CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30758

This is a summary of a decision issued following the February 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 altered documents already signed by clients, which resulted in employment termination and a FINRA suspension.

II. Findings of Fact

2014 Firm ABC Permitted to Resign

In November 2014, Firm ABC permitted Respondent to resign after he made changes to account documents that his clients had previously signed. Respondent admits that he corrected client documents after the clients had signed the documents. Respondent said that when it was brought to his attention that the documents that he submitted were either incomplete or not properly filled out, he made the necessary corrections to accurately reflect the clients' investment profiles. Respondent contends that he only made the changes to make the information contained in the documents more accurate based on his prior meetings and discussion with the clients. At the time Respondent made the changes, he was aware of FINRA's rules prohibiting changing information on account documents after the clients had signed them. Respondent acknowledged that this was a mistake and that the proper procedure would have been to have the clients complete and sign new forms.

FINRA AWC

In December 2014, FINRA opened an inquiry regarding the Form U5 filing by ABC about Respondent's resignation to determine whether he violated any federal securities laws. To resolve the inquiry, in April 2017, Respondent and FINRA entered into an AWC. Pursuant to the AWC, Respondent consented to a 30-day suspension and a $5,000 fine. FINRA made the following findings:

> On five different occasions between March and May 2014, Respondent altered new account documents, alternative investment disclosure forms, and an Investment Retirement Account application that had already been signed by his clients. Specifically, Respondent corrected or included the client's anticipated liquidity needs, net worth, liquid net worth, and/or annual income on new account forms, alternative investment disclosure forms and an IRA application. Respondent contends that he made the changes as an accommodation to avoid requiring the clients to re-execute the documents. By changing new account documentation, Respondent caused the firm to preserve and maintain altered documents in violation of FINRA Rules 4511 (a) and 2010. (Id.)

Respondent disclosed his FINRA suspension to CFP Board in a timely manner in April 2017, as required by Article 13.2 of the *Disciplinary Rules*.

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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.

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 CFP® professional 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 authority. 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 a result, it has been conclusively established that Respondent, a certificant, altered new account documents and other account profile information that had already been signed by the clients, causing his firm to preserve and maintain altered documents, in violation of FINRA Rules 4511 (a) and 2010. In addition, Respondent admitted to such in the record. 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 4.4 of the *Rules of Conduct*, which provides that a certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients.

Respondent, a certificant, failed to exercise reasonable and prudent professional judgment in providing professional services to clients when he altered new account documents and other account profile information that had already been signed by his clients, causing his firm to preserve and maintain altered documents, in violation of FINRA Rules 4511(a) and 2010. Respondent's firm terminated him for this conduct and he was suspended by FINRA for violating its rules. Thus, Respondent violated Rule 4.4 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 his employer when he altered new account documents and other account profile information that had already been signed by the clients, causing his firm to preserve and maintain altered documents. Respondent's actions violated FINRA rules and the firm's policies, which was evidenced by that fact that his firm permitted him to resign due to these violations. Thus, Respondent violated Rule 5.1 of the *Rules of Conduct*.

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Fourth 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 found that Respondent’s conduct violated Rules 4.3, 4.4, and 5.1 of the *Rules of Conduct*, providing grounds for discipline under Articles 3(a) and 3(d) of the *Disciplinary Rules*.

After careful consideration of the evidence in Respondent's matter, the Commission has decided to issue Respondent a suspension for 30 days pursuant to Article 4.3 of the *Disciplinary Rules*. The suspension is effective from June 2018 until July 2018 if Respondent does not appeal this order.

In arriving at its decision, the Commission determined that the applicable Sanction Guidelines recommended:

1. A Private Censure for Conduct 12: Employer Policies Violation;
2. A Private Censure for Conduct 20(c): Misrepresentation to Non-Clients;
3. A Public Letter of Admonition for Conduct 30: Securities Law Violation; and
4. A Public Letter of Admonition for Conduct 33: Professional Discipline involving a Suspension for up to One Calendar Month.

The Commission then consulted Anonymous Case Histories ("ACHs") to determine if any ACHs contained precedent that warranted a deviation from the Sanction Guidelines. The commission consulted ACHs 29351, 27488, and 28203.

In ACH 29351, a CFP® professional marked order tickets for leveraged and inverse exchange funds in customer accounts as "unsolicited" when they were in fact solicited by him. The CFP® professional undertook this course of conduct to avoid his Firm's prohibition on solicited inverse exchange funds. Respondent's actions violated his firm's procedures, which prohibited registered representatives from soliciting such funds, and caused his firm's books to be inaccurate. FINRA suspended the CFP® professional for three months, ordered him to disgorge over $5,200 in commissions, and fined him $10,000. The Commission suspended the CFP® professional's right to use the CFP® marks for three months. The Commission determined the conduct in ACH 29351 was more severe than that at issue in this case. Further, the large scope of the conduct in ACH 29351 was an important factor in the decision and is far more significant than that at issue here.

In ACH 27488, a CFP® professional altered the date on a check writing form and represented it to his firm as an originally signed and dated document. The CFP® professional altered the date rather than ask the client to sign a third version of the application. The CFP® professional also had co-trustee clients sign a blank wire transfer form, in violation of firm policy, FINRA Rule 2010 and NASD Rule 31l0(a). The CFP® professional disputed that he had the client sign a blank wire transfer form and stated that the client misunderstood his instruction and signed the blank form, which he later forwarded to the other trustee to complete. FINRA issued the CFP® professional a Cautionary Action Letter. The Commission issued Respondent a Public Letter of Admonition. The Commission determined the conduct in ACH 27488 was similar to Respondent's in that he undertook alternations to avoid client inconvenience.

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Finally, in ACH 28203, a CFP® professional: (a) entered false information regarding Client's state of residence into his firm's electronic books and records; (b) included false information in an annuity application regarding the state in which Client signed the document; (c) transacted insurance business without proper state registration; and (d) was suspended by FINRA. The CFP® professionals firm terminated him and FINRA suspended him for three months. The Commission suspended the CFP® professional's right to use the CFP® marks for three months. The Commission found the conduct in ACH 28203 to be more severe than that in Respondent's matter because it involved additional conduct in addition to the altering of a document.

Thus, the Commission did not find any ACHs that would cause it to deviate from the recommended sanctions in the relevant Sanction Guidelines. Two of the ACHs involved more severe conduct that resulted in a more severe sanction that that recommended by the Sanction Guidelines applicable to this matter. The most similar ACH resulted in a sanction that was consistent with the applicable Sanction Guidelines for this matter. The Commission then reviewed the aggravating and mitigating factors to determine whether there were any material factors, and if so, what weight those factors may have in its decision. The Commission considered the following in aggravation:

1. Respondent has a multi-year history of similar conduct, as evidenced by his prior Public Letter of Admonition imposed by the Commission when he had clients sign multiple blank ACAT forms;
2. Respondent did not appear to take the Public Letter of Admonition issued to him in 2014 seriously as he was engaging in almost identical behavior while the ink was barely dry on the Public Letter of Admonition;
3. Respondent was terminated twice in approximately two years for similar offenses; and
4. Respondent also had a previous bankruptcy and a history of unsettled and possibly undisclosed tax liens.

The Commission did not consider any mitigating factors. The Commission gave significant weight to the aggravating factors, in particular the factor involving Respondent's prior discipline by CFP Board for almost identical behavior. The Commission decided to rely on this factor to aggravate the sanction from a Public Letter of Admonition to a 30-day suspension.

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