

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 27983

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This is a summary of a decision issued following the February 2014 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 *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 was terminated in March 2012 by Firm for taking a mandatory annuity training course on behalf his supervisor (“Supervisor”) in November 2011.

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

*2012 Firm Termination*

According to Respondent’s August 2012 statement to CFP Board, in late summer of 2011, Supervisor accepted a new client from State. One of Supervisor’s recommendations for that client was to invest \$45,000 into a variable annuity. That client agreed to purchase the annuity and executed all the paperwork. Respondent’s role was to complete all back office activities such as transactions. In September 2011, Supervisor learned that she had to complete mandatory annuity training to sell the variable annuity in State. In September 2011, Supervisor informed Respondent not to complete the client’s annuity submission because she didn’t know if the training time to take the course was worth the income she would receive from the annuity sale.

Respondent stated that in October 2011, Supervisor approached him verbally to discuss the training. Supervisor’s initial idea was to have her other associate advisor complete the training and split 50% of the revenue as he had to be licensed in State. Supervisor then decided to have Respondent take the training for her so that she could keep the entire commission. She was going to compensate the other advisor over \$1,000 for taking the training, so Supervisor stated that she wished to also compensate Respondent. Supervisor paid Respondent \$500 to complete the training. Respondent stated that he felt pressured to do so. Respondent stated that he was paid on his normal paycheck, with the \$500 added to his quarterly bonus. Respondent was not able to provide CFP Board with documentation on the \$500 payment.

Respondent explained that he had a non-compete agreement with Supervisor and she used this agreement to emphasize the fact that Respondent had to do things her way. Respondent stated that he would have had to spend a great deal of money to challenge the non-compete agreement, so he simply followed her request to complete the training for her. Respondent completed the training in October 2011. Supervisor directed Respondent to report the compensation as a bonus.

In November 2011, Respondent ended his professional association with Supervisor due to a Firm internal investigation Firm conducted on Supervisor for discretionary trading. That same day, Respondent turned himself in to his compliance officer for his violation. Respondent subsequently spent over \$9,000 in legal fees and \$14,000 paying Supervisor to buy out of the non-compete agreement. The buyout was completed in February 2012.

In March 2012, Firm terminated Respondent for violating their code of conduct rules for taking the training for Supervisor. Respondent provided CFP Board with a copy of his Notice of Termination (“Notice”) from Firm. The Notice stated the following: “...you acknowledged accepting \$500 from your former sponsoring advisor to complete the continuing education requirement for her State insurance license. [Firm] expects all persons to adhere to Firm’s core values, which include acting with integrity always.” The Notice then cited violations of Section 1.1 of Firm’s Compliance Manual and Firm’s Financial Code of Conduct, both of which reference conducting business ethically and with integrity.

Supervisor’s BrokerCheck record indicates that Firm permitted Supervisor to resign in April 2012: “Advisor was permitted to resign following firm finding of company policy violations related to discretion and acting ethically in completion of continuing education training.”

In October 2013, the Financial Industry Regulatory Authority, Inc. (“FINRA”) finalized a Letter of Acceptance, Waiver and Consent (“AWC”) with Supervisor. Supervisor consented to a 60-day suspension effective from October 2013 through December 2013 and a \$5,000 fine for permitting Respondent to take required State annuity training for her and for compensating him for taking the training.

#### 2012 FINRA AWC

In his NOI Response of August 2012, Respondent provided a copy of letter dated April 2012 from an Associate Principal Investigator at FINRA (“FINRA Investigator”). In her letter, FINRA Investigator informed Respondent that FINRA was conducting an inquiry into his recent termination from Firm. In April 2012, Respondent responded to FINRA Investigator’s request for information and documentation on his Firm Termination. In August 2012, Respondent provided CFP Board with a copy of his response to FINRA, which included email correspondence with Supervisor regarding the annuity training and the \$500 bonus.

In November 2012, FINRA Senior Examiner (“FINRA Examiner”) sent Respondent a letter informing him that his matter had been forwarded to the District Office for further review. FINRA Examiner requested additional information and documentation from Respondent. In December 2012, Respondent responded by providing a copy of Respondent’s employment agreement with Supervisor, as well as their settlement agreement.

In March 2013, FINRA District Director sent Respondent a letter informing him that his matter had been referred to FINRA’s Enforcement Department. Respondent provided CFP Board with a copy of this letter in March 2013. In August 2013, Respondent contacted CFP Board to inform CFP Board that FINRA was mailing him an AWC. In October 2013, Respondent entered into an AWC with FINRA. Without admitting or denying the findings, Respondent accepted and consented to the following findings by FINRA:

“[State] requires registered representatives to complete a 4-hour training course prior to selling, soliciting or negotiating annuities. [Respondent] agreed to take the required [State] annuity training for [Supervisor]. [In October 2011], [Respondent] logged onto [www.webce.com](http://www.webce.com) as [Supervisor] and took the [State] annuity training. [Supervisor] compensated [Respondent] for taking the training for her. As a result of the foregoing conduct, [Respondent] violated FINRA Rule 2010 in that he failed to adhere to high standards of commercial honor and just and equitable principles of trade.”

Respondent consented to the imposition of the following sanctions: 1) a suspension of 31 calendar days from association with any FINRA broker-dealer in any capacity; and 2) a \$5,000 fine. Respondent’s suspension was in effect in 2013.

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

- A. *Rule 5.1 – A certificant 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 completed an annuity training course for his supervisor and accepted compensation from his supervisor for taking the course, in violation of Section 1.1 of Firm's Compliance Manual and Firm's Financial Code of Conduct. Firm terminated Respondent for this misconduct. Respondent's misconduct also violated FINRA Rule 2010. Respondent admitted that he engaged in this conduct. Thus, Respondent violated *Rules of Conduct* Rule 5.1.

- B. *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, on the CFP® marks and on the profession when he completed an annuity training course for his supervisor and accepted compensation from his supervisor for taking the course, in violation of Section 1.1 of Firm's Compliance Manual and Firm's Financial Code of Conduct. Firm terminated Respondent for this misconduct. Respondent's misconduct also violated FINRA Rule 2010. Respondent admitted that he engaged in this conduct. Thus, Respondent violated *Rules of Conduct* Rule 6.5.

### IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a) and 3(d) of CFP Board's *Disciplinary Rules and Procedures* ("Disciplinary Rules"). Article 3(a) of CFP Board's *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*. Article 3(d) provides ground for discipline for any act that is the proper basis for professional discipline, as defined herein, provided professional discipline shall not be a prerequisite to the institution of disciplinary proceedings, and provided further, that dismissal of charges in a professional discipline proceeding shall not necessarily bar a disciplinary action. The Commission found grounds for discipline under Article 3(d) because FINRA suspended Respondent for 31 calendar days. Pursuant to Article 4.2 of the *Disciplinary Rules*, the Commission issued the Respondent a Public Letter of Admonition.

In mitigation, the Commission considered that:

1. Respondent's conduct did not result in any client harm;
2. Respondent was fully contrite before the Commission; and
3. Respondent brought the conduct at issue to the attention of Firm and fully cooperated with the process.

The Commission cited as an aggravating factor that Respondent was terminated by Firm due to the conduct at issue.

In reaching its decision, the Commission consulted *Anonymous Case Histories* 23408, 28190 and 26993. The Commission also consulted *Sanction Guidelines* 12 (Employer Policies Violation), 30 (Securities Law Violation) and 33 (Professional discipline involving a suspension for more than one calendar month and less than three).