CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30547

This is a summary of a decision issued following the June 2018 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 properly supervise subordinates, resulting in one subordinate being named as a beneficiary of several clients' accounts, creating a conflict of interest; (2) was named as a beneficiary in several client accounts, in violation of firm policy; and (3) failed to disclose and obtain approval from his firm after he was named as a beneficiary of both client and non-client accounts.

II. Findings of Fact

Respondent holds Series 7 and 63 securities licenses, and has been a registered representative of Firm ABC ("ABC") since 1990. Respondent was the franchise owner of ABC's City X office, which operated under the name ABC, Branch X, until July 2017, when he sold the office to another ABC financial adviser. Respondent now works as an adviser in the office, which operates under the name ABC, Branch Y.

During the relevant time period, Respondent had only two employees. Employee A, CFP®, who holds Series 63 and 65 securities licenses, was a paraplanner at ABC, Branch X from May 2014 through April 2017, when he resigned from ABC, Branch X. Employee B, who is unregistered and is Respondent's husband, worked as the office manager.

Complaint to CFP Board by Respondent's Employee Paraplanner

In September 2016, Employee A sent a written complaint to CFP Board alleging that Respondent had engaged in improper conduct. Specifically, Employee A's complaint letter alleged that Respondent and Employee B were serving as beneficiaries, trustees, and power of attorney designees for numerous individuals, some of whom were clients of Respondent.

Employee A detailed his allegations in his complaint letter to CFP Board, stating that he discovered that Respondent had arranged for himself, Employee B, and others to be named as beneficiaries of the estate of an elderly friend who was not an ABC client. Employee A described that the elderly friend's spouse had passed away and that Respondent and Employee B caused the friend to also designate Respondent as a fiduciary. Employee A stated that he believed it to be a conflict of interest for Respondent to be both a beneficiary and a fiduciary. Employee A also asserted that he was aware that Respondent and Employee B had inherited beneficial individual retirement accounts ("IRAs") from another friend who passed away and that, while Employee B kept the beneficial IRA in his ABC account, Respondent did not "because he knew he was not supposed to have it."

In his letter to CFP Board, Employee A described that these situations caused him to review Respondent's and the firm's files, and that he identified other circumstances in which friends of Respondent or Employee B listed one or both of them as beneficiaries or fiduciaries. Employee A claimed that Respondent purposefully hid his conflicted relationships from ABC because compliance officials would have prohibited the arrangements, moving some clients away from ABC so they would no longer be considered "clients" of the firm. Employee A also stated in his letter that he had raised his concerns to the registered principal responsible for conducting annual compliance inspections of Respondent's office.

In October 2016, soon after Employee A's sent his complaint letter to CFP Board and after he raised concerns to ABC, the firm's compliance personnel, including Respondent's registered principal, conducted a surprise inspection of Respondent's office. During the surprise inspection, ABC interviewed Respondent and Employee B. In communications with CFP Board, and in his testimony at the hearing, Employee A stated that Respondent and Employee B tried to hide information and documents from ABC during the inspection.

During the hearing, Employee A testified about his own discipline, or having been "written up," by Respondent. First, Employee A testified that, as a result of a disagreement with Respondent about Employee A's solicitation of business and the firm's bonus program, Respondent had "written him up" or issued him a disciplinary form. Employee A also testified that he had been disciplined by Respondent for attempting to remove documents from the office. Employee A further testified that, as a result of two misdemeanor charges, his license to sell insurance in California had been restricted by the Department of Insurance.

