

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30764

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 failed to maintain proper books and records, failed to provide proper custody of client funds, and failed to verify the credentials of a colleague that were posted on Respondent’s business website.

II. Findings of Fact

Respondent is President and Chief Compliance Officer of firm ABC. Therefore, Respondent is responsible for all supervision, formulation and monitoring of investment advice offered to clients. Respondent also represented that he would adhere to the policies and procedures described in the firm’s compliance manual.

In July 2015, State X audited ABC and made the following findings:

- For the years 2012, 2013, and 2014, Respondent filed ABC’s Form ADV Part 1, acknowledging that ABC deducts investment advisory fees directly from client accounts held at its Broker Dealer.
- Invoices for six clients were deficient in that they only included the billing period and the amount of the management fee charged. The invoices did not include the formula utilized to calculate the fee, thereby making it impossible for the clients to know if the fees had been correctly tallied. As a result of this practice, State X determined Respondent and ABC were in custody of client funds.
- While in custody of client funds, Respondent and ABC did not retain the services of an accountant to conduct an examination, without prior notice, at least annually, as required by law.
- Respondent and ABC failed to maintain books and records to support their investment advisory fees because they did not properly make and keep financial statements for "outside" assets separate from Broker Dealer.
- Respondent failed to make and keep required books and records, namely: ledgers reflecting all assets and liabilities, as well as income, expense and capital accounts.
- Respondent also failed to verify the credentials of his colleague, and did not discover that two of the colleague’s designations had expired.

State X determined that Respondent’s conduct violated its laws and regulations for improper custody of client funds; its laws and regulations for failure to maintain proper books and records; and its laws and regulations for improperly using a professional designation.

ACH 30764

- 1 -

In March 2017, Respondent entered into a Consent Order with the Securities Commissioner of State X and consented to a reportable Letter of Censure. In June 2017, the Securities Commissioner of State X issued a formal Letter of Censure to Respondent.

Respondent stated that the custody and fee issues stemmed from his work with six clients to review their 401(k) accounts. Respondent said he did not keep adequate records of their 401(k) accounts and other assets he reviewed. State X contacted the six clients and asked if Respondent had done the work for which he had billed the clients. According to Respondent, all clients informed State X that they were happy with the work Respondent had performed.

With respect to the issues with his colleague, Respondent stated that he and the colleague began marketing their services together to people who were getting ready to retire. After working together, Respondent had asked the colleague why he did not include his certifications on his business card. According to Respondent, the colleague replied that he did not use his certifications on his business cards because he was required to use the full name, not just the letters. Respondent admitted he did not question when the colleague used those designations on their firm website. After investigating the colleague further, Respondent found some troubling things about the colleague, which caused him to dissolve his association with the colleague.

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 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."

The State X Division of Securities is a governmental authority. The Consent Order and Letter of Censure are writings from the State X Division of Securities that indicate that Respondent is the subject of an order of professional discipline. Therefore, the Consent Order and Letter of Censure conclusively establish the existence of such discipline for purposes of this disciplinary proceeding and are conclusive proof of the basis for such discipline by the Respondent.

As detailed in the Consent Order and Respondent's answer to the Complaint, Respondent, a certificant, failed to comply with applicable regulatory requirements governing professional services when he failed to: a) have an accountant conduct annual examinations while in custody of client assets; b) maintain proper books and records to support investment advisory fees; and c) verify the credentials of a colleague and publicized those credentials on a website without discovering that two of the colleague's designations had expired. This conduct violated several sections of the State X Revised Statutes and related rules. Thus, Respondent violated Rule 4.3 of the *Rules of Conduct*.

Second 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 incorporated in the Consent Order are the proper basis for professional discipline, and the Letter of Censure constitutes professional discipline. Therefore, the Consent Order and Letter of Censure are 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 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 decided to issue Respondent a Private Censure pursuant to Article 4.1 of the *Disciplinary Rules*. In arriving at its decision, the Commission determined that the applicable Sanction Guidelines recommended:

1. A Private Censure for Conduct 2: Books and Records Violation;
2. A Private Censure for Conduct 11: Diligence; and
3. A Public Letter of Admonition Conduct 30: Securities Law Violation.

The Commission then noted that CFP Board Counsel's and Respondent's Statements on Sanctions pointed out that the relevant Anonymous Case Histories ("ACH") tended to issue a Private Censure in situations that involved conduct such as that at issue here. *See* ACHs 21781, 29364, and 30033.

The Commission then reviewed aggravating and mitigating factors to determine whether there were any material factors, and if so, what weight those factors may have with respect to its decision. The Commission cited in mitigation that:

1. Respondent cut ties with the colleague who misrepresented his certifications when Respondent became aware of the misrepresentations;
2. The affected clients confirmed that Respondent had, in fact, performed the services that he had billed for;
3. Respondent's conduct did not result in any apparent client harm; and
4. Respondent never intended to have custody of client assets.

The Commission considered in aggravation that Respondent's conduct occurred over several years. The Commission determined that the mitigating factors outweighed the lone aggravating factor, which allowed the Commission to mitigate the recommended sanction for Conduct 30 from a Public Letter of Admonition to a Private Censure. This sanction also was consistent with Conducts 2 and 11. Further, the Commission determined that a Private Censure was an appropriate sanction given the minor and technical nature of the violations.