

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30618

This is a summary of a Settlement Agreement entered into at the February 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 engaged in an outside business activity without properly reporting the outside business activity to, and obtaining approval from, his Firm.

II. Findings of Fact

From February 1996 through October 2014, Respondent was employed Firm. Prior to 2009, Firm approved Respondent’s request to participate in an outside business activity, Company A.

In December 2009, Respondent became the sole officer, incorporator, and state-registered agent of Company B, the successor corporation to Company A. Company B published a sports magazine and attempted to provide marketing and networking services for athletes.

From December 2009 through October 2014, Respondent engaged in outside business activity at Company B. He served as Company B’s Chief Executive and publisher of its magazine. Respondent failed to disclose Company B as an outside business activity via Firm’s reporting system. Respondent misrepresented that he had no outside business activity he had not previously reported on four compliance questionnaires submitted to Firm in March of 2010, 2011, 2013, and 2014.

Respondent said that he provided a magazine giving information on Company B to Firm.

In October 2014, Respondent left Firm. Firm filed a U5 indicating that he had resigned during an investigation into Respondent’s acceptance of a loan from a client. The Financial Industry Regulatory Authority, Inc. (“FINRA” formerly known as the National Association of Securities Dealers or “NASD”) opened an inquiry. CFP Board investigated the matter and dismissed it while reserving the right to reopen the investigation.

In November 2016, Respondent entered into a Letter of Acceptance, Waiver and Consent with FINRA consenting to the findings that his involvement with Company B without properly reporting to and obtaining approval from Firm was a violation of NASD Rule 3030 and FINRA Rule 3270, which prohibit participating in outside business activity without providing prior written notice to the member’s firm, and FINRA Rule 2010, which requires that members observe high standards of commercial honor and just and equitable principles of trade. Respondent consented to a 30-day suspension from association with any FINRA member in any capacity 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. *See ACH 29214.*

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 Rule 3030 and FINRA Rules 3270 and 2010, which are applicable regulatory requirements governing professional services provided to the client. 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 is a certificant. The AWC is conclusive proof that Respondent failed to perform professional services with dedication to the lawful objectives of his employer when he engaged in outside business activity without providing prior written notice to or obtaining approval from Merrill Lynch. 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 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 issued to Respondent a private censure pursuant to Article 4.1 of the *Disciplinary Rules*.

The Commission consulted *Sanctions Guidelines* 12 (Employer Policies Violation), 30 (Securities Law Violation) and 32 (Professional Discipline as Defined in Article 13.4 involving a suspension for up to one calendar month). The Commission also consulted *Anonymous Case Histories* 25939 and 28379 in reaching its decision.

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The Commission cited in aggravation that Respondent did not update his outside business activity disclosure on four separate occasions.

The Commission noted in mitigation that:

1. Respondent had no prior disciplinary history;
2. His outside business activity was a charitable organization;
3. Respondent initially disclosed his outside business activity in 2005 under the name of Company A;
4. Respondent did not receive any compensation from the outside business activity;
5. Respondent was not employed with Firm when Firm began its investigation; and
6. Respondent's manager and other Firm employees served on the board of the charity.