

## THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF

ROBERT P. BAFFA, JR., CFP®,



Respondent.

CFP Board Case No. 2022-64055

January 17, 2024

### ORDER

#### I. Procedural Background

Certified Financial Planner Board of Standards, Inc. (“CFP Board”) granted Respondent the right to use CFP Board certification marks, including the CFP®, CERTIFIED FINANCIAL PLANNER™,  and  certification marks (“CFP Board marks”), on July 5, 2005, and he has been certified since that date, except for a period between 2006 and 2009.<sup>1</sup> (DEC Book at 16.)<sup>2</sup>

On August 9, 2022, CFP Board Enforcement Counsel delivered to Respondent a Notice of Investigation (“NOI”) requesting certain information and documents related to his 2021 Nevada Securities Division Consent Order. (*Id.* at 69-70.)

On July 13, 2023, Enforcement Counsel delivered to Respondent a Notice of Complaint and Complaint that alleged a violation of CFP Board’s *Code of Ethics and Standards of Conduct* (“*Code and Standards*”) and the predecessor *Rules of Conduct* and set potential hearing dates in October 2023. (*Id.* at 5-13.) In accordance with Article 3.1 of the *Procedural Rules*, Enforcement Counsel’s Complaint included numbered paragraphs setting forth the grounds for sanction, including a detailed factual description of the conduct and a specific statement of the alleged violations. (*Id.*) On or about July 20, 2023, Respondent delivered to Enforcement Counsel his Answer. (*Id.* at 114.)

On September 11, 2023, Counsel to CFP Board’s Disciplinary and Ethics Commission (“Commission” or “DEC”) (“DEC Counsel”) issued a Notice of Hearing, setting Respondent’s hearing for October 11, 2023. (Exhibit A.) On October 10, 2023, Respondent filed a Motion for Continuance of the October 11 hearing, based upon what Respondent described as an unexpected conflict due to an office technology transition (“Continuance Motion”). (*Id.*) Enforcement Counsel did not oppose the Continuance Motion. (*Id.*) DEC Counsel granted the Continuance Motion, and noticed the hearing for October 30, 2023, with the agreement of the parties. (*Id.*)

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<sup>1</sup> When asked about this time at the hearing, Respondent stated that, at the time, “[he] was doing everything that [he] could to save money.”: “So, for me to, you know, hold out an extra designation and pay extra fees, I was doing everything that I could to save my own money knowing that, hey, my clients don’t need designations. Designations help with strangers. With existing clients, you don’t need it. I was doing everything that I could to save money.” (Transcript of Hearing of Robert Baffa, October 30, 2023 (“Tr.”) at 66.)

<sup>2</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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On October 30, 2023, a Hearing Panel of the Commission convened by video conference to review the above-described Complaint. (Tr. at 1.) Enforcement Counsel appeared for CFP Board; DEC Counsel appeared for the DEC and for a Hearing Panel of the Commission; Respondent appeared *pro se*. (*Id.*)

At the hearing, Respondent orally moved to enter in the record documents that were not previously provided to Enforcement Counsel or the Commission in accordance with Article 10.3 of the *Procedural Rules*. (*Id.* at 37.) After hearing the parties' positions on the oral motion, DEC Counsel denied the motion, stating that Respondent could raise it after the hearing in a post-hearing motion. (*Id.* at 38.)

After the hearing, on October 30, 2023, Respondent filed a Motion to Admit Documents, to which Enforcement Counsel responded the same day, and Respondent filed a reply to that response on November 1, 2023. (Exhibit B.) On November 7, 2023, DEC Counsel denied the Motion to Admit Documents stating that Respondent failed to show good cause as to why the documents he offered were not timely submitted. (*Id.*)

On November 8, 2023, Respondent made a written Motion to Admit a Letter he had attached to his November 1, 2023 reply brief. (Exhibit C.) Enforcement Counsel filed a response to the Motion to Admit a Letter on November 10, 2023, to which Respondent filed a reply on November 14, 2023, and DEC Counsel denied the Motion on November 15, 2023 pursuant to Article 9.1. of CFP Board's *Procedural Rules*. (*Id.*) DEC Counsel stated that the letter is not additional documentary evidence or additional case histories, and Respondent had not shown good cause for why the letter should be included in the record. (*Id.*)

The Commission considered the Hearing Panel's recommendation and issued its final order on January 17, 2024.

