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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Hon. Joe M. Crosby, Master-in-Equity

Court of Appeals Opinion 2025-UP-169 (Filed May 28, 2025)

Supreme Court Case No. 2025-001557

South Carolina Board of Financial Institutions, …….. Respondent,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, ……..… Petitioners.

RETURN TO PETITION FOR WRIT OF CERTIORARI

August 28, 2025

Shawn D. Eubanks (S.C. Bar No. 78370)
1200 Senate St., Suite 214
Wade Hampton Office Building
Columbia, SC 29201
(803) 734-2623
shawn.eubanks@sto.sc.gov

Attorney for Respondent South Carolina Board of Financial Institutions

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INTRODUCTION

Respondent South Carolina Board of Financial Institutions ("BOFI") responds to the Petition for Writ of Certiorari filed August 4, 2025, by Petitioners CDM Corporation, Inc. ("CDM") and Guardian Fiduciary Services, LLC ("GFS") (collectively, "Petitioners"), challenging the Court of Appeals's unanimous holding that Petitioners conducted unlicensed trust business, in violation of S.C. Code Ann. § 34-21-10, by serving as trustee, conservator, guardian, personal representative, and agent, without BOFI's approval. The court rejected Petitioners' assertion that BOFI may only regulate entities serving as "trustee" and not "non-trustee fiduciary" roles, as this contradicts the plain language of Section 34-21-10 and numerous other statutes.

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR. The Court may grant review for a number of reasons, including but not limited to those (1) where there are novel questions of law; (2) where there is a dissent in the decision of the Court of Appeals; (3) where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; (4) where substantial constitutional issues are directly involved; and, (5) where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. Id.

There is no "special and important" reason to review this case further. There was no dissent within the Court of Appeals. The court's opinion, while thoroughly reasoned and worthy of publication, was not published and has no precedential value beyond the present case. And, to the extent Petitioner has raised any novel or meaningful questions, the Court of Appeals correctly and thoughtfully answered them. Therefore, BOFI respectfully requests that the Court deny the Petition for Writ of Certiorari.

COUNTER-STATEMENT OF QUESTION PRESENTED

Did the Court of Appeals correctly hold that Petitioners were conducting unlicensed trust business, in violation of S.C. Code Ann. § 34-21-10, by serving as personal representative, guardian, conservator, and agent?

COUNTER-STATEMENT OF THE CASE

The Board of Financial Institutions refers to both an agency of the State of South Carolina ("Agency"), and its board ("Board") (collectively "BOFI"). By law, the Board is composed of eleven members, ten of whom must be actively engaged in financial industry, and one who is unaffiliated and serves "as a representative of the consumers of the State." S.C. Code Ann. § 34-1-20. Each Board member is obligated to represent the best interests of the public. Id.

Prior to 1911, "The theory of the common law was that a corporation could not be thus appointed [as executor of a will] because it could not take the oath necessary in qualifying." Ex Parte Michie, 167 S.C. 1, 165 S.E. 359, 366 (1932) (dicta). In 1911, the General Assembly passed legislation which would ultimately become S.C. Code Ann. § 34-15-10, allowing a corporation to be appointed "under the same circumstances, in the same manner, and subject to the same control by the Court having jurisdiction of the same as a legally qualified person." Id (quoting 1932 S.C. Civil Code § 7864). The Supreme Court recounts that "The lawmakers, when they granted them power to become executors, administrators, guardians, and trustees, must have realized that they were creating for them a different status in the law than that of an individual executor, but had faith in their fidelity and the security of the funds intrusted [*sic*] to them." Id at 368. Unfortunately, "The epidemic of bank failures which followed in the years preceding 1930 showed them the fallacy of their faith and induced the passage of the act of 1930, which accurately defines the duties of such fiduciaries in the handling of trust funds." Id at 367.

Among other things, this 1930 act of the General Assembly undertook "to subject corporate fiduciaries to examination" by the State Board of Bank Control, BOFI's predecessor. Id at 367. These statutes evolved into the present law, codified at S.C. Code Ann. § 34-21-10, *et seq.*

Thus, for nearly 100 years, the South Carolina Board of Financial Institutions and its predecessors have licensed and regulated entities serving as trustee, conservator, guardian, personal representative, and agent—i.e. trust business.

