

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30674

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 produce completed client Agreements for five clients to a state regulatory division.

II. Findings of Fact

Respondent obtained his CFP® certification in October 1999, and has maintained his certification since that date.

In September 2016, a State Division of Financial Regulation (“DFR”) conducted a routine examination, which included an in-person interview, at Respondent’s office. DFR requested multiple files and documents, including Investment Advisory Agreements (“Agreements”) for multiple clients. During this examination, Respondent admitted that he had reviewed the firm’s records prior to the interview and could not find Agreements for multiple clients. There were five clients without completed Agreements at the time of the DFR exam. Respondent collected \$28,024.21 in advisory fees from these five clients prior to having completed Agreements.

As of November 2016, Respondent had obtained signed Agreements with all current clients.

In March 2017, Respondent entered into a Final Order to Cease and Desist, Final Order Assessing Civil Penalty, and Consent to Entry of Order (“Consent Order”) with DFR, which found that Respondent violated various State Administrative Rules (“AAR”). Respondent consented to the factual allegations in the DFR Consent Order, including the fact that he received over \$28,024.21 in advisory fees from five clients prior to having completed Agreements with them.

Specifically, one AAR states that every investment adviser shall make and keep true, accurate, and current the following books and records relating to his investment advisory business: all written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.

Another AAR states that a person who is a State Investment Adviser or an Investment Adviser Representative for a State Investment Adviser is a fiduciary and has a duty to act primarily for the benefit of the Adviser’s clients. The provisions of this rule apply to state investment advisers and their investment adviser representatives. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, a state investment adviser or its investment adviser representatives shall not engage in unethical business practices, including the following: entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, and whether the contract grants discretionary power to the adviser.

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Respondent consented to the imposition of the following sanction: A Cease and Desist from violating any provision of State A Securities Law and a Civil Penalty of \$5,000 (\$1,000 per violation), \$2,500 of which was suspended, provided Respondent: a) complies with all terms and conditions of the Order and all requirements of the State Securities Law and b) passes all State examinations completed within the next three years with a minimum standard of "Satisfactory."

As a result of a CFP Board investigation into Respondent's matter, CFP Board determined there was probable cause to refer this matter to the Commission and alleged the following causes of action:

III. 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 keep accurate books and records when he collected \$28,024.21 in advisory fees from five clients prior to having completed Agreements with them, thereby two State regulatory requirements governing professional services provided to the client. Thus, Respondent violated Rule 4.3 of the *Rules of Conduct*.

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 considered no aggravating factors, but did consider the following mitigating circumstances:

- Respondent only noticed the missing agreements prior to his meeting with the examiner, and admitted to the examiner that he could not locate the agreements; and
- Clients who didn't sign their agreements promptly did so once asked.

The Commission also considered *Anonymous Case Histories* ("ACH") 21781 and 29364. In *ACH 21781*, the respondent violated record-keeping provisions of the Investment Advisors Act by failing to keep records of client agreements. In that case, the Commission issued respondent a private censure. In *ACH 29364* a respondent failed to, in relevant part, complete advisory contracts for all of his clients. In that case, the Commission issued respondent a private censure.