THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF

GORDON SCOTT WALLACE, CFP®

Respondent.

CFP Board Case No. 2022-63548

December 20, 2024

ORDER

Certified Financial Planner Board of Standards, Inc. ("CFP Board") granted Respondent the CFP Board financial planning certification and right to use the CFP Board certification marks**,** including the CERTIFIED FINANCIAL PLANNER®,  ,  , and CFP® certification marks ("CFP® marks") on September 16, 2002, and he has been certified since that date. (DEC Book at 12.)[1]

I. PROCEDURAL BACKGROUND

On March 8, 2022, Respondent self-disclosed to CFP Board a pending arbitration with his former employer, a large, national financial services firm, related to client information Respondent possessed after transitioning to a new firm. (*Id.* at 33.) On February 27, 2023, Respondent reported to CFP Board that the arbitration was resolved by a confidential settlement and that he had received an inquiry from the Financial Industry Regulatory Authority, Inc. ("FINRA"). (*Id.* at 39-40.)

On February 2, 2024, CFP Board's Enforcement Counsel filed a Complaint with CFP Board's Disciplinary and Ethics Commission ("Commission") under Article 3.1 of CFP Board's *Procedural Rules*, alleging Respondent's violations of Standard A.8.a, Standard A.9.c., and Standard D.2.a. of CFP Board's *Code of Ethics and Standards of Conduct* ("*Code and Standards*"). (*Id*. at 3-9.)

On April 3, 2024, Respondent filed an Answer to the Complaint, in which he either admits or offers no denial of the factual allegations and alleged grounds for sanction. (*Id.* at 49-53.)

On June 26, 2024, a Hearing Panel constituted under Article 10.6 of the *Procedural Rules* convened at CFP Board Headquarters in Washington, D.C. to review and consider the Complaint, the Answer, and other relevant documents and information. (Transcript of Hearing of Gordon S. Wallace, CFP®, June 26, 2024 ("Tr.") at 1.) Enforcement Counsel appeared in-person for CFP Board; DEC Counsel appeared in-person for the Commission and for the Hearing Panel; and Respondent appeared in-person with his counsel.

The Commission has considered the Hearing Panel's recommendation and issues this final order.

[1] The DEC Book and any other exhibits to this Order will not be published under Article 17.7 of CFP Board's *Procedural Rules* (see www.cfp.net/ethics/enforcement/procedural-rules).

II. FINDINGS OF FACT

A. Background

Respondent has passed the following FINRA examinations: (a) Series 63 - Uniform Securities Agent State Law Examination (1988); (b) Series 6 – Investment Company Products/Variable Contracts Representative Examination (1988); (c) Series 7 – General Securities Representative Examination (1989); (d) Uniform Investment Adviser Law Examination (1992); and (e) SIE – Securities Industry Essentials Examination (2018). (DEC Book at 20.)

Respondent has no history of customer complaints or professional discipline except as described in this order. (*Id.* at 14-32; Tr. at 62-64.)

Respondent was associated with his former firm for approximately 32 years. (*Id.* at 22.) On June 3, 2021, Respondent and four junior team members moved to his current firm where he is associated as a registered representative. (*Id.* at 16.)

On July 1, 2021, Respondent's former firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) stating that Respondent resigned while under "[i]nternal review to determine if [Respondent] utilized a personal electronic device to photograph confidential client information." (*Id.* at 41.)

Respondent later learned that one of his former team members who had stayed at his former firm informed representatives that Respondent and his team members had photographed information. (Tr. at 52-54.)

B. Respondent's 2023 AWC with FINRA

On March 30, 2023, Respondent agreed to a Letter of Acceptance, Waiver, and Consent ("AWC") with FINRA. (DEC Book at 41-45.) In the AWC, Respondent accepted and consented to factual findings and sanctions including the following:

- In May 2021, in anticipation of joining another FINRA member firm, Respondent improperly removed his customers' nonpublic personal information from the firm, without the firm's or the customers' consent.
- Specifically, between May 29 and May 31, 2021, while associated with the firm, Respondent took photographs of account information for approximately 35 customers contained within the firm's electronic systems, including customer names, dates of birth, customer account numbers, and social security numbers.
- In addition, during the same period, Respondent directed junior members of his brokerage team to also photograph account information contained within the firm's systems, including nonpublic personal information of at least 100 customers.
- Customers' nonpublic information is protected under Regulation S-P.

- In addition, Respondent's employment agreement required him to preserve the confidentiality of nonpublic customer information and to refrain from taking and disclosing such information upon termination of his employment.[2]
- Respondent resigned from the firm on June 3, 2021, and Respondent and members of his brokerage team improperly retained the customers' nonpublic personal information. That information was secured by the firm through which Respondent had become registered, and the firm returned the customers' nonpublic personal information to the firm prior to its use.

