

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30419

This is a summary of a Settlement Agreement entered into at the October 2017 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. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he failed to reasonably supervise his assistant, who had primary responsibility for preparing and processing applications and other account paperwork for customers. Respondent’s assistant (a) altered documents relating to customer accounts, including by reusing signatures from forms that previously had been completed by customers, (b) caused the falsified forms to be maintained in the customers’ files, and (c) falsified documents to expedite transactions as an accommodation to customers (the firm’s compliance manual prohibited altering documents in the manners employed).

II. Findings of Fact

Respondent joined ABC in November 2000, and worked there until he was discharged for “violation of the firm’s document signature policy.”

In June 2016, Respondent entered into a Letter of Acceptance, Waiver and Consent (“AWC”) with the Financial Industry Regulatory Authority, Inc. (“FINRA”, formerly known as the NASD) in which he accepted and consented to, without admitting or denying, the facts set forth in the AWC. When Respondent submitted his CFP® Certification Renewal Application, he disclosed his termination and what was, at the time, a FINRA investigation. CFP Board dismissed the matter with caution but notified Respondent of its right to re-open its investigation. CFP Board opened a new investigation.

At ABC, Respondent was registered as an Investment Company Products and Variable Contracts Representative, a Direct Participation Programs Representative, a Municipal Securities Representative, a Corporate Securities Representative, a General Securities Principal, and a General Securities Representative.

From in or around September 2011 through in or around June 2012, Respondent was the principal of a branch office of ABC. In that capacity, he failed to reasonably supervise his assistant, who had primary responsibility for preparing and processing applications and other account paperwork for customers. Respondent’s assistant (a) altered documents relating to customer accounts, including by reusing signatures from forms that previously had been completed by customers, (b) caused the falsified forms to be maintained in the customers’ files, and (c) falsified documents to expedite transactions as an accommodation to customers (the firm’s compliance manual prohibited altering documents in the manners employed).

Respondent ceased regularly reviewing paperwork prepared by his assistant shortly after she was hired by the Firm. Moreover, notwithstanding the fact that the assistant asked Respondent whether she was allowed to use white-out on customer documents, Respondent failed to make a reasonable inquiry or conduct a review of the files the assistant

had handled to determine if she was following the Firm's document and signature policies. Respondent also failed to train his assistant or otherwise to take action to prevent his assistant from engaging in the conduct described above.

Respondent consented to a FINRA AWC in which FINRA found that Respondent violated NASD Conduct Rule 3010 and FINRA Rule 2010, and imposed the following sanctions: (a) a six-month suspension from association with any FINRA member firm in any principal capacity; (b) a \$15,000.00 fine; and (c) a requirement to requalify as a General Securities Principal by passing the Series 24 examination prior to associating with any FINRA member firm in any principal capacity following the six-month principal-capacity suspension.

Article 13.1 of the *Disciplinary Rules and Procedures* ("*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.

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 is a certificant. The AWC is conclusive proof that Respondent failed to comply with NASD Conduct Rule 3010 and FINRA Rule 2010, which are regulatory requirements governing professional services provided to the client.

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 4.6 of the *Rules of Conduct*, which provides that a certificant shall provide reasonable and prudent professional supervision or direction to any subordinate or third party to whom the certificant assigns responsibility for any client services.

Respondent, a certificant, failed to provide reasonable and prudent professional supervision or direction to a subordinate when his assistant used non-genuine signatures on client documents. The AWC is conclusive proof of these facts.

Third 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.

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Pursuant to Articles 13.1 and 13.4 of the *Disciplinary Rules*, 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 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 imposed a three-month suspension. The issuance of the three-month suspension was published in a press release, or in such other form of publicity as is selected by the Disciplinary and Ethics Commission. The fact of a suspension includes the publication of the facts and grounds for discipline underlying the discipline along with the identification of the CFP® professional.

The Commission determined that the applicable Sanction Guidelines recommended: (a) a private censure for Conduct 11: Diligence; (b) a private censure for Conduct 18: Failure to Supervise; and (c) a suspension for at least one year and one day for Conduct 34: Professional Discipline involving a suspension for more than three months. While the Commission recognized that the two substantive Sanction Guidelines recommended a private censure, the Commission determined that based on repeated violations involved in this matter a more severe sanction was warranted.

The Commission then reviewed Anonymous Case Histories (“ACH”) 21365, 27686, and 28675. In ACH 21365, the CFP® professional failed to supervise subordinates, specifically, among other things, claims made on their website that exaggerated their expertise and success. ACH 27686 involved a CFP® professional who retained signed, but incomplete, documents in 34 client files. The CFP® professional also failed to supervise his assistant when he did not direct her to remove the incomplete documents from client files. Finally, ACH 28675 involved a CFP® professional who had clients sign blank Automated Customer Account Transfer Forms. The Commission imposed a public letter of admonition in all instances. The Commission gave the most weight to ACHs 27686 and 28675 since each ACH involved misconduct with completing client documents. Based on its review of the Sanction Guidelines and ACHs, the Commission determine the appropriate baseline sanction was a Public Letter of Admonition.

The Commission then considered whether any aggravating or mitigating factors would affect the appropriate sanction. In aggravation the Commission identified that: 1) Respondent failed to accept responsibility for his lack of supervision and placed the blame on his subordinates; 2) Respondent was warned by his firm that he was prohibited from maintaining blank, signed client documents and of altering a client signature in any way; and 3) the conduct at issue appeared to be a pattern of practice in Respondent’s business as it survived through two different assistants who did not work together. In mitigation, the Commission determined: 1) Respondent’s conduct did not cause any client harm; and 2) Respondent provided detailed information in the record regarding how he modified his business practices by following a rigorous schedule of supervising signatures and client paperwork.

Based on the aggravating and mitigating circumstances, the Commission determined that it would aggravate the sanction from the baseline of a Public Letter of Admonition. The Commission provided significant weight to the aggravating factors because all factors related directly to Respondent’s ethical compass. The Commission was concerned with the long-term nature of the conduct and the fact it continued after he received a warning from his firm and two different employees who engaged in the conduct due to lack of training. Thus, the Commission determined a three-month suspension would be appropriate.