

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 30535

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This is a summary of a Settlement Agreement entered into at the June 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 sold an investment to clients of his firm without providing prior written notice of his participation in the transaction or obtaining his firm’s written approval to participate in the transaction.

II. Findings of Fact

Respondent entered the securities industry in August 1994. In October 1994, he became registered as an Investment Company Products/Variable Contracts Representative. In December 1997, he became registered as a General Securities Representative (“GSR”). In October 2009, he joined a Financial Industry Regulatory Authority, Inc. (“FINRA”) member firm and served as a GSR until it was acquired by Firm. In late 2010, Respondent joined another firm as an Investment Advisor Representative (“IAR”). In November 2014, Respondent became associated with another FINRA member, where he currently serves as a GSR.

On September 8, 2016, Respondent disclosed to CFP Board that he had entered into an Letter of Acceptance, Waiver and Consent (“AWC”) with FINRA.

Two years earlier, on September 5, 2014, Firm terminated Respondent because he provided advice to a customer regarding a securities investment product that was not approved by the firm. Respondent contends that in late 2013, two investment advisory clients, a married couple, inquired about diversifying their portfolio with alternative investments as recommended by their other financial advisors. Respondent answered the clients’ questions, suggested a similar security to review, and introduced the clients to the fund’s representatives. When making the introduction, Respondent told the clients that he was not a representative of the fund nor could he receive compensation for the introduction. According to Respondent, he was merely exercising his duty to provide his clients with his unbiased advice as an IAR. The clients chose to make the investment with money from an account held at the custodian firm, which Respondent oversaw. Respondent represents that he contacted Firm prior to the transaction to ask for guidance about what to do and how to transfer the client’s money due to size of the transaction (\$1 million).

Respondent admits that his participation in his clients’ transaction became an issue for Firm because he was registered with the firm as GSR and was required to obtain prior written notice before participating in this type of transaction away from the firm.

On August 11, 2016, Respondent entered into an AWC with FINRA based upon the following findings by FINRA:

*During his association with Firm, Respondent served as a GSR while also providing asset management services as an IAR of an registered investment advisor. In or about December 2013,*

*Respondent's investment advisory customers ("Investors"), a married couple, consulted with Respondent about certain investment opportunities recommended to them by others. Respondent recommended that the Investors invest in a similar security, a fund of hedge funds, away from Firm, which was not approved for sale through Firm.*

*Between January and February 2014, Respondent facilitated Investors' investment by introducing them to the fund's representatives, assisting them with paperwork for the transaction, and facilitating the transfer of their investment amounts from an Firm custodian account to the fund. Investors invested \$1,000,000 in the investment.*

*Respondent did not provide prior written notice of his participation in this transaction. In addition, he did not obtain Firm's written approval to participate in the transaction.*

*In view of the foregoing, Respondent violated NASD Rule 3040 and FINRA Rule 2010.*

In the AWC, Respondent accepted and consented to, without admitting or denying, the following sanctions: A six-month suspension from association in any capacity with any FINRA member firm and a \$5,000 fine.

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.

As set forth in the AWC, Respondent, a certificant, failed to comply with applicable regulatory requirements governing professional services provided to the client when he violated NASD Rule 3040 and FINRA Rule 2010 by providing advice about and participating in his clients' transaction in a security away from the firm that was not approved by Firm. 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*.

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Respondent, a certificant, failed to perform professional services with dedication to the lawful objectives of the employer/principal when he violated Firm's policies and procedures by providing advice about and participating in his clients' transaction in a security away from the firm that was not approved by Firm. Therefore, Respondent violated Rule 5.1 of the *Rules of Conduct*.

#### *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. The acts set forth in the AWC are the proper basis for professional discipline, and a FINRA suspension constitutes professional discipline. Therefore, the AWC is conclusive proof of those acts 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 issued to Respondent a suspension of his right to use the CFP® certification for six months pursuant to Article 4.3 of the *Disciplinary Rules*. CFP Board will publish the suspension in a press release and on its website. The publication will include, but not be limited to, the discipline and a description of the facts underlying the discipline.

The Commission consulted *Sanctions Guidelines* 12 (Employer Policies Violations), 30 (Securities Law Violation) and 34 (Professional Discipline as Defined in Article 13.4 involving a suspension for more than three months). The Commission also consulted *Anonymous Case Histories* 30060 and 28127 in reaching its decision.

The Commission cited in aggravation that:

1. Respondent was terminated by his firm for his conduct; and
2. Respondent was an experienced advisor and should have been familiar with firm policies and selling away.

The Commission noted in mitigation that:

1. Respondent had no prior disciplinary history;
2. Respondent received no compensation for recommending the unauthorized investment;
3. Respondent's conduct did not appear to cause client harm and
4. The client who purchased the investment in question continued to be a client of the Respondent.