CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29214

This is a summary of a decision issued following the February 2015 hearings of the Disciplinary and Ethics Commission ("Commission") of Certified Financial Planner Board of Standards, Inc. ("CFP Board"). The conduct at issue in this case occurred after January 1, 2009. The Rules in effect at that time under the *Rules of Conduct* were Rules 1.1 through 6.5.

I. Issues Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he: 1) failed to timely and accurately notify his broker-dealer of his outside business activities in violation of NASD Rule 3030 and FINRA Rules 2010 and 3270; 2) participated in private securities transactions without providing prior written notice to and obtaining prior approval from his broker-dealer in violation of NASD Rule 3040 and FINRA Rule 2010; and 3) failed to disclose to CFP Board in writing his FINRA suspension, which FINRA issued in December 2013, within 30 days as required by Article 13.2 of the *Disciplinary Rules.*

II. Findings of Fact Relevant to the Commission's Decision

Relationship w/ ZE, WM, and KE

In 2008, Respondent entered into an agreement with two business partners to purchase his financial planning practice so he could focus his attention on building a consulting business working with small businesses and start-ups. According to Respondent, he and his business partners agreed to a purchase price and time frame for the sale that would have the transaction close by the end of January 2009.

Respondent testified that the sale of his practice did not go as planned. Due to the general market turmoil in 2008 and challenges that his broker-dealer was facing at the time, the purchasers grew concerned that they would not be able to transition his client base to their practice. The purchasers requested that Respondent continue to operate his financial planning practice until they could complete their purchase of the practice. Respondent agreed and continued to maintain his affiliation with his broker-dealer.

In late 2008 or early 2009, Respondent met ZE who was in the business of working with startup companies. Respondent began working with ZE on a due diligence project. From that point forward, Respondent performed due diligence and monitored operational issues at companies that were being evaluated or acquired by ZE's companies. Respondent continued to be involved with working as a consultant and in other capacities with the ZE-related companies while running the financial planning practice. Ultimately, the sale of Respondent's financial planning practice closed in September 2009, but under terms that required him to maintain his involvement with his clients for two additional years.

From 2009 to 2012, Respondent performed services for two companies controlled by ZE: KL, and WM. Respondent received payments for the services he provided as well as expenses incurred from those two entities as well as three other entities controlled by ZE: KR, M LLC, and SL. Around February 2009, ZE asked Respondent to identify and assess potential merger candidates for KL, a public shell company. Soon thereafter, Respondent had an e-mail account established for him at WM, and in June 2009, he became KL's Chief Financial Officer. During 2009, Respondent received approximately $231,000 for services he performed for KL.

In March 2010, Respondent was appointed to KL's board of directors. In June 2010, KL acquired a private company that was trying to produce and market a prepaid gift card for technological services. That same month, Respondent resigned as KL's CFO but kept his seat on the company's board. During the fall of 2010, he assisted with KL's unsuccessful efforts to sell the gift card. Additionally, during 2010, Respondent began to advise WM on its online financial newsletter and trading system, and he became the company's COO. In total, Respondent received approximately $125,000 in 2010 for work he performed from various KE-related entities: KL ($30,000), WM ($20,000), SL ($55,000), KR ($10,000), and M LLC ($10,000).

In 2011, Respondent continued his work with WM while still serving on KL's board. He resigned from KL's board in May 2011, and around that time, he joined WM's board of directors. He also became a salaried employee of WM. In 2011, Respondent received a total of $46,057 from KE controlled entities: $27,057 from WM, $1,500 from M LLC, and $17,500 from SL.

Disclosure of Outside Business Activities

During the period 2009 through 2011, Respondent's broker-dealer required its registered representatives to report, and obtain approval for, all outside business activities ("OBA's") prior to engaging in those activities. Respondent never notified SAI of the payments he received from KR, M LLC, or SL. Respondent submitted an OBA report to his broker-dealer for his work with KL in September 2009, which was six months after he agreed to help the company find a merger candidate and three months after he began serving as the company's CFO. Respondent reported on his OBA filing that that his work with KL began in June 2009, the date he became CFO. Respondent did not update his OBA disclosure to notify his broker-dealer of his service on KL's board of directors or his resignation from the CFO position. Respondent's broker-dealer approved the outside business activities that Respondent disclosed in October 2009.

