



*FP Canada Standards Council™*

*and*

*Helen Harry, CFP®*

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## **STATEMENT OF ALLEGATIONS**

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### **THE CFP® PROFESSIONAL**

1. Helen Harry (“Ms. Harry” or “the Respondent”) was certified by the Financial Planning Standards Council® now FP Canada™, as a CERTIFIED FINANCIAL PLANNER® professional in April 1998. Ms. Harry has consistently renewed her certification with FP Canada and, as of the date of this Statement of Allegations, her CFP® certification is current and in good standing. Ms. Harry does not have a discipline history with the FP Canada Standards Council™.
2. Ms. Harry is a financial planner in Stirling, Ontario.

### **HISTORY OF THE PROCEEDINGS**

3. In August 2020, the Standards Council became aware of disciplinary proceedings by the Mutual Fund Dealers Association of Canada (“MFDA”) involving Ms. Harry. Ms. Harry failed to notify the Standards Council of these disciplinary proceedings. Moreover, she misled the Standards Council when completing her 2020/2021 CFP Certification Renewal Application by falsely attesting that she was not the subject of a complaint, investigation or proceeding before a licensing body and/or self-regulatory body, when in fact her conduct was subject to review by the MFDA.
4. On September 3, 2020, the Standards Council wrote to Ms. Harry and notified her that the Standards Council was conducting a review of her conduct as a CFP® certificant. In the same correspondence, the Standards Council requested that Ms. Harry respond and provide relevant information and documentation by September 25, 2020, to assist the Standards Council in its review.
5. Ms. Harry failed to respond to the Standard Council’s inquiry of September 3, 2020 or to the Standard Council’s subsequent communications and requests for responses of October 5, 2020 and December 21, 2020.

6. The final deadline for response to the Standard Council's communications expired on January 6, 2021.
7. On January 18, 2021, the Executive Director, Standards & Certification and Head of the FP Canada Standards Council, referred this matter to a Disciplinary Hearing Panel in accordance with Article 4.3 of the *FP Canada Standards Council Disciplinary Rules and Procedures (DRP)*.

## NOTICE

8. Further to the direction of the Executive Director, Standards & Certification and Head of the FP Canada Standards Council, and in accordance with Article 5.1 of the *DRP*, I hereby give notice of the Standards Council's request that a hearing date be set with respect to the matter identified as: *FP Canada Standards Council™ and Helen Harry, CFP®*.
9. The Standards Council requests that the hearing in respect of this matter be held in writing.

## APPLICABLE STANDARDS

<b><i>Applicable Rules of Conduct (in relevant part)</i></b>	
<b>Rule 31</b>	<i>A Certificant shall meet all FP Canada requirements for continued certification, including:  a) Making full and accurate Legal Declarations when completing their Annual Renewal Form. Reportable items are outlined in the "Declarations and Professional Obligations" section of the certification renewal form and include consumer proposals and bankruptcy; involvement in civil proceedings; criminal convictions; court orders; and investigations or decisions by professional bodies and regulatory/licensing bodies;  b) Advising FP Canada, in writing, of any changes to prior Legal Declarations within 15 days of becoming aware of new information; ....</i>
<b>Rule 33</b>	<i>A Certificant shall reply promptly and completely to any communication from FP Canada or the FP Canada Standards Council in which a response is requested.</i>

## ALLEGATIONS

The Standards Council makes the following allegations against the Respondent:

1. The Respondent misled FP Canada when completing her 2020/2021 CFP Certification Renewal Application by falsely attesting that she was not the subject of a complaint, investigation or proceeding before a licensing body and/or self-regulatory body, when in

fact her conduct was subject to review by the Mutual Fund Dealers Association of Canada (“MFDA”), thereby breaching Rule 31 of the *Rules of Conduct*;

2. The Respondent failed to provide FP Canada with written notice of the disciplinary proceedings initiated by the MFDA, in or around July 2020, within 15 days of becoming aware of the proceedings, thereby breaching Rule 31 of the *Rules of Conduct*; and
3. The Respondent failed to respond to correspondence sent by the FP Canada Standards Council dated September 3, 2020; October 5, 2020 and December 21, 2020, each of which included requests for information and deadlines for response, thereby breaching Rule 33 of the *Rules of Conduct*.

Dated the 5<sup>th</sup> day of February, 2021.



