

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30952

This is a summary of a Settlement Agreement entered into at the June 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 served as an Registered Investment Advisor (“RIA”) and Investment Adviser Representative (“IAR”) prior to completing the state registration process.

II. Findings of Fact

Respondent was first certified by CFP Board in March 2013 and has maintained his certification since that date. Respondent is the president, founder and sole associated person of ABC, a fee-based financial planning firm established in February 2017.

In November 2017, Respondent disclosed to CFP Board that State A notified him that they had chosen to fine him \$2,000 and discipline ABC and him for serving as an RIA and an IAR, respectively, prior to the completion of the registration process. In December 2017, Respondent and ABC entered into an Order with State A and agreed to the entry of the following findings:

- a. Respondent violated State Rule X by transacting business as an investment adviser representative without being registered as an investment adviser representative or exempted from registration;
- b. ABC violated State Rule Y by transacting business as an investment adviser without being registered as an investment adviser or exempted from registration.

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

- a. Cease and desist from any further violations of the Securities Act of State A; and
- b. Pay, jointly and severally, a fine of \$2,000.

According to Respondent, as to investment advice and management, he adopted an "open architecture" structure in which he partners with a local RIA, Investment Advisors, Inc. ("Investment"). In facilitating the investment advice/management with Investment, Respondent had a Solicitor's Agreement in place in which he discloses the revenue sharing agreement to clients. Respondent's clients also have the option of using their own IA and/or IAR.

Respondent stated that State A inquired as to his company's structure and activities in July 2017. He attended an in-person meeting at State A's office later in July 2017. After the meeting, and after consulting with his attorney, in August 2017, Respondent applied to have ABC registered as an RIA and to have himself registered as an IAR.

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In its December 2017 Order, State A determined that Respondent and ABC received fees for financial planning, and then provided "relationship management" services to their clients using an IA and/or IAR, that included scheduling and attending meetings between the client and IA and/or IAR. According to Respondent, a total of eight clients were involved in this process. In December 2017, State A approved Respondent's and ABC's applications for registration.

III. 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, 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 the following provisions of the State A Revised Statutes: Rule X and Rule Y by: (a) transacting business as an investment adviser representative without being registered as an investment adviser representative or exempted from registration; and (b) transacting business as an investment adviser without being registered as an investment adviser or exempted from registration. 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*, and six (6) hours of remedial education.

In coming to its decision to enter into the Settlement Agreement, the Commission considered the following aggravating factors:

- The consent agreement with the State Department of Financial Institutions;
- Respondent's intentional acts in violation of law;
- Respondent's failure to appreciate the gravity of the misconduct.

The Commission also considered, in mitigation, that Respondent "rapidly" disclosed the matter to CFP Board.

Additionally, the Commission consulted *Anonymous Case History* 28376, in which a respondent practiced in a state for a three-year period without registering as an investment advisor. In that case, the Commission issued to Respondent a private censure.

The six hours of remedial education shall be in any course approved for CFP Board continuing education credit, but will be taken in addition to any hours required to maintain CFP® certification.