

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 28203

This is a summary of a Settlement Agreement entered into at the March 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) entered false information regarding Client’s state of residence into Firm 1’s electronic books and records; 2) included false information in an annuity application regarding the state in which Client signed the document; 3) transacted insurance business without proper state registration; and 4) was suspended by the Financial Industry Regulatory Authority, Inc. (“FINRA”, formerly known as the National Association of Securities Dealers or “NASD”).

II. Findings of Fact

2010 Termination

Respondent began working with Client and recommended Client exchange her existing annuity for another annuity. , Client identified her primary concerns as income and long-term care. Respondent recommended Client purchase an annuity from Company (“Company Annuity”) that was able to meet her needs, providing a 6% return and a long-term care rider, if she required care. Respondent discussed the annuity with Client, and she agreed to the exchange. Client maintained residences in State 1 and State 2, and was in State 1 at the time of the transaction. Respondent stated that he contacted Company for guidance on whether to consider the transaction a State 1 or State 2 contract. Company compliance personnel told Respondent that the determining factor was the state in which the contract was signed.

Respondent stated that the annuity paperwork was initiated and signed in State 1. Client then returned to her residence in State 2. Respondent stated that shortly thereafter, Firm 1 determined that “signatures were missing and that new documents would have to be completed.” Respondent stated that at this time, he also became aware that his State 2 insurance license had expired. Respondent then began the process of re-registering while paperwork was mailed to Client in State 2. Client signed and returned the annuity paperwork. Several weeks after the annuity transaction, Respondent was called into the branch manager’s office and asked about the transaction. The branch manager began an inquiry and at his discretion chose to terminate Respondent. In December 2010, Firm 1 terminated Respondent after he incorrectly transacted an annuity for Client.

2010 FINRA Investigation

In January 2011, FINRA began an inquiry into Respondent’s termination from Firm 1. FINRA requested information and documentation regarding the termination and any other matter with Firm 1 that was unresolved or resolved within the last three years. In his response to FINRA, Respondent stated that he wrote an annuity contract in State 1 for a State 2 state resident under the assumption that the location in which the contract was executed, not the state of residency, determined the terms and validity of the

contract. Respondent stated that he was not licensed in State 2 at the time the contract was executed, but had filed for State 2 licensure.

In May 2011, FINRA's Enforcement Department sent a letter to Respondent requesting a statement regarding his termination from Firm 1 to determine whether violations of FINRA's rules or the federal securities laws had occurred. In December 2011, Respondent provided information to FINRA regarding the annuity contract. Respondent explained that Client and her husband had been his clients since March 2006. Client's husband passed away in 2010, and Respondent continued to serve as Client's advisor. Client had inherited two annuities from her husband that paid 1.5% in annual income. Client requested alternatives to generate additional income. Respondent and Client then discussed exchanging the existing annuities for new annuity contracts with Client's son. Respondent informed Client that Company Annuity would pay her 6% and included a long-term care rider. Client and her son listened to Respondent's presentation and agreed to purchase Company Annuity. They completed the paperwork in the conference room adjacent to Respondent's office in State 1. In May 2012, FINRA sent another letter to Respondent notifying him that he was requested to appear for an on-the-record ("OTR") interview in May 2012 so that FINRA could take his testimony regarding the Firm 1 Termination.

2012 FINRA AWC

In August 2012, Respondent entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA. Without admitting or denying the findings, Respondent accepted and consented to the following findings by FINRA:

1. Client was a resident of State 2. In September 2010, Client contacted Respondent and arranged a meeting to discuss her finances. Client met with Respondent at Firm 1's office located in State 1. Respondent recommended that Client exchange a \$75,000 fixed annuity for a deferred variable annuity. Client agreed to the replacement transaction and directed Respondent to process the transaction. Client then returned to her residence in State 2.
2. In September 2010, Respondent logged into an online system utilized by Firm 1 staff to complete transaction paperwork for annuity purchases ("Online System"). The system was designed to reject annuity transactions that were submitted by registered representatives who did not hold the required states' insurance licenses, as well as transactions involving annuity products that were not offered in the state in which the Firm 1 client resided. Firm 1's Online System is part of its electronic books and records.
3. When Respondent entered Client's replacement transaction into Online System, he reported that Client was a State 2 state resident. Online System rejected the Client replacement transaction because the annuity product was not offered to State 2 residents and because Respondent did not hold the requisite state insurance license in State 2. Respondent tried unsuccessfully, a second time, to process Client's transaction through Online System. After the second attempt, Respondent then improperly input Client's state of residence as State 1. As a result of Respondent's falsification of Firm 1's electronic records, the Online System approved the processing of Client's transaction.
4. By entering false information into Firm 1's electronic books and records, Respondent caused the firm to violate Securities Exchange Commission Rule 17a-3 by maintaining inaccurate books and records and therefore violated NASD Rule 3110 and FINRA 2010.
5. Respondent also used the Online System to falsely indicate in the annuity application that Client signed the annuity contract in State 1. Respondent prepared the application in State 1 and sent it

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to Client at her residence in State 2 for her signature. Client signed the annuity application in State 2 and returned it to Respondent, who submitted the annuity replacement paperwork for processing. Firm 1 determined that it could not honor Client's annuity contract because the variable annuity was not available to State 2 residents. By including false information in the annuity application regarding the state in which Client signed the document, Respondent violated FINRA Rule 2010.

6. Respondent consented to the imposition of a \$25,000 fine and a three-month suspension from association with any FINRA member in any capacity. The suspension was in effect from September 2012 through December 2012.

III. Rule Violations

- A. *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 clients when he: 1) entered false information regarding Client's state of residence into Firm 1's electronic books and records; 2) included false information in an annuity application regarding the state in which Client signed the document; and 3) transacted insurance business without proper state registration. Thus, Respondent violated *Rules of Conduct* Rule 4.4.

- B. *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 transacted insurance business without proper state registration and he attempted to alter the transaction records. Firm 1 terminated Respondent for these actions. Thus, Respondent violated *Rules of Conduct* Rule 5.1.

- C. *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 integrity and fitness as a CFP® professional, upon the CFP® marks, and the profession when he: 1) entered false information regarding Client's state of residence into Firm 1's electronic books and records; 2) included false information in an annuity application regarding the state in which Client signed the document; and 3) transacted insurance business without proper state registration. 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 4.1, 5.5 and 6.5 of the *Rules of Conduct*. Article 3(d) of CFP Board's *Disciplinary Rules* provides grounds for discipline for any act that is the proper basis for professional suspension. The Commission found grounds for discipline under Article 3(d) because FINRA properly suspended Respondent for three months. 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 90-day suspension pursuant to Article 4.3 of the *Disciplinary Rules*.

In reaching its decision, the Commission consulted Anonymous Case History 24874 and considered *Sanction Guidelines* 11 (Diligence), 12 (Employer Policy Violation), 27 (Practicing Without a Professional License), 29 (Suspension of a Professional License), 32 and 33 Professional Discipline).

The Commission considered as an aggravating factor that the FINRA investigation implicated him in the execution of documentation he knew to be incorrect.

The Commission considered no mitigating factors.