Letter of Reprimand to Respondent from ABC

In November 2016, ABC issued Respondent a Letter of Reprimand, Corrective Action Plan, and $5,000 fine for his failure to follow ABC Policy. The letter stated that ABC had made specific findings with regard to Respondent's conduct and specific Compliance Manual violations:

> Specifically, it was found that you and an unlicensed staff member/member of your household were designated as fiduciaries and/or beneficiaries for ABC Financial clients.
>
> Additionally, it was found that you were designated and are currently acting as a fiduciary for an individual who is not an ABC Financial client without appropriately disclosing this relationship on your Outside Business Activities ("OBA") form.
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> Furthermore, it was found that you did not appropriately supervise your staff by ensuring they understood they could not be designated as fiduciaries or beneficiaries for ABC Financial clients.
>
> In addition, you and a member of your staff were not as forthcoming as is expected throughout the internal review related to providing pertinent information when asked.
>
> Please reference the current Compliance Manual section 12.0 - Restricted and prohibited activities which states:
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> > You, members of your staff, or members of your household may not:
> >
> > • Knowingly be listed as the beneficiary, joint tenant or annuitant of any account, will, investment or other financial instrument belonging to any ABC Financial client.

> • Receive or inherit property or money from any ABC client.
>
> You, members of your staff, or members of your household may not serve or be named as a fiduciary for an ABC Financial client.

Please reference the current Compliance Manual section 13.3 - Disclosure of outside activities which states:

> You must disclose outside business activities (OBAs) and obtain central supervisory unit (CSU) and field RP approval before engaging in the OBA. OBAs that must be disclosed include any activity outside of your scope of your role with ABC.

Please reference the current Compliance Manual section 4.1 - Hiring and maintaining staff which states:

> If you use staff to support your financial services practice, regardless of the staff's registration status, hours worked or amount of compensation, you are responsible for:
>
> • Ensuring your staff adheres to the policies and procedures of the firm through daily supervision

Please reference the current Compliance Manual section Intro 1 - Understanding your compliance obligations and resources which states:

> You are obligated by the financial services laws and regulations to receive and follow direction from the company. This includes cooperating and responding promptly to an internal review, complaint or regulatory request, such as providing a written statement, any other requested documentation or testimony in a regulatory or legal proceeding. Failure to cooperate or respond to the registered principal or the corporate office impedes the company's ability to meet supervisory responsibilities, and is considered grounds for disciplinary action up to and including termination. This requirement applies to all employee and franchise registered representatives and their staff, and registered principals (RPs).

ABC's November 2016 Letter of Reprimand also ordered Respondent to complete a detailed "Corrective Action Plan," which required him to review certain identified sections of ABC's Compliance Manual and attest that he and all members of his staff read, understood, and agreed to abide by the referenced sections; attest that he and any member of his staff/household did not have any fiduciary or beneficiary relationships with ABC clients; attest that neither he nor any member of his staff/household had any fiduciary or beneficiary relationships with non- ABC clients that were not been disclosed to ABC; attest that neither he and any member of his staff/household would appropriately disclose to ABC any future fiduciary or beneficiary relationships that may arise with non-ABC clients in the future; and submit a letter to his registered principal outlining his plan on how he will monitor members of your staff/household for fiduciary and beneficiary relationships moving forward. According to Respondent, he fulfilled each item on his Corrective Action plan.

ABC's Letter of Reprimand does not contain any detail with respect to its findings. However, in his Answer to CFP Board's Complaint, Respondent offered facts and explanation with respect to each finding, and Respondent and Employee B each testified with respect to these matters at the hearing.

a) ABC's finding that Respondent and Employee B were designated as fiduciaries and/or beneficiaries for clients, in violation of firm policy

As stated in the Letter of Reprimand, ABC found that Respondent and Employee B were designated as fiduciaries and/or beneficiaries for ABC clients, which is a violation of firm policy. In his Answer, Respondent stated that he never knowingly allowed a client to name him, a member of his household or his staff as a beneficiary or fiduciary but admitted that, on three occasions prior to ABC's review and on two occasions that arose during the review, Respondent became aware that clients had designated him as such.

In two of the three occasions that occurred prior to ABC's review, Respondent disclaimed or refused to sign the designation of beneficiary or fiduciary when he learned of it. In the third occasion, which occurred in 2013, Respondent learned that a client had designated him and Employee B as beneficiaries of his estate. Respondent advised the client that he could not accept the designation per firm policy. However, the client refused to remove the designation and moved his assets from ABC so that he was no longer a client of Respondent and so that Respondent and Employee B could remain beneficiaries.

