

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 30782

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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: (1) performed 40 unauthorized trades in a deceased person’s account; (2) failed to notify his firm of the death of two advisory clients, in violation of firm policy; and (3) accidentally brought a loaded firearm into an international airport and, thereafter, pled guilty to felony charges.

II. Findings of Fact

*2016 ABC Termination*

On June 14, 2016, Firm ABC (“ABC”) terminated Respondent for the following reason: "R[espondent] failed to provide notification to the firm of the death of two advisory clients in violation of firm policy and industry standards of conduct." Respondent contended that the account at issue was for "Customer X" who passed away in June 2015. Respondent explained that each account is assigned to a model that ABC designs, and inputs into the model management platform. When ABC does a rebalancing, the advisor enters the model management system ("system") and selects the portfolio model to be rebalanced. The system would then calculate all the needed trades to bring everything back to the targeted percentages for each mutual fund within that model. The system then processes all the trades for all the accounts at the same time. Respondent processed Customer X’s trades between June 2015 and April 2016. The account was discretionary, and ABC was paid a quarterly management fee based on the assets under management. The fee was approximately 1% a year, paid quarterly. Respondent did not earn any commissions on the trades. The estate account was for the client's estate was not opened until March 2016.

According to Respondent, no client complaint was involved nor were the trades reversed. The beneficiary and executor of Customer X's estate was her son, Son Y. Respondent asserted that Son Y delayed in getting the needed estate documents to open the estate account. Respondent later learned that the decedent's account should have been frozen and he should not have taken direction from Son Y until the estate account was opened.

*2016 FINRA Investigation and 2017 FINRA AWC*

As a result of his ABC Termination, FINRA began an investigation regarding the trades in Customer X's account. In May 2017, Respondent entered into an AWC with FINRA in which he accepted and consented to, without admitting or denying, the following findings:

In February 2007, Customer X opened two investment advisory accounts with Respondent at ABC. At the time, Customer X signed an agreement with ABC granting Respondent discretionary trading authority over the accounts.

ACH 30782

- 1 -

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In June 2015, Customer X died. Although Respondent was aware of Customer X's death since at least late June 2015, Respondent did not inform ABC of Customer X's death and continued to effect trades on a discretionary basis in Customer X's accounts. Between June 2015 and April 2016, Respondent effected a total of 40 trades in Customer X's accounts.

FINRA Rule 2010 requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

After Customer X died, Respondent had no written authority to conduct any trades in Customer X's accounts. Accordingly, by effecting 40 trades in a deceased customer's accounts, Respondent violated FINRA Rule 2010.

Respondent consented to the imposition of the following sanctions: (a) a suspension from association with any FINRA member in any capacity for 30 days; and (b) a \$5,000 fine. Respondent's suspension was effective from June 2017 through July 2017.

### *2017 Criminal Charges*

In February 2017, Respondent was caught with a loaded gun in his carry-on bag as he passed through the screening area at International Airport. Respondent had a Kahr CM9 handgun loaded with hollow point bullets when he was arrested. Respondent was arrested and charged with two felonies: a) 2nd Degree Unlawful Possession of a Weapon; and b) 4th Degree Possession of Hollow Point Bullets.

Respondent pleaded guilty to the charges. In June 2017, Respondent entered into Pretrial Intervention ("PTI"). The conditions of PTI include: a) Respondent's guilty plea would only be vacated upon successful completion of PTI; b) Forfeiture of Respondent's gun and ammunition; c) Successful completion of a firearms safety course; d) Maintaining lawful employment and remaining arrest and crime free; and e) Completion of 100 hours of community service. Respondent also stated that PTI was to last for two years, although he anticipates that it will likely be recommended to end in July 2018 after one year.

Respondent explained that he and his wife were leaving for a vacation in Florida. At the last minute, he exchanged his carry-on for a slightly larger one. Unbeknownst to him, a gun that he usually kept locked up was in that bag. He was totally unaware of the gun until TSA security discovered it as he was going through the screening line. Respondent stated that he is an "active shooter, and a member of the NRA and Practical Pistol Shooting Association." He competes every few months in a practical pistol competition.

