



THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF
FILIPPO MASTROCOLA
Respondent.

CFP Board Case No. 2023-65247

August 21, 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 November 9, 1998. CFP Board suspended that right until further notice on August 10, 2022. (DEC Book at 15, 38-42.)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 violations of Standards A2.b., A.8.a., A.11., and E.3. of CFP Board’s *Code of Ethics and Standards of Conduct* (“*Code and Standards*”), and Rules 2.1 and 4.3 of the CFP Board’s *Rules of Conduct*. (*Id.* at 5-86.) The Complaint cites a May 24, 2022 Consent Order Respondent entered with the Massachusetts Securities Division, in which he consented to paying a \$175,000 administrative fine, \$102,000 in restitution, and was permanently barred from associating with or acting as a broker-dealer or investment advisor in Massachusetts. (*Id.*)

On or about January 23, 2024, Respondent filed an Answer to the Complaint in which he admitted entering into the Consent Order and not disclosing it to CFP Board within 30 days, while denying certain other allegations. (*Id.* at 87-88.) Respondent chose not to produce materials under Article 10.3 of the *Procedural Rules*.²

On June 27, 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 and information. (Transcript of Hearing of Filippo Mastrocola, June 28, 2024 (“Tr.”) at 1.) DEC Counsel appeared

¹ The DEC Book and any other exhibits to this Order will not be published under Article 17.7 of the *Procedural Rules*.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 Enforcement Counsel produced its Article 10.3 materials as Exhibit A to the Complaint. (*Id.* at 5.)

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for the Commission and for the Hearing Panel of the Commission, Enforcement Counsel appeared by video for CFP Board, and Respondent appeared by video on his own behalf.

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. The Commission issued this final Order on August 21, 2024.

II. FINDINGS OF FACT

A. Background

Respondent became a CFP® professional on November 9, 1998. (DEC Book at 15.)

On August 10, 2022, CFP Board issued an Automatic Interim Suspension Order against Respondent under Article 2.1 of the *Procedural Rules* after discovering the May 24, 2022 Massachusetts Consent Order permanently barring him from associating with or acting as a broker-dealer or investment advisor in the state. (*Id.* at 38-42.)

Respondent is not currently registered as an investment advisor or broker. (*Id.* at 5.)

During the relevant time period, Respondent was a licensed attorney. (*Id.* at 52, Tr. at 31.)

B. Massachusetts Consent Order

By entering the Consent Order, Respondent, without admitting or denying the facts or violations of law alleged, consented to the following findings:

- Respondent, through his law firm, provided legal services to a client that consisted of explaining Massachusetts Medicaid (“MassHealth”) policies and procedures related to long-term care, preparing, and filing a MassHealth application for the client’s wife, and responding to requests from MassHealth for additional information.
- Respondent’s firm sent an invoice, dated January 3, 2018, to the client billing him \$12,500 for the MassHealth-related services, which the client dutifully paid.
- The client frequently communicated with Respondent about qualifying for MassHealth and sought advice from Respondent on how to reallocate assets to allow his wife to qualify for the program.
- After reviewing the assets belonging to the client and his wife, Respondent recommended that the client liquidate stocks held in his individual retirement account (“Client’s IRA”) and provide the proceeds to Respondent.

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- Respondent advised the client that purchasing a Medicaid-compliant annuity can permit a Medicaid applicant to reduce his or her household's non-exempt assets to qualify for the program.
- Respondent represented that he would use the proceeds of the Client's IRA sales to purchase a Medicaid-compliant annuity on the client's behalf.
- Respondent knew that it was not possible for a lawyer or designated agent to purchase an annuity on behalf of another person without that person ever having to sign any type of paperwork or attestations from the insurance company.
- On January 17, 2020, the client acted upon Respondent's advice and sold stocks held in the Client's IRA.
- On January 22, 2020, the client withdrew \$228,000 from the Client's IRA, which constituted the distribution from the IRA.
- On February 4, 2020, the client wrote a check to Respondent in the amount of \$228,000.
- On February 4, 2020, Respondent deposited the \$228,000 check from the client into Respondent's Firm's Massachusetts Interest on Lawyers' Trust Account ("Respondent's Firm's IOLTA").
- Because the proceeds resulting from the IRA distribution were taxable, the client instructed the broker-dealer with which he maintained the Client's IRA to withhold \$172,000 for future state and federal taxes.
- The client incurred \$102,000 in tax liability for the 2020 tax year as a result of the bulk withdrawal from the IRA.
- Respondent is the only person who has ever been authorized to spend or withdraw funds from Respondent's Firm's IOLTA.
- Between February 1, 2020, and February 25, 2020, Respondent transferred or withdrew \$225,085.88 of the \$228,000 in funds attributable to the proceeds of the client's stock sales held in Respondent's Firm's IOLTA for purposes unrelated to the client.
- On February 21, 2020, Respondent wired \$220,000 of the funds attributable to the client to an account held for the benefit of an unaffiliated third party.