During the review, ABC also determined that a long-time friend and client of Respondent and Employee B had designated Employee B as a beneficiary and successor power of attorney. Respondent stated that he was unaware of the designations prior to that time. In response to learning of the designation, Respondent informed the client that ABC prohibited Employee B from being a beneficiary or fiduciary. During the review, ABC also determined that another long-time friend and client had designated Employee B in various fiduciary capacities, including as contingent health care proxy, executor of his will, and springing power of attorney. Respondent stated he was also unaware of these designations prior to being notified by ABC, and that he advised the client that Employee B could not serve as fiduciary for him.

b) ABC's finding that Respondent was designated and is acting as a fiduciary for a non-client without proper disclosure

ABC's Letter of Reprimand found that Respondent was designated and was acting as fiduciary for a non-client without prior disclosure by ABC, which is a violation of firm policy. In his Answer, Respondent admitted that, on three occasions, he was acted in a fiduciary or potential fiduciary capacity without prior disclosure to and approval by ABC.

In the first circumstance, which in June 2016, Respondent learned that he was designated as a fiduciary for a long-time friend who was not a client who was not a client; Respondent was also designated as the friend's beneficiary. Respondent stated that he disclosed fiduciary designation to ABC the next day, and that ABC allowed him to continue acting as a fiduciary. Because the friend was not a client, the beneficiary designation was not a violation of ABC's policies and procedures.

In the other two circumstances, Respondent learned after the fact that his brother and father, who were not clients, designated him as a fiduciary. Respondent stated that he disclosed the designations as soon as he learned of them, and that ABC subsequently approved the activity.

c) ABC's finding that Respondent did not appropriately supervise his staff

The Letter of Reprimand found that Respondent failed to appropriately supervise his employees, in violation of ABC's policies with respect to their understanding of ABC's prohibition against advisers, members of adviser's households, and adviser's staff being designated as beneficiaries or fiduciaries for clients that are not members of adviser's family. In his Answer, Respondent stated that he "acknowledges and appreciates that he could have and should have done more to supervise his staff."

d) Respondent and Employee B were not as forthcoming as is expected throughout the internal review related to providing pertinent information when asked.

ABC's Letter of Reprimand found that Respondent and Employee B were not as forthcoming as was expected throughout the firm's internal review, specifically related to providing pertinent information when asked. Although Respondent denied that he had hid any information or documents, Respondent admitted in his Answer that he and Employee B supplemented and corrected certain responses to ABC's questions the day after the surprise inspection. Respondent also stated that ABC did not mention any affirmative efforts by Respondent or Employee B to conceal anything.

FINRA's Letter of Caution to Respondent

According to Respondent, ABC disclosed its internal discipline of Respondent consistent with FINRA Rule 4530(a)(2), which requires that a firm report to FINRA internal discipline of an associated person involving a fine in excess of $2500 or other discipline that has a significant limitation on the individual's activities on a temporary or permanent basis. FINRA then conducted an investigation with respect to Respondent and issued Respondent a cautionary action letter. The cautionary action letter stated:

> FlNRA's investigation revealed that you served as the power of attorney for your brother while he was a firm customer, and as the co-trustee of your father's trust. You did not receive or expect to receive compensation for these activities. ABC's policies required you to disclose, and obtain approval for, these fiduciary activities prior to engaging in them. While you eventually disclosed these fiduciary activities to your firm, you did not do so prior to engaging in them.
>
> FINRA concluded that, by failing to disclose or obtain approval for your fiduciary activities prior to engaging in them, you violated firm policy and thus violated FlNRA Rule 2010.

The letter stated that that the cautionary action letter did not require reporting on Respondent's Form U4, but also stated that it would be taken into consideration in determining the resolution of any future matter.

During the hearing, Employee A confirmed that the staff of FINRA had interviewed him in connection with its investigation of Respondent.

III. <u>Grounds for Discipline</u>

First Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 1.4 of the *Rules of Conduct*, which provides that a certificant shall at all times place the interests of the client ahead of his or her own interests.

