

REPORT ON DISCIPLINARY ACTION

Details of Hearing: Barbara Allen (Windsor, ON)

On November 13, 2020, an FP Canada Standards Council™ Discipline Hearing Panel accepted a Joint Settlement Agreement between the FP Canada Standards Council and Barbara Allen, CFP®. The Panel ordered that Ms. Allen receive a Letter of Reprimand; complete additional Continuing Education credits; and pay costs.

Background

Ms. Allen was certified by FP Canada™, then the Financial Planning Standards Council (FPSC®), as a CERTIFIED FINANCIAL PLANNER® professional in April 1998. She has consistently renewed her certification and does not have a prior discipline history with the Standards Council.

In her 2019/2020 CFP certification renewal form, Ms. Allen self-reported that she was the subject of complaints to the then Financial Services Commission of Ontario (FSCO) (now Financial Services Regulatory Authority (FSRA)), the Investment Industry Regulatory Organization of Canada (IIROC) and her employer, Manulife Securities Incorporated. The complaints were in relation to Ms. Allen instructing a client to sign both the client's name and the client's estranged spouse's name on two Registered Education Savings Plans (RESP) withdrawal forms, absent the estranged spouse's knowledge or consent, and signing her name in the agent section, knowing that she was not the agent of record.

Based on the information available, the Standards Council, commenced an independent investigation into Ms. Allen's conduct in October 2019.

Admitted Conduct

In the Settlement Agreement with the Standards Council, Ms. Allen admitted, among other things, that she:

- Failed to act with integrity and professionalism, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation by advising her client to sign her estranged husband's name on two (2) RESP withdrawal forms, and by signing her own name in the agent section, knowing that she was not the agent of record, contrary to Principles 2 and 8, and Rules 1, 2, and 15 of the *Standards of Professional Responsibility*; and
- Failed to perform financial planning in accordance with applicable laws, regulations, rules or established policies of governmental agencies by engaging in conduct that contravened rules under *the Insurance Act*, as found by the Financial Services Commission of Ontario (FSCO), thereby breaching Rule 18 of the *Standards of Professional Responsibility*.

Applicable Standard

The underlying conduct took place in August 2018; accordingly, Ms. Allen's conduct was governed by the *Standards of Professional Responsibility for CFP® Professionals and FPSC Level 1™ Certificant in Financial Planning*, in force from June 2017 and December 2018.

FP Canada Standards Council Hearing Panel Decision

The Hearing Panel determined that the Joint Settlement Agreement and proposed penalty were reasonable and should be accepted in accordance with Article 6.10 of the *Disciplinary Rules and Procedures*. The Hearing Panel accepted the joint proposed penalty and, on November 13, 2020 ordered that:

- Ms. Allen receive a Letter of Reprimand from the Hearing Panel;
- Ms. Allen shall, at her own expense, successfully complete the Introduction to Professional Ethics (IPE) Course offered by the FP Canada Institute™, by March 31, 2021;
- Ms. Allen shall, at her own expense, successfully complete an additional three (3) hours of Continuing Education (CE) in the category of Practice Management by March 31, 2021;
- Ms. Allen shall provide proof of successfully complete of the Continuing Education described above to the Standards Council by March 31, 2021; and
- Ms. Allen shall pay costs to FP Canada in the amount of \$1,200 to be paid as follows:
 - i. \$400 on or before December 13, 2020;
 - ii. \$400 on or before January 13, 2021; and
 - iii. \$400 on or before February 13, 2021.

DISCIPLINARY HEARING DECISION AND REASONS

IN THE MATTER OF FP CANADA STANDARDS COUNCIL™

AND

BARBARA ALLEN, CFP®

Hearing held on: October 28, 2020

Hearing Panel: **FP Canada Standards Council Discipline Hearing Panel**
Albert Pelletier, Chair of the Hearing Panel
John Voorhorst, CFP®
Peter Jong, CFP®

Also Present: Erica Richler, Independent Legal Counsel to the Hearing Panel
Jessica Sutharsan, Secretary to the Hearing Panel

