



FP Canada Standards Council™

and

Joan McCarthy

STATEMENT OF ALLEGATIONS

THE CFP® PROFESSIONAL

1. Joan McCarthy (“Ms. McCarthy” or “the Respondent”) was certified by the Financial Planning Standards Council®, now FP Canada™, as a CERTIFIED FINANCIAL PLANNER® professional in January 2002. Ms. McCarthy consistently renewed her certification with FP Canada until March 31, 2019, when her certification lapsed due to voluntary non-renewal. Ms. McCarthy does not have a discipline history with the FP Canada Standards Council™ (the “Standards Council”).
2. Ms. McCarthy was a registered representative employed with MD Management Limited (“MD Management”) in St. John’s, Newfoundland from 2002 through 2019. Ms. McCarthy has not been employed with MD Management since March 2019 and has not been registered with an Investment Industry Regulatory Organization of Canada (“IIROC”) regulated firm since that time.

HISTORY OF THE PROCEEDINGS

3. In May 2021, the Standards Council became aware of a Canadian Broadcasting Corporation (“CBC”) news article dated May 1, 2021¹, as well as an IIROC news release dated April 30, 2021², with a link to its Notice of Hearing and Statement of Allegations dated April 21, 2021³. The alleged conduct involved forging client signatures to misappropriate funds into her personal bank account; withdrawing funds from client accounts without client authorization; misleading MD Management; and failing to cooperate with the IIROC investigation.

¹ [CBC News Article dated May 1, 2021](#)

² [IIROC News Release dated April 30, 2021](#)

³ [21-0087 - Notice of Hearing and Statement of Allegations - Joan McCarthy \(English\) \(1\).pdf](#)

4. The alleged misconduct occurred while Ms. McCarthy was certified by FP Canada.
5. On May 11, 2021, the Standards Council instructed an independent investigation into Ms. McCarthy’s conduct as a CFP® professional.
6. On May 12, 2021, the Standards Council wrote to Ms. McCarthy and notified her that the Standards Council was conducting an investigation into her conduct as a CFP certificant. In the same correspondence, the Standards Council requested that Ms. McCarthy respond and provide relevant information and documentation by June 9, 2021, to assist the Standards Council in its investigation.
7. Ms. McCarthy failed to respond to the Standard Council’s inquiry of May 12, 2021, or to the Standard Council’s subsequent communications and requests for responses of June 10, 2021, July 5, 2021, and July 20, 2021. The final deadline for response to the Standard Council’s communications expired on July 29, 2021.
8. On July 13, 2021, Ms. McCarthy was charged criminally with multiple counts of fraud over \$5,000; forgery; uttering a forged document, and possessing property obtained by crime.
9. On July 30, 2021, the Executive Director, Standards & Certification and Head of the FP Canada Standards Council (the “Executive Director”), 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

10. Further to the direction of the Executive Director 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 Joan McCarthy*.
11. The Standards Council requests that the hearing in respect of this matter be held in writing.

APPLICABLE STANDARDS

<i>Applicable Rules of Conduct (in relevant part)</i>	
Rule 33	<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>
Rule 34	<i>A Certificant shall cooperate fully with a FP Canada Standards Council investigation of a complaint unless legally prevented from doing so. This rule applies equally to current and former Certificants.</i>

ALLEGATIONS

The Standards Council makes the following allegations against the Respondent:

1. The Respondent failed to respond to correspondence sent by the FP Canada Standards Council dated May 12, 2021; June 10, 2021; July 5, 2021; and July 20, 2021, each of which included requests for information and deadlines for response, contrary to Rule 33 of the *Rules of Conduct*.
2. The Respondent failed to reply to communications from the FP Canada Standards Council in which a response was requested and thereby failed to cooperate fully with an FP Canada Standards Council investigation, contrary to Rule 34 of the *Standards of Professional Responsibility*.

Dated the 4th day of August, 2021.



