

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 30640

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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 exercised discretion without written authorization in numerous customer accounts.

II. Findings of Fact

On May 28, 2015, Insurance Company terminated Respondent’s appointment as a life insurance agent after an investigation by the firm regarding Respondent reusing client signatures. As a result of the termination of his appointment as a life insurance agent, Respondent’s broker-dealer discharged him on August 14, 2015, listing the following allegation as the reason: “Registered representative’s insurance registration was revoked by a carrier after its investigation of occurrence of reused client signatures.”

Respondent denied the accusation that he reused client signatures, and during the Financial Industry Regulatory Authority, Inc.’s (“FINRA” formerly known as the National Association of Securities Dealers or “NASD”) investigation, he supplied letters from some of his former clients to support his denial of the allegations.

On January 29, 2017, Respondent signed a Letter of Acceptance, Waiver and Consent (“AWC”), and on February 15, 2017, FINRA accepted the AWC, wherein Respondent accepted and consented to, without admitting or denying, the following findings:

*NASD Rule 2510(b) does not permit a registered representative to exercise discretion in a customer’s account “unless such customer has given prior written authorization” and such discretionary authority has been approved, in writing, by the member firm.”*

*On October 15, 2014, Respondent made 70 discretionary trades in 44 customer accounts. None of the customers provided written authorization for this discretionary trading, and First Allied had not approved the accounts for discretionary trading.*

*Based on the foregoing, Respondent violated NASD Rule 2510 and FINRA Rule 2010.*

Respondent consented to the imposition of the following sanctions: a) a suspension from association with any FINRA member in any and all capacities for a period of 30 calendar days; and b) a \$5,000 fine.

After he agreed to the AWC, Respondent was terminated by his broker-dealer.

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.

As set forth in Article 13.3 of the *Disciplinary Rules*, since Respondent’s professional discipline has been proved, Respondent shall have the right to be heard by the Hearing Panel only on matters of rebuttal of any evidence presented by CFP Board Counsel other than proof of professional discipline.

On January 30, 2017, over year after his termination from broker dealer and just one day after he signed the AWC, Respondent executed his CFP Board Ethics Declaration in which he declared “under penalty of perjury and peril of fraud” that his representations on the declaration were true and complete. Those representations included his responses to questions Nos. 7 and 8 that he had never been the subject of a self-regulatory organization inquiry or investigation and that he had never been terminated for cause. Both answers were demonstrably false.

### 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 clients when he violated NASD Rule 2510 and FINRA Rule 2010 by exercising discretion without written authorization in numerous customer accounts. 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, a certificant, failed to perform professional services with dedication to the lawful objectives of the employer/principal when he exercised discretion without written authorization in numerous customer accounts. 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 that there are grounds to discipline Respondent for acts that are a proper basis for professional discipline.

#### *Fourth Ground for Discipline*

Pursuant to Article 3(G) of the *Disciplinary Rules*, there are grounds to discipline Respondent for any false or misleading statements made to CFP Board. Respondent made false statements to CFP Board when he answered “No” to all nine questions on his January 30, 2017 Renewal Application when, in fact, he should have disclosed the FINRA investigation that resulted in his 30-day suspension and his 2015 termination from his broker dealer for cause. Therefore, there are grounds to discipline Respondent under Article 3(G).

#### 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 Public Letter of Admonition pursuant to Article 4.2 of the *Disciplinary Rules*.

The Commission consulted *Sanctions Guidelines* 12 (Employer Policy Violation), 14(a) (Failure to Disclose to CFP Board), 30 (Securities Law Violation) and 32 (Professional Discipline as Defined in Article 13.1 involving a suspension for up to one calendar month). The Commission also consulted *Anonymous Case Histories* 26856 and 28574 in reaching its decision.

The Commission cited no aggravating factors.

The Commission noted in mitigation that Respondent had no prior disciplinary history with CFP Board.