

THE DISCIPLINARY AND ETHICS COMMISSION

In the Matter of



Joseph S. Sturniolo, CFP®,

Respondent.

CFP Board Case No. 2023-64545

August 23, 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 CFP®, CERTIFIED FINANCIAL PLANNER®,  and  certification marks (“CFP® marks”), on December 14, 1987. He has been certified since that date. (DEC Book at 13.)¹

I. PROCEDURAL HISTORY

On December 19, 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 a violation of Standard A.8.a. of CFP Board’s *Code of Ethics and Standards of Conduct* (“Code and Standards”). The Complaint cites a Consent Licensing Order involving Respondent that was entered on December 30, 2022 by the Securities Commissioner for the State of Colorado (“Consent Order”). (*Id.* at 6-139.)

On or about January 26, 2024, Respondent filed an Answer to the Complaint in which he admitted the material allegations in the Complaint, asserted mitigating factors, and identified five Case Histories² he deemed relevant to the Commission’s sanction determination. (*Id.* at 142-49, 152-53.) On or about April 26, 2024, Respondent produced materials pursuant to Article 10.3 of the *Procedural Rules*, including, among other things, a Witness List, and copies of the Case Histories he had identified in his Answer. (*Id.* at 150-96.)³

On June 28, 2024, a Hearing Panel of the Commission convened at CFP Board’s headquarters in Washington, DC to review and consider the Complaint and relevant documents, information, and

¹ The DEC Book and any other exhibits to this Order will not be published under Article 17.7 of the *Procedural Rules*. DEC Book page citations refer to the page(s) of the DEC Book pdf.

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

³ Enforcement Counsel produced its Article 10.3 materials as Exhibit A to the Complaint. (*Id.* at 6.)

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argument. (Transcript of Hearing of Joseph Sturniolo, CFP®, June 28, 2024 (“Tr.”) at 1.) DEC Counsel appeared for the Commission and for the Hearing Panel of the Commission, Enforcement Counsel appeared by video for CFP Board, and Respondent appeared by video and was represented by counsel.

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.

II. FINDINGS OF FACT

A. Background

Respondent has passed the (a) Series 63 – Uniform Securities Agent State Law Examination (1982); (b) Series 7 – General Securities Representative Examination (1983); (c) Series 65 – Uniform Investment Adviser Law Examination (1993); (d) Series 24 – General Securities Principal Examination (1997); and (e) SIE – Securities Industry Essentials Examination (2018). (DEC Book at 65.)

Respondent maintains an insurance license with the Colorado Division of Insurance. (*Id.* at 92; Tr. at 97.)

Respondent has been associated with a firm (“Firm A”) as a broker since January 3, 2006, and as an investment advisor representative since January 3, 2023. (DEC Book at 61.)

Respondent is the sole owner of Sturniolo Joseph S. & Associates (or “the Sturniolo Firm”), an investment adviser licensed in Colorado in June 2012. (*Id.* at 129-30.)

In 2022, the Colorado Division of Securities conducted an examination of the Sturniolo Firm. (*Id.* at 107, 129.) By letter dated May 13, 2022, the Colorado Division of Securities informed the Sturniolo Firm that it had completed its examination and identified deficiencies that required the firm to take corrective action. (*Id.* at 107-118.)

B. Colorado Consent Order

On December 30, 2022, the Colorado Securities Commissioner entered a Consent Licensing Order that incorporated and adopted the terms of a Stipulation for Consent Licensing Order Respondent entered with the Colorado Division of Securities on December 21, 2022 (“Stipulation”) in which, without admitting or denying the allegations, Respondent stipulated to the following:

- the Colorado Securities Commissioner conducted an examination of the Sturniolo Firm’s books and records in 2013 and issued a June 16, 2013 letter to the firm specifying deficiencies. Respondent and the firm’s Chief Compliance Officer failed to cure some of those deficiencies.