## **II. Findings of Fact**

### **A. Background**

Respondent has passed the (a) Series 63 – Uniform Securities Agent State Law Examination (1993); (b) Series 7 – General Securities Representative Examination (2000); (c) Series 66 – Uniform Combined State Law Examination (2000); (d) Series 31 – Futures Managed Funds Examination (2000); (e) Series 24 – General Securities Principal Examination (2005); and (f) SIE – Securities Industry Essentials Examination (2018). (DEC Book at 50, 114.)

Respondent is currently associated with Firm as an investment advisor representative and has been associated with that firm since July 2015. (*Id.* at 60, 114.) Respondent is the owner and sole investment advisor representative of Firm. (*Id.* at 96, 114.) He described that he started his own Firm “with the sole purpose of being able to declare myself a fiduciary.” (Tr. at 33.)

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**B. Respondent Entered into an Administrative Consent Order with the State of Nevada in 2018**

On December 12, 2016, investigators with the Securities Division of the Office of the Nevada Secretary of State (“Nevada Securities Division”) initiated an inspection of Firm’s records. (DEC Book at 91, 114.)

On March 14, 2018, Respondent entered into an Administrative Consent Order with the Nevada Securities Division (“2018 Order”). (*Id.* at 90-95, 114.) In the 2018 Order, Respondent consented to the entry of an order containing findings that he failed to enter into written investment advisory agreements with clients and failed to provide clients with itemized fee invoices when deducting advisory fees from client accounts in violation of NASAA Model Rule 102(a)(4)-1(p) and 102(e)(1)-1 (adopted by Nevada). (*Id.* at 91-93, 114.)

In the 2018 Order, Respondent consented to the following sanctions:

- to cease from violating the Nevada Uniform Securities Act and regulations adopted thereunder, and to comply with the Nevada Uniform Securities Act now and in the future;
- to enter into written advisory agreements with clients;
- Whenever deducting advisory fees from client accounts, to send clients an invoice or statement itemizing the fee, including the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee; and
- to pay a civil penalty of \$7,500.00 and an inspection fee of \$1,000.00.

(*Id.* at 93-94.)

Respondent admitted that he did not disclose the 2018 Order to CFP Board on his annual Ethics Declarations as required. (*Id.* at 28, 89.) He stated that he was not aware that he needed to disclose a “fine from the State.” (*Id.* at 89.)

**C. Respondent Entered into an Administrative Consent Order with the State of Nevada in 2021**

On January 20, 2021, the Nevada Securities Division commenced an examination of Respondent’s Firm. (*Id.* at 96, 114.)

On October 11, 2021, Respondent entered into an Administrative Consent Order with the Nevada Securities division (“2021 Order”). (*Id.* at 96-99.) In the 2021 Order, Respondent consented to the entry of an order containing the following findings:

- Firm did not disclose the 2018 Order on its Form ADV Parts I and II;
- Firm did not properly disclose certain relationships and fees on its Form ADV;
- Firm failed to file an updated Form ADV within 90 days after the end of the fiscal year in violation of Nevada state law NAC § 90.380(3);
- Firm failed to file its annual updating amendments to the Form ADV in a timely manner for the year 2019 in violation of NAC § 90.380(3); and

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- Firm failed to provide a General Ledger and Balance Sheet, nor did they provide a Profit and Loss Statement that was GAAP-compliant in violation of NAC § 90.387. This deficiency was noted in the Nevada Security Division’s closing letter after Firm’s previous examination in 2016.

(*Id.* at 96-97.)

In the 2021 Order, Respondent consented to the following sanctions:

- to cease from violating the Nevada Uniform Securities Act and to comply with the Nevada Uniform Securities Act; and
- to pay a civil penalty of \$7,500.00 and an examination fee of \$1,000.00.

(*Id.* at 97-98, 114)

#### **D. Respondent’s Current Approach to Compliance**

The Hearing Panel viewed credible Respondent’s obvious desires to be compliant and to work in the best interests of his clients (*see, e.g.*, Tr. at 34), and the Commission agreed. However, at the hearing, Respondent admitted that he “need[s] help with regards to compliance, obviously.” (*Id.* at 38-39.) He described that he has worked with several third-party compliance firms and “he is looking to hire someone to [do] compliance altogether.” (*Id.* at 39.) Respondent described that the third-party compliance consultant model is not a good fit for him: “My assumption is I don't need a fulltime employee, but I need someone that's dedicated to me and to my firm, and I'm hoping to find someone to do that.” (*Id.* at 53-54.)

