

FP Canada Standards Council™
and
Kathleen van den Berg, CFP®

STATEMENT OF ALLEGATIONS

THE CFP® PROFESSIONAL

1. Kathleen van den Berg (“Ms. van den Berg” or the “Respondent”) was certified by the Financial Planning Standards Council®, now FP Canada™, as a CERTIFIED FINANCIAL PLANNER® professional on August 1, 2002. Ms. van den Berg has consistently renewed her certification, which remains in good standing as of the date of this Statement of Allegations. Ms. van den Berg does not have a prior discipline history with the FP Canada Standards Council™ (the “Standards Council”).
2. Since 1985, Ms. van den Berg has worked in various roles within the financial industry. In or around 2006, she became a Marketing Manager at Standard Life. Through her business, KAV Wealth Strategies, Ms. van den Berg worked with Standard Life as a wholesaler of segregated funds until 2008. She then worked as a wholesaler with Equitable Life from 2008 to 2015. As of the date of this Statement of Allegations, Ms. van den Berg continues to operate KAV Wealth Strategies.
3. Ms. van den Berg resides in Apsley, Ontario.

HISTORY OF THE PROCEEDINGS

4. This matter came to the attention of the Standards Council on July 14, 2022 when the Standards Council received a complaint from Ms. van den Berg’s former client, JP, who alleged, amongst other things, that in or around January 2017, Ms. van den Berg convinced her to invest in a high risk investment, notwithstanding that she was an inexperienced investor with a low risk tolerance and the goal of securing retirement funds. The investment was a Syndicated Mortgage Investment known as Trafalgar Castle Towns, Whitby (the “Trafalgar SMI”).
5. Commencing in or around November 2022, the construction lender for Trafalgar stopped advancing funds to the project, the bank pulled funding, and liens were placed on the property by various tradespeople. As of the date of this Statement of Allegations, no payments have been made to investors.

6. The Standards Council initiated an investigation into Ms. van den Berg's conduct on January 24, 2023.
7. On May 30, 2024, the Conduct Review Panel ("CRP") convened and referred the allegations set out herein to a Hearing Panel.

THE STANDARDS COUNCIL'S INVESTIGATION

8. JP was Ms. van den Berg's client from May 2016 until June 2022, when she transferred her Canada Life segregated fund investments from Ms. van den Berg back to her bank.
9. Ms. van den Berg did not make her role and the scope of services she was providing with respect to the Trafalgar SMI known to JP. In the alternative, Ms. van den Berg intervened in matters outside the scope of her engagement with JP as a referral agent. In particular, Ms. van den Berg signed documentation as "agent" and made recommendations to JP with respect to the Trafalgar SMI as part of JP's financial plan. She also provided updates to JP about the project and attended and participated in meetings with JP to implement the Trafalgar SMI.
10. Ms. van den Berg did not do any independent research on SMIs generally or on the Trafalgar SMI. She also failed to fully understand the Trafalgar SMI investment, including that it was a high-risk investment.
11. JP did not have a high risk investment tolerance. In addition, based on Ms. van den Berg's recommendations, eleven (11) other clients of Ms. van den Berg invested in the Trafalgar SMI. Four (4) of these clients had a recorded "Medium" risk tolerance; and one (1) client had a recorded "Low Medium" risk tolerance.

NOTICE

12. Further to the direction of the CRP, and in accordance with Article 5.1 of the *FP Canada Standards Council Disciplinary Rules and Procedures* (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 Kathleen van den Berg, CFP®*.
13. The Standards Council requests that the hearing be held in writing.

APPLICABLE STANDARDS

The underlying conduct occurred between May 2016 and June 2022. Accordingly, Ms. van den Berg's conduct is governed by the *Standards of Professional Responsibility* in effect between March 2016 and May 2024. The applicable Principles and Rules of the *Standards of Professional Responsibility* are attached as **Appendix "A"**.

