

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JEFFREY M. CAMARDA AND
KIMBERLY K. CAMARDA, individuals,
4371 U.S. Highway 17, Suite 201,
Fleming Island, FL 32003

Plaintiffs,

v.

Civil Action No. _____

CERTIFIED FINANCIAL PLANNER
BOARD OF STANDARDS, INC, a
Corporation organized and existing
under the laws of the State of Colorado,
1425 K Street, NW, Suite 500,
Washington, DC 20005,

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Jeffrey M. (“Jeff Camarda”) and Kimberly K. Camarda (“Kim Camarda”) (collectively, “Camardas” or “Plaintiffs”), by and through their undersigned counsel, hereby sue Defendant, Certified Financial Planner Board of Standards, Inc. (“CFP Board”), and state as follows:

PARTIES AND JURISDICTION

1. Plaintiffs are individuals residing in Clay County, Florida and operate businesses from an office building located at 4371 US Highway 17, Suite 201, Fleming Island, Florida 32003.

2. Upon information and belief, Defendant CFP Board is a Colorado corporation with its principal place of business located at 14325 K Street NW, Suite 500, Washington, D.C. 20005.

3. This Court has subject-matter jurisdiction in this action pursuant to 28 U.S.C § 1332, because at the time of filing this lawsuit: (1) complete diversity of citizenship exists between Plaintiffs and Defendant CFP Board; and (2) the value of the equitable relief sought exceeds \$75,000.00 with respect to Plaintiffs' claims against Defendant.

4. This Court has personal jurisdiction over the Defendant CFP Board as its principal place of business is in Washington, D.C.

5. Venue is appropriate in this Court pursuant to 28 U.S.C § 1391(b) and pursuant to the specific terms of Terms and Conditions of Certification.

GENERAL ALLEGATIONS

A. Background of the Camarda Companies

6. Jeff Camarda is a Managing Member of Camarda Financial Advisors LLC f/k/a Camarda Financial Advisors, Inc. ("Camarda Advisors") and of Camarda Consultants, LLC ("Camarda Consultants"), (collectively, "Camarda Companies"). Kim Camarda is also a Managing Member of Camarda Financial Advisors and a Manager of Camarda Consultants.

7. Camarda Advisors was originally formed in 1992 as a Florida corporation but was later converted to a limited liability company in 2009. Camarda Advisors provides fee-only investment management services to its clients across the United States, and primarily in the Southeast, with a concentration of clients in Florida.

8. Camarda Consultants was formed in 2007. Camarda Consultants is a licensed insurance agency and financial consulting firm providing business planning, tax, estate planning, insurance, and other non-investment-advisory services to its clients for both fees and commissions.

9. Since their respective inceptions, Camarda Advisors and Camarda Consultants are and have always been two separate and distinct legally formed and organized entities under Florida law.

10. Camarda Advisors and Camarda Consultants maintain separate corporate filings with the Florida Secretary of State, file separate state and federal tax returns, and, at all relevant times, Camarda Consultants and Camarda Advisors have maintained separate websites, advertising, and personnel.

11. Camarda Consultants employs 1099 licensed insurance agents or brokers who sell insurance policies on a commission basis. Camarda Advisors does not and never has.

12. Camarda Consultants is separately licensed as an insurance agency with the State of Florida. Camarda Advisors is not and never has been.

13. Moreover, Camarda Advisors has only ever provided “fee-only” investment services. Camarda Consultants has never advertised itself as providing “fee-only” investment services.

14. At all relevant times, Camarda Advisors’s website has represented that Camarda Advisors provided “fee-only” investment services and offered no other services

15. Likewise, Camarda Advisors’s Form ADV Part II also states that Camarda Advisors provides “fee-only” investment services to clients. A true and correct copy of Camarda Advisor’s Form ADV Part II for the relevant time period is attached as **Exhibit A**.

16. In addition to the Form ADV, every current and former client of Camarda Advisors and/or Camarda Consultants receives a written disclosure statement regarding the services provided by each separate entity and the compensation each entity might receive for its

services. All prospective Camarda Consultants clients, including Camarda Advisors clients, were and are required to sign this statement.

17. Thus, the Camarda Companies' required disclosure statements provide a clear explanation to clients and potential clients that only Camarda Consultants sells insurance products on a commission basis, and that any business relationship with Camarda Consultants is a separate and distinct relationship from any with Camarda Advisors. This process makes it impossible for any prospective or existing client to be misinformed as to the separate and distinct nature of and compensation received by Camarda Consultants and Camarda Advisors.

