



## THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF  
DONALD G. HEATHERLY,  
Respondent.

CFP Board Case No. 2023-64170

August 26, 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<sup>®</sup>, , , and CFP<sup>®</sup> certification marks (“CFP<sup>®</sup> marks”) on January 9, 2006, and he has been certified since that date. (DEC Book<sup>1</sup> at 12.)

#### I. PROCEDURAL BACKGROUND

On October 26, 2023, following an investigation, 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 violating Standard A.15.a. of CFP Board’s *Code of Ethics and Standards of Conduct* (“Code and Standards”) based upon Respondent receiving a loan from a client. (*Id.* at 5-9.)

On December 18, 2023, Respondent filed an Answer to the Complaint, in which he admitted the material allegations and grounds for sanction in the Complaint while offering three mitigating factors. (*Id.* at 119-126.) On February 20, 2024, Respondent filed materials under Article 10.3 of CFP Board’s *Procedural Rules*, including a written statement in which he offered additional mitigating factors and identified two Case Histories<sup>2</sup> he deemed relevant to his case. (*Id.* at 133-145.)

On April 18, 2024, a Hearing Panel of the Disciplinary and Ethics Commission (“Commission” or “DEC”) convened by videoconference to review and consider the Complaint and relevant documents and information. (Transcript of Hearing of Donald G. Heatherly, CFP<sup>®</sup>, April 18, 2024 (“Heatherly Tr.”) at 1.) By videoconference, Enforcement Counsel appeared for CFP Board; DEC

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<sup>1</sup> The hearing materials in the “DEC Book” and any transcripts and exhibits to this Order will not be published under Article 17.7 of CFP Board’s *Procedural Rules*.

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

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Counsel appeared for the Commission and for the Hearing Panel of the Commission; and Respondent appeared and was represented by counsel.<sup>3</sup>

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

## II. FINDINGS OF FACT

### A. Background

Respondent has passed the (a) Series 7 – General Securities Representative Examination (1998); (b) Series 65—Uniform Investment Adviser Law Examination (2022); (c) Series 66—Uniform Combined State Law Examination (1998); and (d) SIE—Securities Industry Essentials Examination (2018). (DEC Book at 53, 119.)

Respondent maintains an Insurance License with the Illinois Department of Insurance. (*Id.* at 47, 119.)

From September 2015 to November 2017, Respondent was employed as a Wealth Strategist and Registered Representative with a bank (“Bank-1”) and registered as a broker with a related entity (“Bank-1 Securities”). (*Id.* at 55.)

From February 2018 to March 2022, Respondent was employed as a Wealth Advisor and officer of another bank (“Bank-2”) and registered as a broker with related entity (“Bank-2 Securities”) from 2003 to 2008 and for a short time in 2018. (*Id.* at 55; Tr. at 59.)

Respondent is currently employed as President at an advisory firm (“Firm-A”) and associated with Firm-A as an investment advisor representative. (DEC Book at 66.) He has been associated with Firm-A since April 20, 2022. (*Id.*) Respondent is not currently registered as a broker. (*Id.* at 51, 119.)

#### 1. Respondent’s Disciplinary History

##### a. *2017 Public Letter of Admonition (CFP Board Case No. 2016-0123)*

On April 17, 2017, the Commission sanctioned Respondent with a Public Letter of Admonition for violating Rule 2.1 of CFP Board’s *Rules of Conduct* after finding that Respondent had misrepresented his compensation method as “fee-only” on CFP Board’s consumer-facing “Find a CFP® Professional” search tool. (*Id.*) After issuing a notice reminding CFP® professionals of their

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<sup>3</sup> In materials submitted on December 12, 2022 in connection with Enforcement Counsel’s investigation, Respondent describes the client at issue in this matter as a potential client. (DEC Book at 98.) At the outset of the hearing, Respondent’s counsel clarified without objection that this individual subsequently became a client of Respondent’s firm. (Tr. at 12-13.)