1. The FP Canada Standards Council Discipline Hearing Panel (the “Panel”) held a written hearing to consider allegations of misconduct against Barbara Allen, CFP® (“Ms. Allen” or the “Respondent”). The Panel considered the Joint Settlement Agreement filed by the parties, as well as the parties’ written submissions.
2. This case involves Ms. Allen instructing her client to sign her estranged husband’s name on two Registered Education Savings Plans (RESP) withdrawal forms to withdraw a total of \$7,000 from a jointly held RESP account. Ms. Allen signed her own name as the agent of record when she knew she was not. This conduct resulted in forms being submitted which were misleading.
3. The allegations against Ms. Allen were set out in the Request for Hearing Panel dated April 2, 2020 as follows:
 - a. Between August 15, 2018 and August 28, 2019, the Respondent failed to act with integrity and professionalism, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation by advising her client to sign her estranged husband’s name on two (2) RESP withdrawal forms, and signed her own name in the agent section, knowing that she was not the agent of record, contrary to Principles 2 and 8 and Rules 1, 2 and 15 of the *Standards of Professional Responsibility* in force between June 2017 and December 2018; and
 - b. The Respondent failed to perform financial planning in accordance with applicable laws, regulations, rules or established policies of governmental agencies by engaging

in conduct that contravened Section 8(d) of Regulation 347/04 under the *Insurance Act*, R.S.O. 1990, c. I.8 as found by the Financial Services Commission of Ontario (FSCO) on November 19, 2018, thereby breaching Rule 18 of the Standards of Professional Responsibility in force between June 2017 and December 2018.

JOINT SETTLEMENT AGREEMENT

4. The parties filed with the Panel a Joint Settlement Agreement, a copy of which is attached as Schedule A.

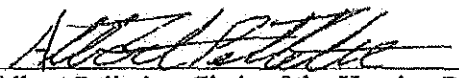
DECISION AND REASONS

5. Pursuant to Article 6.10 of the *Disciplinary Rules and Procedures*, the “Hearing Panel shall review the Settlement Agreement and, unless the Hearing Panel considers the terms of the Settlement Agreement to be inappropriate in the circumstances, shall make an order consistent with the agreed terms of the Settlement”.
6. For the reasons that follow, the Panel accepts the Joint Settlement Agreement and finds that it is not inappropriate in the circumstances:
 - a. It was an isolated incident. Patterns of conduct are much more concerning. That is not the case here;
 - b. There was no harm to the client. The RESP monies that were improperly withdrawn were applied to the benefit of the beneficiary of that account;
 - c. Ms. Allen recognizes that the manner in which she handled the situation was wrong. Her remorse and accountability for her actions are mitigating factors;
 - d. Ms. Allen states that she firmly believes that this situation will not be repeated in the future, which is the appropriate behaviour modification;
 - e. Ms. Allen self-reported the incident and cooperated with the investigation at all times;
 - f. Ms. Allen does not have a discipline history with FP Canada; and
 - g. The penalty agreed to by the parties is in keeping with the penalty and cost awards in similar matters: see Daniel Roy (2019) and James Carney (2018).

ORDER

7. For these reasons, the Panel accepts the Joint Settlement Agreement.
8. The Panel finds that Ms. Allen engaged in misconduct as alleged in the Request for Hearing Panel and as admitted in the Joint Settlement Agreement, more particularly contrary to Principles 2 and 8 and Rules 1, 2, 15 and 18 of the Standards of Professional Responsibility in force between June 2017 and December 2018.
9. The Panel orders the following disciplinary penalty pursuant to its authority under article 8.2 of the *Disciplinary Rules and Procedures*:
 - a. Ms. Allen shall receive a Letter of Reprimand from the Hearing Panel;
 - b. Ms. Allen shall, at her own expense, successfully complete the Introduction to Professional Ethics (IPE) Course offered by the FP Canada Institute™, by March 31, 2021;
 - c. Ms. Allen shall, at her own expense, successfully complete an additional three (3) hours of CE in the category of Practice Management, as defined by FP Canada, by March 31, 2021;
 - d. Ms. Allen shall provide proof of successful completion of the Continuing Education described above to the Standards Council by March 31, 2021; and
 - e. Ms. Allen shall pay costs to FP Canada in the amount of \$1,200 to be paid as follows:
 - i. \$400 within 30 days from the date the Order is signed;
 - ii. \$400 within 60 days from the date the Order is signed; and
 - iii. \$400 within 90 days from the date the Order is signed.

