

## THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF

TIMOTHY P. WOODBURN, CFP®,

Respondent.

CFP Board Case No. 2022-63690

September 11, 2024

### 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 April 13, 2017, and he has been certified since that date. (DEC Book at 13.)<sup>1</sup>

On October 24, 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., D.2.a., and E.2.b. of the *Code of Ethics and Standards of Conduct* (“Code and Standards”). (*Id.* at 5.) The Complaint cites Respondent’s resignation from his firm and an April 1, 2022 Consent Agreement with the Ohio Division of Securities. (*Id.* at 6.)

Respondent answered the Complaint on or about November 23, 2023, admitting all material allegations. (*Id.* at 42-44.). On April 18, 2024, a Hearing Panel of the Commission convened by video conference to hear testimony, and to review and consider documents, information and argument relevant to the Complaint. (Transcript of Hearing of Timothy P. Woodburn, CFP®, April 18, 2024 (“Tr.”) at 1.) Enforcement Counsel appeared for CFP Board; DEC Counsel appeared for the DEC and for the Hearing Panel; Respondent appeared *pro se*.

The Commission considered the Hearing Panel’s recommendation on whether to find that a violation occurred, whether there are grounds for sanction and, if so, the appropriate sanction.

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 The DEC Book and any other exhibits to this Order will not be published under Article 17.7 of the *Procedural Rules*.

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## II. FINDINGS OF FACT

### A. Background

Respondent has passed the following FINRA examinations: (a) Series 63 - Uniform Securities Agent State Law Examination (2017); (b) Series 6 - Investment Company Products/Variable Contracts Representative Examination (2017); (c); SIE - Securities Industry Essentials Examination (2018). (*Id.* at 18.) Respondent is currently associated as an investment adviser representative with Firm #2 and has been associated with that firm since April 5, 2022. (*Id.* at 17.) From September 9, 2020, to October 20, 2021, Respondent was associated as an investment adviser representative with Firm #1. (*Id.* at 19.)

### B. Respondent's Ohio Consent Order

On February 21, 2022, Respondent submitted his application for an investment adviser representative license to the Ohio Division of Securities (the "Division"). The Division conducted a review of Respondent's application and investigated his resignation from Firm #1. (*Id.* at 31-36.) On April 1, 2022, Respondent entered into a Consent Agreement with the Division. (*Id.*) Respondent agreed to the following factual findings:

- a. Respondent admitted that in early 2021, acting in his capacity as securities salesperson for Firm #1, he copied and re-used client signatures on client annuity contracts in five instances, then submitted the forms with copied signatures to an insurance company for the purpose of enabling clients to reallocate assets within an indexed variable annuity; (*id.* at 32)
- b. Respondent credibly represented that in each of the instances, the client whose signature was copied and re-used was aware of and consented to the re-use of their signature; (*id.*)
- c. Respondent credibly represented that his motivation for effectuating the asset reallocation was to break the clients' larger investments in IRA annuity contracts into multiple smaller investments to enable the clients to achieve their tax planning goals and to reduce their paperwork burden; (*id.*)
- d. On or about August 23, 2021, Respondent's supervisor at Firm #1 notified Respondent that Firm #1 was aware of Respondent's copying and re-use of client signatures, and that doing so was a violation of Firm #1's policies and procedures; (*id.*)
- e. On or about September 29, 2021, Applicant was given the choice either to be terminated from Firm #1 or to voluntarily resign, so Applicant chose to resign effective the next day, September 30, 2021; (*id.*)
- f. Other than being permitted to resign from Firm #1, Respondent has no other disciplinary history; (*id.* at 33) and
- g. Respondent did not financially benefit from the asset reallocations. (*Id.*)

Section 1707.19(A)(1)(a) of the Ohio Revised Code provides that an application for an investment adviser representative license may be refused, and any license granted may be suspended, if the Division determines the applicant "is not of good business repute." (*Id.*) Rule 1301:6-3-19(D)(9)

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of the Ohio Administrative Code states that, in determining “good business repute” as that term is used in the Ohio Revised Code sections 1707.161(E) and 1707.19(A)(1)(a) the Division shall consider whether the applicant has engaged in any conduct which would reflect on the reputation for honesty, integrity, and competence in business and personal dealings of the securities salesperson or investment adviser representative including, but not limited to, nondisclosure, incomplete disclosure, or misstatement of material facts. (*Id.* at 33.)

