

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30941

This is a summary of a decision issued following the October 2018 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 signed a client’s name on two checks without her knowledge or permission and presented the checks to his firm for deposit without obtaining the firm’s permission for signing on the client’s behalf.

II. Findings of Fact

CFP Board first granted Respondent the right to use the CFP® marks on September 13, 2007. Previously, CFP Board issued Respondent a seven-month suspension of his right to use the CFP® marks for engaging in private securities transactions in violation of his prior firm’s policies and the rules of the Financial Industry Regulatory Authority (“FINRA”) and its predecessor, the National Association of Securities Dealers (“NASD”). The suspension ended when his right to use the CFP® marks was automatically reinstated. Respondent has maintained his certification since that date.

Respondent, who is employed by broker-dealer and FINRA member Firm XYZ, has passed the following FINRA examinations: (a) Series 6 – Investment Company Products/Variable Contracts Representative Examination (2003); (b) Series 7 – General Securities Representative Examination (2005); (c) Series 63 – Uniform Securities Agent State Law Examination (2003); and (d) Series 65 – Uniform Investment Adviser Law Examination (2005). He first became associated with a FINRA member firm in July 2003. Respondent has not been registered as an associated person of a FINRA member firm since XYZ terminated his employment in November 2017.

XYZ Internal Review and Termination

According to Respondent, in the summer of 2017, the husband of Respondent’s client, Mr. AB, passed away, and Mrs. AB became the beneficiary of his testamentary trust and life insurance proceeds. Respondent was a family friend of the ABs and had known Mrs. AB for over 20 years. Mrs. AB engaged Respondent as her investment adviser for purposes of financial planning and investment management. She also requested guidance on “retirement distribution planning.” After working with Respondent to develop a financial planning strategy, Mrs. AB opened several accounts at XYZ.

One of the accounts, the Mr. AB Trust, was to be funded with Mr. AB’s life insurance proceeds from two different insurance companies. After a two-month delay, Mrs. AB received the first check from one of the insurance companies and contacted Respondent. He told her to mail the check to him for deposit. Respondent neglected to tell Mrs. AB to first endorse the check prior to sending it to him. As a result, she sent it to him without an endorsement.

After receiving the check, Respondent sent it to XYZ for deposit, but the broker-dealer returned the check to Respondent because it had not been endorsed by Mrs. AB. Respondent said that he felt badly about not having told Mrs. AB to endorse the check before she sent it to him given that so much time had elapsed. Therefore, he endorsed it on her behalf without informing her that he was doing so. Respondent did not ask Mrs. AB for permission to sign the check on her behalf, and she did not give him such authorization.

On the same day that Respondent sent the first check to XYZ, he received the second life insurance check from Mrs. AB. As with the first check, Mrs. AB did not endorse the second check. Once again, Respondent endorsed the check on Mrs. AB's behalf without informing her that he was doing so. Respondent mailed the second check to XYZ for deposit into Mrs. AB's account.

XYZ's Written Supervisory Procedures ("WSPs") require the firm to monitor incoming client correspondence directed to registered representatives in order to ensure that client funds (*i.e.*, checks) and securities are handled in accordance with firm procedures. XYZ has specific policies and procedures for safekeeping and segregation of funds. The XYZ's WSPs permitted specific individuals to endorse a check to accommodate the customer only when XYZ was the payee. All checks received by XYZ are monitored for irregularities and approved or disapproved for deposits by the designated supervisor principals in their oversight of the firm's business.

According to Respondent, XYZ contacted Mrs. AB after receiving the checks as part of a routine review surrounding the deposit of third party checks. Mrs. AB informed XYZ that she had not endorsed the checks. Respondent confirmed that he never called Mrs. AB to inform her that he had endorsed the checks on her behalf. XYZ sent the checks back to Mrs. AB for her signature.

Respondent said that, a few days after mailing the checks, his XYZ manager contacted him. Respondent's manager asked if he had signed the checks and he admitted that he had done so, but he said that he had been immediately remorseful. Shortly after speaking with the XYZ manager, Respondent called Mrs. AB to inform her that he had endorsed the checks without her authorization. Respondent contended that Mrs. AB was not upset with him because she understood that he was trying to help her, and he told CFP Board that Mrs. AB would send a letter in support of him. However, Respondent stated at the hearing that Mrs. AB declined to provide a letter of support on his behalf based on advice of counsel.

