

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 24595

This is a summary of a decision issued following the June 2010 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 prior to January 1, 2009. The Rules in effect at that time under the *Code of Ethics and Professional Responsibility* (“*Code of Ethics*”) were Rules 101 through 705.

I. Issues Presented

Whether a CFP[®] professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) incorrectly filled out a Form U-5 regarding the termination of an employee; and 2) did not disclose the resulting suspensions and fine for \$15,000 by the Financial Industry Regulatory Authority (“FINRA,” formerly known as the National Association of Securities Dealers or “NASD”) within 10 days as required by Article 12.2 of the *Disciplinary Rules and Procedures* (“*Disciplinary Rules*”).

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

Following an October 2009 hearing, a FINRA Hearing Panel determined that Respondent violated NASD Conduct Rule 2110 and IM-1000-1 by filing a Form U-5 that misrepresented and omitted material facts concerning the termination of a registered representative. The FINRA Hearing Panel found that Respondent falsely reported that there was neither an internal review nor a FINRA investigation of a registered representative who was terminated. As a result, FINRA: 1) suspended Respondent from associating in any capacity with any member firm for three months; 2) suspended Respondent from associating in any principal capacity with any member firm for nine months; 3) required Respondent to re-qualify by examination before re-entering the securities industry in any principal capacity; and 4) fined Respondent \$15,000.

Respondent was notified of the FINRA Hearing Panel’s decision by a Notice of Hearing Panel Decision dated December 30, 2009. Under Article 12.2 of the *Disciplinary Rules*, a CFP[®] professional is required to notify CFP Board within 10 days of receiving a notice of a professional suspension. Respondent notified CFP Board of the FINRA suspension on February 12, 2010.

According to Respondent’s testimony at hearing and documentation reviewed by the Commission, Respondent sought and received advice from a qualified attorney. Respondent filed the Form U-5 bases on the attorney’s advice.

III. Commission's Analysis and Discipline Imposed

The Commission found that Respondent sought and received advice from a qualified attorney, followed the advice in a timely manner, and disclosed all information to his attorney. The Commission did not agree with FINRA's findings that Respondent willfully filed a false, inaccurate, and misleading Form U-5 regarding the registered representative's termination. The Commission found that all other allegations in CFP Board's complaint did not constitute violations of CFP Board's *Code of Ethics*, but did find grounds for discipline under Article 3(e) of the *Disciplinary Rules* due to the fact that Respondent did not make a timely disclosure of his FINRA suspension as required by Article 12.2.

After careful consideration of the evidence in Respondent's matter, the Commission determined to dismiss Respondent's matter with a caution. The Commission cautioned Respondent to remain aware of disclosure requirements under Article 12.2.

The Commission cited the following mitigating factors:

1. Respondent received no personal gain from his responses on the Form U-5;
2. Respondent was organized and prepared at the hearing; and
3. Respondent had no prior disciplinary history.

The Commission did not cite any aggravating factors.