

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 27092

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This is a summary of a decision issued following the June 2013 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 1) sold allegedly unsuitable insurance policies to his financial planning clients; 2) communicated to clients and prospective clients allegedly misleading information related to client testimonials, the registration status of his firm (“Respondent’s Firm”), and his compensation; 3) was terminated by Firm due to his use of client testimonials, failure to disclose outside business activities, and advertising violations; 4) violated State securities laws related to registration of his business entities, disclosure of outside business activities, client testimonials, and disclosure of his criminal charge to all regulatory bodies; 5) pleaded guilty to one misdemeanor count of Obtaining Contents of Communications; and 6) improperly used the CFP® marks in the Internet domain name [www.respondentsnamecfp.com](http://www.respondentsnamecfp.com), the email addresses [respondent@respondentsnamecfp.com](mailto:respondent@respondentsnamecfp.com) and [employee@respondentsnamecfp.com](mailto:employee@respondentsnamecfp.com), and the Twitter handle @respondentsnameCFP and the corresponding Internet domain name <https://twitter.com/#!/respondentsnamecfp>.

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

*2011 Firm Termination*

In 2010 and 2011, Firm discovered various firm and Securities and Exchange Commission (“SEC”) violations regarding Respondent’s outside business activities, advertising and use of client testimonials.<sup>1</sup> The alleged violations included:

1. Respondent’s Web site, [www.respondentsnamecfp.com](http://www.respondentsnamecfp.com), did not contain proper disclosures related to the registration status of Respondent’s Firm. The Web site appeared to present Respondent’s Firm as an independent investment advisory firm until late 2010 or early 2011, when the following disclosure language was added: “© 2010 Respondent’s Firm ... Advisory Services provided through [Firm], an SEC Registered Investment Advisory Firm.” Through at least September 2010, the Web site stated only “© 2009 Respondent’s Firm” with no disclosure that this entity was not independently registered.
2. Respondent’s LinkedIn profile contained testimonials from two clients and a former client, in violation of SEC policies. According to Respondent’s notes on an undated printout of his LinkedIn profile, the following testimonials appeared on his LinkedIn profile:
  - o January 2008: “Respondent and I have known each other for many years. Respondent is an experienced, competent financial manager. He is very honest and ethical. I can heartily recommend Respondent’s services.” Respondent’s handwritten note indicates that this commenter was a former client.

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<sup>1</sup> Respondent stated that he was not aware of any SEC inquiry into any of Firm’s allegations.

- January 2008: “Respondent’s financial guidance enabled me to successfully retire in 2001 even as the economy headed into the dot com bust. I look forward to continuing our financially prosperous relationship.” The profile states that this commenter “hired Respondent as a Financial Advisor in 1999” and Respondent’s handwritten note indicates that the commenter was a current client.
  - January 2008: “Respondent makes himself available at all hours to guide and give expert advice regarding all matters of finance. He has helped my investment portfolio grow well.” The profile states that this commenter “hired Respondent as a Financial Advisor in 2006.”
3. Respondent allowed visitors to his Facebook page to post comments in violation of firm policy and despite prior instructions that firm policy prohibited this functionality.
  4. Respondent’s outside business, abcinvesting.com, was not merely a publishing company, as Respondent indicated to Firm, but in fact engaged in financial planning and investment advisory activities and was not properly registered or disclosed.
  5. Respondent maintained additional Web sites related to his business activities that were not approved by Firm, including a Flickr profile and a Blogspot profile.
  6. Respondent used an undisclosed and unmonitored email address ([respondent35@yahoo.com](mailto:respondent35@yahoo.com)) for business activities.

Firm terminated Respondent in July 2011. According to Respondent’s FINRA U5 filing, the termination was due to violations of SEC rules and firm policies related to the use of client testimonials, failure to disclose outside business activities, and advertising violations. In July 2011 Respondent joined a new firm under a Heightened Supervision Plan that required daily reviews of Respondent’s client activity and contacts, regular and surprise review meetings, and additional supervision related to advertising, social media and outside business activities.