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Tamara Center  
Director, Professional Conduct and Enforcement  
Counsel to FP Canada Standards Council™

## REPORT ON DISCIPLINARY ACTION

### Details of Hearing: Helen Harry (Stirling, ON)

By way of Decision and Reasons dated April 23, 2021, an FP Canada Standards Council™ Discipline Hearing Panel (the “Hearing Panel”) found that Helen Harry engaged in conduct that breached the *FP Canada Standards Council Rules of Conduct* (the “Rules of Conduct”).

The Hearing Panel’s Decision and Reasons are summarized below and are attached in full. The Hearing Panel considered the evidence provided by the FP Canada Standards Council (the “Standards Council”). Ms. Harry did not provide any submissions, or otherwise participate in the proceedings, despite receiving notice as set out further below.

The Hearing Panel found that Ms. Harry engaged in misconduct, as noted below, and directed that the matter be referred to a penalty hearing, to be scheduled.

### Background

Ms. Harry was certified by the Financial Planning Standards Council® now FP Canada™, as a CERTIFIED FINANCIAL PLANNER® professional in April 1998. Ms. Harry has consistently renewed her certification and, as of the date of the Decision and Reasons, her CFP® certification is current and in good standing. Ms. Harry does not have a discipline history with the Standards Council.

In August 2020, the Standards Council became aware of disciplinary proceedings by the Mutual Fund Dealers Association of Canada (“MFDA”) involving Ms. Harry. The allegations advanced by the MFDA included alleged misconduct by Ms. Harry while certified by FP Canada. Ms. Harry failed to notify the Standards Council of the regulatory proceedings. Between September 3, 2020 and December 21, 2020, the Standards Council sent correspondence to Ms. Harry requesting that she provide specific information and documentation to the Standards Council to assist the Standards Council in its review of her conduct as a CFP Certificant. Ms. Harry failed to respond to the Standard Council’s inquiries.

## Allegations Advanced by the Standards Council

In its [Statement to Allegations](#) dated February 5, 2021<sup>1</sup>, the Standards Council alleged that, Ms. Harry:

1. Misled FP Canada when completing her 2020/2021 CFP Certification Renewal Application by falsely attesting that she was not the subject of a complaint, investigation or proceeding before a licensing body and/or self-regulatory body, when in fact her conduct was subject to review by the Mutual Fund Dealers Association of Canada (“MFDA”), thereby breaching Rule 31 of the Rules of Conduct;
2. Failed to provide FP Canada with written notice of the disciplinary proceedings initiated by the MFDA, in or around July 2020, within 15 days of becoming aware of the proceedings, thereby breaching Rule 31 of the Rules of Conduct; and
3. Failed to respond to correspondence sent by the FP Canada Standards Council dated September 3, 2020; October 5, 2020 and December 21, 2020, each of which included requests for information and deadlines for response, thereby breaching Rule 33 of the Rules of Conduct

## Applicable Standard

The underlying conduct took place between March and December 2020. Accordingly, Ms. Harry’s conduct was governed by the *Standards of Professional Responsibility for CFP® Professionals and FPSC Level 1™ Certificant in Financial Planning*, in force from January 2020.

## FP Canada Standards Council Hearing Panel Decision

The Hearing Panel considered written submissions from the Standards Council and released its decision on April 23, 2021.

In accordance with Article 8.1 of the FP Canada Standards Council *Disciplinary Rules and Procedures* (the “DRP”), the Hearing Panel found that the Standards Council failed to met its onus in respect of Allegation 1, above, but found that Ms. Harry did engage in professional misconduct as set out in Allegations 2 and 3, above.

The Hearing Panel will convene to deliberate on Penalty on a date to be scheduled.