The Commission did not find Employee A's testimony during the hearing to be credible or supportive of the allegations in his complaint to CFP Board beyond the findings of the Letter of Reprimand and the FINRA cautionary action letter issued to Respondent. However, based on Respondent's own admissions in his Answer and in his testimony with respect to the findings in the ABC Letter of Reprimand and in the FINRA cautionary action letter, the Commission found that Respondent, a certificant, placed his own interests ahead of the interests of his clients when he allowed himself to be designated as both a beneficiary and a fiduciary for clients. Although documentary evidence indicated that the dual designations were consistent with the desires of the client, the Commission determined that Respondent should have recognized the conflict of interests and the potential risks for financial exploitation and refused the designations. As a result of this conduct, Respondent violated Rule 1.4 of the *Rules of Conduct*.

Second Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 6.5 of the *Rules of Conduct*, which provides that a certificant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession.

The Commission determined that CFP Board did not prove that the clients and non-clients who named Respondent and Employee B as a beneficiary or fiduciary were infirmed or vulnerable, nor did it prove that Respondent moved clients away from ABC to other financial institutions. However, based on Respondent's admissions with respect to the findings in the Letter of Reprimand, the Commission did find that Respondent, a certificant, engaged in conduct which reflects adversely on his integrity and fitness as a certificant, upon the CFP® marks, and upon the profession when he: violated firm policies and procedures by being designated as a beneficiary by firm clients; failed to make required disclosures to and obtain approvals from the firm for his fiduciary designations; and tried to impede ABC's surprise inspection and likely took steps to keep ABC from discovering that he and Employee B were designated as a beneficiary and fiduciary for clients and non-clients in violation of firm policy. Therefore, Respondent violated Rule 6.5 of the *Rules of Conduct*.

Third Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.3 of the *Rules of Conduct*, which provides that a certificant shall comply with applicable regulatory requirements governing professional services provided to the client.

Respondent, a certificant, is registered with FINRA and is operating as a registered representative of ABC. As such, he is obligated to follow FINRA's rules and regulations. FINRA Rule 3270 states that no registered person may be compensated, or have the reasonable expectation of receiving compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member. Respondent's activities as a fiduciary and beneficiary for clients and non-clients presented him with opportunities to receive compensation for his outside business activities, but he failed to provide ABC with prior written notice. Those actions violated FINRA Rule 3270, as well FINRA Rule 2010, which requires registered persons to observe high standards of commercial honor and just and equitable principles of trade, both of which are regulatory requirements governing professional services provided to the client. Therefore, the Commission determined that Respondent violated Rule 4.3 of the *Rules of Conduct*.

Fourth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 5.1 of the *Rules of Conduct*, which provides that a certificant who is an employee/agent shall perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's *Code of Ethics*.

As ABC stated in its Letter of Reprimand, Respondent, a certificant, violated Sections 12.0, 13.3, 4.1, and 1 of ABC's Compliance Manual by the conduct described in the Letter of Reprimand. The Commission determined that, when Respondent engaged in this misconduct and violated the firm's policies and procedures, he failed to perform his professional services with dedication to the lawful objectives of his employer and, therefore, violated Rule 5.1 of the *Rules of Conduct*.

Fifth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.6 of the *Rules of Conduct*, which provides that a certificant shall provide reasonable and prudent professional supervision or direction to any subordinate or third party to whom the certificant assigns responsibility for any client services.

Respondent, a certificant, was responsible for supervising the activities of Employee B, his office manager. As ABC stated in its Letter of Reprimand, Respondent failed to adequately supervise Employee B when he allowed him to be named as a beneficiary, a fiduciary, and/or an inheritor of assets from ABC clients. The Commission found that, by engaging in conduct that violated the supervisory procedures of Section 4.1 of ABC's Compliance Manual, Respondent failed to provide reasonable and prudent professional supervision to a subordinate, and, therefore, violated Rule 4.6 of the *Rules of Conduct*.

