CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 28183

This is a summary of a Settlement Agreement entered into at 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 after 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 exercised discretion in entering orders for a client's account without obtaining prior written discretionary authority, thereby violating his firm's policy and National Association of Securities Dealers ("NASD," now known as the Financial Industry Regulatory Authority or "FINRA") Rule 2510 and FINRA Rule 2010.

II. Findings of Fact

2012 Firm Termination

In June 2012, Firm terminated Respondent for violating firm policy by exercising time and price discretion in a client's ("LT") account without LT's written authorization. According to Respondent, he and LT discussed the purchase of Company 1, Company 2 and Company 3 stocks during an in-person meeting. Respondent and LT decided that if the prices of the stocks were to decline, Respondent should continue to purchase the stocks until each stock represented 5% of the value of the client's account. Respondent did not have written discretionary authority for the account.

During an account review, shortly after Respondent processed the trades, Firm asked LT whether Respondent called him prior to executing each trade in his account. According to Respondent, LT replied negatively to the question and stated that would be "a stupid way to do business." Firm terminated Respondent for exercising discretion in LT's account without written authorization to do so, in violation of Firm's policy. Respondent stated that after he became employed by a new firm, LT transferred his account from Firm to Respondent's new firm.

2012 FINRA Inquiry

In August 2012, FINRA sent an inquiry letter to Respondent regarding the Firm Termination and requested a statement in response to Firm's claim that Respondent violated firm policy by exercising discretion in a client's account without written authorization. Respondent responded to the FINRA Inquiry letter on August 16, 2012 and explained the reason for his termination as described above. In June 2013, FINRA sent Respondent a Cautionary Action Letter regarding his failure to comply with NASD Rule 2510 and FINRA Rule 2010 when he utilized discretion in entering orders for LT's account without obtaining prior written discretionary authority.

In the June 2013 Cautionary Action Letter, FINRA asked Respondent to provide a written response outlining the steps he had taken to ensure future compliance with the above referenced FINRA rules. In June 2013, Respondent sent a letter to FINRA stating that he has begun keeping a log of all his telephone conversations with his clients detailing their discussions and his recommendations to the clients. Additionally, Respondent's current employer instituted a program to monitor Respondent's interactions with his clients and contacts clients on a monthly basis to review the details of their accounts.

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III. Rule Violations

A. Rule 4.3 – A certificant shall comply with applicable regulatory requirements governing professional services provided to the client.

Respondent failed to comply with applicable regulatory requirements governing professional services provided to the client when he violated NASD Rule 2510 and FINRA Rule 2010 by exercising discretion in entering orders for the client's account without obtaining prior written discretionary authority. Thus, Respondent violated *Rules of Conduct* Rule 4.3.

B. Rule 4.4 – A certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients.

Respondent failed to exercise reasonable and prudent professional judgment in providing professional services to his client when he violated Firm's policy and NASD Rule 2510 and FINRA Rule 2010 by exercising time and price discretion in the client's account without the client's written authorization. Thus, Respondent violated *Rules of Conduct* Rule 4.4.

C. 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.

Respondent failed to perform professional services with dedication to the lawful objectives of his employer and in accordance with CFP Board's *Code of Ethics* when he violated Firm's policy and NASD Rule 2510 and FINRA Rule 2010 by exercising time and price discretion in the client's account without the client's written authorization. As a result of Respondent's conduct, Firm terminated Respondent. Thus, Respondent violated *Rules of Conduct* Rule 5.1.

D. 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.

Respondent engaged in conduct that reflects adversely on his or her integrity and fitness as a CFP® professional, upon the CFP® marks and upon the profession when he utilized discretion in entering orders for a client's account without obtaining prior written discretionary authority, thereby violating his firm's policy and NASD Rule 2510 and FINRA Rule 2010. As a result of Respondent's conduct, Firm terminated him and FINRA issued a Cautionary Action Letter. Thus, Respondent violated *Rules of Conduct* Rule 6.5.

IV. Discipline Imposed

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 4.3, 4.4, 5.1 and 6.5 of the *Rules of Conduct.* 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 Public Letter of Admonition, pursuant to Article 4.2 of the *Disciplinary Rules*.

The Commission considered the following mitigating factors:

1. Respondent's conduct did not harm any clients or result in any client complaints;
2. The client orally approved of the plan for various transactions;
3. The client moved her account to Respondent's new firm; and
4. Respondent modified his procedures to keep logs of all client conversations to document a client's authorization prior to a trade.

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The Commission considered the following aggravating factors:

1. Respondent violated Firm's policy, which required written authorization of all trades;
2. Firm terminated Respondent's employment; and
3. FINRA cautioned Respondent regarding his conduct.

The Commission consulted Anonymous Case Histories ("ACH") 28116 and 27007, 24154 and 15982. The DEC also reviewed *Sanction Guidelines* 12 (Employer Policies Violation) and 30 (Securities Law Violation) in arriving at its decision.

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