(*Id.* at 42.)

In the AWC, Respondent agrees that he violated FINRA Rule 2010 by removing and retaining customers' nonpublic information protected under Regulation S-P and failing to preserve and to refrain from taking and disclosing such information in accordance with Respondent's employment agreement with the firm. (*Id.*) FINRA Rule 2010 requires registered persons, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade. (*Id.*)

Respondent's sanctions under the AWC included a $5,000 fine and a suspension for 10 business days from associating with any FINRA member in all capacities. (*Id.* at 39.)

Respondent's former firm named him and others in an arbitration that the parties resolved in a confidential settlement agreement. (*Id.* at 33, 39, 49.)

On July 12, 2023, the Delaware Insurance Department issued a Cease and Desist Order sanctioning Respondent with a $500 fine for failing to report the FINRA action within 30 days in violation of Title 18 Del. C. Subsection 1719, and ordering Respondent to cease and desist from further engaging in violations of Title 18 of the Delaware Code. (*Id.* at 26.)

C. Respondent's Testimony and Credibility

Respondent admits to photographing non-public confidential client information and directing his junior team members to do the same. (Tr. at 84-85[3].) This included information that was not

[2] In his Answer to the Complaint, Respondent neither admits nor denies this allegation, noting that his employment agreement is not a part of the record in this matter. (DEC Book at 49.) However, in the AWC, Respondent agrees to FINRA's finding, and it contributing to his violation of Rule 2010. (*Id.* at 42.)

[3] Asked and answered during the hearing:

[PANEL CHAIR]:	Did you photograph non-public personal client information contained within the Firm's Electronic system?
MR. WALLACE:	Yes
[PANEL CHAIR]:	Did you have the firm or the customer's consent?
MR. WALLACE:	No.
[PANEL CHAIR]:	Did you direct junior members of your brokerage firm to photograph account information?

already collected or known to Respondent and information he could not access after resigning. (*Id.* at 79.) The images of confidential non-public customer information were stored on Respondent's iPad, password protected, and were not accessed by him, his team, his new firm, nor other individual, and when his new firm discovered that Respondent had improperly retained the information, the iPad was wiped clean and sent to the prior firm. (*Id.* at 69-70.) Respondent stated: "When I took the pictures I **intended** to take [them to the new firm] and **absolutely use the information**." (*Id.* at 70.) (Emphasis added.)

Respondent testified he would have printed hardcopies of the information instead of photographing it, but he had no access to the office printer during the pandemic, and that he photographed the information instead of emailing it, because the result would be the same—emailing the information required capturing images from the firm's laptops, pasting the images into a PowerPoint or similar program, attaching the files containing those images to an email using firm email accounts, then printing those images contained in the files using the office printer. (*Id.* at 65-69.) The Commission did not find this testimony credible and notes that emailing or printing the information was more likely to be detected by his firm.

Respondent admits that in 1989 he signed an employment agreement with his prior firm that limits the client information he could possess, but he said he had forgotten about the agreement by 2021. (*Id.* at 39; Tr. at 44-45, 71.) For this reason, Respondent asserts, he did not seek legal counsel or consult with compliance personnel during his transition; he acknowledges that his firm would have produced a copy had he asked for it. (*Id.* at 79.) Respondent states that he possessed some client information from his former firm in hardcopy during the course of working from home during the COVID-19 pandemic but admitted "other information I compiled in anticipation of my move to [the new firm.]" (DEC Book at 33.)

Respondent testified that he took non-public customer information that related only to clients he had serviced, and that he did so to facilitate his team's transition of those clients to his new firm. (Tr. at 87.) Respondent testified he did not intend to collect any confidential information relating to the firm's *other* customers and that he did not solicit any other customers of the firm. (*Id.* at 60.) No client has filed a complaint against Respondent. (*Id.* at 63.) Asked how many of his prior firm's customers followed Respondent to his new firm, Respondent states his team of five serviced approximately 400 clients at his prior firm and his team of four now manages under 300 clients. (*Id.* at 78.)

The Commission did not find compelling Respondent's suggestion that his former firm had ratified his conduct. Respondent pointed to text messages from his arbitration with his firm purporting to

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MR. WALLACE:	Yes.
[PANEL CHAIR]:	And did you retain the customers' non-public personal information after resignation from the firm on June 3rd, 2021?
MR. WALLACE:	I retained it for an hour or two.
[PANEL CHAIR]:	But you did retain it?
MR. WALLACE:	Yes, yes.

(Tr. at 84-85.)

show that representatives of the firm knew he possessed certain information but did not confront him or demand he return it. (*Id.* at 50-51, 53-55.) Respondent also testified that he believed employees customarily retained customer information when leaving the firm because, anecdotally, "the copier count was up" at the office printer late at night. (*Id.* at 50-51.) Neither of these examples of his firm's supposed acquiescence was persuasive to the Commission. Respondent presented no evidence that his conduct was permitted and his firm's arbitration claims against him suggest the opposite is true.

