

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30570

This is a summary of a decision issued following the June 2017 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. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he participated in private securities transactions without providing prior written notice to or obtaining approval from the Firm.

II. Findings of Fact Relevant to the Commission’s Decision

In October 2014, the Firm terminated Respondent after the Firm discovered he had been participating private securities transactions without prior the Firm’s approval. In January 2016, Respondent disclosed his termination to CFP Board. CFP Board investigated and dismissed the matter with caution and required Respondent to inform CFP Board of the outcome of the pending Financial Industry Regulatory Authority, Inc’s (“FINRA” formerly known as the National Association of Securities Dealers or “NASD”) inquiry within 14 days of the resolution date.

The Firm’s allegations stemmed from four clients obtaining and the exercising warrants of Company A. These were previously issued warrants given to investors in an earlier financing round completed by Company A. Prior to becoming involved in these transactions, Respondent spoke with the Firm about Company A and the prospect of the warrant transactions for some of his clients. In October 2013, a member of the Firm’s compliance department emailed Respondent and informed him that the Firm would not prohibit him from participating in the warrant transactions. According to Respondent, the Firm became spooked due to the size of one of the transactions and revoked its permission to participate in the transaction without notifying Respondent.

Respondent entered an Acceptance, Waiver and Consent (“AWC”) with FINRA establishing the following:

Between October 2013 and July 2014, Respondent solicited customers to invest via warrants in Company A. He participated in the transactions by arranging for and facilitating the granting to and subsequent exercise of the warrants by his customers. In return for his involvement in these transactions, Respondent expected to receive a fee from Company A.

In November 2013, Respondent solicited three customers to invest \$357,000 in Company A via warrants. Company A wired \$23,000 to the Firm as a payment for the warrant transactions, referencing Respondent and the three customers. Respondent received \$9,500 of the fee, according to his payout percentage. In June 2014, Respondent solicited a prospective customer (who later became a customer of the Firm) to invest \$2.5 million in Company A via warrants. A fee for that transaction was also sent to the Firm but in this instance was rejected and returned to Company A.

Respondent used the Firm’s systems to participate in the transactions and made verbal inquiries to the Firm’s representatives about obtaining Company A warrants for his

customers. Nonetheless, although the Firm processed the first commission payment and had notice, after-the-fact of the first three transactions, Respondent failed to provide prior written notice or obtain approval from the Firm for any of the four transactions as required by NASD Rule 3040.

NASD Rule 3040 provided, in relevant part, that no person associated with a member firm shall participate in any manner in a private securities transaction without first providing written notice describing in detail the proposed transaction, the person's role, and stating whether he has received or may receive selling compensation. In the case of a transaction in which an associated person has or may receive selling compensation, approval is also required. Because of the conduct described above, Respondent violated NASD Rule 3040. Because of violating NASD Rule 3040, Respondent also violated FINRA Rule 2010.

Respondent consented to a suspension in all capacities from association with any FINRA member firm for a period of 10 months and a \$15,000 fine. In October 2016, Respondent informed CFP Board of the AWC.

III. Commission's Analysis and Conclusions Regarding Grounds for Discipline

First Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules and Procedures* ("*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.

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.

Respondent is a certificant. The AWC was conclusive proof that Respondent failed to comply with NASD Rule 3040 and FINRA Rule 2010, which are regulatory requirements governing professional services provided to the client, when he participated in private securities transactions without providing prior written notice to or obtaining approval from the Firm. Thus, 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 is a certificant. The AWC was conclusive proof that Respondent failed to perform professional services with dedication to the lawful objectives of his employer when he participated in private securities

transactions without providing written notice to or receiving approval from his employer. Thus, 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 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 determined 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 4.3 of the *Disciplinary Rules*, the Commission issued to Respondent a suspension of his right to use the CFP® certification for **3 months**.

In arriving at its decision, the Commission consulted *Sanction Guidelines* 30 (Securities Law Violation) and 34 (Professional Discipline for More Than Three Calendar Months). The Commission also consulted *Anonymous Case Histories* 30060 and 29214. Each of these cases involved the failure to disclose outside business activities, which resulted in a FINRA suspension. In each case, the Commission effectively matched the FINRA suspension.

The Commission decided to provide more weight to the ACHs because there was a significant difference in the recommended sanction in the two applicable Sanction Guidelines. The Commission also determined the facts of this case were unique in that Respondent provided written proof of what appeared to be limited permission to purchase the warrants. Thus, the Commission decided to use matching the FINRA suspension, as done in the ACHs cited, as the starting point for its analysis.

The Commission next considered whether there were any mitigating or aggravating factors that would affect the Commission's final determination. The Commission cited in mitigation that:

1. Respondent disclosed the FINRA AWC to CFP Board;
2. Respondent was forthcoming and remorseful;
3. Respondent appears to have conducted proper due diligence on the investment he recommended to clients.
4. The record demonstrates that Respondent contacted his broker dealer to obtain permission and in fact obtained limited permission to engage in the conduct; and
5. Respondent acted in the best interests of clients.

The Commission did not consider any aggravating factors. Given the absence of aggravating factors and the fact that Respondent appears to have received some written approval for the sale of the warrants, the Commission determined that a downward deviation from matching a 10-month suspension was warranted. The Commission determined that three months was appropriate in that it recognized the seriousness of being subject to a suspension by FINRA and took into account the individual circumstances of Respondent's matter.