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<sup>1</sup> <https://www.fpcanada.ca/docs/default-source/standards-and-enforcement/statement-of-allegations---harry.pdf>

## **DISCIPLINARY HEARING DECISION AND REASONS**

*IN THE MATTER OF FP CANADA STANDARDS COUNCIL™*

*AND*

*HELEN HARRY, CFP®*

Heard in writing: March 24, 2021

Date of decision: April 23, 2021

Hearing Panel: **FP Canada Standards Council Discipline Hearing Panel**  
Mark Bailey, LL.B., Chair of the Hearing Panel  
Jonah Rabinovitch, CFP®  
Jeff Lighthouse, CFP®

Tamara Center, for FP Canada Standards Council

Helen Harry, self-represented

Bernie LeBlanc, Independent Legal Counsel to the Hearing Panel

Jignasa Patel, Secretary to the Hearing Panel

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1. The FP Canada Standards Council Discipline Hearing Panel (the “Panel”) held a written hearing to consider allegations of misconduct against Helen Harry, CFP®, (the “Respondent” or “Ms Harry”). The Panel considered the evidence as well as FP Canada’s written submissions. The Respondent did not provide any submissions or otherwise respond to the investigation as set out further below.
  2. The allegations in this case relate to the failure of the Respondent to disclose the existence of a Mutual Fund Dealers Association of Canada (“MFDA”) investigation and proceeding commenced against her and her failure to respond to correspondence from the FP Canada Standards Council enquiring about the MFDA investigation and proceeding.
  3. For the reasons that follow, the Panel finds that the Respondent engaged in misconduct and breached the *Code of Ethics* and the *Rules of Conduct* as set out further below. Accordingly, the Panel refers this matter to a penalty hearing pursuant to Article 8.2 of the *Disciplinary Rules and Procedures*.

## THE ALLEGATIONS OF MISCONDUCT

4. The allegations against the Respondent were set out in the Statement of Allegations dated February 5, 2021 as follows:
  1. The Respondent misled FP Canada when completing her 2020/2021 CFP Certification Renewal Application by falsely attesting that she was not the subject of a complaint, investigation or proceeding before a licensing body and/or self-regulatory body, when in fact her conduct was subject to review by the MFDA, thereby breaching Rule 31 of the Rules of Conduct;
  2. The Respondent failed to provide FP Canada with written notice of the disciplinary proceedings initiated by the MFDA, in or around July 2020, within 15 days of becoming aware of the proceedings, thereby breaching Rule 31 of the Rules of Conduct; and,
  3. The Respondent failed to respond to correspondence sent by the FP Canada Standards Council dated September 3, 2020; October 5, 2020 and December 21, 2020, each of which included requests for information and deadlines for response, thereby breaching Rule 33 of the Rules of Conduct.

## THE FACTS

### *Background of the Respondent*

5. The Respondent was certified by the Financial Planning Standards Council® now FP Canada™, as a Certified Financial Planner® professional in April 1998. The Respondent has consistently renewed her certification with FP Canada. As of February 18, 2021, her CFP certification was current.<sup>1</sup>
6. The Respondent was registered as a mutual fund salesperson (now known as a dealing representative) with Investia Financial Services Inc., (“Investia”) from December 2006 to August 2019.

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<sup>1</sup> Affidavit of Sheila Janes, Sworn February 18, 2021 (“Janes Affidavit”) at para 6, FP Canada Standards Council’s Written Submissions on Finding, Tab 2.

***The MFDA Investigation and Proceeding***

7. In January of 2019, Investia conducted an internal investigation into the Respondent's conduct. Also in January of 2019, Investia filed a report regarding the misconduct on the MFDA's Member Event Tracking System ("METS").<sup>2</sup> Subsequent to Investia's filing on METS, MFDA commenced an investigation into the Respondent's conduct.<sup>3</sup>
8. When completing her 2020/21 CFP Renewal Application Form through the FP Canada online portal on March 31, 2020, Ms. Harry did not make any positive declarations on the renewal applications. Specifically, the Respondent answered "No" to the following question on her CFP Renewal Application Form:  
  

*Since signing your last application for certification: have you received notice of a pending or current complaint, investigation, or proceeding against you or any business with which you are/were involved before any professional-oversight body, licensing body and/or self-regulatory body for any reason whatsoever?*<sup>4</sup>
9. On July 31, 2020, the MFDA ("Staff") sent a copy of the Notice of Hearing to the Respondent's email address.<sup>5</sup> Ms. Harry did not notify FP Canada that an MFDA Notice of Hearing had been issued.<sup>6</sup>
10. On or about August 19, 2020, the MFDA issued a News Release indicating that the MFDA had commenced disciplinary proceedings in respect of the Respondent by way of the issuance of a Notice of Hearing. Ms. Harry did not notify FP Canada that an MFDA Notice of Hearing had been issued.<sup>7</sup>
11. The MFDA Notice of Hearing includes the allegation that the Respondent, between 2009 and 2019, altered client forms and used those altered forms to process transactions. It is also alleged

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<sup>2</sup> Decision and Reasons of the MFDA Hearing Panel dated January 11, 2021 (the "MFDA Decision") at para 23 to 25, Exhibit H to the Janes Affidavit.

