

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 28127

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This is a summary of a decision issued following the October 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 prior to and after January 1, 2009. The Rules in effect for conduct occurring before January 1, 2009 were Rules 101 through 705 of CFP Board’s *Code of Ethics and Professional Responsibility* (“*Code of Ethics*”). The Rules in effect for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board’s *Rules of Conduct*.

I. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) recommended that a client invest approximately \$100,000 in an oil and gas joint venture, outside the scope of Respondent’s relationship with his Firm, and which resulted in the termination of Respondent’s employment; and 2) failed to disclose to CFP Board that he signed a FINRA AWC wherein he consented to a \$5,000 fine and suspension from association with any Financial Industry Regulatory Authority, Inc. (“FINRA,” formerly known as the National Association of Securities Dealers or “NASD”) member in any capacity for a period of six months due to his outside business activities.

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

In April 1, 2007, Respondent accepted the position of Chief Executive Officer of Firm. In August 2008 Respondent began updating a comprehensive financial plan for Client. Respondent recommended that Client invest approximately \$100,000 in an oil and gas joint venture offering with Company. Respondent received an interest in the venture valued at approximately \$13,000. The oil and gas joint venture failed, resulting in a 100% loss of Client’s investments. Respondent’s activities were considered outside the scope of his relationship with Firm. Firm terminated Respondent’s employment in January 2009 as a result of his conduct. In June 2010, Firm filed a Form U5 on behalf of Respondent terminating his association with Firm as of May 2010. In August 2010, Firm filed a Form U5 Amendment on behalf of Respondent disclosing that he had engaged in outside business activities while he was registered with Firm.

Respondent entered into a Letter of Acceptance, Waiver and Consent (“AWC”) in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for a period of six months. In May 2012, FINRA accepted the AWC. In the AWC, Respondent agreed to the entry of findings that he violated NASD Conduct Rules 3030 and 2110.

III. Commission’s Analysis and Conclusions Regarding Rule Violations

- A. *Rule 406 – A CFP Board designee shall perform professional services with dedication to the lawful objectives of the employer and/or in accordance with the 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 recommended that a client invest approximately \$100,000 in an oil and gas joint venture, outside the scope of Respondent’s relationship with Firm, and which resulted in the termination of Respondent’s employment. Further, Respondent admitted that he sold an oil and gas investment that was not approved by Firm and did not report the compensation he received to Firm. Thus, Respondent violated Rule 406 of the *Code of Ethics*.

- B. Rule 606(a) – A CFP Board designee shall perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities.*

The Commission determined that Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when he recommended that a client invest approximately \$100,000 in an oil and gas joint venture, outside the scope of Respondent's relationship with Firm, and in violation of NASD Rules 3030 and 2110. The Commission also determined that the sale of an unapproved investment as well as the compensation received outside the payment methodology of Firm supported this finding. Thus, Respondent violated Rule 606(a) of the *Code of Ethics*.

- C. Rule 606(b) – A CFP Board designee shall perform services in accordance with applicable rules, regulations and other established policies of CFP Board.*

The Commission determined that Respondent failed to perform services in accordance with the applicable rules, regulations and other established policies of CFP Board when he: 1) recommended that a client invest approximately \$100,000 in an oil and gas joint venture, outside the scope of Respondent's relationship with Firm and in violation of NASD Rules 3030 and 2110; and 2) signed a FINRA AWC wherein he consented to a \$5,000 fine and suspension from association with any FINRA member in any capacity for a period of six months. Thus, Respondent violated Rule 606(b) of the *Code of Ethics*.

- D. Rule 607 – A CFP Board designee shall not engage in conduct which reflects adversely on his/her integrity or fitness as a CFP Board designee, upon the marks, or upon the profession.*

The Commission determined that Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks and upon the profession when he: 1) recommended that a client invest approximately \$100,000 in an oil and gas joint venture in violation of NASD Rules 3030 and 2110; 2) signed a FINRA AWC wherein he consented to a \$5,000 fine and suspension from association with any FINRA member in any capacity for a period of six months; and 3) violated Rules 406, 606(a) and 606(b). Thus, Respondent violated Rule 607 of the *Code of Ethics*.

- E. Rule 6.4 – A certificant shall notify CFP Board in writing of any conviction of a crime, except misdemeanor traffic offenses or traffic ordinance violations unless such offense involves the use of alcohol or drugs, or of any professional suspension or bar within 10 calendar days after the date on which the certificant is notified of the conviction, suspension or bar.*

The Commission determined that Respondent failed to notify CFP Board in writing of any professional suspension or bar within 10 calendar days after the date on which the certificant was notified of the conviction, suspension or bar when, FINRA announced Respondents' suspension in its monthly disciplinary action report. Respondents' suspension became effective in June 2012. Respondent failed to notify CFP Board of the suspension. CFP Board discovered Respondents' professional suspension in August 2012. Thus, Respondent violated Rule 6.4 of the *Rules of Conduct*.

- F. Rule 6.5 – A certificant shall not engage in conduct which reflects adversely on integrity or fitness, upon the CFP® marks, or upon the profession.*

The Commission determined that Respondent engaged in conduct that reflected adversely on his integrity and fitness, upon the CFP® marks and upon the profession when he failed to disclose to CFP Board that he signed a FINRA AWC in which he consented to a \$5,000 fine and suspension from association with any FINRA member in any capacity for a period of six months. Thus, Respondent violated Rule 6.5 of the *Rules of Conduct*.

#### IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a), 3(d) and 3(e) 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 *Code of Ethics* or *Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 406, 606(a), 606(b) and 607 of the *Code of Ethics* and Rules 6.4 and 6.5 of the *Rules of Conduct*. Article 3(d) provides grounds for discipline for any act that is the proper basis for professional discipline. The Commission founds grounds for discipline under Article 3(d) because FINRA suspended Respondent for six months. Article 3(e) provides grounds for discipline for any act or omission that violates the *Disciplinary Rules*. The Commission found grounds for discipline under Article 3(e) because Respondent failed to report his FINRA suspension within 30 calendar days, as required by Article 13.2 of the *Disciplinary Rules*. Pursuant to Article 4.3 of the *Disciplinary Rules*, the Commission issued a one year and one day suspension.

The Commission cited as a mitigating factor that prior to the matter at issue, Respondent had a clean disciplinary history.

The Commission cited the following aggravating factors:

1. Respondent was purportedly acting as CEO and Compliance officer of Firm when the unapproved sale took place; and
2. Respondent's receipt of compensation outside Firm, even on an approved investment, was a violation of the Standards.

While considering the degree of sanction to impose, the Commission consulted Anonymous Case Histories 26856 and 26289 and Sanction Guidelines 12 (Employer Policy Violation), 30 (Selling Away) and 34 (Professional Suspension for Over 90 Days). Notwithstanding Respondent's claim that he was unaware that the investment had not been approved, both his purported role as compliance officer and his compensation outside of Firm did not provide a basis for any variance from the Sanction Guidelines.