in 24 years in the industry, he has not had a customer complaint or any other violations (*id.* at 44), testimony corroborated by his BrokerCheck report and IAPD. (DEC Book at 17-49.)

III. DISCUSSION

To impose a sanction on Respondent, the Commission must find grounds for a sanction. Under Article 12 of the *Procedural Rules*, the Commission found grounds for sanction based on Respondent’s violations of CFP Board’s *Code and Standards*.

First Grounds for Sanction

Standard A.8.a. of the *Code and Standards* states that a CFP® professional must comply with the laws, rules, and regulations governing Professional Services.

Respondent was a CFP® professional at all times relevant to these first grounds for sanction.

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Article 7.2 of the *Procedural Rules* provides that a record from a (a) federal, state, local, or foreign governmental agency, (b) self-regulatory organization, or (c) other regulatory authority imposing discipline upon Respondent (“Professional Discipline”) is conclusive proof of the existence of such Professional Discipline and the facts and violations that serve as the basis for such Professional Discipline. Professional Discipline includes a censure, injunction, undertaking, order to cease and desist, fine, suspension, bar, or revocation, and the surrender of a professional license or certification in response to a regulatory action or regulatory investigation. A record of Professional Discipline includes a settlement agreement, order, consent order, and AWC.

FINRA is an industry self-regulatory authority. The AWC is a record of Professional Discipline by FINRA, and Respondent is the subject of that record. The AWC conclusively establishes the existence of such Professional Discipline for purposes of this disciplinary proceeding and is conclusive proof of the facts and violations that serve as the basis for such Professional Discipline.

FINRA found that Respondent’s conduct violated FINRA Rule 2010, which requires an associated person, in the conduct of his or her business, to “observe high standards of commercial honor and just and equitable principles of trade.”

FINRA Rule 2010 is a rule governing Professional Services, and the AWC is conclusive proof that Respondent failed to comply with FINRA Rule 2010.

Therefore, there are grounds to sanction Respondent for a violation of Standard A.8.a. of the *Code and Standards*.

Second Grounds for Sanction

Standard D.2.a. of the *Code and Standards* states that a CFP® professional will be subject to discipline by CFP Board for violating policies and procedures of the CFP® professional’s firm that do not conflict with the *Code and Standards*.

Respondent was a CFP® professional at all times relevant to these second grounds for sanction.

As a result of his impersonation of a client, Respondent’s employer suspended him for 30 days and fined him \$5000 for violating the firm’s policies.

Therefore, there are grounds to sanction Respondent for a violation of Standard D.2.a. of the *Code and Standards*.

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IV. THE COMMISSION'S DECISION

Under Article 12.3 of CFP Board's *Procedural Rules*, the Commission's final order must impose a sanction if the Commission finds a violation that warrants a sanction. The Commission has discretion to order a sanction among those applicable sanctions set forth in Article 11.1.

CFP Board has issued non-binding *Sanction Guidelines* intended to serve as guidance for determining appropriate sanctions. The Commission considered the following conducts (and recommended sanctions) from the *Sanction Guidelines*:

Conduct 12 Employer Policies Violation (Private Censure)

Conduct 31 Securities Law Violation (Public Censure)

Conduct 33 Professional Discipline involving suspension or similar for up to one calendar month (30 days) (Public Censure)

The Policy Notes to Conduct 31 provide that knowing violations of the securities laws should be treated more seriously than negligent acts. While Respondent knowingly engaged in misconduct in the "heat of the moment," it was not premeditated.

Enforcement Counsel argued for aggregating the two suspensions Respondent received—from FINRA and Respondent's firm—and applying Conduct 34 (Professional Discipline . . . involving a suspension . . . for *more* than one calendar month (30 days)). Enforcement Counsel theorized that FINRA had reduced the length of its suspension to account for the firm's suspension. The Commission finds this theory too speculative to support a suspension of Respondent under Conduct 34, and that the Public Censure called for by Conduct 33 is supported by the 10-day suspension FINRA imposed on Respondent.

The Commission has also considered whether there are any material aggravating or mitigating factors in this case, and what weight those factors may have in its decision.

The Commission found the following factors to be mitigating:

1. There is no evidence of client harm.
2. Respondent has no prior discipline in 24 years in the financial services industry.
3. The Respondent sought information that would benefit the client, and when finally obtained allowed Respondent and his clients to make a prudent decision about the account transfer.
4. Respondent took responsibility and expressed remorse for his misconduct.

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The Commission found the following factors to be aggravating:

1. Respondent did not attempt to remedy or rectify the misconduct prior to detection (Principal Consideration 4); and
2. Respondent attempted to conceal his misconduct when initially confronted by his firm (Principal Consideration 10).

The Commission has also considered various Case Histories,² including ones cited by Enforcement Counsel, to determine if any contain persuasive non-binding precedent.

The Commission did not find persuasive the Case Histories in which a CFP® professional had received a Private Censure for comparable conduct; each was more than a decade old. Neither did the Commission find persuasive the Case Histories where a suspension was imposed, as each involved aggravating factors—for example, termination, client harm, forgery—that are not present here.

In consideration of the violations found, the aggravating and mitigating factors, and the Case Histories, the Commission issues this Order imposing on Respondent a **Public Censure**.

Ordered by:

Disciplinary and Ethics Commission
CFP Board

² Case Histories (referred to as “ACHs” or “CHs”) are available on CFP Board’s website at <https://www.cfp.net/ethics/enforcement/case-history>