#### *2012 Obtaining Contents of Communications Misdemeanor Conviction*

In February 2012, Respondent notified CFP Board of his involvement in a criminal matter. In December 2011, Respondent was charged in the Circuit Court in State (“Court”) with one misdemeanor count of Obtaining Contents of Communications. Respondent stated that the charge arose from a review by Firm of his computer records after his termination. According to the charging documents, the president and chief compliance officer of Firm contacted the police after discovering that Respondent had recorded an April 2011 meeting with them without informing them of the recording. In February 2012, Respondent pleaded guilty to the charge. The Court issued a sentence of 18 months probation, a \$400 fine and prohibited any contact between Respondent and Firm.

#### *2011 Division of Finance and Corporate Securities Inquiry*

In July 2011 the Division of Finance and Corporate Securities (“DFCS”) initiated an inquiry into Respondent’s termination and criminal conviction. In August 2012, the DFCS issued Respondent a Warning Letter and closed its inquiry. In the Warning Letter, the DFCS stated that Respondent may have violated securities law when he: 1) conducted business as Respondent’s Firm and/or abcinvesting.com when those entities were not licensed with the DFCS, registered with the DFCS as Respondent’s assumed business names, or timely disclosed as outside business activities on Respondent’s Form U5. The DCFS determined that abcinvesting.com was not merely a publishing company, as Respondent asserted, because the company offered and advertised programs that provided financial tools and advice; 2) failed to timely update his Form U4 to disclose his criminal charge; and 3) published client testimonials related to Respondent’s investment adviser business activities on a social media Web site.

### *Insurance Sales*

Subsequent to Respondent's termination, Firm filed a complaint with the Insurance Division ("ID") regarding Respondent's sales of insurance products to three clients while affiliated with Firm. Firm retained an outside analyst to review sales of Universal Life Insurance policies to the following clients: RL, EM and the EM Profit Sharing Plan, and FG. The analyst reviewed various client documents as well as recordings made by Respondent of meetings with the clients. According to the analyst's report, each of the clients entered into a financial planning agreement with Respondent under which Respondent would manage the clients' assets on a non-commissionable basis and perform financial planning services for a percentage of the clients' assets. The report stated that Respondent recommended the policies to the clients as flexible retirement investment vehicles and that none of the clients seemed to understand the complex products he sold them.

The report found that Respondent misrepresented to ML the commission Respondent would receive from the sale of the policy. ML inquired about Respondent's payment and Respondent stated that he would receive commissions "spread out over a 10-year period." The report concluded that this was a misleading statement because Respondent chose Commission Payout Option A, in which he received 95% of the commissionable target premium in the first policy year and a 2% trail commission, rather than Option B, in which he would have received 13% of the commissionable target premium per year for 10 years. The report also found that Respondent had the ability to reduce the commissionable target premium of the policy, which would have allegedly increased the cash value and projected retirement income of the policy, but did not.

The policy for the EM Profit Sharing Plan was similar to ML's and Respondent again chose not to reduce the commissionable target premium, which would have allegedly increased the cash value and projected retirement income of the policy. The policy for EM was also similar, but contained an Accounting Benefit Rider that reduced the commissions and increased the cash values in the policy. The report also noted that Respondent recommended that EM refinance his primary residence, in part, to fund the policy.

Finally, the report stated that Respondent recommended that FG contribute all of his available cash flow assets toward the purchase of a similar policy. The report found, based on an analysis of Respondent's recording of a meeting with FG, that FG did not understand the policy he purchased and was not comfortable with its suitability as a retirement vehicle. FG surrendered the policy approximately one year after purchase. He confirmed that FG surrendered his policy because he did not understand that the growth in his policy would only appear at the end of each five-year segment and did not understand the charges related to the policy. FG recovered 76.5% of his premium payments.