### **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 the *Procedural Rules* because it determined that Respondent violated CFP Board’s *Code and Standards* and *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*

Enforcement Counsel alleges in its Complaint that there are grounds to sanction Respondent for a violation of Standard A.8.a. of CFP Board’s *Code and Standards* (for conduct after June 2020), which provides that a CFP® professional must comply with the laws, rules, and regulations governing Professional Services and Rule 4.3 of CFP Board’s *Rules of Conduct* (for conduct up to June 2020), which provides that a CFP® professional shall be in compliance with applicable regulatory requirements governing professional services provided to the client.

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

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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 State of Nevada, Securities Division is a governmental agency. The Administrative Consent Order dated October 11, 2021, is a record of Professional Discipline from the State of Nevada, and Respondent is the subject of that record. Therefore, the 2021 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 of Respondent.

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

The 2021 Administrative Consent Order is conclusive proof that Respondent violated Nevada state laws NAC § 90.380(3), NAC § 90.3864(3), and NAC § 90.387, which are state requirements governing annual Form ADV updates, annual disclosure document submissions, and the maintenance of financial records.

Therefore, there are grounds to sanction Respondent for a violation of Standard A.8.a. of the *Code and Standards* and Rule 4.3 of the *Rules of Conduct*. Respondent admitted these violations in his Answer. (DEC Book at 114.)

### ***Second Ground for Sanction***

Enforcement Counsel alleges in its Complaint that there are grounds to sanction Respondent for a violation of Rule 4.3 of CFP Board’s *Rules of Conduct*, which provides that a CFP® professional shall be in compliance with applicable regulatory requirements governing professional services provided to the client.

The State of Nevada, Securities Division is a governmental agency. The Administrative Consent Order dated March 14, 2018, is a record of Professional Discipline from the State of Nevada, and Respondent is the subject of that record. Therefore, the 2018 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 of Respondent.

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

The 2018 Order is conclusive proof that Respondent violated NASAA Model Rule 102(a)(4)-l(p) and 102(e)(1)-l (adopted by Nevada), which govern the existence of written investment advisory contracts as well as the itemization and explanation of fees.

Therefore, there are grounds to sanction Respondent for a violation of Rule 4.3 of the *Rules of Conduct*. Respondent admitted this violation in his Answer. (DEC Book at 114.)

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#### **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 does warrant a sanction. The Commission has discretion to order a sanction among those applicable sanctions set forth in Article 11.1.

After carefully considering the evidence in Respondent's matter and the violations found, the Commission determined to issue to Respondent an **Order of Public Censure**.

CFP Board 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 31: Securities Law Violation (Public Censure)

The Commission did not consider any mitigating or aggravating factors.

The Commission then consulted *Case Histories* (referred to as "ACHs" or "CHs") and specifically cited ACH 31628 and ACH 41415.

In ACH 31628, the Commission found a CFP® professional violated Rule 4.3 of the *Rules of Conduct* for failing to maintain accurate information on their Form ADV and failing to maintain written information about advisory clients. The Commission imposed a one-year suspension, but had found additional and more egregious conduct than exists in the instant matter, including suitability violations.

In ACH 41415, a CFP® professional entered into a consent order with CFP Board for a public censure to resolve violations of Rule 4.3 and Rule 6.5 of the *Rules of Conduct*. In that case, the CFP® professional, who was a managing member of his firm, failed to renew his and his firm's registrations and made a misleading statement on an affidavit to the regulator, which he later clarified. He entered into a settlement order with a state regulator to pay a \$2,500 monetary penalty and \$500 in investigative costs for transacting business while unregistered and making false or misleading statements to the regulator. In this case, there are no allegations Respondent made misleading statements, but the Commission did make findings that Respondent violated state regulations twice, close in time to one another.

The Commission is concerned that, even after two state regulatory actions resulting in significant penalties, Respondent still does not have adequate compliance systems in place. After considering the violations found, the lack of aggravating and mitigating factors, and the relevant Case Histories, the Commission determined that a **Public Censure** is appropriate.

Ordered by:

The Disciplinary and Ethics Commission  
CFP Board  
January 17, 2024