B. The CFP Board's Certification Process and the Camardas' Use of the Certified Financial Planner Mark

18. The CFP Board is a private not-for-profit corporation which grants CFP® certifications and CFP® marks to individuals, such as the Camardas, who meet the CFP Board's required standards for competent and ethical personal financial planning.

19. Upon information and belief, the CFP Board derives virtually all of its revenue from the manufacture and licensing of the CFP® professional service trademark.

20. The CFP Board holds itself out on its own website as a "public service" organization with its "mission" stated as "benefit[ing] the public by granting the CFP® certification and upholding it as the recognized standard of excellence for competent and ethical personal financial planning." To that end, the CFP Board requires individuals who utilize the CFP® mark to abide by the CFP Board's standards of professional conduct and practices specified in the Board's Code of Ethics and Rules of Conduct.

21. The CFP Board maintains Disciplinary Rules and Procedures ("Rules") to investigate any alleged violations of its rules, and to enforce its code of ethics and professional responsibility. The Rules provide a process by which CFP certificants are given notice of

potential Rules violations and furthermore establishes the written procedures to investigate and discipline its members for any supposed violations—all with specific requirements to provide proper notice and an opportunity to be heard to any certificant accused of Rules violations. A true and correct copy of the Disciplinary Rules and Procedures is attached hereto as **Exhibit B**.

22. In 1992, Jeff Camarda was granted the right to use the CFP® certification mark by the CFP Board. In 2000, Kim Camarda was granted the same right.

23. Jeff Camarda uses his CFP certification and mark in the course of his business operations with Camarda Advisors; although Kim Camarda holds a CFP certification, she is not a CFP practitioner. As her role with Camarda Advisors is of an executive and administrative nature; she does not service clients, do financial planning, or dispense investment advice to clients. Other than her formal designation as a "Manager" for purposes of LLC Florida registration, Kim Camarda has absolutely no involvement in Camarda Consultants whatsoever.

C. Disgruntled Competitor's Unwarranted "Complaint" to the CFP Board

24. Upon information and belief, on February 1, 2011, the CFP Board received an anonymous "complaint" from a local business competitor of the Camardas wrongly alleging that Camarda Advisors made misrepresentations to clients in violation of the CFP Board's Code of Ethics by advertising that Camarda Advisors provided "fee-only" investment services when it supposedly also provided non-"fee-only" services.

25. On March 8, 2011, the CFP Board notified the Camardas of the complaint and began an investigation. In response, the Camardas immediately provided the CFP Board with all information requested by the CFP Board, including tax returns, financials, leases, payrolls, disclosure documents, and other requested material.

26. During its investigation of this so-called "complaint," however, the CFP Board apparently did nothing else. It gathered no other additional evidence, interviewed no clients of the Camardas, or performed no further investigation into the veracity of the "complaint" other than requesting documents from the Camardas.

27. The sole basis that the CFP Board ever identified as a so-called "violation" of the Rules by the Camardas was that Camarda Advisors's advertisements describing itself as a "fee-only" entity constituted a misrepresentation to clients or prospective clients because the CFP Board had unilaterally determined that Camarda Advisors and Camarda Consultants were supposedly "functionally one entity" (as the CFP Board construed its Rules) and, because Camarda Consultants—a separate and distinct corporate entity from Camarda Advisors at all times—also provides services to its own distinct customers that are commission based, Camarda Advisors could not advertise as "fee-only."

28. Solely on these purported grounds, on December 14, 2011, the CFP Board sent the Camardas a conclusory, unsupported "finding of fact" unilaterally advising the Camardas that they had allegedly violated Rule 2.1 and 6.5 of the Code of Ethics and indicating the CFP Board was going to impose discipline on the Camardas as set forth in the Rules.

29. Because there was no basis to any of these so-called "violations," the Camardas immediately invoked their right to a hearing to contest and dispute the Board's actions rather than accept any such unjustifiable discipline.

30. Even though the Camardas had committed no Rules violations or made any purported "misrepresentations" to their clients and viewed the CFP Board's allegations otherwise as meritless, the Camardas, in the spirit of compromise and in order to attempt to address the CFP Board's concerns, immediately without having or being asked to do so, amended Camarda

Advisors's marketing materials to remove the phrase “fee-only investment management” and substituted the term “fee-based.” Nonetheless, the CFP Board insisted on proceeding forward to a full hearing on the complaint.