Pursuant to S.C. Code Ann. § 34-21-10, before a non-exempt entity[1] conducts trust business in South Carolina, it must seek and obtain prior written approval from the Board. An entity initiates the Board's review by submitting a completed Trust Company Application, which has at all times relevant to this action, been publicly available in the "Applications and Forms" section of BOFI's website. See https://banking.sc.gov/industry-information/applications-and-forms. On page 1, Section I of the Trust Company Application, the entity trust company applicant must declare the "trust powers to be exercised" by selecting from a list which includes "Trustee," "Executor or Administrator," "Conservator," "Guardian," "Agent," among other options. Id.

Once an entity's application to conduct trust business is approved by the Board in writing, it remains subject to regular examinations by BOFI. S.C. Code Ann. § 34-21-20.

Petitioner CDM is a domestic corporation located in Georgetown, South Carolina, co-owned by Stephen Mantell and his wife, Candida Mantell. Petitioner GFS is a domestic limited liability company with Mr. Mantell as the sole member, also located in Georgetown. Utilizing the names and corporate veils of both CDM and FGS as well as "Senior Helpers," Petitioners admit to seeking and accepting appointments to serve as trustee, conservator, guardian, personal

[1] By statute, BOFI does not license or regulate individuals or "natural persons" serving in fiduciary roles. Natural persons are free to accept fiduciary appointments without any licensure or oversight from BOFI.

representative, and agent pursuant to a power of attorney for numerous individuals, in multiple counties, and before multiple probate judges.[2]

Despite conducting this extensive trust business, Petitioners have never made a written application to the Board to conduct a trust business in South Carolina, nor did they receive written permission from the Board to conduct a trust business in South Carolina. **(R. pp. 161-163)** (Def. Resp. to Pl. Req. to Admit). Petitioners' sole contact with BOFI was, according to Mantell's self-serving and unverified statement, a legally ineffectual telephone discussion in 2011 with a BOFI staff member—not the Board—in which Mantell claims his businesses were absolved of any licensure requirements or regulatory oversight because "my companies were not actively managing investments." **(R. p. 203)** (Affidavit of Stephen Mantell, ¶ 12). BOFI has no record of this conversation, nor is there any evidence suggesting that the "management of investments" was ever a consideration in whether BOFI's approval was required pursuant to Section 34-21-10.[3]

Thus, BOFI initiated an action in Circuit Court in Georgetown County on October 26, 2020, alleging that Petitioners were conducting unauthorized trust business in violation of S.C. Code Ann. § 34-21-10, *et seq*. **(R. pp. 15-23)** (Complaint). The case was referred to Hon. Joe M. Crosby, Master-in-Equity for Georgetown County, on March 11, 2022. **(R. pp. 1-3)** (Order of Reference). The parties filed opposing Motions for Summary Judgment. **(R. pp. 77-221)** (Motions for Summary Judgment).

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[2] CDM served as conservator, guardian, personal representative, and power of attorney for individuals in South Carolina. **(R. pp. 161-169)** (Pl. Resp. to Def. Req. to Admit). GFS served as guardian in South Carolina. Id. Both Petitioners hold themselves out to the public as providing the services of conservator, guardian, personal representative of an estate, and power of attorney. **(R. pp. 161-169)** (Pl. Resp. to Def. Req. to Admit).

[3] Petitioners' contention that BOFI claimed to regulate only those business involved in the "management of investments" seems unlikely, considering that the Financial Industry Regulatory Authority ("FINRA") licenses and examines individuals and firms dealing in investments.

The Master-in-Equity's Order permanently enjoined Petitioners from serving as a trustee of a trust; however, the Master-in-Equity declined to enjoin Respondents from serving as conservator, guardian, personal representative, and agent. **(R. pp. 4-12)** (Summary Judgment Order). The Master-in-Equity held that the "trust business" regulated by BOFI must involve a "trust," and that Petitioners' serving as conservator, guardian, personal representative, or agent did not constitute "trust business," and did not require BOFI's prior written approval. Id. The Master-in-Equity further held that Petitioners' "non-trustee fiduciary" roles are regulated by the probate courts and, therefore, BOFI cannot regulate entities serving in these capacities. Id.

BOFI timely appealed the matter to the Court of Appeals, challenging the Master's narrow rendering of "trust business," and its finding that the probate courts regulate conservator, guardian, personal representative, or agent to the exclusion of BOFI's oversight.

