

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 30604

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This is a summary of a Settlement Agreement entered into at the June 2018 hearings of the Disciplinary and Ethics Commission (“the 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 failed to supervise an employee, resulting in the firm’s violation of several state regulatory rules.

II. Findings of Fact

Respondent became a CFP® professional in June 1995, and has maintained his certification since that date. Respondent was employed by Firm ABC (“ABC”) as the designated principal in State A. He was also registered as an ABC general securities representative, financial and operations principal, and general securities principal with FINRA. Respondent was also the supervisor of his son, Son X.

Respondent contends that State A Securities Department (“State A”) conducted an audit of ABC’s City Y branch office in October 2013. Respondent’s Chief Compliance Officer, CCO (not a CFP® professional), instructed Respondent to attend. Respondent was immediately excused, and the auditor conducted an extensive interview of Son X. State A continued its inquiry into the securities-related activities of Son X into 2014. It requested information and documentation regarding all client agreements and profiles for each of Son X’s clients and a list of all alternative investment transactions from January 2011 to October 2013.

*Statement of Evidence*

In February 2015, State A filed a Statement of Evidence against Respondent, Son X, CCO, and ABC. It alleged that from April 2011 to December 2013, ABC, CCO’s, Respondent’s, and Son X’s actions resulted in the recommendation, approval and completion of certain unsuitable alternative investment transactions. State A also alleged that ABC, CCO, and Respondent failed to create, maintain, and enforce written policies and procedures in connection with certain alternative investment products. There were no client complaints filed for this alleged misconduct.

*Notice of Hearing*

According to Respondent, he declined to sign a Consent Order offered by State A. In February 2016, State A filed a Notice of Hearing against Respondent and Son X. The Notice of Hearing referenced eight transactions and the customer profile forms which indicated that the issuers’ stated suitability requirements were not met at the time the transactions were recommended and effected.

State A alleged that Respondent (a) failed to adequately supervise Son X, (b) failed to enforce ABC’s written procedures, and (c) did not require accurate or complete suitability documentation and, as a result, approved certain transactions and documents in contravention of ABC’s written procedures and the issuers’ specific suitability requirements. State A

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further alleged that Respondent violated various sections of the State A Securities Law (“the Act”). According to Respondent, the Hearing took place in September 2016

### *Order of Censure and Fine*

In January 2017, State A issued its Order of Censure and Fine ("Order") to Respondent and Son X. State A determined that Son X failed to maintain accurate records as required pursuant to the procedures of ABC and the securities laws, rules, and regulations of the U.S. Securities and Exchange Commission, the Financial Industry Regulatory Authority, and State A. State A also determined that Respondent, acting as a designated principal, financial and operations principal, and general securities principal, had the duty to supervise the activities of Son X. Respondent failed to adequately supervise the securities activities of Tyler Olson, permitting or facilitating Tyler Olson's failure to maintain accurate records, and failed to enforce ABC's written procedures. State A determined that Respondent violated the Act and was censured and ordered to pay a fine of \$2,000.

### III. Grounds for Discipline

#### *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 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, failed to comply with applicable regulatory requirements governing professional services provided to the client when he violated the Act for failing to adequately supervise the securities activities of Son X, and permitting or facilitating Son X's failure to maintain accurate records, and failing to enforce ABC's written procedures. Therefore, Respondent violated Rule 4.3 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 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, failed to provide reasonable and prudent professional supervision or direction when he failed to adequately supervise the securities activities of Son X. Therefore, Respondent violated Rule 4.6 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 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*.

Respondent, a certificant, failed to perform professional services with dedication to the lawful objectives of the employer/principal when he failed to enforce ABC's written procedures regarding suitability documentation for clients' investment in alternative investments. Therefore, Respondent violated 5.1 of the *Rules of Conduct*.

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#### IV. Discipline Imposed

The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the Findings of Fact and Grounds for Discipline. Pursuant to the terms of the Settlement Agreement, the Commission issued to Respondent a Private Censure pursuant to Article 4.1 of the *Disciplinary Rules*.

In coming to its decision to enter into the Settlement Agreement, the Commission noted, in aggravation, the fact that Respondent displayed an irresponsible ignorance of rules and procedures over a long time. In mitigation, the Commission considered the following factors:

- Respondent had no prior disciplinary history;
- Respondent had no customer complaints;
- Respondent's misconduct did not result in customer harm;
- Respondent's confidence—however mistaken—that he was acting ethically;
- Respondent's acceptance of responsibility with CFP Board.

The Commission also considered *Anonymous Case History ("ACH")* 29364, where respondent entered into a state consent order wherein he agreed to the findings that he failed to maintain accurate books and records. In that case, the Commission issued respondent a private censure.