Respondent also contended that he sought to deposit the money into Mrs. AB's account as quickly as possible so that they could begin executing her investment objectives and avoid any further delays. Respondent admitted that he made a "horrible judgment call." Respondent also confirmed that he understood that he failed to comply with the operative rules and took responsibility for his actions.

On Respondent's Form U-5, XYZ described these circumstances in connection with its Internal Review. On November 10, 2017, XYZ terminated Respondent because the "client sent in two checks to be deposited but forgot to sign them. Rep took the liberty to endorse the checks."

FINRA Inquiry

In January 2018, FINRA opened an investigation into Respondent's termination by XYZ and his dealings with Mrs. AB. In response to certain FINRA staff inquiries, Respondent admitted that Mrs. AB had not given him permission to endorse the checks on her behalf. Respondent contended that he did not inform Mrs. AB that he endorsed the checks because he thought that XYZ had already done so. Respondent asserted that he did not sign or endorse documents for any clients other than Mrs. AB.

In March 2018, FINRA completed its examination relating to the termination of Respondent's employment by XYZ. FINRA issued a Cautionary Action Letter to Respondent that stated, "You violated FINRA Rule 2010 in that you signed a customer's name on two checks, without her knowledge or permission, in order to facilitate the deposit of those checks into the customer's account."

FINRA Rule 2010 provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."

Respondent notified CFP Board of his termination by XYZ Securities a few days after it occurred.

III. Grounds for Discipline

To impose discipline on Respondent, the Commission must find grounds for discipline. The Commission found grounds for discipline under CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*") because it determined that Respondent violated certain provisions of the *Rules of Conduct* as discussed below. The Commission made its decision based on the authority granted to it in Article 11.2 of the *Disciplinary Rules*.

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 2.1 of the *Rules of Conduct*, which provides that a certificant shall not communicate, directly or indirectly, to clients and prospective clients any false or misleading information directly or indirectly related to the certificant's professional qualifications or services. Rule 2.1 further provides that a certificant shall not mislead any parties about the potential benefits of the certificant's service, and that a certificant shall not fail to disclose or otherwise omit facts where that disclosure is necessary to avoid misleading clients.

Respondent, who is a certificant, admitted in his Answer that he misled his firm about the services he provided to his client when he signed the client's name on two checks without her knowledge or permission and presented the checks to the firm for deposit without obtaining the firm's permission for signing on the client's behalf. Thus, Respondent violated Rule 2.1 of the *Rules of Conduct*.

Respondent also admitted in his Answer that he failed to disclose or otherwise omitted facts where disclosure was necessary to avoid misleading his client when he failed to inform his client that he had signed the checks on her behalf, despite the fact that Firm policy required the client's signature and/or permission from a Firm officer or supervisor. Thus, Respondent violated Rule 2.1 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 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, who is a certificant, admitted in his Answer that he failed to comply with FINRA Rule 2010, which governs professional services provided to a client and requires member firms and associated persons to observe high standards of commercial honor and just and equitable principles of trade, when he signed the client's name on two checks without her knowledge or permission. Thus, Respondent violated Rule 4.3 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 4.4 of the *Rules of Conduct*, which provides that a certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients.

Respondent, a certificant, admitted in his Answer that he failed to exercise reasonable and prudent professional judgment in providing professional services to a client when he signed the client's name on two checks without her knowledge or permission. Thus, Respondent violated Rule 4.4 of the *Rules of Conduct*.

Fourth 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, who is a certificant, failed to perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's *Code of Ethics* when he signed a client's name on two checks without her knowledge or permission in violation of his Firm's policies and procedures. During the hearing, Respondent admitted that he signed his clients name on two checks and also admitted that he did so knowing that he was violating firm policies and procedures. Indeed, he was terminated by his firm for this conduct. Thus, Respondent violated Rule 5.1 of the *Rules of Conduct*.

IV. Discipline Imposed

The Commission found that Respondent's conduct violated Rules 2.1,4.3, 4.4, and 5.1 of the *Rules of Conduct*, providing grounds for discipline under Article 3(A) of the *Disciplinary Rules*.