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obligation to accurately represent their compensation methods to the public, CFP Board notified Respondent in September 2013 that it had removed the “fee-only” description from Respondent’s CFP Board profile and asked him to carefully review his compensation method before updating. (*Id.*) Even though Respondent received commissions, Respondent again misrepresented his compensation method as “fee-only” on the CFP® Professional tool. (*Id.* at 78, 79, 120.)

b. *2020 Warning and Letter of Dismissal (CFP Board Case No. 2020-55617)*

In September 2020, CFP Board issued a letter to Respondent (“2020 Letter of Caution”) stating that he may have violated Rule 6.2 of the *Rules of Conduct* by answering “No” on his 2018 Ethics Declaration to the question: “Have you ever been terminated for cause or permitted to resign in lieu of discipline when the cause of the termination or resignation involved allegations relating to compliance, honesty or ethical considerations.” (*Id.* at 30-31, 91-92, 121.) On November 16, 2017, Bank-1 had permitted Respondent to resign for failing to disclose he had been under investigation by CFP Board and had received the 2017 Public Letter of Admonition. (*Id.* at 61, 120.) CFP Board chose not to refer this alleged violation of Rule 6.2 to the Commission but warned Respondent in its 2020 Letter of Caution about the importance of adhering to Standard E of the *Code and Standards*, including his duty to accurately answer questions on Ethics Declarations. (*Id.* at 91, 121.) During his hearing on the instant matter, Respondent testified that he answered “No” on his 2018 Ethics Declaration because he did not understand the question. (Tr. at 71-75.) The Hearing Panel did not find Respondent credible in this regard and the Commission agreed.

2. Respondent Establishes Advisory Firm with Loan from Client

a. *Bank-2’s Grievance<sup>4</sup> Against Respondent*

CFP Board received a grievance from Bank-2 alleging that in November 2021, while Respondent was a Bank-2 employee, Respondent approached one of his clients at Bank-2 to whom Respondent was a fiduciary (“Client”), about lending money to Respondent to fund Respondent’s own competing advisory firm (Firm-A). (DEC Book at 93.) The grievance alleged that Respondent entered into a personal loan agreement with Client and received a check for \$150,000 from Client, which Bank-2 discovered after an investigation prompted by Client’s daughter questioning the \$150,000 withdrawal. (*Id.*; *see id.* at 106.) The grievance also alleged that Respondent “did not disclose or manage the conflicts of interest this personal transaction caused, nor did he self-report this ethics violation until [Bank-2] discovered the situation and confronted him with it.” (*Id.*)

Respondent stated that Bank-2 advised him that he violated Bank-2 policies and believed he violated the *Code and Standards*, at which point Respondent disclosed the loan to CFP Board. (*Id.* at 22, 117; *see also* Tr. at 36-38: CFP Board received Respondent’s disclosure before Bank-2’s grievance.)

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<sup>4</sup> This grievance was not fully anonymous because, after Respondent self-reported his misconduct to CFP Board, Bank-2’s legal representation informed Respondent that Bank-2 had reported this matter to CFP Board. (DEC Book at 117.)

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Respondent admitted he did not disclose the loan to Bank-2 “since the loan was part of actions being taken to leave Bank-2.” (DEC Book at 117.) Respondent stated it is fair to say that as an officer of Bank-2, he would have received numerous trainings making clear that borrowing from clients is prohibited, but Respondent admitted that his business opportunity took precedence. (Tr. at 59-60.)

b. *Respondent and His Business Partner Borrow Money from Client*

Respondent met his business partner while working at Bank-1 in 2015. (*Id.* at 121.) The business partner began working with Client in 2015, and Respondent joined Client’s service team in 2016. (*Id.* at 22, 121.) Respondent stated that his business partner eventually cultivated a personal relationship with Client, and she now views Respondent’s business partner “as a son.” (Tr. at 42-43.)

In February 2018, Respondent joined Bank-2, and his business partner joined Bank-2 two weeks later. (*Id.*) Following his business partner’s transition to Bank-2, Client transferred her accounts to Bank-2 and continued working with Respondent’s business partner as her portfolio manager and with Respondent as her relationship manager. (*Id.* at 97, 121.)

In Fall 2021, Respondent and his business partner were having a business lunch with Client when she inquired about their future plans. (*Id.* at 22, 121.) Client suggested the two partners open their own firm, and they revealed they were already considering opening their own firm. (*Id.* at 23, 121.) After the lunch, Client indicated she was interested in investing in their new firm as an equity investor, but the partners declined Client’s offer because they wanted to retain 50/50 ownership. (*Id.* at 23, 122.)

In October 2021, Respondent and his business partner found a local office condominium they believed would work well as office space, and Client accompanied them to view the property. (*Id.*) After seeing the space, Client offered to buy or become partial owner of the condominium. (*Id.*)

The partners and Client considered different ownership arrangements, including:

- Client would purchase the property outright with Respondent and his business partner entering into a lease-to-purchase agreement. (*Id.* at 105, 122.)
- Client and the partners would all have separate ownership interests in the property. (*Id.* at 23, 122.)

