

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30621

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. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when she violated the State administrative code by: a) excluding the formula used to calculate the advisory fee on its invoices; b) failing to concurrently send invoices at the time the advisory fee was deducted; c) taking action to withdraw funds when failing to comply with safekeeping requirements; d) failing to maintain net capital of at least \$25,000; e) failing to notify the State within 24 hours of its deficient net capital and to suspend business operations during the time of the net capital deficiency; f) failing to amend multiple items on its Form ADV; and g) failing to file timely financial statements.

II. Findings of Fact

At the time of the hearing, Respondent was the managing principal, CCO, and sole associated person of Company A. During relevant period, January 2015, through February 2016, Respondent was a managing principal of the firm.

In January 2017, Respondent completed her Renewal Application for CFP® Certification and disclosed an administrative proceeding against Company A following a compliance examination concerning the period from January 2015, through February 2016.

In June 2017, Company A entered into a Stipulation and Consent Order and consented to the entry of the following findings:

- a. Company A violated State Administrative Code, by failing to have written advisory agreements for six clients;
- b. Company A violated State Administrative Code by:
 - i. Excluding the formula used to calculate the fee on its invoices for the fees collected during 2015; and
 - ii. Failing to concurrently send invoices at the time the advisory fee was deducted for the third and fourth quarters of 2015;
- c. Company A violated State Administrative Code by taking action to withdraw funds when failing to comply with safekeeping requirements;

- d. Company A violated State Administrative Code by failing to maintain a net capital of at least \$25,000 from January 2015 through May 2015;
- e. Company A violated State Administrative Code by failing to notify the State within 24 hours of its deficient net capital and to suspend business operations upon the net capital deficiency;
- f. Company A violated State Administrative Code by failing to amend one or more of the following on its Form ADV:
 - i. The number of clients to which the firm provided financial planning services during its last fiscal year (Form ADV, Part 1, Item 5H);
 - ii. That it maintained custody of clients' accounts, (Form ADV, Part 1, Item 9A), Form ADV, Part 1, Item 9A filed in March 2016); and
 - iii. The total amount of assets under management (Form ADV, Part 1, Item 5H filed in March 2016);
- g. Company A violated State Administrative Code by failing to file timely financial statements for its fiscal year ending on December 2015.

As a result of the Consent Agreement, Company A agreed to the following terms and conditions:

- a. Cease and desist from violations of State law and the rules promulgated thereunder, and henceforth strictly comply with all provisions of State law and the rules promulgated thereto; and
- b. Pay an administrative fine of \$5,000.

Respondent, in her role as Chief Compliance Officer, signed the Consent Agreement. Respondent, through her attorney, contended that Company A had customized written policies and procedures in place since June 2013, when it entered into an agreement with a compliance consulting firm ("Consultant"). Consultant assisted Company A with the initial registration of the firm as well as draft compliance documents. Consultant also assisted and advised Company A on other regulatory issues such as interpretation of custody.

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, as a managing principal of Company A, failed to ensure that Company A complied with applicable regulatory requirements governing professional services provided to the client when Company A violated the State Administrative Code by: a) excluding the formula used to calculate the advisory fee on its invoices for the fees collected during each of the four quarters in 2015; b) failing to concurrently send invoices at the time the advisory fee was deducted for the third and fourth quarters of 2015; c) taking action to withdraw funds when failing to comply with safekeeping requirements; d) failing to maintain a net capital of at least \$25,000 from January 2015, through May 2015; e) failing to notify the State within 24 hours of its deficient net capital and to suspend business operations upon the net capital deficiency; f) failing to amend multiple items on its Form ADV; and g) failing to file timely

financial statements for its fiscal year ending December 2015. 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 dismiss the allegations with a caution for Respondent to be in compliance with applicable regulatory requirements governing professional services provided to the client.

The Commission consulted *Sanctions Guidelines* 30 (Securities Law Violation). The Commission also consulted *Anonymous Case History* 18761 in reaching its decision.

The Commission did not cite any aggravating factors. The Commission noted in mitigation that:

1. It believed State was overzealous in pursuing Respondent;
2. Respondent had adequately explained the reasons for most of the violations cited by State;
3. Respondent had engaged a compliance consultant since she founded the firm; and
4. Respondent only took over the Chief Compliance Consultant role after her partner, who had previously served in that role, left the firm.