<sup>3</sup> MFDA Decision at para 35, Exhibit H to the Janes Affidavit.

<sup>4</sup> Janes Affidavit at para 4 and Exhibit A (2020/21 CFP Renewal Application Declaration).

<sup>5</sup> MFDA Decision at para 2, Exhibit H to the Janes Affidavit.

<sup>6</sup> Janes Affidavit at para 6 and Exhibit B (MFDA News Release and Notice of Hearing).

<sup>7</sup> Janes Affidavit at paras 5 and Exhibit B (MFDA News Release and Notice of Hearing).



that the Respondent cut and pasted client signatures onto new account forms which she submitted for processing.<sup>8</sup>

12. The MFDA held a hearing on December 9, 2020. The Respondent did not serve nor file a Reply. Neither the Respondent, nor a representative on her behalf, attended the MFDA hearing or otherwise participated in the MFDA proceeding.
13. The MFDA Hearing Panel issued its Decision and Reasons on January 11, 2021. The MFDA Hearing Panel upheld the allegations of MFDA Staff and imposed a \$16,000 fine and costs of \$5,000.

***The Standards Council's Efforts to Contact Ms. Harry Regarding the MFDA Proceeding***

14. The Standards Council sent correspondence to Ms. Harry on September 3, 2020, October 5, 2020 and December 21, 2020 in each case requesting that Ms. Harry provide specific information and documentation relating to the allegations in the MFDA proceeding by an indicated deadline. In each case, the correspondence was sent to the email address and/or delivered to physical address on file with FP Canada. In each case, no error messages (for the email transmissions) or returned mail (for the mailed correspondence), indicating that the item could not be delivered, were received by the Standards Council. In respect of the December 21, 2020 letter, the Standards Council received confirmation of delivery from the courier that the letter was delivered. In each case, Ms. Harry failed to respond by the indicated deadline nor otherwise acknowledge the correspondence.<sup>9</sup>
15. On February 5, 2021, the Standards Council filed the Statement of Allegations in this matter with the Hearing Panel and on notice to Ms. Harry.<sup>10</sup> The Respondent did not provide any submissions in response to the Statement of Allegations or otherwise participate in this proceeding.

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<sup>8</sup> Janes Affidavit at para 7 and Exhibit B (MFDA News Release and Notice of Hearing).

<sup>9</sup> Janes Affidavit at para 8-18 and Exhibits C-D (Letters dated September 3, October 5 and December 21, 2020).

<sup>10</sup> Janes Affidavit at para 18 and Exhibit G (Statement of Allegations).

## APPLICABLE STANDARDS

16. The following standards were in place at the times of the alleged conduct.

<b><i>Applicable Rules of Conduct (in relevant part)</i></b>	
<b>Rule 31</b>	<p><i>A Certificant shall meet all FP Canada requirements for continued certification, including:</i></p> <p><i>a) Making full and accurate Legal Declarations when completing their Annual Renewal Form. Reportable items are outlined in the “Declarations and Professional Obligations” section of the certification renewal form and include consumer proposals and bankruptcy; involvement in civil proceedings; criminal convictions; court orders; and investigations or decisions by professional bodies and regulatory/licensing bodies;</i></p> <p><i>b) Advising FP Canada, in writing, of any changes to prior Legal Declarations within 15 days of becoming aware of new information; ....</i></p>
<b>Rule 33</b>	<p><i>A Certificant shall reply promptly and completely to any communication from FP Canada or the FP Canada Standards Council in which a response is requested.</i></p>

## RESPONDENT’S POSITION

17. As stated above, the Respondent did not file submissions nor otherwise participate in this hearing despite the fact that she was provided notice.