The Division found that Respondent was not of “good business repute.” (*Id.* at 33.)

Pursuant to the Consent Order, Respondent agreed to the suspension of his Ohio investment adviser representative license for 30 days from the date of the Consent Order.<sup>2</sup> (*Id.* at 35.) Respondent also agreed that all activities with Firm #2 conducted pursuant to his Ohio investment adviser representative license, would be subject to a heightened supervision plan for a period of 12 months. (*Id.* at 35.)

### **C. Respondent’s Cautionary Action Letter**

The Financial Industry Regulatory Authority, Inc. (“FINRA”) investigated Respondent’s resignation from Firm #1 and on October 18, 2022, issued a Cautionary Action Letter (“CAL”) to Respondent. (*Id.* at 40.) The CAL cautioned Respondent about two deficiencies stating that Respondent “had knowledge of and permitted client signatures to be copied onto new variable annuity applications” in violation of FINRA Rule 2010, and that Respondent’s conduct caused Firm #1 to maintain inaccurate books and records, in violation of FINRA Rule 4511. (*Id.*)

### **D. Respondent’s Testimony**

The Hearing Panel found Respondent’s testimony to be highly credible; he answered the Hearing Panel’s questions directly and provided helpful explanations and context in a forthright and frank manner. (*See Id.* at 45-46 (discussing lessons learned from the situation) and 48-49 (discussing demands of heightened supervision).) Respondent noted that the past two years of regulatory oversight have been personally difficult for him, but he accepted the regulators’ actions. (*Id.*)

## **III. DISCUSSION**

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

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<sup>2</sup> The Division imposed a 60-day suspension in total but gave Respondent credit for the 30 days immediately preceding the Consent Order.

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*First Grounds for Sanction*

There are grounds to sanction Respondent for a violation of Standard D.2.a. of the *Code and Standards*, which provides 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 these Standards.

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

Respondent's employer, Firm #1, stated that re-using client signatures was a violation of its policies and procedures. Respondent, in violation of these policies and procedures, re-used client signatures to be copied onto new variable annuity applications and submitted the documents to his firm.

The Division is an Ohio state governmental agency. The Consent Order with the Division is conclusive proof that Respondent failed to comply with his firm's policies and procedures. Therefore, there are grounds to sanction Respondent for a violation of Standard D.2.a. of the *Code and Standards*.

*Second Grounds for Sanction*

There are grounds to sanction Respondent for a violation of Standard E.2.b. of the *Code and Standards* which provides that a CFP® professional may not engage in conduct that reflects adversely on his or her integrity or fitness as a CFP® professional, upon the CFP® marks, or upon the profession. This includes conduct that results in a finding in a Regulatory Action that the CFP® professional engaged in a misrepresentation or other dishonest conduct.

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

Rule 1301:6-3-19(D)(9) of the Ohio Administrative Code states that, in determining "good business repute" as that term is used in sections 1707.161(E), and 1707.19(A)(1)(a), the Division shall consider whether the applicant has engaged in any conduct which would reflect on the reputation for honesty, integrity, and competence in business and personal dealings of the securities salesperson or investment adviser representative including, but not limited to, nondisclosure, incomplete disclosure, or misstatement of material facts.

The Division found that, according to Section 1707.19(A)(1)(a) of the Ohio Revised Code and Rule 1301:6-3-19(D)(9) of the Ohio Administrative Code, Respondent was not of "good business repute."

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

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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 (“AWC”).

The Division is an Ohio state regulatory authority. The Consent Order is a record of Professional Discipline by the Division, and Respondent is the subject of that record. Therefore, the Consent Order 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.