Despite court records that indicate otherwise, Respondent asserted that he did not plead guilty to the felony charges. In fact, as explained in State A's Uniform Guidelines on the Pretrial Intervention Program, a defendant charged with a first or second-degree crime may be admitted into PTI only after entering a guilty plea to the charge(s) against them. The guidelines further state that once a guilty plea is entered, it is held on "inactive" status pending successful completion of PTI. Therefore, the guilty plea has no force or effect, unless PTI is violated. It is neither a judgment of conviction nor an adjudication.

Further, Respondent contended that he had "NO conviction, NO guilty plea and NO criminal record [and]...[t]here's also no reporting requirement for any of this per CFP Board of Standards." However, when Respondent completed his CFP Board Renewal Application on November 1, 2017, he answered "yes" to the first question on the Ethics Declaration which asked, "Are you currently charged with or have you ever been convicted of a felony?"

ACH 30782

- 2 -

### 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 failed to comply with applicable regulatory requirements governing professional services provided to the client when he effected 40 unauthorized trades in a deceased customer's accounts, in violation of FINRA Rule 2010. 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 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, which included the finding that Respondent engaged in unauthorized trades in violation of FINRA rules. Therefore, 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 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 failed to perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's Code of Ethics when he failed to provide notification to his firm of the death of two advisory clients in violation of firm policy. The Commission noted that Respondent did not know that he needed to notify his firm that his client had done so. He believed the protocol was to simply direct the set-up of an estate account which he did start doing after notification of the client's death. Nevertheless, Respondent violated Rule 5.1 of the *Rules of Conduct*.

#### *Third Ground for Discipline*

CFP Board's Complaint alleged that 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.

CFP Board's Complaint further alleged that Respondent engaged in conduct which reflects adversely on his integrity or fitness as a certificant, upon the CFP® marks, or upon the profession when he was arrested and charged with two felonies, Unlawful Possession of a Weapon and Possession of Hollow Point Bullets, plead guilty to the charges, and was placed on Pretrial Intervention for two years. The Commission believed that Respondent made an honest mistake by carrying the handgun in his bag to the airport as he was in a rush to catch a flight and had just learned that he would be subject to FINRA enforcement. Therefore, the Commission **declined to find** that Respondent violated Rule 6.5 of the *Rules of Conduct*. The Commission does not make this determination, however, based on the treatment of the plea under State A law.

#### *Fourth Ground for Discipline*

CFP Board's Complaint alleged that pursuant to Article 3(c) of the *Disciplinary Rules*, there are grounds to discipline Respondent for any act or omission that violates the criminal laws of any State or of the United States or of any province, territory or jurisdiction of any other country, provided however, that conviction thereof in a criminal proceeding shall not be a prerequisite to the institution of disciplinary proceedings, and provided further, that acquittal in a criminal proceeding shall not bar a disciplinary action. As stated above, New Jersey law dictates that during the pendency of the PTI program, the guilty plea was held in an inactive status. Thus, the Commission **declined to find** grounds for discipline under Article 3(c).

#### *Fifth 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 Respondent's FINRA suspension 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 and 5.1 of the *Rules of Conduct*, providing grounds for discipline under Articles 3(a) and 3(d) of the *Disciplinary Rules*.

Pursuant to Article 4 of the *Disciplinary Rules*, the Commission must establish grounds for discipline to impose discipline or sanctions. Once the Commission has established grounds for discipline, it has wide discretion to impose any sanction under Article 4 of the *Disciplinary Rules*.

After careful consideration of the evidence in Respondent's matter, the Commission has 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 12: Employer Policies Violation;
2. A Public Letter of Admonition for Conduct 30: Securities Law Violation; and
3. A Public Letter of Admonition for Conduct 32: Professional Discipline as defined in Article 13.6 involving a suspension for up to one calendar month (30 days).

The Commission consulted Anonymous Case Histories ("ACHs") but did not identify any ACHs that were material to its decision.

ACH 30782

- 4 -

The Commission did not consider any mitigating or aggravating factors. While the Commission found that Respondent technically made trades in the client's account after the client's death, these trades were made as part of an automatic rebalancing program in an account that Respondent had discretion to make the trades. Thus, the Commission heavily discounted this violation as technical in nature. The Commission determined there was no ill-intent on the part of Respondent in executing the trades. Further, the Commission found it material that the trades were part of a rebalancing effort and that there were no client complaints regarding the conduct. Thus, the Commission decided to impose a Private Censure.