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- The Sturniolo Firm has not updated, and since at least 2013 has failed to deliver to clients and prospective clients, its Form ADV Part 2 (“Firm Brochure”) and individual representatives Part 2B (“Brochure Supplement”) in violation of Rule 51-4.7(IA)(A) under the Colorado Securities Act. This disclosure form is required to be updated annually and provided to clients before entering into an advisory relationship.
- Due to the Sturniolo Firm’s failure to deliver its Form Brochure and Brochure Supplement, Respondent did not disclose material information to clients in violation of Rule 51-4.8(IA)(K). Specifically, Respondent did not disclose that the Sturniolo Firm and its representatives accepted compensation for the sale of insurance and securities, and that this practice presents a material conflict of interest and creates an incentive to recommend products based on the compensation received and not the best interests of the client.
- Respondent was subject to a 2019 customer complaint in his capacity as a registered representative with Firm A (the “2019 Customer Complaint”) and a 2020 customer complaint against Firm A in which Respondent was not named as a party (the “2020 Customer Complaint”). Since the customer complaints were not disclosed on the Sturniolo Firm’s disclosure documents and the disclosure documents were not delivered, existing and potential clients of the Sturniolo Firm did not receive notice of either customer complaint as required. The customer complaints have since been expunged from Respondent’s record after an arbitration panel found them to be false, factually impossible, and clearly erroneous allegations.
- The Sturniolo Firm misrepresented to clients that its services were being provided through Firm A, not through their independent state investment adviser. The Sturniolo Firm’s advisory contract identified Respondent as an investment adviser representative of Firm A but did not contain adequate information in violation of Rule 51-4.8(IA)(P).
- The Sturniolo Firm failed to timely file its annual updating amendments for fiscal years 2008 to 2018 and has currently not filed for fiscal years 2019 and 2020 as required by Rule 51-4.3(IA)(G).
- Based on the above alleged conduct, the Sturniolo Firm violated or failed to comply with provisions of the Colorado Securities Act pursuant to § 11-51-410(1)(b) and (5), C.R.S., and rules thereunder. (*Id.* at 124-39.)

The Respondent consented to sanctions, including, but not limited to:

- the issuance of a reportable letter of censure and restrictions placed on Respondent’s Colorado investment advisor license by the Colorado Securities Commissioner;

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- Respondent’s withdrawal of his and his firm’s Colorado licenses within sixty (60) days of receiving approval of his adviser representative license with Firm A;
- specified undertakings, including Respondent’s retention of a compliance consultant approved by the Colorado Division of Securities should he apply for a Colorado state investor adviser firm license in the future; and
- heightened supervision for a period of three years to be governed by registration and supervisory agreements included as exhibits to the Stipulation. (*Id.*)

B. Evidence Presented

Respondent asserts that he believed the deficiencies identified in 2013 had been cured, and that he reasonably relied on the Sturniolo Firm’s Chief Compliance Officer, hired in 2001, to handle the firm’s operations and compliance functions, including timely filing and updates to the firm’s Form ADV. (*Id.* at 145, Tr. 16-17, 63.) Respondent testified that his Chief Compliance Officer was depending on Firm A to inform them what was necessary for the Sturniolo Firm to meet its compliance requirements. (*Id.* at 102.)

The Sturniolo Firm’s Chief Compliance Officer confirmed that Respondent “entrust[ed]” him to handle the firm’s paperwork, including filing and updating its Form ADV and providing the disclosures to clients. (Tr. at 64-69.) He mistakenly understood that updates to the Sturniolo Firm’s Form ADV would be handled through Firm A and took “full responsibility” for his firm’s non-compliance. (*Id.* at 66-69.) In describing his responsibilities as Chief Compliance Officer, his testimony focused principally on handling client applications and other onboarding paperwork, and not on areas the Commission would have expected him to identify, such as common disclosure documents, conflict of interest policies, internal firm compliance meetings, trainings, and the like. (*Id.* at 64-65.)

The Commission found that Respondent and the Chief Compliance Officer, who continues to work for Respondent (*id.* at 65), did not adequately explain why for nearly ten years the firm did not follow up with the Colorado Division of Securities to confirm whether the deficiencies identified in 2013 had been satisfactorily addressed. (*Id.* at 67, 111-12, 118-19.)