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

REPORT ON DISCIPLINARY ACTION

Details of Hearing: Joan McCarthy (St. John's, NL)

By way of Decision and Reasons dated November 11, 2021, an FP Canada Standards Council™ Discipline Hearing Panel (the “Hearing Panel”) found that Joan McCarthy engaged in conduct that breached the *FP Canada Standards Council Standards of Professional Responsibility* (“*Standards of Professional Responsibility*”).

The Hearing Panel’s Decision and Reasons on merits 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. McCarthy did not provide any submissions, or otherwise participate in the proceedings despite receiving notice of the proceedings, as set out further below.

Having found that Ms. McCarthy engaged in misconduct, the Hearing Panel directed that the matter be referred to a penalty hearing, to be scheduled.

Background

Ms. McCarthy was certified by the Financial Planning Standards Council®, now FP Canada™, as a CERTIFIED FINANCIAL PLANNER® professional in January 2002. Ms. McCarthy consistently renewed her certification with FP Canada until March 31, 2019, when her certification lapsed due to voluntary non-renewal. Ms. McCarthy does not have a discipline history with the Standards Council.

In May 2021, the Standards Council became aware of a news articles relating to Ms. McCarthy which alleged conduct involving:

- Forging client signatures to misappropriate funds into her personal bank account;
- Withdrawing funds from client accounts without client authorization;
- Misleading her employer; and
- Failing to cooperate with the other financial services regulator.

The alleged misconduct occurred while Ms. McCarthy was certified by FP Canada.

Ms. McCarthy failed to respond to several inquiries from the Standard Council regarding her alleged conduct.

Allegations Advanced by the Standard Council

In its [Statement of Allegations](#) dated August 4, 2021, the Standards Council alleged that Ms. McCarthy:

1. Failed to respond to correspondence sent by the FP Canada Standards Council dated May 12, 2021; June 10, 2021; July 5, 2021; and July 20, 2021, each of which included requests for information and deadlines for response, contrary to Rule 33 of the *Rules of Conduct*; and
2. Failed to reply to communications from the FP Canada Standards Council in which a response was requested and thereby failed to cooperate fully with an FP Canada Standards Council investigation, contrary to Rule 34 of the *Standards of Professional Responsibility*.

FP Canada Standards Council Hearing Panel Decision

The Hearing Panel released its decision on November 11, 2021.

In accordance with Article 8.1 of the *Disciplinary Rules and Procedures* (the “DRP”), the Hearing Panel found that it did not have jurisdiction to make a finding in respect of Allegation 1 above as a result of Ms. McCarthy no longer being a certificant at the time of the alleged conduct, but found that she did engage in professional misconduct as set out in Allegation 2 above.

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

DISCIPLINARY HEARING DECISION AND REASONS

*IN THE MATTER OF FP CANADA STANDARDS COUNCIL™
AND
JOAN MCCARTHY*

Heard in writing: October 27, 2021

Date of decision: November 11, 2021

Hearing Panel: **FP Canada Standards Council Discipline Hearing Panel**
Susan Kushneryk, Chair of the Hearing Panel
Stuart Dollar, CFP®,
Janice Charko, CFP®

Tamara Center, for FP Canada Standards Council
Joan McCarthy, self-represented
Erica Richler, 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 Joan McCarthy (the “Respondent”). The Panel considered the affidavit evidence and submissions filed by the FP Canada Standards Council (the “Standards Council”). The Respondent did not file any evidence or submissions.
 2. The allegations in this case relate to the Respondent’s alleged failure to respond to correspondence sent by the Standards Council and to cooperate fully with an investigation.
 3. For the reasons that follow, the Panel finds that the Respondent engaged in misconduct and breached Rule 34 (now re-numbered as Rule 36) of the *Standards of Professional Responsibility* by failing to cooperate fully with an investigation. The Panel finds that it does not have jurisdiction to make a finding under Rule 33 (now re-numbered as Rule 35) because that Rule does not apply to former Certificants. The Panel refers this matter to a penalty hearing pursuant to Article 8.2 of the *Disciplinary Rules and Procedures*.
 4. Reference in these reasons to Rules 33 and 34 should in all instances be read as referring to those rules both as numbered Rules 33 and 34 through the early part of the relevant time and as renumbered during the later part of the relevant time to be the current Rules 35 and 36.