DATED this 13th day of November, 2020


Albert Pelletier, Chair of the Hearing Panel


John Voorhorst, CFP®


Peter Song, CFP®



FP CanadaTM

Advancing Professional
Financial Planning

FP Canada Standards CouncilTM

and

Barbara Allen, CFP[®]

Joint Settlement Agreement

I. NOTICE OF SETTLEMENT

1. In accordance with Article 6.10 of the *FP Canada Standards CouncilTM Disciplinary Rules and Procedures* in effect from September 1, 2020 (the "DRP"), and as set out in this Joint Settlement Agreement (the "Agreement"), a settlement of all particulars in this matter has been reached between the FP Canada Standards CouncilTM, (the "Standards Council"), a Division of FP CanadaTM, and Barbara Allen ("Ms. Allen" or the "Respondent").

II. ACKNOWLEDGEMENTS

Execution of this Agreement

2. The Respondent has carefully reviewed this Agreement and has had the benefit of legal counsel.
3. The Respondent has signed this Agreement voluntarily and without duress.
4. The parties agree that this Agreement will be filed with the Standards Council Discipline Hearing Panel (the "Hearing Panel") on consent.

The Allegations

5. The Standards Council made the following allegations against the Respondent:
 1. *Between August 15, 2018 and August 28, 2018, the Respondent failed to act with integrity and professionalism, and engaged in conduct involving dishonesty, fraud,*

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deceit or misrepresentation by advising her client to sign her estranged husband's name on two (2) Registered Education Savings Plans (RESP) withdrawal forms, and signed her own name in the agent section, knowing that she was not the agent of record, contrary to Principles 2 and 8 and Rules 1, 2 and 15 of the Standards of Professional Responsibility in force between June 2017 and December 2018.

2. *The Respondent failed to perform financial planning in accordance with applicable laws, regulations, rules or established policies of governmental agencies by engaging in conduct that contravened Section 8(d) of Regulation 347/04 under the Insurance Act, R.S.O. 1990, c.I.8 as found by the Financial Services Commission of Ontario (FSCO) on November 19, 2018, thereby breaching Rule 18 of the Standards of Professional Responsibility in force between June 2017 and December 2018.*

Admissions

6. The Respondent admits the facts contained in this Agreement and admits that the facts support the particulars of professional misconduct contained in the Request for Hearing Panel dated April 2, 2020.¹
7. The Respondent understands that because she has signed this Agreement, the Standards Council will not have to prove the admitted facts or the admitted particulars through a full hearing; instead, the Hearing Panel will be asked to make a finding of misconduct based on this Agreement.
8. The Respondent understands that the Decision and Reasons, as well as a summary of the Decision, will be published in accordance with Article 10.1 of the DRP.

Jurisdiction

9. The Respondent accepts the jurisdiction of the Hearing Panel to make a finding of misconduct in accordance with Article 8.1 of the DRP. She further accepts the jurisdiction of the Hearing Panel to impose a penalty pursuant to Article 8.2 of the DRP.
10. The Respondent understands that the Hearing Panel will review this Agreement having regard to Article 6.10 of the DRP and that the Hearing Panel may reject this Agreement and/or request amendments to this Agreement.

Waiver of Appeal

11. The Respondent is aware of her right to appeal a decision of the Hearing Panel pursuant to Article 9.1 of the DRP and, by executing this Agreement, voluntarily waives such right upon acceptance of this Agreement by the Hearing Panel.

¹ Request for a Hearing Panel dated April 2, 2020, JSA Document Book, Tab 1.

III. FACTS

Background of the Respondent

12. Ms. Allen was certified by the Financial Planning Standards Council®, now FP Canada, as a *CERTIFIED FINANCIAL PLANNER*® professional in April 1998. Ms. Allen has consistently renewed her certification, and as of the date of this Agreement, her certification is current and in good standing.
13. Ms. Allen does not have a discipline history with FP Canada.
14. Since 1995, Ms. Allen has worked within the financial services industry and worked as a Financial Advisor with Investors Group, followed by her employment with Berkshire-TWC Financial Group Inc. (“Berkshire”) until Manulife Securities Incorporated (“Manulife”) acquired Berkshire’s mutual fund and securities dealerships in 2007.
15. Ms. Allen conducts business in Windsor, Ontario and is currently employed with Manulife as a Senior Financial Advisor.