Respondent did not appear to the Commission to fully appreciate the distinction between dealing with clients “transparently” and having in place policies and processes appropriate for managing conflicts of interest like those identified in the Consent Order. (*See, e.g.*, Tr. at 82-84.)⁴

⁴ “Q: So then the heart of what has to happen in that kind of a business model where you’ve got some AUM and then the potential to implement through products that might have commission or other transaction fees, is the conversation around the conflicts of interest or the disclosures, which I think is the heart of maybe the regulatory concern on the ADV. Where in your firm – do you have a policy for how you and your associates handle conflicts of interest in the internal policy on disclosure management? A: As long as we provide clients with transparency, you know, with what we do, how we do it, how we’re compensated, there’s no conflict of interest, you know, because the clients know how we’re being compensated.... Q: So your approach to handling conflicts of interest is through what you believe is a transparent and open communication process? A: Yes, yes.”

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The Commission credits a January 10, 2024 letter from Firm A stating with respect to its heightened supervision of Respondent that Firm A had conducted an initial unannounced branch inspection on October 24, 2023 and (i) found Respondent “to be in general compliance” with Firm A’s policies and procedures, and (ii) “uncovered no material concerns or red flags in our reviews.” (*Id.* at 153; Tr. at 30.) Yet the Commission found little evidence that Respondent has evolved his approach to his firm’s compliance function, particularly as it relates to books and records and disclosures. The Commission is concerned that, once heightened supervision ceases, Respondent might again fail to provide all required to disclosures to clients and prospective clients and his compliance practices might again fail examination.

Respondent’s FINRA BrokerCheck and Investment Adviser Public Disclosure (IAPD) reports list him as being registered with “Sturniolo Joseph S & Associates Inc” (the Sturniolo Firm) until February 2023. The reports also identify him as an insurance agent currently doing business as (DBA) an entity named “Joseph S. Sturniolo & Associates Inc”. (DEC Book at 59-91.) Respondent testified that this was a “misprint,” that the Sturniolo Firm that entered into the Consent Order “was never called Sturniolo Joseph, so I don’t know why it says that.” (Tr. at 99.) The Commission has some concern that any non-insurance business being conducted through the DBA would not be subject to oversight by Firm A due to this lack of clarity. The Commission notes that the Consent Order appears to address this possibility by including a review by Firm A of Respondent’s other business activities (OBAs) to ensure “customers do not incorrectly assume the OBAs are part of their securities business.” (DEC Book at 139.)

Respondent, who is 75 years old (*id.* at 58), does not currently appear to have a developed succession plan. In testimony on this topic, Respondent referred to a “buy-sell” agreement with the Sturniolo Firm’s Chief Compliance Officer, then testified about the difficulty of finding someone he could trust to take over the business, and that he was working with Firm A to find someone he could train over the next year or two to be his successor. (Tr. at 89-90.) Respondent’s testimony suggests that business succession will either be covered by the arrangement with the Chief Compliance Officer, or Respondent will continue to service current and future clients as an active financial advisor holding himself out to clients as a comprehensive financial planner. (*Id.* at 38.) Both raise concerns that the professional services Respondent provides will not be subject to adequate compliance oversight after heightened supervision ceases.

III. DISCUSSION

To impose a sanction on Respondent, the Commission must find grounds for a sanction. The Commission found grounds for a sanction 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*.

Grounds for Sanction

Standard A.8.a. of the *Code and Standards* states that a CFP® professional must comply with the laws, rules, and regulations governing Professional Services.

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Professional Services includes financial advice and related activities and services offered or provided, such as financial planning, legal, accounting, or business planning services.

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

Article 7.2 of the *Procedural Rules* states 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.

The Colorado Securities Commissioner is a state governmental agency. The Consent Order is a record of Professional Discipline by the Colorado Securities Commissioner, and Respondent is the subject of that record. Therefore, the Consent Order conclusively establishes the existence of Professional Discipline for purposes of this disciplinary proceeding and is conclusive proof of the facts and violations that serve as the basis for that Professional Discipline of Respondent.