Ultimately, Respondent and his business partner took a \$150,000 lump sum loan from Client to purchase and renovate the office space. (*Id.*) The purchase, for \$190,000 in total, closed on December 31, 2021, and the office property was placed into a land trust. (*Id.* at 23.)

On February 25, 2022, Respondent and his business partner provided their notices of resignation to Bank-2. (*Id.* at 23, 123.) Respondent stated that for days following his resignation he was still employed by Bank-2 on a “garden leave,” and instructed by Bank-2 not to conduct financial

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services business during the garden leave. (*Id.* at 123.) During the leave period, Respondent and his business partner incorporated Firm-A, obtained its registration as a Registered Investment Advisor, and began firm operations on April 25, 2022, the day their leave ended. (*Id.* at 23, 124.)

### 3. The Terms of Client's Loan

Respondent admitted that on November 17, 2021, Client signed a Promissory Note with Respondent and his business partner formalizing Client's loan to them of \$150,000 with a 5% APR to be paid within 36 months. (*Id.* at 109, 123-124.) At the time Client signed the Promissory Note, she was neither a member of Respondent's family nor a business organization or legal entity in the business of lending money. (*Id.* at 97, 109, 123.) The loan money was deposited into a *de facto* business account with held jointly by Respondent and his business partner. (*Id.* at 23, 123.)

On June 8, 2022, Respondent and his business partner reimbursed Client the \$150,000 loan amount plus accrued interest of \$5,073.53. (*Id.* at 23, 124.)

Respondent stated he believed the terms of the loan were "fair" because the loan yield was based on the yield of the iShares iBoxx High Yield Corporate Bond ETF ("HYG") at the time of the promissory note. (*Id.*) In 2021, the average yield of HYG was 4.48% with a low of 4.02% and a high of 4.98%. (*Id.*) Respondent stated that he believed HYG was the appropriate ETF to use for comparison, so he believed the 5% interest rate agreed on per the terms of the Promissory Note was a fair yield. (*Id.*)

Respondent testified that Client was adamant about lending the funds, and Client provided a letter expressing her support for Respondent in these proceedings, stating she was very insistent in offering the loan and was satisfied with the performance of the loan as an investment in her portfolio.<sup>5</sup> (Tr. at 49; DEC Book at 134.) However, Respondent admitted that no written or oral disclosure of his conflicts of interest was provided to Client. (DEC Book at 116.) Respondent stated that he believed Client "knew" the risks involved with the loan and Respondent's conflicts of interest without disclosing them to her, based on her sophistication as an investor. (*Id.*)

Respondent admitted that he did not seek to obtain a loan from any commercial lender before obtaining the loan from Client because he believed no institution would loan the funds due to Firm-A being a new business. (*Id.* at 115-117.) Respondent also admitted he did not consider any market comparisons with loans from any institution before obtaining the loan from Client. (*Id.*)

The Commission took this to mean that there is so much risk involved in loaning money to a fledgling company with no proven track record that Respondent did not even contact institutional lenders, but Respondent still recommended the loan to Client, which is a significant, undisclosed conflict of interest.

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<sup>5</sup> Client's daughter questioned her mother's decision to loan the money to Respondent, according to the grievance, and Client stated in a text message that her daughter "seems to think I am not bright enough to make my own decisions. She does a lot for me so I have to tread lightly." (DEC Book at 93, 106.) Respondent testified that Client's daughter is also Respondent's client and testified that the daughter—generally—is supportive of Respondent. (Tr. at 69-70.)

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### **III. DISCUSSION OF RESPONDENT'S MISCONDUCT**

To impose a sanction on Respondent, the Commission must find grounds for a sanction. The Commission found grounds for a sanction because it determined, and Respondent admitted, 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*.

#### *Grounds for Sanction*

Respondent admitted to violating Standard A.15.a. of CFP Board's *Code and Standards*, which provides that a CFP® professional may not, directly or indirectly, borrow money from or lend money to a client unless i. the client is a member of the CFP® professional's family; or ii. the lender is a business organization of legal entity in the business of lending money.

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

Respondent admitted to the following:

In 2021, Client was Respondent's client at Bank-1 and Respondent acted as her relationship manager. On November 17, 2021, Respondent signed a Promissory Note with Client wherein she loaned Respondent \$150,000 to establish his new firm. Per the terms of the loan, Respondent was required to pay off the loan over the course of 36 months with a 5% APR. At the time that Client signed the Promissory Note she was neither a member of Respondent's family nor a business organization or legal entity in the business of lending money.