In July 2011, Respondent notified his broker-dealer of his work with WM. This was two years after he received his first payment from WM, approximately a year after he assumed the role of the company's COO, and several months after he became a board member and salaried employee. Respondent described his position with WM as "Operations Assistant" and listed his start date as June 2011. Respondent's broker-dealer never approved this outside business activity.

FINRA determined that Respondent failed to provide "prompt" or "prior" written notice to his broker-dealer regarding his outside business activities for KL and WM, or provide any notice of the payments from KR, M LLC or SL. Respondent's failure to provide prompt notice violated NASD Rule 3030 (in effect Jan. 2009, through Dec. 2010), FINRA Rule 3270 (in effect Dec. 2010 and forward), and FINRA Rule 2010. Separately, since his outside business activity disclosures were inaccurate, Respondent also violated FINRA Rule 2010.

Respondent acknowledged in his responses to CFP Board that his activities with KE-related companies were outside business activities ("OBA"). Respondent indicated that he committed "several oversights" with regards to OBA disclosures. Respondent testified that he communicated constantly with his compliance officer about the work he engaged in with the KE-related companies. Respondent also testified that he had made all of the appropriate disclosures on his broker-dealer's electronic reporting form, but could not confirm that he made this disclosures by producing any evidence other than his testimony. Respondent repeatedly testified that his compliance officer would let him know if there were any problems with his alleged attempts at disclosing his outside business activities. Respondent further testified that he never followed up with his compliance officer in writing to verify that his broker-dealer received his alleged disclosures.

Private Securities Sales

While receiving payments from KE-related companies during 2009 and 2010, Respondent recommended that five of his customers at his broker-dealer purchase approximately $420,000 in restricted LM stock in private transactions from WM. Respondent referred customers to a KE associate who arranged for the sales. Respondent assisted with preparing the paperwork for the sales. Respondent also advised and assisted three other individuals in completing forms to purchase approximately $179,000 of restricted LM stock from WM.

In 2011, while receiving payments from the KE-related companies WM, M LLC, and SL, Respondent recommended that six customers of his broker-dealer purchase, via private transactions, approximately $220,000 in restricted stock of CM, a publicly traded company. As he had with the LM sales, Respondent referred customers to the same KE associate to arrange for the sales, and he assisted with preparing the paperwork for the transactions. Some of the stock was purchased from M LLC and other shares were purchased from KR. In addition, Respondent advised and assisted four others who purchased CM stock from either M LLC or KR. In total, Respondent participated in approximately $917,000 in CM stock sales.

Respondent never provided his broker-dealer with prior notice of his participation in the sales of restricted LM or CM stock. The firm only learned about his participation in those sales as a result of an investigation it conducted after he left his broker-dealer. By virtue of his failure to provide SAI with prior written notice of his participation in the sales of restricted stock, Respondent violated NASD Rule 3040 and FINRA Rule 2010.

For these violations, Respondent was: 1) suspended in all capacities for two years; 2) fined $40,000 due upon re-association with a member firm or prior to any request for relief from any statutory disqualification; and 3) ordered to pay restitution of $55,000 (plus interest) to customers identified by FINRA.

Respondent's Failure to Timely Report His Professional Suspension

In December 2013, FINRA accepted Respondent's AWC and his two-year suspension started in the same month. Pursuant to Article 13.2 of the *Disciplinary Rules*, Respondent was obligated to disclose his professional discipline to CFP Board in writing within 30 days. In July 2014, CFP Board discovered that Respondent had been suspended. CFP Board has found no evidence that Respondent reported his suspension in writing in January 2014 or at any time.

