

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

IN THE MATTER OF
JEFFREY K. KIRKPATRICK
Respondent.

CFP Board Case No. 2022-63658

February 12, 2024

ORDER OF ADMINISTRATIVE PERMANENT BAR

On December 19, 2023, pursuant to Article 4.2 of Certified Financial Planner Board of Standards, Inc.’s (“CFP Board”) *Procedural Rules*, CFP Board Enforcement Counsel filed a Motion for Order of Administrative Permanent Bar (“Motion”)¹ requesting that Counsel for the Disciplinary and Ethics Commission (“DEC Counsel”) issue an Order of Administrative Permanent Bar against Jeffrey K. Kirkpatrick (“Respondent”).

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

I. Background

Respondent became a CFP® professional on March 8, 1999, and remained certified until May 1, 2022, when Respondent’s certification expired. (*See* Motion, Exhibit 1 at 3.²)

On June 13, 2023, Enforcement Counsel delivered a Complaint to Respondent pursuant to Article 3.1 of CFP Board’s *Procedural Rules*, alleging violations of CFP Board’s *Code of Ethics and Standards of Conduct* (“*Code and Standards*”) (the “2023 Complaint”). (*Id.* at 89-92.) Pursuant to Article 3.1 of the *Procedural Rules*, the 2023 Complaint set forth the grounds for sanction, including a detailed factual description of the conduct and a specific statement of the alleged violations. Enforcement Counsel delivered the 2023 Complaint via electronic mail to the email address of record that Respondent had provided to CFP Board. (*Id.* at 1-2.) Pursuant to Article 3.2, Respondent had a duty to deliver to Enforcement Counsel, and contemporaneously file with the DEC, a written Answer within 30 calendar days of delivery of the 2023 Complaint, but he did not do so. (*Id.* at 2.) As demonstrated by Respondent’s failure to submit an Answer to the 2023 Complaint as required, Enforcement Counsel determined that Respondent was in default pursuant to Article 4.1.e. (*Id.* at 2.) Enforcement Counsel filed a Motion for Order of Administrative Permanent Bar on December 19, 2023. (*Id.* at 3.)

¹ Enforcement Counsel states in its Motion that it had attempted to meet and confer with Respondent by phone on August 23, 2023, in a reasonable and good faith effort to resolve or narrow the issue of Respondent’s default, but Respondent did not respond to Enforcement Counsel’s attempt. (Motion at 1; Exhibit 1 at 94.) Enforcement Counsel also stated that Respondent previously had indicated via telephone that he would not be participating in this investigation. (*Id.*)

² 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*.

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II. **Discussion**

A. Respondent is in Default

Pursuant to Article 4.1.e. of the *Procedural Rules*, if Respondent fails to file an Answer in accordance with Article 3.2 then Respondent is in default. Respondent failed to file an Answer to the 2023 Complaint within 30 calendar days of delivery of the 2023 Complaint, as required by Article 3.2 of the *Procedural Rules*. Respondent is therefore in default under Article 4.1.e. of the *Procedural Rules*.

B. Respondent's Conduct Warrants an Administrative Permanent Bar

The factual allegations that Enforcement Counsel set forth in its 2023 Complaint against Respondent include the following:

1. *Enforcement Counsel's 2022 Investigation*

a. 2022 NOTICE OF INVESTIGATION ("NOI") AND 2022 NOTICE OF FAILURE TO COOPERATE

Enforcement Counsel states in its 2023 Complaint that it discovered that Respondent's conduct was the subject of an investigation by the U.S. Securities and Exchange Commission ("SEC"). (*Id.* at 69, 90.) As part of that investigation, SEC staff issued a "Wells Notice" on February 24, 2022. (*Id.*)

On April 5, 2022, Enforcement Counsel sent Respondent a Notice of Investigation ("2022 NOI"), and a Request for Information seeking information about the SEC's Wells Notice. (*Id.* at 69-71.)

Enforcement Counsel states in its 2023 Complaint that, in May 2022, Respondent acknowledged the 2022 NOI in an email, but informed Enforcement Counsel that he recently surrendered his CFP® certification and was not going to participate in Enforcement Counsel's investigation. (*Id.* at 90.) Enforcement Counsel also states that Respondent failed to substantively respond to the NOI's requests. (*Id.*)

On May 25, 2022, Enforcement Counsel sent a Notice of Failure to Cooperate. (*Id.* at 73.) Enforcement Counsel states that Respondent failed to cure the deficiency noted in the Notice of Failure to Cooperate. (*Id.* at 81.)

b. 2022 COMPLAINT ALLEGING RESPONDENT FAILED TO SATISFY HIS DUTY TO COOPERATE

On June 24, 2022, Enforcement Counsel issued a Complaint to Respondent alleging violations of Sections d. and k. of the *Terms and Conditions of Certification and Trademark License* ("*Terms and Conditions*") based upon his refusal to fully cooperate with Enforcement Counsel's investigation ("2022 Complaint."). (*Id.* at 79-81.)