History of Proceedings

16. This matter came to the attention of the Standards Council when Ms. Allen reported, in her 2019/2020 CFP certification renewal form, that she was the subject of related complaints to Manulife, then the Financial Services Commission of Ontario (“FSCO”) (now Financial Services Regulatory Authority (“FSRA”)) and, finally, the Investment Regulatory Organization of Canada (“IIROC”).
17. The complaints were in relation to Ms. Allen instructing a client to sign both the client’s name and the client’s estranged spouse’s name on two (2) Registered Education Savings Plans (RESP) withdrawal forms, absent the estranged spouse’s knowledge or consent. Further, Ms. Allen signed her own name in the agent section, despite knowing that she was not the agent of record.
18. Ms. Allen received a warning letter from IIROC dated October 23, 2018 as well as a warning letter from FSCO dated November 19, 2018. In addition, Ms. Allen was reprimanded and sanctioned \$2,500 by Manulife. Notwithstanding the penalty, Ms. Allen continued to work, uninterrupted, for Manulife.
19. On October 15, 2019, the Standards Council commenced an independent investigation into Ms. Allen’s conduct as a FP Canada certificant. The investigation was completed on January 28, 2020.
20. On February 19, 2020, the Conduct Review Panel (CRP) convened and referred this matter to a Hearing Panel.

21. On April 2, 2020, a Request for a Hearing Panel was served and filed, on notice to Ms. Allen on April 22, 2020.

The Alleged Misconduct

Allegation #1 – Advising a client to sign her estranged husband’s name and signing her name in the agent section, knowing that she was not the agent

22. On August 2, 2018, following a referral by her family lawyer, K.S. contacted Ms. Allen by telephone, inquiring about obtaining a new financial advisor. While discussing her personal financial circumstances arising out of her family law proceedings, K.S. advised Ms. Allen that she needed to withdraw funds from her RESP account to pay university tuition fees for her two children. K.S. advised Ms. Allen that the RESP account had been opened on December 7, 2009, jointly with her husband, G.S., with the help of their advisor at Industrial Alliance (“IA”).

The RESP Withdrawal Forms

23. On August 15, 2018, Ms. Allen and K.S. met for the first time. At that meeting, Ms. Allen opened Manulife nominee accounts for all RRSP and locked in assets and completed all necessary documentation required to transfer all assets in K.S.’s name from other institutions to Manulife.
24. Ms. Allen states that following a review of the relevant RESP statements, she believed that K.S. could withdraw the funds directly with IA. According to Ms. Allen, K.S. advised her that G.S. had made similar withdrawals from the RESP accounts in the past without her signature. Ms. Allen proceeded to print two copies of the RESP redemption forms from IA’s website. K.S. informed Ms. Allen that the agent on record at IA was R.L..
25. Ms. Allen indicated R.L.’s name at the top of the forms as the “Agent of Record”. Ms. Allen then suggested to K.S. that K.S. sign her own name as well as her estranged spouse’s name, and then write K.S.’s initials beside his name. Ms. Allen states that the initials were intended to indicate that it was not G.S.’s actual signature. Once completed, the forms were faxed from Ms. Allen’s office to IA.
26. On August 24, 2018, K.S. advised Ms. Allen that the forms which they had submitted to IA on August 15, 2018 were incorrect and had been returned to R.L.. IA then sent correct copies of the RESP withdrawal forms to K.S..

The Correct RESP Withdrawal Forms

27. On August 28, 2018, Ms. Allen and K.S. met and filled out the correct RESP withdrawal forms. Once again, Ms. Allen advised K.S. to sign her own name as well as G.S.’s name and to include K.S.’s handwritten initials beside her estranged spouse’s name. Once again, Ms. Allen states that the initials were meant to indicate that it was not G.S.’s actual

signature. Ms. Allen then signed the agent section with her own name, on both sets of forms. The completed forms were then faxed from Ms. Allen's office to IA.

28. Ms. Allen states that she signed the agent section erroneously on the first of the two forms. Ms. Allen admits that she realized her mistake after signing the first form, but chose not to cross her name out because "it just looks terrible when you start crossing things out [on forms]".
29. The following day, Ms. Allen received email confirmation from K.S. that she had received the RESP funds for her two children. The total amount of the RESP withdrawal was \$7,000.00
30. Ms. Allen's estranged husband, G.S. subsequently initiated complaints with Manulife, FSCO and IIROC, stating that he did not sign the two RESP withdrawal forms, which were processed through Ms. Allen, and that the forms were completed without his knowledge or consent.
31. Ms. Allen admits that by:
- a. advising a client to sign her estranged husband's name on documents to remove funds from an RESP account; and
 - b. signing her name as the agent of record, when she knew that was not accurate, she failed to act with integrity and professionalism, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, contrary to Principles 2 and 8 and Rules 1, 2 and 15 of the *Standards of Professional Responsibility for CFP® Professionals and FPSC Level 1® Certificants in Financial Planning* (the "Standards of Professional Responsibility") in force between June 2017 and December 2018.