In a thoroughly reasoned 15-page opinion, the Court of Appeals agreed with BOFI on both points, concluding "[W]e reverse the master's conclusions that the term 'trust business' excludes the services of personal representatives, conservators, guardians, and agents and that these roles are outside BOFI's regulatory jurisdiction." (Op. at 15). The court also observed that, regardless of the meaning of trust business as used in Section 34-21-10, Petitioners' fiduciary activities are plainly subject to BOFI's regulation: "[S]ection 34-21-20 clearly governs organizations like Respondents: "All state chartered banks, building and loan associations, savings associations, savings and loan associations, savings banks, trust companies, and fiduciary corporations authorized to conduct a trust business in this State are subject to examination by [BOFI] and are further subject to rules and regulations promulgated by [BOFI]." (Op. at 10).

Petitioners now seek the review of the Supreme Court. BOFI opposes on the following grounds.

ARGUMENT

I. PETITIONERS' DISAGREEMENTS WITH THE LAW, OBJECTIONS TO INEFFECTUAL DICTA, AND BASELESS FACTUAL ACCUATIONS DO NOT MERIT THIS COURT'S INTERVENTION.

Petitioners' arguments— beginning with the crude characterization of the Court of Appeals analysis as "tortured" (p. 7), and concluding with the baseless, ad hominem accusation that BOFI is "unqualified and unequipped to regulate" trust business (p. 16)— do not compose a genuine challenge to the interpretation of the law meriting this Court's involvement.

Petitioners' claims of broad, harmful changes to the State's regulatory landscape are unfounded. For one thing, nothing has changed: the Court of Appeals applied the law at is has been interpreted for nearly 100 years. See Ex Parte Michie, 167 S.C. 1, 165 S.E. 359, 366 (1932).

Regardless, the Order was not published and— by rule and according to its own declarative heading— it "has no precedential value." (Op. at 1). Thus, even if this Court disagrees with the conclusion that "all institutional fiduciaries fall within BOFI's regulatory authority," that language is ineffectual. The application of the appellate Order is limited to Petitioners, and the practical effect of the appellate decision is narrow and explicit: "we remand to the master to enjoin [Petitioners'] services as a personal representative, conservator, guardian, or agent without first complying with section 34-21-10." (Op. at. 15). As discussed more fully herein, the statute leaves no doubt that these fiduciary roles constitute BOFI-regulated trust business.

Additionally, Petitioners' objections to BOFI's regulation of corporate fiduciaries are "couched in terms of the absurdity of any other interpretation in light of the special circumstances of [Petitioners'] particular businesses. [Petitioners] seem particularly concerned about the amounts of BOFI's application fee and annual supervisory fee." (Op. at 6).

Petitioners reiterate these arguments in their request for this Court's review, along with making inaccurate factual assertions intended to discredit BOFI rather than make a meaningful

challenge to the Opinion. Petitioners repeatedly declare – in bold and italics— that BOFI "doesn't even have a way for companies other than Banks, Credit Unions, Savings Associations, and Savings Banks… to apply for 'trust powers.'" (Petition, pp. 3, 17). This is demonstrably false: BOFI's Trust Company Application is publicly available on BOFI's website. See https://banking.sc.gov/industry-information/applications-and-forms. Petitioners also claim that "the Bank Board confirmed to the Petitioners' principal that their provision of these fiduciary services did not amount to a 'trust business' subject to the agency's jurisdiction." (Petition, p. 2). Yet, even according to Mantell's own self-serving affidavit, his conversation was with a BOFI staffer—not the Board. **(R. p. 203)** (Affidavit of Stephen Mantell, ¶ 12).

Ultimately, Petitioners' claims do not merit further review by this Court.

II. THE COURT OF APPEALS CORRECTLY HELD THAT PETITIONERS CONDUCTED UNLICENSED TRUST BUSINESS BY SERVING AS CONSERVATOR, GUARDIAN, PERSONAL REPRESENTATIVE, AND AGENT, IN VIOLATION OF S.C. CODE ANN. § 34-21-10, ET SEQ.

