



REPORT ON DISCIPLINARY ACTION

Details of Hearing: Kevin Thomas Cahill (Guelph, ON)

On February 1, 2018, a Financial Planning Standards Council (FPSC®) Discipline Hearing Panel found Kevin Thomas Cahill breached the *CFP® Code of Ethics* and the *Standards of Professional Responsibility for CFP Professionals and FPSC Level 1 Certificants in Financial Planning* (“Standards of Professional Responsibility”). On May 16, 2018, FPSC’s Hearing Panel ordered, among other penalties, that Mr. Cahill be permanently banned from seeking renewal or reinstatement of CFP certification.

Background

Mr. Cahill was certified by FPSC as a CERTIFIED FINANCIAL PLANNER® professional in January 2010. On September 29, 2017, Mr. Cahill voluntarily cancelled his CFP certification. At the time of the Hearing, Mr. Cahill was not certified with FPSC.

Mr. Cahill has a prior discipline history with FPSC. A copy of the report in respect of the 2011 matter can be found at: http://fpsc.ca/docs/default-source/FPSC/standards-and-enforcement/fpsc_report_discactions_2011.pdf?sfvrsn=0.

Mr. Cahill’s father died in March 2010, with Mr. Cahill (and his sister) appointed as executors and trustees of the estate. The Will instructed Mr. Cahill to set aside \$100,000 to be held in trust for the benefit of his brother, Patrick Cahill. In July 2010, Mr. Cahill transferred the \$100,000 intended for Patrick Cahill into a Non-Registered Investment Plan in London Life in his own name, without naming Patrick as a beneficiary. In June 2012, Mr. Cahill facilitated a personal loan to himself from the London Life Plan in the amount of \$92,642.00, which Mr. Cahill subsequently used to purchase a property for his business. The funds were then lost when the property was sold under power of sale. From June 2012 to May 2014, Mr. Cahill transferred \$500 per month to Patrick Cahill via personal cheques, after which all payments stopped on June 2014, due to non-sufficient funds. Mr. Cahill did not respond to his brother, Patrick’s requests for information about the “trust” funds. As a result, Patrick Cahill then commenced a civil lawsuit against Mr. Cahill, among others, for recovery of the unpaid amounts. On February 25, 2016, the Court determined that: contrary to their father’s Will, the trust fund for Patrick Cahill was never established; Mr. Cahill breached his fiduciary obligations to the beneficiaries of the Estate; and that Mr. Cahill was liable to Patrick Cahill for the dissipation of funds from the London Life Plan. The lawsuit was subsequently appealed, but dismissed with costs on December 20, 2016.

Mr. Cahill failed to notify FPSC of the estate litigation and of the Court’s decision, thereby breaching his disclosure obligations to FPSC. FPSC subsequently commenced an investigation into Mr. Cahill’s conduct in May 2016.

Applicable Standard

The underlying conduct occurred between July 2010 and 2014, and was, accordingly, governed by the:

- CFP® *Code of Ethics*, in force from January 2010 to October 2011;
- *Standards of Professional Responsibility for CFP® Professionals and FPSC Level 1™ Certificants in Financial Planning*, in force from November 2011 to October 2014.

FPSC Hearing Panel Decision

FPSC's Hearing Panel found that, among other things, Mr. Cahill:

- Engaged in conduct involving self-dealing and/or misappropriation in July 2010, when he opened the London Life Plan in his name alone, thereby converting \$100,000 of estate assets to his own benefit and control, contrary to Principles 1 and 6 and Rules 101 and 601 of the *Code of Ethics*;
- Engaged in self-dealing in June 2012 when he facilitated the loan from the London Life Plan to himself, contrary to Principles 2 and 8 and Rules 1 and 2 of the *Standards of Professional Responsibility*;
- Breached his fiduciary obligations as an Estate executor and trustee when he opened the London Life Plan in his name alone, and again when he facilitated the loan from those funds to himself, contrary to Principles 1 and 6 and Rule 601 of the *Code of Ethics*, and Principles 2 and 8 and Rule 2 of the *Standards of Professional Responsibility*;
- Failed to act with integrity, contrary to Principle 1 and Rule 601 of the *Code of Ethics*, and Principle 2 and Rule 2 of the *Standards of Professional Responsibility*;
- Failed to act with professionalism, contrary to Principle 6 and Rule 601 of the *Code of Ethics*, and Principle 2 and Rule 2 of the *Standards of Professional Responsibility*;
- Failed to maintain and/or demonstrate the requisite knowledge and competencies expected of a CFP professional and as detailed in the *Professional Competency Profile*, thereby engaging in conduct that reflects adversely on his fitness as a CFP professional, contrary to Principle 3 and Rule 601 of the *Code of Ethics*, and Principle 4 and Rules 2 and 19 of the *Standards of Professional Responsibility*;
- Engaged in conduct that reflects adversely on his fitness as a CFP professional, upon the CFP Marks and upon the profession generally, contrary to Rule 601 of the *Code of Ethics*, and Rule 2 of the *Standards of Professional Responsibility*;
- Failed to declare the civil proceedings and the Superior Court of Justice (Ontario) decision dated February 25, 2016, to FPSC when applying to renew his certification with FPSC in March 2016, contrary to Rule 25 of the *Standards of Professional Responsibility*.

In concluding that Mr. Cahill's conduct breached of the *Code of Ethics* and *Standards of Professional Responsibility*, the Hearing Panel noted, among other things, that:

- Mr. Cahill failed to demonstrate remorse or insight into his actions;

On May 16, 2018, the Hearing Panel Ordered that:

- a. Mr. Cahill is permanently banned from seeking renewal or reinstatement of CFP certification;
- b. Mr. Cahill is permanently banned from using the CFP marks; and
- c. Mr. Cahill shall pay costs to FPSC in the amount of \$3,678.20, which costs are due immediately.

Mr. Cahill did not pay costs to FPSC.

On June 18, 2018, Mr. Cahill filed a Notice of Appeal requesting that the Hearing Panel's findings and Penalty Order be set aside.

On September 6, 2018, the Appeal Hearing Panel adjourned to consider Mr. Cahill's Appeal. After carefully considering the written submissions filed by Mr. Cahill and FPSC, on October 1, 2018, the Appeal Panel dismissed Mr. Cahill's Appeal. No costs were awarded in respect of the Appeal.

Accordingly, Mr. Cahill is permanently banned from seeking renewal or reinstatement of CFP certification, and is prohibited from using the CFP Certification Marks or representing himself as a CFP professional or FPSC certificant.