The Consent Order is conclusive proof that Respondent failed to comply with Colorado laws, rules, or regulations governing Professional Services that include the proper maintenance and handling of books and records, the delivery of Form ADVs, and the proper disclosure of customer complaints. Respondent failed to cure books and records deficiencies identified by the Colorado Securities Commissioner in its June 16, 2013 letter to the Sturniolo Firm. Respondent failed to update his firm’s Form ADV Part 2 or provide material information to clients since 2013. Respondent did not properly disclose the 2019 Customer Complaint or the 2020 Customer Complaint, and he failed to timely file his firm’s annual updating amendments for fiscal years 2008 to 2018. (*Id.* at 124-39.)

Accordingly, there are grounds to sanction Respondent for violating 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 the applicable sanctions set forth in Article 11.1.

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

- Conduct 14(b): Failure Provide in Writing, Discuss, or Disclose Required Information to Client (Public Censure)
- Conduct 20(d): Misrepresentation to Clients and Prospective Clients (Public Censure)
- Conduct 30: Securities Law Violation (Public Censure)
- Conduct 2: Books and Records Violation (Private Censure)

The Commission concluded that a public censure was the appropriate baseline sanction here given Respondent's violation and the Commission's factual findings.

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 the parties.

The Commission identified as a mitigating factor the fact that Firm A's ongoing heightened supervision of Respondent had found no additional violations to date.

The Commission identified the following as aggravating factors:

1. The Colorado Consent Order required Respondent to withdraw his firm's investment advisor license.
2. The Colorado Consent Order placed Respondent under heightened supervision for a period of three years.
3. Respondent's conduct demonstrates a pattern of behavior involving repeated books and records lapses and inadequate supervision of a compliance officer who displayed a lack of competence.
4. Respondent did not appear to acknowledge or appreciate the connection between books and records violations and adequate disclosure of conflicts of interest.
5. The conduct occurred for an extended period of time.
6. Respondent was negligent in relying on a compliance officer whom he had reason to know was not diligently performing his compliance duties.

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The Commission also consulted various Case Histories, including ones the parties identified,⁵ to determine if any contained non-binding precedent that may be persuasive to the Commission. The Commission did not find persuasive the Case Histories identified by Respondent to support a private censure. Many reflect mitigating factors lacking in this case. (*See. e.g.*, CH 21781 (citing respondent’s ongoing efforts to improve books and records); CH 29364 (citing respondent’s proactive efforts to rectify compliance concerns in recognition of deficient conduct).) None of the Case Histories cited by either party involves the combination of aggravating factors the Commission found relevant to its decision here—most notably, the long period of time Respondent remained out of compliance after being informed of his firm’s compliance deficiencies; the mandatory withdrawal of the firm’s state license; and the imposition of multi-year heightened supervision aimed at monitoring Respondent’s ongoing compliance.

The Commission found particularly relevant CH 31716, in which a respondent consented to a three-month suspension of his right to use the CFP® marks after entering into a state regulatory consent order for books and records violations involving, among other things, inaccurate Forms ADV.

After considering the violation found, the single mitigating factor, the baseline public censure recommended by the *Sanction Guidelines*, the several aggravating factors here, and Case Histories, the Commission issues this Order imposing on Respondent a **Suspension for Three Months and Undertakings** in the form of (a) 10 hours Continuing Education relevant to the management of conflicts of interest and compliance, and (b) providing CFP Board with all ongoing correspondence or reports concerning Respondent between Firm A and Colorado state securities regulators.

Ordered by:

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⁵ Respondent identified the following Case Histories, each involving the imposition of a private censure: CH 30764, CH 21781, CH 30033, CH 29364, and CH 26763. Enforcement Counsel identified the following Case Histories, in which the sanctions included a public censure, a suspension, or undertakings: CH 31341, CH 31628, CH 31716, CH 43598, and CH 43887.