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- Respondent misrepresented to the client that he had used the client's \$228,000 to purchase a Medicaid-compliant annuity on the client's behalf. Respondent never actually purchased any annuity on the client's behalf.
- On May 3, 2021, Respondent opened an attorney trust savings account for the benefit of the client ("Respondent's Trust Account for Client").
- Respondent is the only person who has ever been authorized to spend or withdraw funds from Respondent's Trust Account for Client.
- From May 2021 to November 2021, Respondent made regular transfers in the amount of \$4,633.35 from Respondent's Trust Account for the client to the client's checking account.
- Respondent did not tell the client that the \$4,633.35 transfers were not actually payments from a Medicaid-compliant annuity that Respondent had purchased on the client's behalf.
- On November 18, 2021, the Massachusetts Securities Division Enforcement Section sent an inquiry letter to Respondent seeking information about all annuities that he had assisted the client in purchasing.
- In a letter to the Massachusetts Securities Division Enforcement Section dated November 29, 2021, Respondent admitted that he had not purchased an annuity for the client.
- On December 1, 2021, Respondent transferred \$250,373.56 from Respondent's Trust Account for the client to the client's checking account.
- On December 1, 2021, a gift basket from Respondent was delivered to the client's home.
- On December 2, 2021, Respondent called the client and admitted that he had not actually purchased a Medicaid-compliant annuity on the client's behalf. During this call Respondent told the client that he had held the proceeds of his stock sales in a trust account, minus \$25,193 that Respondent paid to the client's wife's nursing home.

(*Id.* at 51-59.)

The Consent Order states that by engaging in the conduct it describes, Respondent violated Section 101(2) of the Massachusetts Uniform Securities Act, Mass. Gen. Laws c. 110A (the "Massachusetts Securities Act"), which provides:

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It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly . . . (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances _ under which they are made, not misleading. . . .”

The Consent Order imposed the following sanctions against Respondent:

- a permanent bar in Massachusetts from registering as, associating with, or acting as a broker-dealer or investment advisor any capacity;
- restitution to the client in the amount of \$102,000;
- an administrative fine of \$175,000; and
- a censure.

(*Id.* at 57-58.)

On July 21, 2022, Respondent paid the client \$102,000 in restitution. (*Id.* at 60-61.) On August 22, 2022, Respondent paid his \$175,000 administrative fine to the Massachusetts Securities Division. (*Id.* at 62-64.)

Respondent did not disclose to CFP Board that he had entered into the Consent Order within 30 days of entering the Consent Order. (*Id.* at 84-86.)

B. Evidence Presented at the Hearing

At the hearing, Respondent testified that he had voluntarily relinquished his rights to use the CFP® marks and that he consented to a revocation of that right as a sanction in this case. (Tr. at 16, 28, 35.) Respondent also testified that his law license had been suspended and that he had voluntarily resigned from the state bar. (Tr. at 29.)

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*.

First Grounds for Sanction

Standard A.2.b. of the *Code and Standards* states that a CFP® professional may not, directly or indirectly, in the conduct of Professional Services i) employ any device, scheme or artifice to defraud; ii) make any untrue statement of a material fact or omit to state a material fact necessary

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in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or iii) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

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.

Respondent was engaged in Professional Services when he rendered legal services to his client that included explaining MassHealth policies and procedures related to long-term care, preparing and filing a MassHealth Application for the client's wife, and responding to requests from MassHealth for additional information.

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 Massachusetts Securities Division is a state governmental agency. The Consent Order is a record of Professional Discipline by the Massachusetts Securities Division; Respondent and the Professional Services he provided are the subjects 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 Massachusetts Consent Order is conclusive proof that Respondent violated Section 101(2) of the Massachusetts Securities Act. The Consent Order is conclusive proof that Respondent made a misleading statement by representing to his client that he would use the proceeds of Client's IRA sales to purchase a Medicaid-compliant annuity on his client's behalf, knowing that it was not possible for a lawyer or designated agent to purchase an annuity on behalf of another person without that person ever having to sign any paperwork. Respondent never purchased any annuity on his client's behalf. Respondent used the proceeds of Client's IRA sales for purposes unrelated to the client. Respondent opened an attorney trust savings account for his client in which only Respondent had the authority to spend or withdraw funds. (DEC Book at 51-59.)

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

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Second 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.

Rule 4.3 of the *Rules of Conduct* states that a certificant shall be in compliance with applicable regulatory requirements governing professional services provided to the client.

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

Respondent was engaged in Professional Services when he rendered legal services to his client that included explaining MassHealth policies and procedures related to long-term care, preparing and filing a MassHealth Application for the client's wife, and responding to requests from MassHealth for additional information.

The Massachusetts Securities Division is a state governmental agency. Under Article 7.2 of the *Procedural Rules*, the Massachusetts Consent Order is conclusive proof that Respondent did not comply with Section 101(2) of the Massachusetts Securities Act and the regulations promulgated thereunder, which govern Professional Services provided to the client.

Accordingly, 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*.

Third Grounds for Sanction

Standard A.11 of the *Code and Standards* states that a CFP® professional must provide a Client with accurate information, in accordance with the Engagement, and in response to reasonable Client requests, in a manner and format that a Client reasonably may be expected to understand.

