

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

IN THE MATTER OF
MARK A. WHITAKER
Respondent.

CFP Board Case No. 2023-64670

April 1, 2024

ORDER OF ADMINISTRATIVE PERMANENT BAR

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 Revocation (“Motion”)¹ on December 14, 2023, requesting that Counsel for CFP Board’s Disciplinary and Ethics Commission (“DEC Counsel”) issue an Administrative Order of Revocation against Mark A. Whitaker (“Respondent”). (Motion and its exhibits enclosed as “Exhibit A”.)

On January 5, 2024, DEC Counsel issued a scheduling order that, among other things, extended the deadline for Respondent to file a Response to the Motion until January 19, 2024. (“Exhibit B”².) The scheduling order included the following (emphasis in original):

Mr. Whitaker ... should note: Administrative Orders issue public sanctions. Pursuant to Articles 4.4, 11.1, and 17.7 of the *Procedural Rules*, **CFP Board will publish the order** imposing a public sanction and/or a summary of the contents of the order in a press release, **on CFP Board’s website**, and any other form of public disclosure that CFP Board determines is appropriate. In the publication, CFP Board will have the right to identify Respondent and the form of sanction, and provide some or all of the facts, as CFP Board has determined them to be, that CFP Board has determined are relevant to the sanction, including information which otherwise may be private or confidential under the *Procedural Rules*. **Publication of the sanction will remain on CFP Board’s website**. CFP Board may characterize or otherwise describe in public statements the sanction and facts relevant to the sanction.

(*Id.*)

To date, Respondent has not filed a Response or sought further extensions. Therefore, Enforcement Counsel did not file a Reply. No party requested oral argument on the Motion.

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

I. BACKGROUND

¹ Enforcement Counsel certified in its Motion that it had met and conferred with Respondent by telephone on three occasions—June 22, 2023, July 6, 2023, and July 11, 2023—in a good faith attempt to resolve or narrow the issues, but the parties were unable to resolve the issues.

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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Respondent became a CFP® professional on May 8, 1989. (Motion at 10.) On July 7, 2023, Respondent submitted a Voluntary Relinquishment Request to CFP Board, and voluntarily relinquished his CFP Board certification, effective January 1, 2024. (Exhibit A at 9.)³

On March 6, 2023, Enforcement Counsel delivered to Respondent a Notice of Investigation and Request for Information to Respondent concerning his conduct with respect to “6/4/2018 North Carolina State Board of CPA Examiners Revocation Order” (“NOI”). (*Id.* at 15-16.) According to its Motion, Enforcement Counsel spoke with Respondent about this investigation by telephone on June 22, 2023, July 6, 2023, and July 11, 2023, and during each of these conversations the parties discussed Respondent’s options for responding to a Compliant versus the issuance of an Administrative Order of Revocation if Respondent did not cooperate with CFP Board’s investigation. (*Id.* at 4.) Enforcement Counsel stated that during the July 6, 2023 phone call, Respondent asked whether relinquishing his certification would make the investigation “go away” and Enforcement Counsel informed him that the investigation would continue and would eventually lead to issuance of an Administrative Order if he did not cooperate with the investigation. (*Id.*)

On August 29, 2023, according to Enforcement Counsel⁴, Enforcement Counsel sent to Respondent an email requesting that Respondent indicate whether or not he intended to participate in Enforcement Counsel’s ongoing investigation of his conduct. (*Id.* at 4.) On October 10⁵, 2023, Enforcement Counsel sent to Respondent an email that delivered to him a Notice of Failure to Cooperate pursuant to Article 1.3 of CFP Board’s *Procedural Rules* for his alleged violations of CFP Board’s *Code of Ethics and Standards of Conduct* (“*Code and Standards*”) (“Notice”). (*Id.* at 7-8, 14.) Enforcement Counsel indicated in the Notice and in its email delivering the Notice to Respondent that, in accordance with the *Procedural Rules*, Respondent could cure his alleged Failure to Cooperate by resubmitting certain documents and information to Enforcement Counsel within 14 days. (*Id.*) Later that day, Respondent replied to Enforcement Counsel’s email. (*Id.*) In his reply, Respondent acknowledged discussing his options with Enforcement Counsel during the July 11, 2023 phone call, but did not provide the information requested to cure his alleged failure to cooperate. (*Id.*) Respondent further stated: “Please proceed in any way you choose!” (*Id.* at 7.)

Enforcement Counsel stated that it determined Respondent was in default pursuant to Article 4.1.b and Article 4.1.c of the *Procedural Rules*, as demonstrated by Respondent’s relinquishment of his

³ Enforcement Counsel noted in its Motion: “Mr. Whitaker is currently certified, however by the time this motion is determined his status might change. Therefore, in the event that his status has changed to “not certified” Enforcement Counsel requests that DEC Counsel issue an Administrative Order of Permanent Bar.” (Motion at 3.)