Respondent indicated to CFP Board that he would not provide any documents related to these policies, including the financial plans, financial planning agreements, and any marketing and disclosure materials provided to the clients, because of confidentiality concerns. Respondent confirmed that he was in a financial planning relationship with each of these clients. He stated that he received both fees and commissions from these clients, including the following commissions for the sales of the policies: approximately \$6,000 for ML's policy; approximately \$178,000 for EM's two policies; and approximately \$5,000 for FG's policy. Respondent stated that there were no alternative compensation arrangements available and that he verbally disclosed his commissions to the clients.

At the hearing, Respondent presented testimony from his own insurance expert ("Expert"). Expert testified that several of the assumptions made by the outside analyst were erroneous, including his assumption that Respondent could have increased the cash value of the policies by changing his commission payout structure. For example, Expert stated that the commission does not affect the long-term cash value of the policy.

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### 2012 Insurance Division (“ID”) Inquiry

In September 2012, the ID informed Respondent that it had concluded that Respondent violated state law by failing to timely notify the ID of his arraignment on the misdemeanor Obtaining Contents of Communications charge and provide a copy of documents related to the criminal charge. The ID decided not to take any enforcement action against Respondent but urged him to know and comply with his regulatory obligations. The correspondence from the ID did not mention the above-referenced insurance sales.

#### *Misuse of the CFP® Marks*

In January 2012, CFP Board staff discovered that Respondent was misusing the CFP® marks in the following ways:

1. Improperly using the CFP® marks in the Internet domain name [www.respondentsnamecfp.com](http://www.respondentsnamecfp.com)
2. Improperly using the CFP® marks in his email address [respondent@respondentsnamecfp.com](mailto:respondent@respondentsnamecfp.com) and his assistant’s email address [employee@respondentsnamecfp.com](mailto:employee@respondentsnamecfp.com)

CFP Board sent Respondent a copy of the Guide to Use of the CFP® Certification Marks and requested proof that Respondent had corrected the misuse. In February 2012, Respondent informed CFP Board that the above domain name and email addresses were no longer in use.

In May 2012, CFP Board notified Respondent that it had discovered that Respondent was also misusing the CFP® marks in the following way:

1. Improperly using the CFP® marks in the Twitter handle @respondentsnameCFP and the corresponding Internet domain name <https://twitter.com/#!/respondentsnamecfp>

In May 2012, Respondent informed CFP Board that the @respondentsnameCFP Twitter handle was no longer in use.

### III. Commission’s Analysis and Conclusions Regarding Rule Violations

- A. *Rule 1.4 Violation - A certificant shall at all times place the interest of the client ahead of his or her own. When the certificant provides financial planning or material elements of financial planning, the certificant owes to the client the duty of care of a fiduciary as defined by CFP Board.*

CFP Board’s Complaint alleged that Respondent failed to act in the best interest of his clients as required by his fiduciary duty of care when he sold Universal Life Insurance policies to his financial planning clients RL, EM and the EM Profit Sharing Plan, and FG, representing the policies as flexible retirement investment vehicles. The Commission determined that CFP Board did not prove that Respondent failed to act in the best interest of his clients. The Commission determined that it did not have sufficient evidence to determine whether the policies were suitable. The Commission was able to review only the reports and the testimony of competing insurance experts who arrived at contradictory findings. The Commission also questioned the accuracy of the report prepared by Firm’s outside expert as it lacked details and the expert was not able to review the financial plans Respondent prepared for the clients. In addition, RL, EM and FG never filed a customer complaint against Respondent, and RL and EM provided letters of support for Respondent as part of the record in the matter. Based on the information the Commission was able to review, the Commission determined that Respondent’s sale of the insurance

policies was based on logical planning strategies. Thus, Respondent did not violate Rule 1.4 of the *Rules of Conduct*.

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

CFP Board's Complaint alleged that Respondent communicated to clients and prospective clients false or misleading information related to his professional qualifications or services when he: 1) maintained a LinkedIn profile containing testimonials from two clients and a former client in violation of SEC policies prohibiting client testimonials as misleading statements; 2) maintained a Web site that did not contain proper disclosures related to the registration status of Respondent's Firm and appeared to present Respondent's Firm as an independent investment advisory firm; and 3) misrepresented his compensation to RL.