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

The Massachusetts Securities Division is a state governmental agency. Under Article 7.2 of the *Procedural Rules*, the Consent Order is conclusive proof that Respondent provided inaccurate information in the Engagement with his client by (a) representing that he would use the proceeds of the Client's IRA sales to purchase a Medicaid-compliant annuity on the client's behalf, but instead wiring those proceeds to an account held for the benefit of an unaffiliated third party; and (b) misrepresenting to the client that he had used the client's \$228,000 to purchase a Medicaid-compliant annuity on the client's behalf. (DEC Book at 51-59.)

Accordingly, there are grounds to sanction Respondent for a violation of Standard A.11 of the *Code and Standards*.

Fourth Grounds for Sanction

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Rule 2.1 of the *Rules of Conduct* states that a certificant shall not communicate, directly or indirectly, to clients or prospective clients any false or misleading information directly or indirectly related to the certificant's professional qualifications or services. A certificant shall not mislead any parties about the potential benefits of the certificant's service. A certificant shall not fail to disclose or otherwise omit facts where that disclosure is necessary to avoid misleading clients.

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

The Massachusetts Securities Division is a state governmental agency. Under Article 7.2 of the *Procedural Rules*, the Consent Order is conclusive proof that Respondent communicated to his client false or misleading information about his professional services and failed to disclose facts necessary to avoid misleading the client. In the Consent Order, the Massachusetts Securities Division found that (a) Respondent represented that he would use the proceeds of the Client's IRA sales to purchase a Medicaid-compliant annuity on the client's behalf, but instead wired the proceeds to an account held for the benefit of an unaffiliated third party; and (b) Respondent misrepresented to the client that he had used the client's \$228,000 to purchase a Medicaid-compliant annuity on the client's behalf.

Therefore, there are grounds to sanction Respondent for a violation of Rule 2.1 of the *Rules of Conduct*

Fifth Grounds for Sanction

Standard E.3.c. of the *Code and Standards* states that a CFP® professional must provide written notice to CFP Board within thirty (30) calendar days after the CFP® professional, or an entity over which the CFP® professional was a Control Person, has had conduct mentioned adversely in a Finding in a Regulatory Action involving a failure to comply with the laws, rules, or regulations governing Professional Services (except a Regulatory Action involving a Minor Rule Violation in a Regulatory Action brought by a self-regulatory organization).

Standard E.3.g. of the *Code and Standards* provides that a CFP® professional must provide written notice to CFP Board within thirty (30) calendar days after the CFP® professional, or an entity over which the CFP® professional was a Control Person, has been the subject of a Finding of fraud, theft, misrepresentation, or other dishonest conduct in a Regulatory Action or Civil Action.

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

The Consent Order is a Regulatory Action involving a failure to comply with the laws, rules, or regulations governing Professional Services that Respondent provided to his client. In the Consent Order, Respondent was the subject of a finding of fraud, theft, misrepresentation, or other dishonest conduct. The Consent Order found that Respondent (a) represented to this client that he would use the proceeds of the Client's IRA sales to purchase a Medicaid-compliant annuity on the client's behalf, but instead wired those proceeds to an account held for the benefit of an unaffiliated third party; and (b) misrepresented to the client that he had used the client's \$228,000 to purchase a Medicaid-compliant annuity on the client's behalf.

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Respondent admits that he did not report to CFP Board that he had entered into the Massachusetts Consent Order within 30 days of entering the Consent Order in May 2022.

Therefore, there are grounds to sanction Respondent for a violation of Standards E.3.c. and E.3.g. 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 issued its non-binding *Sanction Guidelines* to serve as guidance for determining appropriate sanctions. The Commission considered the recommended sanctions and policy notes for the following categories of conduct:

- Conduct 2: Books and Records Violation (Private Censure)
- Conduct 14.a: Failure to Disclose to CFP Board (Private Censure)
- Conduct 20.d: Misrepresentation to Clients and Prospective Clients (Public Censure)
- Conduct 29: Revocation or suspension of a non-financial professional license (e.g. real estate, attorney) or certification (Revocation)³

The Commission also considered whether there were any material aggravating or mitigating factors relevant to the sanction imposed here, and what weight those factors may have in the Commissions' decision.

The Commission determined there were no mitigating factors.

The Commission considered the following aggravating factors:

1. Respondent did not attempt to remedy the misconduct prior to detection.
2. Respondent attempted to conceal his misconduct.
3. Respondent's conduct was intentional.
4. Respondent's conduct resulted in harm to the client.

³ Although Respondent was not a registered securities representative or financial advisor, the Commission considers the Consent Order's permanent bar of Respondent from acting as an investment advisor to be, in effect, a revocation of his professional financial license.

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The Commission also consulted various Case Histories⁴ to determine if any contained non-binding precedent that may be persuasive to its decision but found none materially relevant to the facts in this case.

After considering the violation found, the aggravating or mitigating factors, and any relevant Case Histories, the Commission determined to issue to Respondent this **Order of Revocation**.

Ordered by:

The Disciplinary and Ethics Commission, CFP Board

⁴ Case Histories (referred to as “CHs” or “ACHs”) are available on CFP Board’s website at <https://www.cfp.net/ethics/enforcement/case-history>.