Nor was the Commission persuaded by Respondent's assertion that he tried to rectify his misconduct by returning the customers' confidential information to his prior firm. (*Id.* at 87; DEC Book at 51.) Respondent testified that the customers' non-public confidential information remained password protected and was never accessed, but it appears he only surrendered because his new firm prompted him to—not because of any independent effort to remedy the conduct. (Tr. at 69-70.)

Respondent asserts that he accepted responsibility for his and his team's misconduct by entering the 2023 AWC with FINRA on behalf of himself and his team. (DEC Book at 51.) The Commission does not believe that Respondent entered the FINRA AWC so that his team could avoid being disciplined. Rather, the evidence indicates that his team would not have participated but for Respondent's direction.

Respondent was remorseful and acknowledges that his misconduct may have harmed others, including at least two junior members of his team who were interested in becoming CFP® professionals—one of whom had recently passed the CFP® Exam in March 2024. Respondent expressed sincere concern about his impact on their candidacy for CFP® certification. (Tr. at 75-76.) Respondent also admits that his misconduct "reflects badly on the business, period…. And that's a big issue." (Tr. at 75-76.)

III. DISCUSSION

The Commission has found grounds for sanction against Respondent under the authority granted to it in Article 12 of the *Procedural Rules*.

First Ground for Sanction

Respondent admits to violating Standard A.8.a. of the *Code and Standards*, which 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 this violation.

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. The fact that Respondent has not admitted or denied the findings contained in the record does not affect the conclusiveness of the proof. 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 Letter of Acceptance, Waiver, and Consent.

FINRA is an industry self-regulatory organization. The 2023 AWC is a record of Professional Discipline by FINRA, and Respondent is the subject of that record. Therefore, under Article 7.2 of the *Procedural Rules*, the AWC conclusively establishes the existence of such Professional Discipline for purposes of this disciplinary proceeding and is conclusive proof of facts and violations set forth in the Complaint that serve as the basis for such Professional Discipline of Respondent.

FINRA Rule 2010 is a regulation governing professional services. The 2023 AWC is conclusive proof that between May 29 and May 31, 2021, and into June 2021, Respondent failed to comply with FINRA Rule 2010 in violation of Standard A.8.a of the *Code and Standards*, which Respondent admits.

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

Second Ground for Sanction

Respondent admits to violating Standard A.9.c. of the *Code and Standards*, which states that a CFP® professional either directly or through the CFP® professional's firm, must take reasonable steps to protect the security of non-public personal information about any client, including the security of information stored physically or electronically, from unauthorized access that could result in harm or inconvenience to the client.[4]

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

Respondent admits that he failed to take reasonable steps to protect the security of non-public personal information about clients as follows: a) when he improperly removed their nonpublic personal information from his prior firm without the firm's or the customers' consent, and photographed account information contained within the firm's electronic systems, which Respondent admits; b) when he directed junior members of his brokerage team to also photograph account information, which Respondent admits; and c) when Respondent and members of his

[4] Enforcement Counsel's Complaint did not cite Article 7.2 in the Second Grounds for Sanction. (DEC Book at 8, ¶ 20-23.) DEC Counsel provided Respondent and his counsel an opportunity and time after the hearing to submit a written statement on the applicability of Article 7.2 to the Second Grounds for Sanction, which Respondent declined in a letter filed on July 17, 2024. (Tr. at 85-86; Exhibit-1.) During the hearing, Respondent admitted to the Second Grounds for Sanction. (Tr. at 84-85.) Based on Respondent's admissions and compelling circumstantial evidence, Enforcement Counsel met its burden to prove the Second Grounds for Sanction.

brokerage team improperly retained the customers' nonpublic personal information after Respondent resigned from the firm on June 3, 2021, which Respondent admits.

Therefore, there are grounds to sanction Respondent for violating Standard A.9.c. of the *Code and Standards.*

Third Ground for Sanction

Respondent admits to violating Standard D.2.a. of the *Code and Standards*, which 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 this violation.

The 2023 AWC establishes that Respondent's employment agreement with his prior firm requires him to preserve the confidentiality of nonpublic customer information and to refrain from taking and disclosing such information upon the termination of his employment.

The 2023 AWC with FINRA is conclusive proof that Respondent's failure to preserve the confidentiality of nonpublic customer information or failure to refrain from taking and disclosing such information upon termination of his employment from the prior firm contributed to Respondent's failure to comply with FINRA Rule 2010.