The Commission determined that CFP Board did not prove that Respondent made false or misleading statements relating to his professional qualifications or services. The Commission determined that Respondent's LinkedIn profile contained client testimonials that were posted by clients and not Respondent. The record reflected, however, that Respondent removed the testimonials as soon as he became aware of them. In addition, Respondent corrected the issues with the disclosure on his website immediately after being made aware of them. With respect to the communication regarding compensation, the recording in the record clearly indicated that the RL was aware that Respondent would receive a commission due to the sale of the insurance policy. Thus, Respondent did not violate Rule 2.1 of the *Rules of Conduct*.

*C. Rule 4.1 Violation - A certificant shall treat prospective clients and clients fairly and provide professional services with integrity and objectivity.*

CFP Board's Complaint alleged that Respondent failed to treat prospective clients and clients fairly and provide professional services with integrity and objectivity when he: 1) maintained a LinkedIn profile containing testimonials from two clients and a former client in violation of SEC policies prohibiting client testimonials as misleading statements; 2) maintained a Web site that did not contain proper disclosures related to the registration status of Respondent and appeared to present Respondent as an independent investment advisory firm; 3) misrepresented his compensation to RL; 4) had the ability to reduce the commissionable target premium of the policies he sold to his clients, which would have increased the cash value and projected retirement income of the policies, but did not; and 5) sold unsuitable insurance policies to his financial planning clients RL, EM and the EM Profit Sharing Plan, and FG.

The Commission determined that CFP Board failed to prove that Respondent did not treat clients fairly and provide professional services with integrity and objectivity. The Commission determined that Respondent immediately corrected the issues associated with his LinkedIn profile and his website disclosures. The Commission determined that while these were compliance issues, that this did not reflect on how Respondent treated his clients. With respect to the communication regarding compensation, the recording in the record clearly indicated that RL was aware that Respondent would receive a commission due to the sale of the insurance policy. The Commission did not find that it was an issue that Respondent changed the way he received the commission. The rule only requires that the client be made aware of the type of compensation not how it will be paid to the CFP® professional. Finally, the Commission determined that CFP Board did not present sufficient evidence to determine whether the

policies were suitable. The Commission was able to review only the reports and the testimony of competing insurance experts who arrived at contradictory findings. The Commission questioned the accuracy of the report prepared by Firm's outside expert as it lacked details and the expert was not able to review the financial plans Respondent prepared for the clients. Many of the outside expert's claims were contradicted by the record. For example, the outside expert stated that EM funded the policy with all of his cash flow. During testimony, however, it was determined that EM had an annual income of approximately \$300,000 per year of which \$12,000 was used to fund the policy. Outside of this information, the Commission lacked any material facts about the three clients that were necessary to determine if the recommendations were suitable. In addition, RL, EM and FG never filed a customer complaint against Respondent and RL and EM provided letters of support for Respondent as part of the record in the matter. Based on the information the Commission was able to review, Respondent's sale of the insurance policies was based on logical planning strategies. Thus, Respondent did not violate Rule 4.1 of the *Rules of Conduct*.

*D. Rule 4.3 Violation - A certificant shall be in compliance with applicable regulatory requirements governing professional services provided to the client.*

The Commission determined that Respondent failed to comply with applicable regulatory requirements governing professional services provided to the client when he violated state securities laws by: 1) conducting business as Respondent and/or abcinvesting.com when those entities were not licensed with the DFCS, registered with the DFCS as Respondent's assumed business names, or timely disclosed as outside business activities on Respondent's Form U5; 2) failing to timely update his Form U4 to disclose his criminal charge; 3) maintaining a LinkedIn profile containing testimonials from two clients and a former client; and 4) failing to timely notify the ID of his arraignment on the misdemeanor Obtaining Contents of Communications charge and provide a copy of documents related to the criminal charge, resulting in a Warning Letter from the DFCS and a conclusion by the ID that Respondent violated State law. Thus, Respondent violated Rule 4.3 of the *Rules of Conduct*.

