

**CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.  
WASHINGTON D.C.**

IN THE MATTER OF

ELAINE M. ZITO,

Respondent.

CFP Board Case No. 2023-64840

May 7, 2024

**ORDER OF ADMINISTRATIVE PERMANENT BAR**

Pursuant to Article 4.2 of Certified Financial Planner Board of Standards, Inc.'s ("CFP Board") *Procedural Rules*, Enforcement Counsel filed a Motion for Order of Administrative Permanent Bar ("Motion")<sup>1</sup> on January 8, 2024, requesting that Counsel for the Disciplinary and Ethics Commission ("DEC Counsel") issue an Order of Administrative Permanent Bar against Elaine M. Zito ("Respondent"). (Motion and its exhibits enclosed as Exhibit A.)<sup>2</sup>

On January 29, 2024, DEC Counsel notified the parties that Respondent's January 22, 2024 deadline to file any response to the Motion had passed, and extended Respondent's deadline to file any response to the Motion to February 5, 2024. (Exhibit B.) DEC Counsel received an automatic email reply from Respondent stating: "Thank you for your email! **Please Note:** I have retired from the securities and insurance industries. **Please unsubscribe me from your email list, if you are a securities or insurance product manager, customer service rep or vendor.**" (Exhibit C.) (Emphasis included.)

To date, Respondent has not filed a Response or sought further extensions. Therefore, Enforcement Counsel did not file a Reply. No party requested oral argument on the Motion.

For the reasons stated below, Enforcement Counsel's Motion is granted.

**I. BACKGROUND**

Respondent became a CFP® professional on September 7, 2005. (Exhibit A at 8-11.) Respondent's certification expired July 31, 2023, and she went into a Not Certified status on August 8, 2023. (*Id.*)

On April 11, 2023, Enforcement Counsel issued a Notice of Investigation ("NOI") to Respondent related to a pending Financial Industry Regulatory Authority, Inc. ("FINRA") arbitration filed against her. (*Id.* at 51-53.) Respondent did not acknowledge or respond to Enforcement Counsel's NOI within the 30-day timeframe, so Enforcement Counsel issued her a Second NOI on May 23, 2023. (*Id.* at 54.) Enforcement Counsel alleged Respondent acknowledged and provided responses to the Second NOI on June 9, 2023, but the evidence Enforcement Counsel provided in support of this claim was an encrypted communication

<sup>1</sup> Enforcement Counsel certified in its Motion that it had attempted to meet and conferred with Respondent via email in a good faith attempt to resolve or narrow the issues, but the parties were unable to resolve the issues. (*Id.* at 2, 68.)

<sup>2</sup> The Motion, any response to or reply in support of the Motion, and any Exhibits to the Order are not subject to publication under Article 17.7 of the *Procedural Rules*.

IN THE MATTER OF ELAINE M. ZITO  
CFP Board Case No. 2023-64840  
May 7, 2024

that did not meaningfully reflect Respondent's communication. (*Id.* at 55.) On November 27, 2023, Enforcement Counsel sent Respondent a request for additional information and documents ("RFAI"), reminding Respondent of the Duty of Cooperation she owes to CFP Board under Article 1.3 of the *Procedural Rules*. (*Id.* at 56-59.) Respondent replied that day and failed to provide substantive responses to RFAI, stating in relevant part:

I am retired. I live out of the country, and I am no longer licensed and have not been associated with a Broker Dealer for almost 4 years. Please call my former broker dealer for any further assistance. If a client has complained, they need to go to the supervisory Broker Dealer, and so does the CFP Board. The CFP Board also needs to cease trying to obtain information from me. They need to see all paperwork archived by the Broker Dealer for transactions the broker dealer approved. I am unable to accommodate this request.

(*Id.* at 60.)

Subsequently, Respondent provided some but not all of the information requested in the RFAI, and on November 30, 2023, Enforcement Counsel clarified that a compliant response must include individualized responses to each of the requests in the RFAI. (*Id.* at 61-66, 67.) On December 12, 2023, Enforcement Counsel delivered a Notice of Failure to Cooperate to Respondent providing Respondent 14 days to cure her failure to cooperate. (*Id.* at 68-70.) Respondent failed to provide substantive responses to the outstanding requests that would have cured the Notice of Failure to Cooperate, so Enforcement Counsel determined that Respondent was in default pursuant to Article 4.1.c. of the *Procedural Rules* and filed a Motion for Order of Administrative Permanent Bar on January 8, 2024. (*Id.* at 2-6.)

