

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 30719

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This is a summary of a Settlement Agreement entered into at the February 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, on four occasions, telephoned insurance company’s annuity service departments and impersonated two clients who held equity index annuities with the company.

II. Findings of Fact

Respondent became a CFP® professional in April 2004. For approximately five months in 2006, Respondent allowed his certification to lapse putting him into a "Not Certified" status. In September 2006, Respondent's certification was reinstated, and he has maintained his certification since that date.

Respondent entered the securities industry in October 1991, when he was associated with a Financial Industry Regulatory Authority (“FINRA”) member firm and registered with FINRA as an Investment Company Products/Variable Contracts Representative. From February 2010 to the present, he has been registered with FINRA through ABC as a General Securities Representative.

On four occasions, from July 2013 through July 2016, Respondent telephoned an insurance company's annuity service department and impersonated two clients who held equity indexed annuities with the company. The calls were intended to obtain current information in preparation for client meetings, obtain documents that would facilitate a mortgage refinance, and to update a contract holder's address of record.

Respondent admits to these findings. Respondent's conduct violated FINRA Rules 2010. FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade.

In March 2017, Respondent entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA, and consented to the imposition of the following sanction: a suspension from associating with any FINRA member firm in any and all capacities for 30 business days and a \$5,000 fine.

Article 13.1 of the *Disciplinary Rules* provides 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 by such authority shall conclusively establish the existence of such professional discipline for purposes of disciplinary proceedings and shall be conclusive proof of the basis for such discipline by the Respondent. As defined in Article 13.4 of the *Disciplinary Rules*, professional discipline "shall include the suspension, bar or revocation as disciplinary measure by . . . [an] industry self-regulatory organization or professional association."

FINRA is an industry self-regulatory organization. The AWC is an order of professional discipline by FINRA, and Respondent is the subject of that order. Therefore, the AWC conclusively establishes the existence of such discipline for purposes of this disciplinary proceeding and is conclusive proof of the basis for such discipline by the Respondent.

As set forth in Article 13.3 of the *Disciplinary Rules*, since Respondent's professional discipline has been proven, Respondent would only have the right to be heard by the Hearing Panel on matters of rebuttal of any evidence presented by CFP Board Counsel other than proof of professional discipline.

As a result of the AWC, State A Department of Insurance ("DOI") issued an Order of Summary Revocation of Respondent's insurance license in May 2017. Respondent submitted a request for reconsideration to DOI and received an Order Granting Reconsideration and Vacating the Order of Summary Revocation in July 2017.

### 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 impersonated two clients on four occasions to an insurance company in violation of FINRA Rule 2010. The AWC is conclusive proof of these facts and the violation. Thus, 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 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.

Respondent, a certificant, engaged in conduct that reflects adversely on his integrity, his fitness as a certificant, upon the CFP marks and profession when he impersonated two clients on four occasions to an insurance company. The AWC is conclusive proof of these facts. Thus, Respondent violated Rule 6.5 of the *Rules of Conduct*.

#### *Third Ground for Discipline*

Pursuant to Article 3(d) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts that are the proper basis for professional discipline. The acts set forth in the AWC are the proper basis for professional discipline, and the AWC constitutes professional discipline. Therefore, the AWC is conclusive proof that there are grounds to discipline Respondent for acts that are a proper basis for professional discipline.

### 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 public letter of admonition pursuant to Article 4.2 of the *Disciplinary Rules*.

In coming to its decision to enter into the Settlement Agreement, the Commission considered two aggravating factors: (1) that CFP Board had issued two prior warnings to Respondent; and (2) the misconduct at issue happened on multiple occasions over the course of several years. In mitigation, the Commission considered three factors: (1) there was no client harm; (2) there was no personal gain for Respondent; and (3) the state commissioner later vacated the revocation. All told, the Commission found that the aforementioned factors balance each other out.

The Commission also considered Anonymous Case Histories (“ACH”) in coming to its decision. First, the Commission consulted ACH 28146 in which a respondent knowingly allowed a client to impersonate her daughter. In that case, the Commission decided to settle with respondent and issued a public letter of admonition. Second, the Commission consulted ACH 29377, in which a respondent pretended to be a client to execute trades because the client was not comfortable enough to call himself. In that case, the Commission issued the respondent a private censure. All in all, the Commission determined that ACH 28146 was more similar to the instant case.