

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 28139

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This is a summary of a Settlement Agreement entered into at the February 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 before 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. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) signed and issued an audit opinion letter as a “CPA” in State 1, when Respondent was not licensed in the state as a CPA with the State 1 CPA Board; 2) stated that he had performed an audit of Company 1, when he did not; and 3) did not have any working papers or any other audit documentation to support the audit opinion he signed and issued on behalf of Company 1.

II. Findings of Fact

***2010 State 1 CPA Board Consent Order***

In November 2009, the State 1 CPA Board sent an inquiry letter to Respondent related to a June 2008 audit he performed for a State 1 company (“Company 1”). Respondent signed the audit opinion letter, issued on Firm’s letterhead, as a “CPA” in State 1 when Respondent was not licensed in the state as a CPA, nor was Firm registered with the State 1 CPA Board. To assist with their investigation, the State 1 CPA Board requested that Respondent provide certain documentation and information related to the audit report he issued on behalf of Company 1, including copies of his letter of engagement, working papers and the audit report.

In his November 2009 response letter to the State 1 CPA Board, Respondent stated that he had acted imprudently because although he was a licensed CPA in State 2, he had no authority to perform an audit for a State 1 client. Respondent explained that he did not have a letter of engagement because Company 1 was not his client and he had not performed an actual audit for the client. Respondent admitted that he signed the audit opinion letter as a favor to a colleague (“Colleague”) who was registered with Respondent’s broker-dealer (“Broker-Dealer”). According to Respondent, Colleague presented him with Excel spreadsheets that supported expenditure amounts reported on Company 1’s statements. Respondent signed the opinion letter that Colleague prepared after a cursory review of the statements. Respondent stated that, although he did not request any compensation for this “favor,” Colleague sent a \$250 check to Respondent two weeks later and Respondent did not return the check.

Respondent admitted that he could not defend his actions and that he knew that what he did was unethical. Respondent stated he was aware that his actions indicated a lack of judgment and respect for the professional designation he attained through years of study and effort. Respondent maintains, however, that his actions were not based on deception or fraud, but rather imprudence.

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In January 2010, the State 1 CPA Board approved a consent order with Respondent. Pursuant to the State 1 CPA Board Consent Order, as an individual practitioner State 2 licensed CPA firm, Respondent may render audit services to a client in State 1 through its practice privilege. In order to do so, however, Respondent's firm must first comply with State 1 regulations that include peer review and notice to the State 1 CPA Board that the firm is performing an audit, pursuant to the State 1 General Statutes ("SIGS"). Respondent did not: 1) provide such notice regarding the Company 1 engagement; 2) perform any audit field work; and 3) have any working papers or any other audit documentation to support the audit opinion.

The State 1 CPA Board concluded that Respondent's actions violated the State 1 Administrative Code ("S1AC"). As a result, the State 1 CPA Board: 1) permanently revoked Respondent's individual practitioner's practice privilege to perform public accounting services to State 1 clients; and 2) assessed Respondent a \$1,000 civil penalty.

### ***2011 State 2 CPA Board Consent Order***

As a State 2 CPA, Respondent was required to report the State 1 CPA Board Consent Order to the State 2 CPA Board. In March 2010, Respondent sent a letter to the State 2 CPA Board informing them of the January 2010 consent order he executed with the State 1 CPA Board. The State 2 CPA Board opened an investigation into Respondent's conduct.

In March 2011, Respondent entered into a consent order with the State 2 CPA Board, agreeing to a 24-month suspension with 18 months stayed and a \$5,000 fine. In July 2011, the State 2 CPA Board approved the consent order.

Respondent did not disclose the State 1 CPA Board revocation and the State 2 CPA Board suspension to CFP Board within 10 calendar days, as he was required to, pursuant to Article 12.2 of the *Disciplinary Rules*. Respondent did, however, disclose the matters on his August 2012 Renewal Application.

### **III. Rule Violations**

#### ***A. Rule 201 – A CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services***

Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when he: 1) signed and issued an audit opinion letter as a "CPA" in State 1, when Respondent was not licensed in the state as a CPA, nor was his firm registered with the State 1 CPA Board; 2) stated that he had performed an audit of Company 1, when he had not; and 3) had no working papers or any other audit documentation to support the audit opinion he signed and issued on behalf of Company 1. Thus, Respondent violated *Code of Ethics* Rule 201.

#### ***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***

Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when he signed and issued an audit opinion as a State 1 CPA without first complying with State 1 regulations governing practice privilege, in violation of the S1AC. Thus, Respondent violated *Code of Ethics* Rule 606(a).

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

Respondent failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board when he violated *Code of Ethics* Rules 102, 201, 606(a), 607 and 701 by: 1) signing and issuing an audit opinion letter as a “CPA” in State 1, when Respondent was not licensed in the state as a CPA, nor was his firm registered with the State 1 CPA Board; 2) stating that he had performed an audit of Company 1, when he had not; and 3) not having any working papers or any other audit documentation to support the audit opinion he signed and issued on behalf of Company 1. Thus, Respondent violated *Code of Ethics* Rule 606(b).

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

Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the CFP® marks and upon the profession when he: 1) signed and issued an audit opinion letter as a “CPA” in State 1, when Respondent was not licensed in the state as a CPA, nor was his firm registered with the State 1 CPA Board; 2) stated that he had performed an audit of Company 1, when he did not; and 3) did not have any working papers or any other audit documentation to support the audit opinion he signed and issued on behalf of Company 1. Thus, Respondent violated *Code of Ethics* Rule 607.

*E. Rule 701 – A CFP Board designee shall provide services diligently*

Respondent failed to provide services diligently when he: 1) did not obtain a letter of engagement from Company 1; 2) signed and issued an audit opinion letter without performing an actual audit for the client; and 3) did not have any working papers or any other audit documentation to support the audit opinion he signed and issued on behalf of Company 1. Thus, Respondent violated *Code of Ethics* Rule 701.

*F. 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*

Respondent failed to notify CFP Board of the State 1 CPA Board Revocation and the State 2 CPA Board Suspension within 10 calendar days after he received notification of the revocation and suspension. Thus, Respondent violated *Rules of Conduct* Rule 6.4.

#### 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* and *Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 102, 201, 606(a), 606(b), 607 and 701 of the *Code of Ethics* and Rule 6.4 of the *Rules of Conduct*. Article 3(d) of the *Disciplinary Rules* provides grounds for discipline for any act that is the proper basis for professional discipline. The Commission found grounds for discipline under Article 3(d) because of the professional discipline issued by State 1 and State 2’s CPA Board. Article 3(e) of the *Disciplinary Rules* provides grounds for discipline for any act or omission that violates the *Disciplinary Rules*. The

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Commission found grounds for discipline under Article 3(e) because Respondent failed to report the professional discipline issued by State 1 and State 2 within 10 calendar days. The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the Findings of Fact and Rule Violations. Based on the terms of the Settlement Agreement, the Commission issued to Respondent a suspension of one year and one day, pursuant to Article 4.3 of the *Disciplinary Rules*.

In coming to this decision, the Commission consulted *Sanction Guidelines* 14 (Failure to Disclose), 20(c) (Misrepresentation to Non-Clients), 27 (Practicing Without a Professional License) and 34 (Professional Suspension for 3 Months or More). The Commission also consulted Anonymous Case History 23714.

The Commission considered that Respondent took full responsibility in admitting guilt and that he self-disclosed the conduct upon renewal although he failed to inform CFP Board in the required 10 days as mitigating factors.

The Commission considered Respondent's two-year suspension in State 2 as an aggravating factor.