D. The CFP Board Hearing and Utter Lack of Evidence of Rules Violations

31. During the hearing, it was patently obvious that the CFP Board did not conduct a proper and diligent investigation of the baseless "complaint" against the Camardas, and did not intend to. Worse, the CFP Board failed to present or even consider any evidence as to whether Camarda Advisors and Camarda Consultants were, in fact, separate entities and whether any clients of Camarda Advisors or Camarda Consultants had actually been misled.

32. In fact, during the disciplinary hearing, the CFP Board conceded that it never spoke to any of the clients of Camarda Advisors or Camarda Consultants in conducting its investigation of the allegations.

33. Moreover, the CFP Board failed to present or find any evidence that:

- a. any of the clients of Camarda Consultants or Camarda Advisors had been misled;
- b. there was any revenue sharing between Camarda Advisors and Camarda Consultants which would support the CFP Board’s claim that they were one entity;
- c. Camarda Advisors ever provided services in any manner other than “fee-only”;
- d. demonstrated that Camarda Consultants ever advertised itself as a “fee-only” entity;

- e. any current or former clients of Camarda Advisors misunderstood that Camarda Advisors was a separate and distinct entity from Camarda Consultants and that Camarda Advisors provided “fee-only” services; or
- f. either of the Camardas received any direct or indirect compensation for non- “fee-only investment management” services as would be required per the CFP Board's own Rules for their “fee-only” definition to not be met.

34. In further disregard to the Camardas’ due process rights to a fair hearing, none of the members of the Board’s hearing panel exhibited any competent knowledge or a proper understanding of the applicable Code of Ethics and the Rules promulgated by the CFP Board to even begin to apply them fairly and justly to the Camardas and their business.

35. Although the CFP Board's own Rules in the Section 2.2 of the Rules of Conduct explains the express disclosures to clients required by the CFP Board to satisfy Section 2.1 (prohibiting misleading disclosures), the CFP Board utterly ignored all of Section 2.2 in its entirety and clear evidence that the Camardas presented demonstrating that they were fully compliant with each of the specific disclosure requirements of Section 2.2.

36. The CFP Board further ignored other applicable rules demonstrating the Camardas’ compliance with the CFP Board’s ethical standards and which explained and interpreted the meaning of the supposed rules the Camardas were accused of violating. For example, the CFP Board ignored Rules 1.2, 1.3, 2.22, 2.2, and 4.3, as well as their own January 2007 pronouncement that its "fee-only" definition specifically excludes “related parties” (such as the Camarda Companies).

37. Instead, the CFP Board ignored their own governing rules, fashioned their own definition of terms in reliance on outdated and superseded rules, and applied them to the Camardas without regard to and in direct contravention of its own newly defined terms.

38. Despite the lack of evidence of any wrongdoing or violation of any of the ethics rules, on March 30, 2012, the Board issued an Order finding that the Camardas had violated Rule 2.1 and 6.5 of the CFP Board's Code of Ethics. The sole basis for the CFP Board's finding was supposedly based upon the CFP Board's "conclusion" that Camarda Advisors and Camarda Consultants were functionally one "practice." Therefore, the CFP Board held that Camarda Advisors cannot represent itself as providing fee-only services when Camarda Consultants also receives insurance commissions.

39. The CFP Board did not, because it could not, present any evidence to establish the Camardas ever received any "non-fee" compensation, a critical element of the fee-only definition.

40. In addition, the CFP Board defined and applied the term "practice" for the first time in the context of the disciplinary hearing against the Camardas and, worse, the CFP Board then gave the newly defined term retroactive effect as applied to the Camardas, which was arbitrary, capricious, and inherently unfair as the Camardas neither received notice of this new definition nor provided an opportunity to address the allegations or sufficiently dispute any such newly minted "definition."

41. The CFP Board further failed to recognize conflicts of interest among its own hearing officers and governing Directors as evidence was presented during the extensive proceedings which demonstrated at least two of the hearing officers had done the same thing as the Camardas without disqualification or penalty.

42. In connection with its decision, the CFP Board has stated it intends to issue a Public Letter of Admonition which would allege the Camardas violated certain of the Rules (“Public Letter”) and to publish this Public Letter on the CFP Board website as well as in a press release to local and perhaps other newspapers and publications.