THE ALLEGATIONS OF MISCONDUCT

5. The allegations against Joan McCarthy were set out in the Statement of Allegations dated August 4, 2021 as follows:
 1. The Respondent failed to respond to correspondence sent by the FP Canada Standards Council dated May 12, 2021; June 10, 2021; July 5, 2021; and July 20, 2021, each of which included requests for information and deadlines for response, thereby breaching Rule 33 of the *Standards of Professional Responsibility*; and
 2. The Respondent failed to reply to communications from the FP Canada Standards Council in which a response was requested and thereby failed to cooperate fully with an FP Canada Standards Council investigation, contrary to Rule 34 of the *Standards of Professional Responsibility*.

THE FACTS

6. The Respondent was certified by the Financial Planning Standards Council[®], now FP Canada[™], as a Certified Financial Planner[®] in January 2002. She consistently renewed her certification until March 31, 2019, when her certification lapsed due to non-renewal.
7. In May 2021, the Standards Council became aware of allegations against the Respondent made by another regulatory body.
8. Pursuant to Rule 3.1.2 of the Standards Council *Disciplinary Rules and Procedures*, the Executive Director of the Standards Council is entitled to “[m]ake a complaint in the absence of a third-party allegation of misconduct where the Executive Director has a reasonable suspicion that the FP Canada certificant may have engaged in conduct that may breach the *Standards of Professional Responsibility*.”
9. Pursuant to Rule 4.3.1 of the Standards Council *Disciplinary Rules and Procedures*, “[w]here it is determined that a complaint includes a proper allegation of misconduct and a formal investigation is warranted: Staff shall give written notice to the FP Canada certificant [...] that a formal investigation has been commenced” and “[s]uch notice shall set out the substance of the complaint.”
10. Information about allegations made by another regulatory body prompted the Standards Council to commence an investigation. The Standards Council provided written notice by way of four

letters to the Respondent advising her that an investigation had been commenced and setting out the substance of the complaint.

11. The Standards Council sent its first letter to the Respondent on May 12, 2021, advising among other things that it had commenced an investigation into her conduct and that it sought information from her with respect to that conduct. The Standards Council further advised in that letter that the Respondent was required to respond. The Standards Council included with the letter a publication titled “Responding to an Investigation” in which the Standard Council advised details the investigation process and potential outcomes. The Respondent did not reply to that letter.
12. The Standards Council sent three follow-up letters on June 10, July 5 and July 20, 2021. In each of those letters, the Respondent was reminded that she was required to respond. In the last letter, dated July 20, 2021, the Respondent was advised that failing to respond may be a breach of Rules 33 and 34. The Respondent did not reply to any of the follow-up letters.
13. The Standards Council took steps to ensure that the Respondent received its various letters by sending them both by e-mail and courier. All but one of the four letters were confirmed by the courier service as having been delivered or picked-up. The one letter that was not delivered or picked-up from the courier service was the letter dated July 5, 2021, the second-to-last letter. While the courier copy of that letter was not successfully delivered, the final letter indicates that all previous letters were included as enclosures. As such, the Respondent did receive all four letters.
14. In sum, the Standards Council commenced an investigation, provided ample notice to the Respondent of that investigation by way of four letters over the period from May 12 to July 20, 2021, and the Respondent failed to respond to any of the Standards Council’s letters.
15. In addition to the foregoing evidence, the Standards Council included in its materials for this proceeding information about the substance of the allegations made against the Respondent by other enforcement entities. No evidence was provided that there have been findings against the Respondent as a result of those allegations. The evidence about the substance of the allegations is highly prejudicial to the Respondent and some of it may not be admissible evidence against her in this proceeding. That evidence was disregarded by this Panel and formed no part of our reasons for decision.