Respondent's assertion that the employment agreement and the firm's policies and procedures are not in the record due to confidentiality of his arbitration settlement with the firm is irrelevant. Respondent admits that he took photographs of account information contained within the firm's electronic systems and removed customers' nonpublic personal information from the firm without the firm's or the customers' consent.

By violating his employment agreement with his prior firm, Respondent violated the firm's policies and procedures in violation of Standard D.2.a. of the *Code and Standards.*

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

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 in Article 11.1.

CFP Board's non-binding *Sanction Guidelines* serve as guidance for determining appropriate sanctions.[5] The Commission considered the following categories of conduct and recommended sanctions in the *Sanction Guidelines*.

- Conduct 2: Books and Records Violation (Private Censure)
- Conduct 12: Employer policies violation (Private Censure)
- Conduct 31: Securities Law Violation (Public Censure)
- Conduct 33: Professional Discipline as Defined in Article 7.2 Involving a Suspension (or a Similar Type of Professional Discipline) for up to One Calendar Month (30 Days) (Public Censure)

The Policy Notes to Conduct 12 states that if the firm terminated the Respondent due to the violation, the termination should be considered as an aggravating factor.

The Policy Notes for Conduct 31 states in relevant part: "Inquire whether the CFP® professional knowingly violated the securities laws or whether it was his/her negligence that led to a violation of securities laws. Intentional acts should be treated more seriously than negligent acts."

The Commission reviewed the mitigating and aggravating factors in this case, including those provided by Respondent in his Answer and each party at the hearing, and considered whether any relevant factors are material to this matter and, if so, the weight of those factors.

In mitigation, the Commission cited that:

1. No customer filed a complaint with respect to Respondent's misconduct;

2. Respondent has no prior disciplinary history with CFP Board, other professional association, nor FINRA or other regulator; and

3. Respondent acknowledges his misconduct and the harm he caused to his junior team members and to the financial planning profession.

In aggravation, the Commission cited:

1. Respondent's misconduct was intentional;

2. Respondent directed junior members of his brokerage team to violate FINRA Rules;

3. Respondent and his team captured and maintained confidential information of more than 135 customers;

[5] CFP Board's *Sanction Guidelines* (effective June 30, 2020 through December 31, 2021) is available on CFP Board's website and at: http://www.cfp.net/-/media/files/cfp-board/standards-and-ethics/enforcement/2020/cfpboard-sanction-guidelines-2020-06.pdf. (Last accessed December 19, 2024.)

4. Respondent's firm would have terminated his employment had Respondent not resigned; and

5. Respondent attempted to conceal his misconduct from the firm.

The Commission has consulted various prior Case Histories[6] (referred to as "CHs" or "ACHs"), including those identified by the parties, for any non-binding precedent that may be persuasive. The Commission thoroughly considered ACH 41969 as suggested by Respondent, where the Commission issued a Private Censure, mitigating down from relevant sanction guidance. The Commission also considered ACH 38673, ACH 31828, ACH 30537, and ACH 29324, where the Commission issued Public Censures in line with the sanction guidance.

The Commission distinguishes ACH 41969 from the instant matter. In ACH 41969, decided in June 2020, a CFP® professional removed nonpublic personal information of more than 300 customers from his prior firm and provided it his new firm. However, the CFP® professional in ACH 41969 is an independent contractor who did not have a similar employment agreement with his prior firm. The sourced clients were his clients. His firm assured that he could sell the clients back to the firm or to another representative, and his supervisor even arranged a time to obtain files after he had left the firm. The CFP® professional also sought counsel and relied on the advice of a compliance officer at his new firm.

Respondent is not an independent contractor. Respondent admits he had an employment agreement with his prior firm that limits the information he was allowed to possess. The clients Respondent serviced at his prior firm were customers of the firm, not his own. Respondent did not consult with any attorney or compliance officer. As a result, the Commission found an additional Grounds for Sanction related to violating firm policies that is not present ACH 41969.

As an employee of the firm for 32 years, it is not credible for Respondent to believe he could take the firm's nonpublic confidential customer information without approval. If Respondent was unclear about the terms of his employment agreement, FINRA Rules, or Regulation S-P, a reasonable CFP® professional would seek guidance, which Respondent admits he did not do.

Based on the substantial evidence supporting the Commission's factual findings and its reasonable determination on Respondent's violations of the *Code and Standards*; the persuasive guidance provided by the *Sanction Guidelines* including the policy notes and baseline sanction of Public Censure recommended for each Conduct 31 and Conduct 33; and the number and weight of the aggravating and mitigating factors and the relevant Case Histories that, in sum do not justify deviating from the sanction guideline; the Commission issues this final Order imposing on Respondent a **Public Censure**.

Ordered by:
The Disciplinary and Ethics Commission, CFP Board
Dated: December 20, 2024

[6] Case Histories are available on CFP Board's website, at: www.cfp.net/ethics/enforcement/case-history.