*E. . Rule 4.4 Violation - A certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients.*

CFP Board's Complaint alleged that Respondent failed to exercise reasonable and prudent professional judgment in providing professional services to clients when he: 1) sold unsuitable insurance policies to his financial planning clients RL, EM and the EM Profit Sharing Plan, and FG; 2) communicated to clients and prospective clients misleading information related to client testimonials, the registration status of Respondent, and his compensation; 3) violated SEC rules and firm policies related to the use of client testimonials, failure to disclose outside business activities, and advertising violations, resulting in his termination from Firm; and 4) violated state securities laws related to registration of his business entities, disclosure of outside business activities, client testimonials, and disclosure of his criminal charge to all regulatory bodies.

The Commission determined that CFP Board did not present sufficient evidence to determine whether the policies were suitable. The Commission was able to review only the reports and testimony of competing insurance experts who arrived at contradictory findings. The Commission questioned the accuracy of the report prepared by Firm's outside expert as it lacked details and the expert was not able to review the financial plans Respondent prepared for the clients. Many of the outside expert's claims were contradicted by the record. For example, the outside expert stated that EM funded the policy with all of his cash flow. During testimony, however, it was determined that EM had an annual income of approximately \$300,000 per year of which \$12,000 was used to fund the policy. Outside of this information, the Commission lacked any material facts about the three clients that were necessary to

determine if the recommendations were suitable. In addition, RL, EM and FG never filed a customer complaint against Respondent and RL and EM provided letters of support for Respondent as part of the record in the matter. Based on the information the Commission was able to review, Respondent's sale of the insurance policies was based on logical planning strategies. Thus, Respondent did not violate Rule 4.4 of the *Rules of Conduct*.

*F. Rule 4.5 Violation - In addition to the requirements of rule 1.4, a certificant shall make and/or implement only recommendations that are suitable for the client.*

CFP Board's Complaint alleged that Respondent failed to make and implement only recommendations that are suitable for the client when he recommended Universal Life Insurance policies to his financial planning clients RL, EM and the EM Profit Sharing Plan, and FG, representing the policies as flexible retirement investment vehicles.

The Commission determined that CFP Board did not present sufficient evidence to determine whether the policies were suitable. The Commission was able to review only the reports and the testimony of competing insurance experts who arrived at contradictory findings. The Commission questioned the accuracy of the report prepared by Firm's outside expert as it lacked details and the expert was not able to review the financial plans Respondent prepared for the clients. Many of the outside expert's claims were contradicted by the record. For example, the outside expert stated that EM funded the policy with all of his cash flow. During testimony, however, it was determined that EM had an annual income of approximately \$300,000 per year of which \$12,000 was used to fund the policy. Outside of this information, the Commission lacked any material facts about the three clients that were necessary to determine if the recommendations were suitable. In addition, RL, EM and FG never filed a customer complaint against Respondent and RL and EM provided letters of support for Respondent as part of the record in the matter. Based on the information the Commission was able to review, Respondent's sale of the insurance policies was based on logical planning strategies. Thus, Respondent did not violate Rule 4.5 of the *Rules of Conduct*.

*G. Rule 5.1 Violation - 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.*

The Commission determined that Respondent failed to perform professional services with dedication to the lawful objectives of his employer and in accordance with the *Code of Ethics* when he violated SEC rules and firm policies related to the use of client testimonials, failure to disclose outside business activities and advertising violations, resulting in his termination from Firm. The Commission determined that the client testimonials were a violation of SEC rules and noted that it was clear that the [abcinvesting.com](http://abcinvesting.com) website was more than a publishing website. Thus, Respondent violated Rule 5.1 of the *Rules of Conduct*.