III. Commission's Analysis and Conclusions Regarding Rule Violations

A. The Commission determined that Respondent failed to timely and accurately notify his broker-dealer of his outside business activities in violation of NASD Rule 3030 and FINRA Rules 2010 and 3270. The Commission relied on Article 13.1 of the *Disciplinary Rules*, which states that "a letter or other writing from a governmental or industry self-regulatory authority to the effect that a Respondent has been the subject of an order of professional discipline shall conclusively establish the existence of such professional discipline for purposes of disciplinary proceedings and *shall be conclusive of the basis for such discipline*." The Commission determined that the AWC entered into by Respondent constituted a writing by a self-regulatory authority evidencing that Respondent was subject to a professional discipline in the form of a suspension by FINRA. Therefore, the AWC conclusively established the basis for the FINRA suspension. With respect to Rule 5.1, Respondent failed to perform professional services with dedication to the lawful objectives of his employer/principal when he violated NASD and FINRA rules by failing to disclose his OBAs. With respect to Rule 6.5, Respondent engaged in conduct that reflected adversely on his integrity or fitness as a CFP® professional, on the CFP® marks and upon the profession when he was suspended by FINRA for failing to disclose OBAs. Thus, the Commission determined that Respondent's conduct violated Rules 5.1 and 6.5 of the *Rules of Conduct*.

B. The Commission determined that Respondent participated in private securities transactions without providing prior written notice to and obtaining prior approval from his broker-dealer in violation of NASD Rule 3040 and FINRA Rule 2010. The Commission relied on Article 13.1 of the *Disciplinary Rules*, which states that "a letter or other writing from a governmental or industry self-regulatory authority to the effect that a Respondent has been the subject of an order of professional discipline shall conclusively establish the existence of such professional discipline for purposes of disciplinary proceedings and *shall be conclusive of the basis for such discipline*." The Commission determined that the AWC entered into by Respondent constituted a writing by a self-regulatory authority evidencing that Respondent was subject to a professional discipline in the form of a suspension by FINRA. Therefore, the AWC conclusively established the basis for the FINRA suspension. With respect to Rule 5.1, Respondent failed to perform professional services with dedication to the lawful objectives of his employer/principal when he violated NASD and FINRA rules by failing to disclose his OBAs. With respect to Rule 6.5, Respondent engaged in conduct that reflected adversely on his integrity or fitness as a CFP® professional, on the CFP® marks and upon the profession when he was suspended by FINRA for failing to disclose OBAs. Thus, the Commission determined that Respondent's conduct violated Rules 5.1 and 6.5 of the *Rules of Conduct*.

C. The Commission determined that Respondent failed to disclose to CFP Board in writing his FINRA suspension, which FINRA issued in December 2013, within 30 days as required by Article 13.2 of the *Disciplinary Rules*. Respondent admitted that he failed to disclose his FINRA suspension. Respondent attempted to explain his failure by testifying at the hearing that he failed to disclose the suspension to CFP Board because he was participating as an undercover asset in a criminal investigation. The Commission did not find this explanation to be credible because FINRA had already published Respondent's suspension. Thus, Respondent's disclosure to CFP Board would not have had any impact on his participation in the investigation. The Commission determined that Respondent's conduct violated Rule 6.1 of the *Rules of Conduct*.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*") provides grounds for discipline for any act or omission that violates the *Rules of Conduct*. The Commission found grounds for discipline under Articles 3(a), 3(d) and 3(e) because Respondent violated Rules 5.1, 6.1 and 6.5 of the *Rules of Conduct*. Pursuant to Article 4.3 of the *Disciplinary Rules*, the Commission issued a one year and one day suspension. Respondent's suspension was effective as of May 2015.

The Commission considered as mitigating factors that:

1. Respondent claimed that he attempted to make the appropriate OBA disclosures on his broker-dealer's electronic disclosure system;
2. Respondent recognized potential criminal activity and reported the activity to the appropriate authorities.

The Commission did not considered any aggravating factors.

In arriving at its decision, the Commission consulted *Sanction Guidelines* 34 (Professional discipline as defined in Article 13.6 involving a suspension for more than three months). The Commission also consulted Anonymous Case Histories 26289 and 23323, both of which involved a suspension due to the failure to disclose OBA's.