Sixth Ground for Discipline

CFP Board alleged that, pursuant to Article 3(a) of the *Disciplinary Rules*, there were grounds to discipline Respondent under Rule 6.1 of the *Rules of Conduct* for his alleged failure to provide full cooperation to CFP Board in its investigation. Specifically, CFP Board alleged that Respondents responses to its NOI were inadequate, inhibiting its investigation.

The Commission determined that, while Respondent's responses to CFP Board's NOI could have been more descriptive and fulsome, Respondent did not fail to cooperate with CFP. Thus Respondent **did not** violate Rule 6.1 of the *Rules of Conduct*.

Seventh Ground for Discipline

CFP Board alleged that there were grounds to discipline Respondent pursuant to Article 3(g) of the *Disciplinary Rules* for allegedly making false or misleading statements to CFP Board. Specifically, CFP Board alleged that Respondent provided incomplete, inaccurate and misleading statements in response to CFP Board's NOI, impeding the staff's ability to complete its investigation.

The Commission did not find Respondent's responses false or misleading and, therefore, Respondent **did not** violate Article 4(g) of the *Disciplinary Rules*.

IV. Discipline Imposed

The Commission found that Respondent's conduct violated Rules 1.4, 4.3, 4.6, 5.1, and 6.5 of the *Rules of Conduct*, providing grounds for discipline under Article 3(a) of the *Disciplinary Rules*. After careful consideration of the evidence in Respondent's matter, the Commission determined to issue Respondent a Public Letter of Admonition pursuant to Article 4.2 of the *Disciplinary Rules*.

CFP Board has issued non-binding *Sanction Guidelines* that are intended to serve as guidance for determining the appropriate sanction. In arriving at its decision, the Commission determined that the applicable *Sanction Guidelines* recommended:

- Conduct 12: Employer Policy Violation (Private Censure);
- Conduct 18: Failure to Supervise (Private Censure);
- Conduct 13: Failure to Act in Client's Interest Outside of a Financial Planning Relationship (Public Letter of Admonition);
- Conduct 22: Inappropriate Relationship with Client (Public Letter of Admonition);

In reaching its decision, the Commission considered *Anonymous Case Histories ("ACHs")*, including *ACHs* 30519 and 24933. In *ACH* 30519, a CFP® professional and his wife received a gift from a client, who was also personal friend, and his wife was also named as a beneficiary on variable annuity that the client owned. The CFP® professional was permitted to resign from his firm for accepting the gifts and for his wife's beneficiary designation in violation of firm policies, and Respondent entered into a settlement with FINRA with respect to his conduct and was issued a two-month suspension and $15,000 fine. Pursuant to a settlement agreement, the Commission issued the CFP® professional a Public Letter of Admonition. In *ACH* 24933, a CFP® professional accepted $200,000 as a beneficiary of a client's trust account serving as an advisor to the trust without disclosure. Pursuant to a settlement agreement, the Commission issued the CFP® professional a Public Letter of Admonition. The Commission also reviewed *ACH* 28992 and *ACH* 26286 cited by CFP Board counsel, both of which involved lengthy suspensions and large fines issued by FINRA. The Commission considered that, in this circumstances, Respondent only received a cautionary action letter from FINRA, which had also reviewed the facts regarding these matters, including conducting an interview of Employee A.

The Commission also reviewed aggravating and mitigating factors to determine whether there were any materials factors, and, if so, what weight those factors may have in its decision. As aggravating factors, the Commission considered that:

1. Respondent attempted to inhibit ABC's surprise compliance investigation;
2. Respondent had potential conflicts of interest with numerous clients and non-clients;
3. Respondent personally benefited from the designations at issue because he and/or his spouse inherited assets;
4. Respondent had the opportunity to examine his client base and mitigate the risk of being designated as a fiduciary or beneficiary for clients when this type of issue arose in 2013. (See, supra, page 5.); and
5. Respondent received a cautionary action letter from FINRA with respect to these issues.

In mitigation, the Commission considered that Respondent submitted letters from clients or their representatives in support of Respondent's statements.

Based on these circumstances, the Commission determined that a Public Letter of Admonition was appropriate.