*H. Rule 6.1 Violation – A certificant shall abide by the terms of all agreements with CFP Board, including, but not limited to, using the CFP® marks properly and cooperating fully with CFP Board's trademark and professional review operations and requirements.*

The Commission determined that Respondent failed to abide by the terms of all agreements with CFP Board when he improperly used the CFP® marks in the Internet domain name [www.respondentsnamecfp.com](http://www.respondentsnamecfp.com), the email addresses [Respondent@respondentsnamecfp.com](mailto:Respondent@respondentsnamecfp.com) and [employee@respondentsnamecfp.com](mailto:employee@respondentsnamecfp.com), the Twitter handle @respondentsnameCFP and the corresponding Internet domain name <https://twitter.com/#!/respondentsnamecfp>. Respondent admitted to these violations

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in the record and corrected all of the issues when he was made aware of them. Thus, Respondent violated Rule 6.1 of the *Rules of Conduct*.

*I. Rule 6.5 Violation - 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.*

CFP Board's Complaint alleged 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) sold unsuitable insurance policies to his financial planning clients RL, EM and the EM Profit Sharing Plan, and FG; 2) communicated to clients and prospective clients misleading information related to client testimonials, the registration status of Respondent, and his compensation; 3) violated SEC rules and firm policies related to the use of client testimonials, failure to disclose outside business activities and advertising violations, resulting in his termination from Firm; 4) violated state securities laws related to registration of his business entities, disclosure of outside business activities, client testimonials and disclosure of his criminal charge to all regulatory bodies; 5) pleaded guilty to one misdemeanor count of Obtaining Contents of Communications; and 6) improperly used the CFP® marks in the Internet domain name [www.respondentsnamecfp.com](http://www.respondentsnamecfp.com), the email addresses [Respondent@respondentsnamecfp.com](mailto:Respondent@respondentsnamecfp.com) and [employee@respondentsnamecfp.com](mailto:employee@respondentsnamecfp.com), the Twitter handle @respondentsnameCFP and the corresponding Internet domain name <https://twitter.com/#!/respondentsnamecfp>.

As noted above, the Commission found that CFP Board did not prove that Respondent made unsuitable recommendations to his clients and did not communicate misleading information related to client testimonials, the registration of Respondent, and his compensation. The Commission did find that CFP Board proved the remaining allegations under this rule violation. Thus, Respondent violated Rule 6.5 of the *Rules of Conduct*.

*J. Practice Standard 400-2 Violation – The financial planning practitioner shall develop the recommendation(s) based on the selected alternative(s) and the current course of action in an effort to reasonably meet the client's goals, needs and priorities.*

CFP Board's Complaint alleged that Respondent failed to develop financial planning recommendations that reasonably met his clients' goals, needs and priorities when he recommended Universal Life Insurance policies to his financial planning clients RL, EM and the EM Profit Sharing Plan, and FG, representing the policies as flexible retirement investment vehicles.

The Commission determined that CFP Board did not present sufficient evidence to determine whether the policies were suitable. The Commission was able to review only the reports and the testimony of competing insurance experts who arrived at contradictory findings. The Commission questioned the accuracy of the report prepared by Firm's outside expert as it lacked details and the expert was not able to review the financial plans Respondent prepared for the clients. Many of the outside expert's claims were contradicted by the record. For example, the outside expert stated that EM funded the policy with all of his cash flow. During testimony, however, it was determined that EM had an annual income of approximately \$300,000 per year of which \$12,000 was used to fund the policy. Outside of this information, the Commission lacked any material facts about the three clients that were necessary to determine if the recommendations were suitable. In addition, RL, EM and FG never filed a customer complaint against Respondent and RL and EM provided letters of support for Respondent as part of the record in the matter. Based on the information the Commission was able to review, Respondent's sale of the insurance policies was based on logical planning strategies. Thus, Respondent did not violate *Practice Standard 400-2*.