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Enforcement Counsel states in its 2023 Complaint that, on June 29, 2022, Respondent indicated that he changed his mind and would participate in Enforcement Counsel’s investigation. (*Id.* at 91.) The 2023 Complaint describes that Respondent provided the outstanding information and documents to Enforcement Counsel on July 12, 2022, and on July 19, 2022, Enforcement Counsel withdrew the June 2022 Complaint issued to Respondent. (*Id.*)

Enforcement Counsel states in its 2023 Complaint that Respondent ultimately settled the matter that was the subject of the Wells Notice issued to him, resulting in an SEC finding that Respondent willfully aided and abetted and caused his firm to violate Section 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-7 thereunder. (*Id.*) The SEC found that, while Respondent was responsible for administering his firm’s compliance program, he knew or should have known that the firm’s compliance program was inadequately implemented. (*Id.* at 44.) Respondent knew of Outside Business Activities (“OBA”) being conducted by an investment advisor representative of the firm and failed to perform the proper review of that OBA and failed to require the investment advisor representative to comply with the firm’s formal reporting requirements. (*Id.*) After at least a year of non-compliance with the firm’s compliance program, Respondent reported the OBA to the Broker-Dealer. (*Id.*) This resulted in the Broker-Dealer terminating its relationship with Respondent’s firm. (*Id.*) The SEC ordered that Respondent cease and desist from future violations and not act in a supervisory or compliance capacity, with the right to reapply to regain that status in five years, and imposed a \$15,000 civil penalty. (*Id.*)

2. *Enforcement Counsel’s Continued 2023 Investigation*

a. 2023 REQUEST FOR INFORMATION AND DOCUMENTS AND 2023 NOTICE OF FAILURE TO COOPERATE

The 2023 Complaint alleges that, after discussing his case with Enforcement staff, Respondent indicated once again that he was not going to participate in Enforcement Counsel’s investigation (*id.* at 91) and that Enforcement Counsel issued an email request for information and documents to Respondent. (*Id.*) Enforcement Counsel alleges that Respondent failed to respond to the email request for information and documents, so Enforcement Counsel delivered a Notice of Failure to Cooperate to Respondent on May 23, 2023. (*Id.*)

Enforcement Counsel alleges in its Motion that Respondent has not cured the deficiency noted in the Notice of Failure to Cooperate issued May 23, 2023. Enforcement Counsel states in its Motion that, to date, Enforcement Counsel has not received the information requested in the email request for information and documents issued March 29, 2023. (*Id.* at 92.)

b. 2023 COMPLAINT ALLEGING RESPONDENT FAILED TO SATISFY HIS DUTY TO COOPERATE WITH THE 2023 INVESTIGATION

Enforcement Counsel filed its 2023 Complaint against Respondent on June 13, 2023. The 2023 Complaint set forth grounds for sanction against Respondent failure to satisfy the cooperation

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requirements of Sections d and k of the *Terms and Conditions* and of the *Procedural Rules*. Specifically, that Respondent engaged in a continuous course of misconduct relating to Respondent's failure to cooperate, including: (a) Respondent failed to respond to the requests in CFP Board's email requesting information and documentation dated March 29, 2023; and (b) Respondent failed to cure his failure to cooperate in response to CFP Board's Notice of Failure to Cooperate dated May 23, 2023.

Enforcement Counsel has averred that Respondent did not file an Answer to the 2023 Complaint; his Answer was due on July 13, 2023; and there is no evidence in the record that Respondent has filed an Answer to the 2023 Complaint. (*Id.* at 94.)

Respondent's conduct warrants an Order of Administrative Permanent Bar. Specifically, Respondent's conduct may have violated sections d and k of the *Terms and Conditions*, and Respondent did not file an Answer to the June 2023 Complaint.

III. Conclusion

DEC Counsel finds that Respondent is in default pursuant to Article 4.1.e. of the *Procedural Rules*, the Motion is **GRANTED**, and DEC Counsel issues this Order of Administrative Permanent Bar ("Order") wherein 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 by sending an email to discipline@cfpboard.org, within 45 calendar days of issuance of this Order, or by **March 28, 2024**, written evidence that Respondent:

- Has advised Respondent's Firm(s), in writing, of this Administrative Permanent Bar in the manner set forth in Standard D.3 of the *Code and Standards*; and
- Has advised all Clients of this Administrative Permanent Bar 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*; and
- 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*, within 45 calendar days from the date of this Order, or by **March 28, 2024**, Respondent is required to submit to Enforcement Counsel, by sending an email to discipline@cfpboard.org, 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

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promotional materials, as well as pictures of any other materials Respondent controls in which the CFP Board certification 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
February 12, 2024