## II. DISCUSSION

### A. Respondent is in Default.

Pursuant to Article 4.1.c. of the *Procedural Rules*, if Respondent fails to cure a Notice of Failure to Cooperate in accordance with Article 1.3.d. of the *Procedural Rules* then Respondent is in default. Respondent failed to cure the Notice of Failure to Cooperate issued to her on December 12, 2023, within 14 calendar days of its delivery, as required by Article 1.3.d. of the *Procedural Rules*. As a result of Respondent's failure to cure the Notice of Failure to Cooperate, Respondent is in default under Article 4.1.c. of the *Procedural Rules*.

### B. Respondent's Conduct Warrants an Administrative Permanent Bar.

Enforcement Counsel sought to investigate the following:

1. In 2023, Respondent's client filed a FINRA Arbitration against Respondent's former broker dealer and included Respondent's actions and recommendations as part of the factual basis for the arbitration filing.

IN THE MATTER OF ELAINE M. ZITO  
CFP Board Case No. 2023-64840  
May 7, 2024

2. Based on the documents Enforcement Counsel acquired, this arbitration pertained to Respondent's recommendations that her client invest in certain products.
3. Specifically, the client alleged Respondent was negligent and breached her fiduciary duty when she recommended the client invest a high concentration of her assets in highly speculative products.
4. Based on the documents Enforcement Counsel has acquired, Respondent appears to have made these recommendations while certified as a CFP® professional.

Respondent's conduct may have violated Standard A.1 of CFP Board's *Code of Ethics and Standards of Conduct* ("*Code and Standards*"), which requires that at all times when providing Financial Advice to a Client, a CFP® professional must act as a fiduciary, and therefore, act in the best interest of the Client.

The seriousness, scope, and harmfulness of Respondent's conduct warrants an Order of Administrative Permanent Bar. Specifically, the evidence suggests that Respondent may have breached her fiduciary duty in violation of Standard A.1 of the *Code and Standards*, and Respondent either intentionally or negligently chose not to continue participating in CFP Board's investigation. As a result, Respondent's failure to cure the Notice of Failure to Cooperate warrants the issuance of an Order of Administrative Permanent Bar.

### III. CONCLUSION

After careful consideration, and in accordance with Articles 4 and 9 of CFP Board's *Procedural Rules*, DEC Counsel has determined that Enforcement Counsel stated with reasonable particularity in its Motion, the grounds for Respondent's default under 4.1.c. and its determination on the seriousness, scope, and harmfulness of Respondent's conduct. Accordingly, DEC Counsel grants Enforcement Counsel's Motion and issues to Respondent this Administrative Order of Permanent Bar ("Order"). Respondent is permanently barred from applying for or obtaining CFP® certification.

### IV. COMPLIANCE WITH ORDER

Pursuant to Article 11.2 of the *Procedural Rules*, Respondent is required to submit to Enforcement Counsel, within 45 calendar days of issuance of this Order, or by June 21, 2024, written evidence that Respondent:

- **Has advised Respondent's Firm(s)** of the public sanction, in writing, in the manner set forth in Standard D.3 of the *Code and Standards*; and
- **Has advised all Clients<sup>3</sup>** of the public sanction and provided all Clients the location of CFP Board's website that sets forth Respondent's disciplinary history in the manner set forth in Standard A.10 of the *Code and Standards* (see <http://www.cfp.net/verify>); and

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<sup>3</sup> Respondent must notify all Clients as the term "Client" is defined in the Glossary to CFP Board's *Code and Standards*, available at <https://www.cfp.net/ethics/code-of-ethics-and-standards-of-conduct>.

IN THE MATTER OF ELAINE M. ZITO  
CFP Board Case No. 2023-64840  
May 7, 2024

- **Will advise all future Clients** of the location of CFP Board's website that sets forth Respondent's disciplinary history, according to Standard A.10 of the *Code and Standards*.

Pursuant to Article 11.3 of the *Procedural Rules*, Respondent is required to submit to Enforcement Counsel, within 45 calendar days of issuance of this Order, or by June 21, 2024, Respondent's statement of assurance that Respondent will not use the CFP Board certification marks and proof that Respondent has removed the CFP Board certification marks from all internet sites or other tangible materials that Respondent exposes to the public, including screenshots of the businesses, social media, and third-party financial advisor listing website profiles that Respondent controls, pictures of signage, and when applicable, copies of Respondent's business cards, letterhead, and marketing and promotional materials, as well as pictures of any other materials Respondent controls in which the CFP® marks previously appeared publicly in reference to Respondent or Respondent's services. Failure to do so may result in further disciplinary or legal action regarding the unauthorized use of the CFP Board certification marks.

Issued by:

Counsel to the Disciplinary and Ethics Commission  
Date: May 7, 2024