After careful consideration of the evidence in Respondent's matter, the Commission determined to issue Respondent a six-month suspension pursuant to Article 4.3 of the *Disciplinary Rules*. The suspension is effective from February 8, 2019 until August 8, 2019 if Respondent does not appeal this order.

In arriving at its decision, the Commission considered that the applicable *Sanction Guidelines* recommended:

- Conduct 19: Forgery (Suspension for at least one year and one day).
- Conduct 20(d): Misrepresentation to Clients and Prospective Clients (Public Letter of Admonition).
- Conduct 30: Securities Law Violation (Public Letter of Admonition).
- Conduct 12: Employer Policies Violation (Private Censure).
- Conduct 20(c): Misrepresentation to Non-Clients (Private Censure).

The Commission noted that, although Conduct 19: Forgery recommended a suspension for at least one year and one day, the policy notes for the sanction guideline state that a CFP® professional's intent can be an additional aggravating or mitigating factor in determining an appropriate sanction.

The Commission then considered *Anonymous Case Histories* (“ACHs”) 27004 and 28497, which had facts similar to the instant case. In ACH 27004 (March 2012), a CFP® professional directed his assistant to prepare a switch letter (“Letter”) for a client to sign. The CFP® professional assistant obtained the client’s signature, but mistakenly sent the Letter to the clearing firm without providing the switch rationale. The clearing firm rejected the Letter due to the lack of a switch rationale. The CFP® professional revised the Letter to include the switch rationale, which he previously had discussed with the client. The CFP® professional then initialed the Letter with the client’s initials because he had already discussed with the client the fees associated with the mutual fund, as well as the reasons for the change in investments. The CFP® professional’s firm terminated him because he violated firm policy by adding a client’s initials to a signed form. After an investigation, FINRA similarly found that the CFP® professional wrote a client’s initials on a switch letter and submitted it for processing after the client signed it. FINRA issued a Cautionary Action Letter to the CFP® professional prohibiting future violations of FINRA Rule 2010 and NASD Rule 3110(a). The Commission found that the CFP® professional’s conduct violated Rules 4.3, 5.1, and 6.5 of the Rules of Conduct and issued him a Public Letter of Admonition.

Similarly, in ACH 28497 (June 2013), a CFP® professional used a client's authentic signature from a traditional Individual Retirement Account (“IRA”) adoption agreement to forge an IRA distribution form in violation of firm policy (and resulting in a letter of caution from the firm). The CFP® professional and the client had already discussed the transaction and the CFP® professional did not intend to harm or otherwise disadvantage of his client and instead intended to assist the client. The Commission found that the CFP® professional’s conduct violated Rules 1.4, 4.4, 5.1, and 6.5 of the Rules of Conduct and issued him a Public Letter of Admonition.

The Commission then reviewed the aggravating and mitigating factors to determine whether there were any materials factors, and, if so, what weight those factors may have in its decision. The Commission considered in aggravation that:

1. The Respondent received a suspension from CFP Board previously, after being suspended by FINRA for private securities transactions.
2. He was terminated by XYZ for signing his client’s name on the two checks and was terminated by another prior firm with respect to the conduct leading to his prior seven-month suspension from CFP Board.

In mitigation, the Commission considered that:

1. The Respondent did not act with the intent to gain something from his client in signing the checks.
2. The client was not harmed by Respondent’s actions.
3. Respondent was executing a plan for depositing the checks that he and the client had agreed upon.
4. The client did not complain about Respondent’s actions (although the Commission also considered that she also did not testify or otherwise offer a statement in support of Respondent).
5. Respondent has never had a client complaint.
6. Respondent recognized his error in judgement and was remorseful.

In weighing these factors, the Commission determined that the mitigating factors outweighed the aggravating factors, warranting a downward deviation from highest sanction recommended by the applicable *Sanction Guidelines*. Respondent did not act with an intent to harm or disadvantage his client. To the contrary, he was acting in her interest in trying to deposit her checks quickly so that she could access cash to manage expenses and debt after the death of her husband. However, the Commission also determined that Respondent’s conduct was more aggravated than that in ACH 27004 or 28497, particularly

with respect to the severity of CFP Board's prior discipline of Respondent. Based upon these circumstances, the Commission determined that a six-month suspension was appropriate.