APPLICABLE STANDARDS

16. The Standards Council alleged that the Respondent breached the following Rules:

<i>Applicable Standard of Professional Responsibility</i>	
Rule 33	<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>
Rule 34	<i>A Certificant shall cooperate fully with a FP Canada Standards Council investigation of a complaint unless legally prevented from doing so. This rule applies equally to current and former Certificants.</i>

17. The conduct at issue in this case relating to the failure to cooperate occurred from May 2021 through July 2021. The *Standards of Professional Responsibility* were amended on July 1, 2021, which resulted in the re-numbering of Rule 33 (which became Rule 35) and Rule 34 (which became Rule 36). The substance of the Rules remained the same.

DECISION AND REASONS

Allegation #1 – The Respondent failed to respond to correspondence sent by the FP Canada Standards Council dated May 12, 2021; June 10, 2021; July 5, 2021; and July 20, 2021, each of which included requests for information and deadlines for response, thereby breaching Rule 33 of the Standards of Professional Responsibility.

18. Rule 33 directs “a Certificant” to reply to correspondence from FP Canada or the Standards Council. Unlike Rule 34, Rule 33 does not include a provision that it “applies equally to current and former Certificants.”

19. The rules of statutory interpretation require us to find that the absence of the provision from Rule 33, particularly when compared against its inclusion in the following Rule 34, is deliberate and intended, such that Rule 33 does not apply to former Certificants.

20. The Respondent’s certification lapsed on March 31, 2019. The first correspondence forming the basis of the allegations against her in this proceeding was sent subsequent to that lapse, on May 12, 2021, when the Respondent was no longer a Certificant.

21. As the Respondent was not a Certificant during the period from May to July 2021 when the correspondence was sent to her and when she failed to respond to that correspondence, this Panel does not have jurisdiction to make a finding against her under Rule 33.

Allegation #2 – The Respondent failed to reply to communications from the FP Canada Standards Council in which a response was requested and thereby failed to cooperate fully with an FP Canada Standards Council investigation, contrary to Rule 34 of the Standards of Professional Responsibility.

22. Unlike Rule 33, Rule 34 expressly provides that it “applies equally to current and former Certificants.” The Rule provides that current and former Certificants are required to “cooperate fully with a FP Canada Standards Council investigation of a complaint unless legally prevented from doing so.”

23. The evidence from the Standards Council in this proceeding establishes that the investigation was commenced and notice of that investigation setting out the substance of the complaint was provided to the Respondent in accordance with the Standards Council *Disciplinary Rules and Procedures*.

24. The evidence further establishes that the Respondent did not cooperate with the Standards Council investigation as she was required to do by Rule 34 when she failed to respond to the correspondence from the Standards Council over the period from May to July 2021.

25. Accordingly, the Respondent, a former Certificant, breached the requirements of Rule 34.

CONCLUSION AND ORDER

26. For the reasons set out above, the Panel finds that the Respondent engaged in misconduct and breached Rule 34 of the *Standards of Professional Responsibility* by failing to cooperate fully with an investigation.

27. While the conduct of the Respondent in not cooperating with the Standards Council was passive and did not engage members of the public directly, cooperation with the oversight body is an important responsibility of any professional and is critical to the oversight body’s ability to regulate the profession.

28. The Panel directs that this matter be referred to a penalty hearing, to be scheduled by the Secretary to the Hearing Panel.

DATED this 11th day of November, 2021



Susan Kushneryk, Chair of the Hearing Panel



Janice Charko, CFP[®], Hearing Panel Member



Stuart Dollar, CFP[®], Hearing Panel Member