ALLEGATIONS

The Standards Council makes the following allegations against the Respondent:

1. Between May 2016 and March 2020, the Respondent failed to adequately disclose to her client, JP, the role and scope of services she was providing, with respect to the Trafalgar Syndicated Mortgage Investment (the “Trafalgar SMI”), and thereby failed to act in the client’s best interest and with diligence, contrary to Principles 1 and 7 of the *Standards of Professional Responsibility* in force between March 2016 and June 2021.
2. In the alternative to Allegation #1, between May 2016 and March 2020, the Respondent failed to refrain from intervening in matters outside the scope of her engagement as a referral agent with her client, JP, contrary to Rule 20 and Principles 1 and 7 of the *Standards of Professional Responsibility* in force between March 2016 and December 2018 and Rule 27 and Principles 1 and 7 of the *Standards of Professional Responsibility* in force between January 2019 and June 2021.
3. In or about January 2017, the Respondent recommended the Trafalgar SMI to twelve (12) clients, including JP, without fully understanding the nature of SMI investments; fully understanding the Trafalgar SMI product, including its risks; and without conducting sufficient due diligence relating to the Trafalgar SMI product. By engaging in this conduct, the Respondent failed to act in her clients’ best interests, with objectivity and with diligence and she failed to act with reasonable and prudent professional judgement, contrary to Principles 1, 3 and 7 and Rule 15 of the *Standards of Professional Responsibility* in force between March 2016 and May 2017.
4. In or about January 2017, the Respondent recommended the Trafalgar SMI, which was a high-risk investment, to four (4) clients who had a recorded risk tolerance of “Medium” and one (1) client who had a recorded risk tolerance of “Low Medium”. By recommending the Trafalgar SMI investment product to these clients, the Respondent failed to act in her clients’ best interests and to make only those recommendations that were both prudent and appropriate for these clients, contrary to Rule 16 and Principle 1 of the *Standards of Professional Responsibility* in force between March 2016 and May 2017.
5. In or about January 2017, the Respondent recommended the Trafalgar SMI, which was a high-risk investment to JP, who did not have a high risk tolerance. By making this recommendation, the Respondent failed to make only those recommendations that were both prudent and appropriate for the client, contrary to Rule 16 and Principle 1 of the *Standards of Professional Responsibility* in force between March 2016 and May 2017

Dated: July 9, 2024



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

Appendix A

Standards of Professional Responsibility from March 2016 to January 2019

Principle 1: Client First

A CFP professional shall always place the client's interests first. Placing the client's interests first requires the CFP professional to act honestly and to place the client's interests ahead of his/her own and ahead of all other interests.

Principle 3: Objectivity

A CFP professional shall be objective when providing advice and/or services to clients. Objectivity requires intellectual honesty, impartiality and the exercise of sound judgment, regardless of the services delivered or the capacity in which a CFP professional functions.

Principle 7: Diligence

A CFP professional shall act diligently when providing advice and/or services to clients. Diligence is the degree of care and prudence expected from CFP professionals in the handling of their clients' affairs. Diligence requires fulfilling professional commitments in a timely and thorough manner and taking due care in guiding, informing, planning, supervising, and delivering financial advice and/or services to clients.

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

Rule 16: A CFP professional shall make only those recommendations that are both prudent and appropriate for the client.

Rule 20: A CFP professional shall refrain from intervening in client matters outside the scope of the engagement.

Standards of Professional Responsibility from January 2019 to June 2021

Principle 1: Duty of Loyalty to the Client

The Duty of Loyalty encompasses:

- The duty to act in the client's interest by placing the client's interests first. Placing the client's interests first requires the Certificant place the client's interests ahead of their own and all other interests;
- The obligation to disclose conflicts of interest and to mitigate conflicts in the client's favour; and
- The duty to act with the care, skill and diligence of a prudent professional.

Principle 7: Diligence

[No Material Change]

Rule 27: A Certificant shall refrain from intervening in client matters outside the scope of the engagement.