⁴ Although Enforcement Counsel’s August 29, 2023 email is not in the record as an exhibit to the Motion, Enforcement Counsel’s determination that Respondent is in default is based on Respondent’s relinquishment of his CFP® marks and his failure to comply with his Duty to Cooperate, as evidenced by his failure to substantively reply to the Notice of Failure to Cooperate delivered to him on October 10, 2023. Furthermore, Enforcement Counsel also references this August 29, 2023 email in its correspondence to Respondent dated October 10, 2023, where Enforcement Counsel delivered its Notice of Failure to Cooperate to Respondent, and also references it in the body of that Notice, evidencing that Respondent knew or should have known of the existence of the email. (*Id.* at 7-8, 14.)

⁵ Enforcement Counsel in its Motion and its Notice of Failure to Cooperate erroneously stated the date of the Notice of Failure to Cooperate to be October 6, 2023, when the provided email evidencing delivery to Respondent of the Notice of Failure to Cooperate is dated October 10, 2023. Pursuant to Article 16.5, the date of filing and delivery will be the day a document is transmitted—presumptively October 10, 2023, for the purposes of this Order. Regardless, Respondent did not cure his alleged failure to cooperate within 14 days of either date.

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CFP® marks in conjunction with his statements to Enforcement Counsel, as well as his failure to comply with the Duty to Cooperate within the required timeframe. On December 14, 2023, Enforcement Counsel filed its Motion.

II. DISCUSSION

a) Respondent is in Default.

On more than one occasion, and as best evidenced by the July 11, 2023 telephone call, Enforcement Counsel met with Respondent to confer with him regarding his options of responding to a Complaint, if and when filed, including the option of defaulting under Article 4.1 of the *Procedural Rules*. On October 10, 2023, Enforcement Counsel delivered a Notice of Failure to Cooperate to Respondent. Respondent replied to the Notice stating that he had relinquished his CFP® Marks on July 7, 2023 and that he did not intend to participate in the investigation, and he failed to cure his failure to cooperate.

Respondent is deemed in default under the following provisions of CFP Board’s *Procedural Rules*:

- Article 4.1.b: Respondent relinquished his CFP Board certification instead of responding to Enforcement Counsel’s requests and stated: “Please proceed in any way you choose!”—thereby he provided a clear intention to not participate in the investigation.
- Article 1.3.d: Respondent failed to cure the Notice of Failure to Cooperate within 14 calendar days of delivery of the Notice, as required by Article 1.3.d of the *Procedural Rules*.

Respondent is therefore in default under Article 4.1.c of the *Procedural Rules*.

b) Respondent’s Conduct Warrants an Administrative Permanent Bar.

Enforcement Counsel stated Respondent’s alleged misconduct concerned the following:

Respondent received a two-year revocation of his Certified Public Accountant (“CPA”) credentials in June 2018 by the North Carolina State Board of CPA Examiners because he failed to disclose annuity commissions to one of his clients. Respondent’s failure to disclose commissions may have violated Rule 2.2.A.1 of the *Rules of Conduct*. Respondent’s revocation of his CPA credentials also may have violated Rule 4.3 of the *Rules of Conduct*. Respondent failed to disclose the 2018 suspension of his CPA license to CFP Board on an ethics disclosure he submitted to CFP Board on December 21, 2019. This omission may have violated Standard E.3.c of the *Code and Standards*.

As a result, Respondent’s conduct warrants the issuance of an Order of Administrative Permanent Bar.

III. CONCLUSION

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After careful consideration, and in accordance with Articles 4 and 9 of CFP Board's *Procedural Rules*, DEC Counsel has determined that Enforcement Counsel stated with reasonable particularity in its Motion, the grounds for Respondent's default under Articles 4.1.b. and 4.1.c. and its determination on the seriousness, scope, and harmfulness of Respondent's conduct. Accordingly, DEC Counsel grants Enforcement Counsel's Motion and issues to Respondent this Administrative Order of Permanent Bar ("Order"). 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, within 45 calendar days of issuance of this Order, or by May 16, 2024, written evidence that Respondent:

- **Has advised Respondent's Firm(s)** of the public sanction, in writing, in the manner set forth in Standard D.3 of the *Code and Standards*; and
- **Has advised all Clients** (as Client is defined in the Glossary to the *Code and Standards*) of the public sanction 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*, Respondent is required to submit to Enforcement Counsel, within 45 calendar days of issuance of this Order, or by May 16, 2024, 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 promotional materials, as well as pictures of any other materials Respondent controls in which the CFP® 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

April 1, 2024