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

#### *Third Grounds for Sanction*

There are grounds to sanction Respondent for a violation of Standard A.8.a. of the *Code and Standards*, which provides 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 third grounds for sanction.

FINRA found that Respondent had knowledge of and permitted client signatures to be copied onto new variable annuity applications and concluded that this 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 4511 requires member firms to make and preserve books and records as required under FINRA rules, the Exchange Act, and the applicable Exchange Act rules. FINRA determined that by permitting the submission of variable annuity transactions documents with copied signatures and by directly submitting the documents to the sponsor companies, Respondent also violated FINRA Rule 4511 by causing Firm #1 to maintain inaccurate and incomplete books and records.

FINRA Rules 2010 and 4511 are rules and regulations governing Professional Services.

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

#### **IV. THE COMMISSION’S DECISION**

Pursuant to 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.

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

- Conduct 2 Books and Records Violation. (Private Censure)
- Conduct 12 Employer Policies Violation. (Private Censure)
- Conduct 19 Forgery. (Suspension for at least one year and one day)
- Conduct 33 Professional Discipline involving suspension or similar fur up to one calendar month (30 days) (Public Censure)

The Policy Notes to Conduct 12 provide that if a respondent was terminated due to a violation, that should be deemed an aggravating factor. Such is the case here, and the applicable sanction would be aggravated up to a Public Censure.

The Policy Notes for Conduct 19 provide that the following considerations should be deemed aggravating or mitigating factors in determining the appropriate sanction:

- (1) What is the nature of the documents that were either forged or falsified?
- (2) Did the CFP® professional mistakenly believe he or she had implied authority?
- (3) What was the CFP® professional's intent?

Applying Conduct 19 to the present case, the Commission found in mitigation that:

1. the documents containing the re-used signatures were identical contracts, created from a large single annuity, which Respondent's clients had signed;
2. Respondent's clients knew and approved of the plan to re-use their signatures on the contracts, and Respondent credibly believed that doing so was not inappropriate in light of his understanding that the issuing insurance company did not object to the practice; and
3. Respondent's intent was not fraudulent, but rather to minimize the paperwork burden on his clients, who otherwise would have to sign multiple identical contracts.

In light of the mitigating factors present, the Commission concludes that application of Conduct 19 in this matter does not warrant a suspensory sanction.

The Public Censure called for by Conduct 33 is supported by the effective 30-day suspension that the Ohio authorities imposed on Respondent.

The Commission then consulted various Case Histories<sup>3</sup> to determine if any contained non-binding precedent that may be persuasive to the Commission.

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<sup>3</sup> Case Histories (referred to as "ACHs" or "CHs") are available on CFP Board's website at <https://www.cfp.net/ethics/enforcement/case-history>

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The Commission found particularly relevant Case History 34497, in which the Commission imposed a public censure and involved facts more similar to the instant case. There, FINRA had imposed a two-month suspension and fine where the CFP® professional signed her clients' name or initials on account documents on two separate occasions, both with and without client pre-authorization to accommodate each client by expediting the processing of their respective transactions. The CFP® professional was terminated for the conduct and was placed on a heightened supervision plan as a condition of her state registration.

In Case History 42595 the CFP® professional was issued a three-year suspension in a matter with many more aggravating factors than are present here. The CFP® professional continued a practice of copying client signatures, despite having been given prior warnings by his firm, and blamed his unregistered assistant rather than acknowledging his responsibility as the assistant's supervisor. The CFP® professional in that case entered into an AWC with FINRA imposing a 20-day suspension and fine. Also of concern in that case was the quality of the CFP® professional's advice and his lack of communication with the elderly client whose signature was forged.

The significant mitigating factors in this matter, and Respondent's credibility and acceptance of responsibility for his actions, warrants a significant downward departure from the highest of sanctions reflected in the Policy Notes to the applicable *Sanction Guidelines*. In light of the evidence that supports the Commission's factual findings and violations found, and the number and weight of the mitigating factors in this matter, the Commission issues this Order imposing on Respondent a **Public Censure**.

Ordered by:

Disciplinary and Ethics Commission  
CFP Board