43. The severe sanction evidenced by the Public Letter is inappropriate and unorthodox because the Camardas do not have a previous disciplinary record with the CFP Board, nor have they suffered a professional suspension by any other regulatory authority.

E. The Appellate Board’s “Rubber Stamp” of the So-Called “Violations”

44. Once the Camardas received the CFP Board's decision concerning the Public Letter, the Camardas timely appealed to the CFP Board of Appeals Committee as permitted by the Rules.

45. On January 3, 2013, however, the CFP Appellate Panel "rubber stamped" the decision of the CFP Board by concluding, without explanation or reason, that the disciplinary panel below had made no errors in enforcing or interpreting the applicable code of the CFP Board.

46. In affirming the decision, the Appellate Panel improperly accepted the definition of terms, including the term “practice,” which were used to prosecute the Camardas and which had not been defined prior to the date on which the Camardas were charged with violating the CFP Board’s Code of Ethics.

47. In addition, the Appellate Panel improperly confirmed the decision of the Disciplinary Panel despite the absence of proof demonstrating either actual confusion by clients or the potential for confusion, or the receipt of non-fee compensation, and in the absence of precedent to support the level of discipline levied by the disciplinary panel. Worse, evidence

was presented to the CEO of the CFP Board at the appeals hearing demonstrating commissioners of the CFP Board had acted similarly to the Camardas and not accused, much less found, to have violated the Rules. The Appellate Panel ignored this evidence entirely.

48. The CFP Board has indicated its intention to publish the Public Letter on the Internet and in local newspapers on or about January 22, 2013.

49. Any such publication of the Public Letter will have an immediate, severe, and permanent adverse impact on the good reputation and revenue of the Camardas and the Camarda Companies.

50. All conditions precedent to bringing this action have been satisfied, have occurred, or have otherwise been waived.

COUNT I
(DECLARATORY RELIEF)

51. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 through 50 as if fully set forth herein.

52. Plaintiffs and Defendant CFP Board have reached a stipulation to resolve, at this time, concerns which would otherwise necessitate a count or motion for temporary injunctive relief. As such, this Complaint does not contain a request for temporary injunctive relief.

53. This is an action by the Camardas against Defendant for declaratory relief brought pursuant to 28 USC § 2201 for the purpose of determining a question or an actual and justiciable controversy between the parties.

54. Specifically, Plaintiffs seek a judicial declaration that Defendant CFP Board breached its obligations and responsibilities to the Camardas by failing to adhere and follow its own rules, guidelines, and standards for disciplinary proceedings and by rendering a disciplinary sanction wholly devoid of evidentiary support or basis in the CFP Board's own rules.

55. The CFP Board has promulgated rules governing its membership and certificant holders, as well as the proper conduct of disciplinary proceedings and appeals, including the Standards of Professional Conduct, Disciplinary Rules and Procedures, and Appeal Rules and Procedures, all of which are amended or supplemented from time to time.

56. As a not-for-profit corporation, the CFP Board also holds itself out as a professional association with the mission of “benefit[ing] the public by granting the CFP® certification and upholding it as the recognized standard of excellence for competent and ethical personal financial planning.”

57. As with any board purporting to require compliance with self-imposed standards and rules of conduct, the CFP Board must exercise reasonable standards of due process and fairness, especially those standards inherent in adopting, implementing, and applying its own by-laws, rules, and/or customs.

58. In exchange for the Camardas’ permitted use of the CFP® marks, the Camardas agreed to comply with the CFP Board’s standards of conduct, provided they were fair, reasonable, and in keeping with the process of law.

59. In exchange for the Camardas’ use of the CFP® marks in compliance with the CFP Board’s standards, the Camardas’ good business reputation further enhances the value of the CFP mark to the CFP Board.

60. In exchange for the Camardas’ agreement to use CFP® marks in accordance with the CFP Board’s standards, the CFP Board agrees to adhere to the rules and guidelines for investigating and prosecuting any disciplinary complaints against the Camardas.

61. As such, the by-laws, rules, and promulgations of the CFP Board constitute a contract governing the proper conduct of proceedings for discipline and the overall relationship

by and between the CFP Board and its members and certificant holders, including, but not limited to, the Camardas.

62. The CFP Board further has an obligation to the Camardas to promulgate, implement, and apply clear rules and provide adequate notice of such rules and interpretation of such rules so that compliance with such rules and standards can be made by the Camardas. In addition, the CFP Board has an obligation pursuant to its business relationship with the Camardas to apply its rules and standards fairly and consistently.

