

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 26763

This is a summary of a decision issued following the March 2012 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. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he was censured and fined by the Securities and Exchange Commission (“SEC”) for: 1) failing to ensure that his firm (“Firm”) maintained complete and accurate employee records; 2) instructing an associated person to backdate employment-related documents; and 3) knowingly submitting the backdated documents to the SEC without disclosing that they were backdated.

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

Respondent co-founded Firm in 1998. Since that date, Respondent has served as a registered representative as well as Firm’s President and Chief Compliance Officer. In March 2009, the SEC opened an examination of Firm and requested that Respondent provide certain documents related to Firm’s employees. Respondent provided some of the requested documents in April 2009, but did not provide documents related to one associated person of Firm (“Associated Person”). The SEC repeated its request. In May 2009, Respondent emailed seven documents to Associated Person with the following message:

I’m going thru (sic) my employee files for the SEC audit and realized that I don’t have all of the other employment/registration forms for you. I only have your form U4. I have attached the forms that I need you to complete, sign and fax back to me ASAP. Please date the forms [June 2008]. It’s very important.

As directed by Respondent, Associated Person signed the documents and dated them June 2008, the date he became a registered representative at Firm. Respondent provided the documents to the SEC without disclosing that the documents were backdated. As a result of this conduct, the SEC determined that Firm violated Section 17(a) and Rule 17a-3 of the Securities Exchange Act of 1934 (“Exchange Act”) by failing to make and keep required records related to Associated Person’s employment and compensation. The SEC also determined that Respondent willfully aided, abetted and caused Firm’s violations.

In his February 2011 statement to the SEC, Respondent denied willfully misleading the SEC and characterized his actions as “a genuine unintentional mistake at a time of great stress.”

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Respondent stated that Associated Person submitted his Form U-4 to Firm in June 2008 and submitted additional employment documents in late June and early July of 2008. These additional documents were forwarded to a Firm Compliance Assistant. Several times over the next few months, Respondent instructed the Compliance Assistant to ensure that Firm maintained all required forms related to hiring new registered representatives. Respondent and the Compliance Assistant were unable to locate the forms related to Associated Person in response to the SEC request. Respondent stated that through his email to Associated Person he merely intended to replace the original documents and did not intend to deceive the SEC.

In April 2011, Respondent and Firm submitted Offers of Settlement to the SEC. In May 2011, the SEC accepted the Offers of Settlement and issued an Order that required Respondent and Firm to cease and desist from committing or causing any future violations of Section 17(a) and Rules 17a-3 and 17a-4 of the Exchange Act, censured Respondent and Firm, and fined Respondent \$25,000 and Firm \$50,000.

In May 2011, the Financial Industry Regulatory Authority, Inc. (“FINRA”) requested that Firm provide: 1) proof that Respondent and Firm had complied with all sanctions imposed by the SEC Order; and 2) a declaration that the sanctions imposed by the SEC Order were no longer in effect and that Respondent and Firm were in compliance with the terms and conditions of the SEC Order. In June 2011, Firm provided the requested declarations and proof that Respondent and Firm paid the fines. FINRA took no action against Respondent or Firm.

III. Commission’s Analysis and Conclusions Regarding Rule Violations

A. *Rule 5.1 – A certificant shall perform professional services with the dedication to the lawful objectives of the employer/principal and in accordance with CFP Board’s Code of Ethics*

The Commission determined that Respondent failed to perform professional services with dedication to the lawful objectives of his employer when he: 1) failed to ensure that Firm maintained complete and accurate employee records; 2) instructed Associated Person to backdate employment-related documents; and 3) knowingly submitted the backdated documents to the SEC without disclosing that they were backdated. The SEC fined and censured Respondent and Firm as a result of his conduct. Thus, Respondent violated Rule 5.1 of the *Rules of Conduct*.

A. *Rule 6.5 – 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*

The Commission determined that Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP® professional, upon the CFP® marks and upon the profession when he: 1) failed to ensure that Firm maintained complete and accurate employee records; 2) instructed Associated Person to backdate employment-related documents; and 3) knowingly submitted the backdated documents to the SEC without disclosing that they were backdated. The SEC fined and censured Respondent and Firm as a result of his conduct. Thus, Respondent violated Rule 6.5 of the *Rules of Conduct*.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*") provides grounds for discipline for any act or omission that violates the *Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 5.1 and 6.5 of the *Rules of Conduct*. Pursuant to Article 4.1 of the *Disciplinary Rules*, the Commission issued a Private Censure to Respondent.

The Commission considered the following mitigating factors: 1) Respondent's conduct did not result in client harm; 2) Respondent has no history of client complaints; 3) Respondent's conduct did not involve fraud or failure to supervise; 4) Firm, where Respondent oversees 125 employees, has had no other SEC or FINRA violations; 5) Respondent swore in testimony to the SEC that the oversight was an honest mistake and that he had not intended to mislead SEC staff; 6) FINRA took no action after confirming that Respondent and Firm had paid the SEC fines; 7) Respondent and Firm had no other history of failing to maintain employee records; and 8) after the issuance of the SEC Order, Respondent hired a fulltime compliance officer.

The Commission did not consider any aggravating factors.