

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30777

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: (1) took action with client funds while having custody of such; (2) failed to have his firm maintain net capital of at least \$25,000 for one fiscal year; (3) failed to notify a state regulatory body within 24 hours of his firm’s deficient net capital and to suspend business operations upon the net capital deficiency; (4) failed to have his firm submit audited financial statements to a state regulatory body for two fiscal years; (5) failed to prepare and maintain true, accurate, and current firm records; and (6) failed to have his firm file an amended Form ADV.

II. Findings of Fact

Respondent was first certified by CFP Board in May 1998 and has maintained his certification since that date. Respondent is the president and sole associated person of Firm ABC (“ABC”).

In June 2017, Respondent completed his Renewal Application for CFP® certification and disclosed an administrative proceeding against ABC by the State Office of Financial Regulation (“SOFR”), following a compliance examination concerning the period January 2013 through June 2014.

In September 2015, Respondent and ABC entered into a Consent Agreement with SOFR and consented to the entry of the following findings:

- a. Respondent and ABC violated Rule DEF, subsection 1, of the State Administrative Code by taking action with clients' securities or funds while having custody of clients' funds and failing to comply with Rule DEF, subsection 2.
- b. ABC violated Rule GHI of the State Administrative Code by failing to maintain a net capital of at least \$25,000 for the 2013 fiscal year;
- c. ABC violated Rule JKL of the State Administrative Code by failing to notify SOFR within 24 hours of its deficient net capital and to suspend business operations upon the net capital deficiency;
- d. ABC violated Rule MNO of the State Administrative Code by failing to submit audited financial statements to SOFR for the 2012 and 2013 fiscal years;

- e. ABC violated Rule PQR of the State Administrative Code by: failing to prepare and maintain true, accurate, and current records, which includes having a copy, in writing, of each agreement entered into by the investment adviser with any client;
- f. ABC violated Rule STU of the State Administrative Code by failing to file an amended Form ADV, within 30 days, when one or more of the following in its filed Form ADV became inaccurate:
 - i. The number of accounts currently under active asset management;
 - ii. Frequency, amount, and type of advisory fees charged to clients;
 - iii. Custody and custodial arrangements;
 - iv. Number of registered persons;
 - v. Types of clients; and/or
 - vi. Types of services offered including financial planning services.
- g. ABC violated Rule VWX of the State Administrative Code by entering into, extending, or renewing investment advisory contracts which failed to include accurate advisory fees.

As a result of the Consent Agreement, Respondent and ABC agreed to the following terms and conditions:

- a. Cease and desist from violations of State Statutes and the Office's rules promulgated thereunder, and henceforth strictly comply with all provisions State Statutes and the rules promulgated thereto; and
- b. Pay, jointly and severally, an administrative fine of \$5,000.

III. Grounds 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, as president, and sole associated person of ABC, failed to ensure that he and ABC complied with applicable regulatory requirements governing professional services provided to the client when he and/or ABC violated State Administrative Code Rules DEF, GHI, JKL, MNO, PQR, STU, VWX by a) taking action with clients' securities or funds, while having custody of clients' funds; b) failing to maintain a net capital of at least \$25,000 for the 2013 fiscal year; c) failing to notify SOFR within 24 hours of its deficient net capital and to suspend business operations upon the net capital deficiency; d) failing to submit audited financial statements to SOFR for the 2012 and 2013 fiscal years; e) failing to prepare and maintain true, accurate, and current records, which includes having a copy, in writing, of each agreement entered into by the investment adviser with any client; and f) failing to file an amended Form ADV, within 30 days, when Form ADV became inaccurate. Therefore, 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 with Respondent, the Commission considered in aggravation that the Respondent conducted no due diligence regarding the rules and regulations regulating his practice.

In mitigation, the Commission considered the following factors:

- Respondent self-reported the matter to CFP Board during annual renewal;
- Before closing down his practice, Respondent hired compliance assistance and updated his Form ADV, processes, and policies;
- No client complaints were ever filed; and
- The State did not suspend Respondent's firm, and reduced the fine from \$43,000 to \$5,000.

The Commission considered Anonymous Case Histories 30033, 28383, and 28956, where the Commission dealt with similar conduct which resulted in Private Censures.