Ms. Allen's position

32. The incident occurred in August of 2018 and was an isolated incident. Ms. Allen's intention at the time was to assist a new client who was in great distress over a very challenging separation from her husband.
33. Furthermore, Ms. Allen states that she would not knowingly do anything to hurt or in any way, harm a client. In this case, Ms. Allen was attempting to facilitate the education of her client's children, and there was no harm to her client and no harm to G.S..
34. Notwithstanding the above, Ms. Allen recognizes that the manner in which she handled the situation was wrong, and states that this situation will not be repeated in the future.



Allegation #2 –Failed to perform financial planning in accordance with applicable laws, regulations, rules of other applicable authorities

35. In or about October 2018, Ms. Allen's conduct was the subject of a review by FSCO in connection with the complaint made by G.S..
36. FSCO closed their file with a warning letter dated November 19, 2018² which states that Ms. Allen engaged in conduct that contravened Section 8(d) of Regulation 347/04 under the *Insurance Act*, R.S.O. 1990. C. I.8. In particular, she "demonstrated incompetence or untrustworthiness to transact the insurance agency business for which the licence [was] granted." FSCO also took the position that their "office will not be pursuing this matter further".
37. Ms. Allen admits that she failed to provide her professional services in accordance with applicable rules of another authority, namely FSCO, contrary to Rule 18 of the *Standards of Professional Responsibility* in force between June 2017 and December 2018.

IV. APPLICABLE STANDARDS

38. The underlying conduct occurred in August 2018. Accordingly, Ms. Allen's conduct is governed by the *Standards of Professional Responsibility* in force between June 2017 and December 2018. The relevant Principles and Rules of the *Code of Ethics and Rules of Conduct* are as follows:

Principle 2: Integrity: A CFP professional shall always act with integrity.

Principle 8: Professionalism: A CFP professional shall act in a manner reflecting positively upon the profession.

Rule 1: A CFP professional shall not engage in or associate with individuals engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to clients or any other parties.

Rule 2: A CFP professional shall not engage in conduct that reflects adversely on his or her integrity or fitness as a CFP professional, the CFP marks or the profession.

Rule 15: A CFP professional shall exercise reasonable and prudent professional judgment in providing financial planning.

Rule 18: A CFP professional shall perform financial planning in accordance with applicable laws, regulations, rules or established policies of governmental agencies and other applicable authorities including FPSC.

² Warning Letter from FSCO to Ms. Allen dated November 19, 2018, JSA Document Book, Tab 2

V. AGREEMENT WITH RESPECT TO PENALTY

The Proposed Penalty

39. The parties have made the following agreement with respect to penalty:

- a) Ms. Allen shall receive a Letter of Reprimand from the Hearing Panel;
- b) Ms. Allen shall, at her own expense, successfully complete the Introduction to Professional Ethics (IPE) Course offered by the FP Canada Institute™, by March 31, 2021;
- c) Ms. Allen shall, at her own expense, successfully complete an additional three (3) hours of CE in the category of Practice Management, as defined by FP Canada, by March 31, 2021;
- d) Ms. Allen shall provide proof of successful completion of the Continuing Education described in subparagraphs (b) and (c) above to the Standards Council by March 31, 2021;
- e) Ms. Allen shall pay costs to FP Canada in the amount of \$1,200 to be paid as follows:
 - i. \$400 within 30 days from the date the Order is signed;
 - ii. \$400 within 60 days from the date the Order is signed; and
 - iii. \$400 within 90 days from the date the Order is signed.

40. The parties jointly submit that the penalty proposed in this case is appropriate, in the public interest, and consistent with the admissions and the applicable standards.

This Agreement may be signed in counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

Agreed to by FP Canada Standards Council, this 15th day of September, 2020



Tamara Center, Counsel to FP Canada Standards Council

Agreed to by Barbara Allen, this 16 day of September, 2020



Barbara Allen, CFP®



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