

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30896

This is a summary of a Settlement Agreement entered into at the June 2019 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 obtained reimbursement from his firm for computer equipment he purchased but then returned or cancelled, and when he encouraged other employees to do the same and to lie to firm investigators about it.

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

Respondent was certified as a CFP® professional on May 17, 2016, and has been certified since that date. Respondent has passed the following Financial Industry Regulatory Authority (“FINRA”) examinations: (1) Series 7 – General Securities Representative Examination (2012); (2) Series 63 – Uniform Securities Agent State Law Examination (2012); (3) Series 66 – Uniform Combined State Law Examination (2013); and (4) the Securities Industry Essentials Examination (2017). Respondent entered the securities industry in 2012 and, from June 2012 through February 2017, was registered with FINRA as a General Securities Representative (and associated person) of ABC National Financial (“ABC”).

ABC filed a Form U5 on February 13, 2017 in which it disclosed that Respondent had voluntarily terminated his employment. The Form U5 states that Respondent's employment ended due to "[a]llegation[s] that [he] was inappropriately paid under the firm's computer reimbursement benefit for items he never actually owned. Not customer or sales practice related."

FINRA’S Investigation of Respondent

Without admitting or denying the findings, Respondent consented to the entry of specific following findings by FINRA in a Letter of Acceptance, Waiver and Consent (“AWC”):

- i. ABC sponsored a Computer Equipment Purchase Assistance Program (“Program”), through which it reimbursed employees up to 20 percent of the purchase price for certain personal computer equipment, up to a maximum of \$2,000. Employees submitted their computer equipment purchase receipts through an online third-party administrator, DEF Works (“DEF”), and ABC paid the reimbursement amounts to

employees in a subsequent pay period. Employees were entitled to reimbursement under the program once every three years.

- ii. On August 8, 2016, Respondent purchased over \$10,000 of computer equipment. He submitted the receipt to the Program on August 12, 2016, and subsequently received \$2,000. Thereafter, three other employees provided Respondent with their DEF Works online login and password information. On three separate occasions, Respondent purchased over \$10,000 of computer equipment, accessed the employee's online account through the information provided to him, and submitted the purchase receipt for reimbursement through the employee's account. He then cancelled the order or returned the computer equipment.
- iii. Thereafter, the three employees each received \$2,000 in reimbursement from the Program for the computer purchase receipts Respondent submitted through their accounts; each of the employees paid to him a portion of the reimbursement he or she received. The aggregate amounts the three employees paid to Respondent from the reimbursements they received was \$3,700.
- iv. ABC commenced an internal investigation on August 29, 2016. In connection with ABC's investigation, Respondent advised one of the three employees to lie to the ABC investigators by telling them that she was in possession of a computer. In fact, Respondent had purchased and returned the computer for which he submitted a reimbursement claim through the employee's online account.

FINRA found, and the AWC stated, that Respondent converted ABC funds in violation of FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade"). That Rule requires "[a] member, in the conduct of its business, [to] observe high standards of commercial honor and just and equitable principles of trade."

The AWC further stated that "[c]onversion is an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it. Conversion violates [FINRA] Rule 2010 because such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade."

Pursuant to the AWC, FINRA imposed a permanent bar on Respondent from association with any FINRA member firm in any capacity, including clerical or ministerial functions.

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 of omissions that violate Rule 4.3 of the *Rules of Conduct*, which provides that a "certificant shall be in compliance with applicable regulatory requirements governing."

Article 13.1 of the *Disciplinary Rules* provides that a letter or other writing from a governmental agency 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 any governmental agency, industry self-regulatory organization or professional association.”

FINRA is an industry self-regulatory authority. The AWC barring Respondent from association with any FINRA member firm in any capacity constitutes an order of professional discipline by FINRA and Respondent is a subject of that order. Therefore, AWC conclusively established 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, a certificant, was an employee of ABC. As set forth in the FINRA AWC, Respondent failed to comply with applicable regulatory requirements governing professional services provided to the client because he violated FINRA Rule 2010 when he converted ABC funds by obtaining reimbursement to which he was not entitled pursuant to the Program. 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, was an employee of ABC. As set forth in the FINRA AWC, Respondent failed to perform his professional services with dedication to the lawful objectives of his employer because he converted ABC funds by obtaining reimbursement to which he was not entitled pursuant to the Program. Therefore, Respondent violated Rule 5.1 of the *Rules of Conduct*.

Third 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 6.5 of the *Rules of Conduct*, which provides that a “certificant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession.”

Respondent, a certificant, was an employee of ABC. As set forth in the FINRA AWC, Respondent engaged in conduct that reflects adversely on his integrity or fitness as a certificant, upon the CFP® marks, or upon the profession because he violated FINRA Rule 2010 when he converted ABC funds by obtaining reimbursement to which he was not entitled pursuant to the Program. Therefore, Respondent violated Rule 6.5 of the *Rule of Conduct*.

Fourth 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 barring Respondent from association with any FINRA member firm in any capacity constitutes professional discipline. Therefore, the AWC conclusively proves there are grounds to discipline Respondent. Based upon the allegations and conduct set forth herein, 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. In accordance with the terms of the Settlement Agreement, the Commission issued to Respondent a five year suspension pursuant to Article 4 of the *Disciplinary Rules*. Additionally, Respondent agreed to complete 90 additional remedial education credits (in addition to his required CE hours) within the period of his suspension. The suspension shall be published in a press release, or in such other form of publicity as is selected by the Commission. The publication will include, but not be limited to, the discipline and a description of the facts underlying the discipline.

The Commission determined that the applicable Sanction Guidelines recommended:

- (1) Private Censure (Conduct 12: Employer Policies Violation);
- (2) Suspension for at Least One Year and One Day (Conduct 20(a): Fraud, Misrepresentation or Deceit Involving Professional Activities);
- (3) Revocation (Conduct 28: Revocation of a Financial Professional License); and
- (4) Public Letter of Admonition (Conduct 30: Securities Law Violation/Conversion).

The Commission considered mitigating and aggravating factors. The Commission considered in aggravation that Respondent encouraged others to participate in the fraud and, when under investigation by his employer, Respondent encouraged one other employee to lie to investigators. In mitigation, the Commission considered that: (a) Respondent expressed remorse in communications with CFP Board; (b) Respondent claims to have taken several actions to better himself, including enrolling in the State A Board Ethical Leadership Training course, volunteering as a life coach in a program for convicted felons, and volunteering to teach financial literacy to high school kids; and (c) no clients were harmed.

The Commission also consulted *Anonymous Case Histories* (“ACH”) 30586 and 28993.