- K. *Practice Standard 400-3 Violation – The financial planning practitioner shall communicate the recommendation(s) in a manner and to an extent reasonably necessary to assist the client in making an informed decision.*

CFP Board’s Complaint alleged that Respondent failed to communicate his recommendation in a manner and to an extent reasonably necessary to assist his clients in making an informed decision regarding the insurance recommendations he made to his clients. The Commission determined that CFP Board did not present sufficient evidence to determine whether the policies were suitable. The Commission was able to review only the reports and the testimony of competing insurance experts who arrived at contradictory findings. The Commission questioned the accuracy of the report prepared by Firm’s outside expert as it lacked details and the expert was not able to review the financial plans Respondent prepared for the clients. Many of the outside expert’s claims were contradicted by the record. For example, the outside expert stated that EM funded the policy with all of his cash flow. During testimony, however, it was determined that EM had an annual income of approximately \$300,000 per year of which \$12,000 was used to fund the policy. Outside of this information, the Commission lacked any material facts about the three clients that were necessary to determine if the recommendations were suitable. In addition, RL, EM and FG never filed a customer complaint against Respondent and RL and EM provided letters of support for Respondent as part of the record in the matter. Based on the information the Commission was able to review, Respondent’s sale of the insurance policies was based on logical planning strategies. Thus, Respondent did not violate *Practice Standard 400-3*.

- L. *Practice Standard 500-2 Violation – The financial planning practitioner shall select appropriate products and services that are consistent with the client’s goals, needs and priorities.*

CFP Board’s Complaint alleged that Respondent failed to select appropriate products and services that were consistent with his clients’ goals, needs and priorities when he sold Universal Life Insurance policies to his financial planning clients RL, EM and the EM Profit Sharing Plan, and FG, representing the policies as flexible retirement investment vehicles.

The Commission determined that CFP Board did not present sufficient evidence to determine whether the policies were suitable. The Commission was able to review only the reports and the testimony of competing insurance experts who arrived at contradictory findings. The Commission questioned the accuracy of the report prepared by Firm’s outside expert as it lacked details and the expert was not able to review the financial plans Respondent prepared for the clients. Many of the outside expert’s claims were contradicted by the record. For example, the outside expert stated that EM funded the policy with all of his cash flow. During testimony, however, it was determined that EM had an annual income of approximately \$350,000 per year of which \$12,000 was used to fund the policy. Outside of this information, the Commission lacked any material facts about the three clients that were necessary to determine if the recommendations were suitable. In addition, RL, EM and FG never filed a customer complaint against Respondent and RL and EM provided letters of support for Respondent as part of the record in the matter. Based on the information the Commission was able to review, Respondent’s sale of the insurance policies was based on logical planning strategies. Thus, Respondent did not violate *Practice Standard 500-2*.

#### 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

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for discipline under Article 3(a) because Respondent violated Rules 1.4, 2.1, 4.1, 4.3, 4.4, 4.5, 5.1, 6.1 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 as mitigating factors that:

1. Respondent has no disciplinary history;
2. Respondent's clients did not file a customer complaint in the face of serious allegations of unsuitable recommendations;
3. The split between Respondent and Firm led to the issues raised by CFP Board in its Complaint;
4. Respondent presented numerous letters of recommendations as part of his submission, including letters written by RL and EM;
5. Firm agreed to over \$1 million in fines with the SEC, which damaged the credibility of their investigation and its allegations against Respondent; and
6. Respondent immediately corrected his marks misuse when CFP Board made him aware of it.

The Commission did not consider any aggravating factors.

The Commission consulted Anonymous Case History ("ACH") 22544. ACH 22544 involved a misdemeanor charge and misuse of the CFP® marks, resulting in a private censure. The Commission noted that the misdemeanor charge in ACH 22544 was more serious than the charge at issue in this case. The Commission also consulted *Sanction Guidelines* 12 (Employer Policies Violation), 24 (Misdemeanor Criminal Conviction), 25 (Misuse of the CFP® marks) and 30 (Securities Law Violation). All of the *Sanction Guidelines* and the ACHs the Commission considered recommended a private censure or a public letter of admonition. The Panel determined that the mitigating factors cited above warranted the deviation from a public letter of admonition to a private censure.