63. As a direct and proximate result of its conduct in the investigation, hearings, and proposed Public Letter publication, the CFP Board has blatantly and flagrantly breached its contractual and business obligations to the Camardas, all as alleged herein in paragraphs 24 through 50.

64. During the “disciplinary” proceedings against the Camardas, the CFP Board further violated the Camardas’ due process rights by failing to conduct a fair hearing, to consider and properly evaluate the evidence presented, or to adhere to the Board’s own procedures, standards, and precedent in order to render a reasoned decision supported by the evidence and reasonable interpretation of the applicable rules.

65. Should the arbitrary, capricious, and unsupported decision of the CFP Board and Appellate Panel be allowed to stand, it will cause substantial and irreparable harm to the Camardas, as well to the Camarda Companies.

66. Plaintiffs seek a declaratory judgment that the CFP Board breached its obligations and responsibilities to Plaintiffs by failing to adhere and follow its own rules, guidelines and standards for disciplinary proceedings and by rendering a disciplinary sanction wholly devoid of evidentiary support or basis in the CFP Board’s own rules.

67. Plaintiffs further seek a declaratory judgment that the CFP Board's disciplinary sanction is void and should be vacated in light of the CFP Board's breach of its obligations to the Camardas and/or failure to conduct a fair hearing.

WHEREFORE, the Plaintiffs hereby demand judgment against the Defendant as follows:

- a. declaring that the CFP Board breached its obligations and responsibilities to the Camardas by failing to adhere and follow its own rules, guidelines and standards for disciplinary proceedings and by rendering a disciplinary sanction wholly devoid of evidentiary support or basis in the CFP Board's own rules;
- b. declaring the March 30, 2012 decision of the Disciplinary Review Board void due to the arbitrary and capricious nature of the decision;
- c. vacating and dismissing the March 30, 2012 Order of the Disciplinary Review Board due to the lack of substantive findings and conclusions which support the allegation;
- d. vacating and dismissing the decision of the Appellate Panel dated January 3, 2013 based upon the information set forth above; and
- e. providing for such other and further relief as this Court deems just and proper.

COUNT II
(Permanent Injunctive Relief)

68. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 50 as if set forth herein.

69. This is an action by Plaintiffs against Defendant for permanent injunctive relief pursuant to Fed. R. Civ. P. 65 to enjoin Defendant from enforcing its purported "disciplinary

sanction” against Plaintiffs and to prevent the publication and release of the proposed Public Letter on the Internet or in the form of a press release or any other form of publication or dissemination from the CFP Board against the Plaintiffs.

70. The Board’s publication and enforcement of its disciplinary decision threatens imminent interference with Plaintiffs’ good reputation, goodwill, and established business interests, and advantageous relationships with its clients.

71. The CFP Board’s publication and enforcement of its disciplinary decision also threatens imminent and severe harm to Plaintiffs’ reputation, income, business designations and certifications, and future business.

72. If the CFP Board is not enjoined from enforcement and publication of its disciplinary decision against the Camardas, Plaintiffs will suffer immediate irreparable harm for which they have no adequate remedy at law if injunctive relief is not entered.

73. As a direct and proximate result of the CFP Board’s unwarranted and unjustified threatened interference with Plaintiffs’ business and related interests through enforcement and publication of the CFP Board’s disciplinary decision, Plaintiffs have a clear legal right to the injunctive relief requested.

74. As the CFP Board has breached its contractual obligations to the Camardas, all as set forth herein, there exists a substantial likelihood that Plaintiffs will prevail on the merits of this action and the public interest will be served by such injunctive relief.

75. Finally, a balancing of the harms to Plaintiffs and Defendant weighs heavily in favor of entry of the injunctive relief sought by Plaintiffs.

WHEREFORE, Plaintiffs pray for permanent injunctive relief against Defendant CFP Board enjoining the CFP Board, and all persons acting in concert with, on behalf of, or in

participation with CFP Board (including all related entities, agents, officers, directors, employees, successors, assigns, and any other firms and corporations), permanently from taking any contemplated action to publish or otherwise disseminate or release the Public Letter in the form of a press release or any other form of communication, publication, or dissemination from the CFP Board against the Plaintiffs, together with such other and further relief as this Court deems just and proper under the circumstances.

Dated: June 10, 2013

**JEFFREY M. CAMARDA
AND KIMBERLY K. CAMARDA**

By counsel

/s/ Phillip C. Chang

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