Respondent stated he will not be asserting, and did not assert, any defenses. (DEC Book at 125.)

Therefore, there are grounds to sanction Respondent for violating Standard A.15.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 the applicable sanctions set forth in Article 11.1.

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

- Conduct 3: Borrowing from a Client (Public Censure).

The Policy Notes to Conduct 3 state: "The following should be considered additional aggravating or mitigating factors in determining the appropriate sanction: (1) Was this an isolated incident? (2)

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Was there informed consent? (3) Was there a preexisting relationship? (4) Was there harm to the client? (5) Did the CFP® professional profit from the incident?”

The Commission considered whether there were any material aggravating or mitigating factors relevant to Respondent’s sanction and what weight those factors may have in the Commission’s decision. This included a review of aggravating or mitigating factors offered by Enforcement Counsel and by Respondent.

The Commission cited the following mitigating factors:

1. There is no evidence of client harm—Respondent and his business partner repaid Client what she was owed under the Promissory Note, Client did not lodge a complaint, and Client indicated she was aware of CFP Board’s investigation and provided a letter in support of Respondent.
2. This was an isolated incident—Respondent stated he has not borrowed money from a client in any other instance, and no evidence was presented otherwise, however in the context of his disciplinary history, Respondent’s misconduct is not isolated, so this factor carried little weight. (*See DEC Book at 117.*)
3. Respondent had a pre-existing relationship with Client, although any personal relationship developed out of Respondent’s business relationship with Client and even the business relationship was more with Respondent’s business partner, so this factor carried little weight.

The Commission cited the following aggravating factors:

1. Respondent has a disciplinary history—the Commission previously found Respondent made misrepresentations to clients and prospective clients, Respondent was terminated for not reporting the Commission’s findings to his employer, and CFP Board alleged Respondent misrepresented the termination on his 2018 Ethics Declaration.
2. There was no informed consent—Respondent did not disclose his conflicts of interest to Client or provide Client investment alternatives to the loan, exposing Client to the risks involved with his start-up business.
3. Respondent profited from his misconduct—Respondent received more favorable terms for Client’s loan than he would obtain from pursuing institutional lenders and the value of the property he bought with the loan would have appreciated over the term of the loan.

The Commission consulted various Case Histories, including ones identified by the parties, to determine if any contained non-binding precedent that may be persuasive to the Commission. The Commission considered the cases suggested by Respondent and by Enforcement Counsel and cited CH 21866, CH 29879, and CH 31337.

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ACH 21866 is similar to the instant matter; however, the case was decided 15 years ago, concerning a loan made in 2006.

ACH 29879 is significantly distinguishable from in instant matter because (1) in good faith, the CFP® professional in CH 29879 did not believe that the friend who loaned money to the CFP® professional was a client of the CFP® professional or the CFP® professional's firm, whereas Respondent had a longstanding customer relationship with Client that predated any personal relationship that may have resulted; (2) the Commission in CH 29879 found that the CFP® professional did not conceal or fail to disclose the loan he received from his firm, and promptly reported his termination CFP Board—whereas Respondent intentionally did not report Client's loan to Bank-2 and knew or should have known he violated bank policy; and (3) the Commission in CH 29879 mitigated down to a Private Censure in part due to the CFP® professional's incredibly compelling personal circumstances, including multiple successive life-altering catastrophes involving several family members—terminal brain cancer, dementia, and seven deaths during the relevant period—whereas, Respondent took a loan from the client of his employer to establish his own firm to compete with that employer.

In ACH 31337, in accordance with a settlement agreement, a respondent consented to a suspension for two months and admitted to several grounds for sanction concerning a civil matter and protracted bankruptcy litigation related to a client's loan. Notably, the respondent in ACH 31337 had a 14-year close family relationship with the client and entered into the loan prior to becoming a CFP® professional, and the grounds for sanction in that case appeared to result from the fallout of her prior decision.

After considering the facts and violations found, the baseline recommended sanction suggested by the *Sanction Guidelines* in light of its policy notes, the greater weight of the aggravating factors in light of the mitigating factors, and Respondent's disciplinary history and relevant Case Histories, the Commission issues this Order imposing on Respondent a **Suspension for Four (4) Months**.

Ordered by:

The Disciplinary and Ethics Commission, CFP Board

Date: August 26, 2024