The Court of Appeals correctly held that Section 34-21-10 prohibits Petitioners from serving as conservator, guardian, personal representative, or agent without the Board's prior written approval because these activities constitute trust business. The Opinion supports this conclusion on every front, and rather than re-hash the appellate arguments, BOFI defers to the clear, thorough, and accurate analysis in the Opinion.

a. The plain language of Section 34-21-10 makes it clear that trust business includes personal representative, conservator, guardian, and agent.

The Court of Appeals accurately concluded that the plain language of Section 34-21-10 indicates that BOFI-regulated trust business includes personal representative, conservator, guardian, and agent: "the inclusion of 'executor, administrator, guardian, committee or in any other fiduciary capacity' in the exceptions to the requirement for trust business licensure in section 34-21-10 shows that these activities would otherwise constitute a trust business if not undertaken by

an exempt person, and to view this otherwise would render this final clause of section 34-21-10 surplusage or superfluous." (Op. at 8).

b. The context of Section 34-21-10 and other provisions throughout Title 34 further confirm that trust business includes personal representative, conservator, guardian, and agent.

The Court of Appeals provides further assurance of its conclusion by analyzing the context of trust business throughout Title 34: "As to the context in which section 34-21-10 appears, there are numerous sections within the same general statutory law that show the legislature's intent to include personal representatives, conservators, guardians, and agents within the term 'trust business.'" (Op. at 9).

c. The usual and customary meaning of trust business includes personal representative, conservator, guardian, and agent.

The Court of Appeals acknowledges that, to the extent that the "trust business" in Section 34-21-10 is ambiguous, the usual and customary meaning of "trust business" includes personal representative, conservator, guardian, and agent: "The usual and customary meaning of the term 'trust' is recognized in secondary sources of law as including a range of fiduciary relationships. 'A trust is defined as the right, enforceable solely in equity, to the beneficial enjoyment of property, the legal title to which is vested in another, but the word 'trust' also is frequently employed to indicate duties, relations, and responsibilities that are not strictly technical trusts.'" (Op. at 7) quoting 90 C.J.S. Trusts § 1 (December 2024 update).

Petitioners have failed to make any argument that undermines the court's analysis; as such, this Court should not allow Petitioners to proceed.

III. PETITIONERS' ARGUMENTS REGARDING THE BOARD'S POLICY STATEMENT ARE MOOT BECAUSE THE COURT OF APPEALS DID NOT GIVE DEFERENCE TO, OR EVEN CONSIDER IT IN THE ANALYSIS OF THIS CASE.

Petitioners raise extensive objections to the Board's "Policy Statement Concerning the Conducting of Trust Business by Non-Depository Entities in South Carolina," repeatedly emphasizing a concurring opinion by Justice Kittredge stating that "an administrative agency may not make law without legislative oversight and approval." Joseph v. S.C. LLR, 417 S.C. 436, 461, 790 S.E.2d 763, 777 (2016) (Kittredge, J., concurring). BOFI is in full agreement with this sentiment, and has never argued that the Policy Statement should be treated as law; however, Petitioners protests are moot in light of the fact that the Court of Appeals did not rely on or give deference to, or even consider the Policy Statement in its analysis.

The sole acknowledgement of BOFI's Policy Statement occurs in the "Facts/Procedural History" section of the Opinion:

> After the case was referred to the master, but before the parties filed cross-motions for summary judgment, BOFI unanimously adopted a policy statement "affirm[ing] BOFI's longstanding industry and regulatory interpretation of the phrase 'trust business' as used in S.C. Code Ann. § 34-21-10." The policy statement asserted that BOFI interprets the phrase "conduct a trust business" as used in section 34-21-10 to include serving as a personal representative of a decedent's estate, a guardian, a conservator, or an agent pursuant to a power of attorney.

(Op. at 2). Following these two sentences, the Policy Statement is not mentioned again.

Thus, Petitioners objections to the Board's issuance of the Policy Statement do not constitute grounds for this Court to review the well-founded decision of the Court of Appeals.

CONCLUSION

For the foregoing reasons, BOFI respectfully asks this Court to deny the Petition for Writ of Certiorari.

s/ Shawn D. Eubanks
Shawn D. Eubanks (S.C. Bar No. 78370)

1200 Senate St., Suite 214
Wade Hampton Office Building
Columbia, SC 29201
(803) 734-2623

shawn.eubanks@sto.sc.gov
Attorney for Respondent