## DECISION AND REASONS

18. Having regard to the submissions of the Standards Council, we consider each of the allegations of misconduct separately, as follows:

***Allegation #1 – The Respondent misled FP Canada when completing her 2020/2021 CFP Certification Renewal Application by falsely attesting that she was not the subject of a complaint, investigation or proceeding before a licensing body and/or self-regulatory body, when in fact her conduct was subject to review by the Mutual Fund Dealers Association of Canada (“MFDA”), thereby breaching Rule 31 of the Rules of Conduct.***

19. In order to establish this allegation, the Standards Council must prove that the Respondent was subject to the investigation conducted by the MFDA at the time she completed her 2020/2021 CFP Certification Renewal Application.
20. In addition, Allegation #1 states that the Respondent “falsely attested” that she was not subject to the MFDA review. Consequently, the Standards Council must also establish the Respondent was aware of the MFDA investigation at the time of the Renewal Application in order for her attestation to be false.
21. The Standards Council bears the onus of proof and, in the Panel’s view, the Standards Council has failed to adduce evidence sufficient to meet its onus in respect of Allegation #1.
22. The Panel has not been provided with a precise date for when the MFDA commenced its investigation. The evidence is limited the MFDA’s Reasons and Decision which merely states that the MFDA investigation was commenced “subsequent to Investia’s filing on METS” which filing occurred in January of 2019.<sup>11</sup> Further, there is no indication in the record that the Respondent was provided notice of the MFDA investigation prior to being sent the issuance of the Notice of Hearing on July 31, 2020.
23. The Panel recognizes that, in the normal course, it is unlikely that the MFDA would wait until after March 31, 2020 (the date the Respondent completed the CFP Certification Renewal Application) to commence its investigation when it received the METS filing in January 2019. The Panel also recognizes that respondents will often be notified of a complaint early in the investigation process and that the Respondent was certainly made aware of the Investia investigations. However, there is simply no evidence as to when the MFDA investigation was commenced and when, or if, the Respondent was notified. The Panel is required to base its decisions on the evidentiary record before it not on conjecture based on what might usually occur.
24. In this case, the Respondent did not respond to the factual record presented by the Standards Council. In certain circumstances, the Panel may be able to draw an adverse inference from such a lack of response and conclude that the Respondent does not dispute the evidence adduced

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<sup>11</sup> MFDA Decision at para 35, Exhibit H to the Janes Affidavit.

by the Standards Council. However, such an adverse inference would not address the difficulty in this case that there is simply no evidence in the record to prove two elements of the Allegation #1.

25. For these reasons, the Panel dismisses Allegation #1.

***Allegation #2 – The Respondent failed to provide FP Canada with written notice of the disciplinary proceedings initiated by the MFDA, in or around July 2020, within 15 days of becoming aware of the proceedings, thereby breaching Rule 31 of the Rules of Conduct.***

26. The Panel's concerns regarding a lack of evidence do not similarly apply to Allegations #2 and #3.

27. With respect to Allegation #2, it is clear from the record that the Respondent was notified of the MFDA proceeding on July 30, 2020. It also has been established she did not advise FP Canada within 15 days of July 30, 2020.

28. Accordingly, the Panel upholds Allegation #2 and finds that the Respondent breached Rule 31 of the Rules of Conduct.

***Allegation #3 – The Respondent failed to respond to correspondence sent by the FP Canada Standards Council dated September 3, 2020; October 5, 2020 and December 21, 2020, each of which included requests for information and deadlines for response, thereby breaching Rule 33 of the Rules of Conduct.***

29. With respect to Allegation #3, the affidavit evidence filed by the Standards Council discloses that the Standards Council delivered the letters dated September 3, October 5 and December 21, 2020 and that the Respondent failed to respond to this correspondence.<sup>12</sup> The Panel, therefore, concludes that the Respondent breached Rule 33 of the Rules of Conduct.

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<sup>12</sup> Janes Affidavit at para 8-18 and Exhibits C-D (Letters dated September 3, October 5 and December 21, 2020).

## CONCLUSION AND ORDER

30. For the reasons set out above, the Panel dismisses Allegation #1 but upholds Allegations #2 and #3.
31. The Panel directs that this matter be referred to a penalty hearing, to be scheduled by the Secretary to the Hearing Panel.

**DATED** this 23<sup>rd</sup> day of April, 2021



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Mark Bailey, LL.B., Chair of the Hearing Panel



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Jonah Rabinovitch, CFP<sup>®</sup>, Hearing Panel Member



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Jeff Lightheart, CFP<sup>®</sup>, Hearing Panel Member