CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 28393

This is a summary of a Settlement Agreement entered into at the February 2014 hearings of the Disciplinary and Ethics Commission ("DEC") 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 *Code of Ethics* were Rules 101 through 705.

I. Issues Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he: 1) sent emails to two clients in connection with their purchase of Secured Loan Fund ("SLF") that contained statements indicating that SLF's had excellent liquidity; 2) sent an email to a third client that contained statements regarding the safety of SLF; and 3) caused a client's account records to reflect false annual income and net worth information, causing the business records maintained by RIB to be inaccurate.

II. Findings of Fact

2010 Financial Industry Regulatory Authority, Inc. ("FINRA") INVESTIGATION

According to Respondent's March 2013 statement to CFP Board, FINRA never sent him a letter to commence its investigation of him. According to Respondent, "the focus of FINRA's investigation was broader than just [him] and was not directed directly at [him]." The only letter FINRA sent to Respondent was the Wells Notice discussed below.

2012 FINRA Wells Notice

In July 2012, FINRA Staff sent Respondent a Wells Notice notifying him that the Staff had made a preliminary determination to recommend that disciplinary action be brought against Respondent.

Respondent's Response to the 2012 FINRA Wells Notice

In August 2012, Respondent filed a response to FINRA's Wells Notice. In his letter, Respondent addressed three matters: 1) His sale of the SLF to two investors; 2) The content requirements for correspondence and sales literature; and 3) The proposed books and records violations.

Allegations regarding misrepresentations of SLF

FINRA alleged that Respondent made material misrepresentations in connection with two customer purchases of SLF. Specifically, Respondent wrote to client MS in an August 2008 email that "there isn't much selection with more liquidity and stability than SLF." In another email sent to client JS in February 2008, Respondent also described the liquidity feature of SLF as a "60 day lock and then every 30 days the money is liquid." Respondent asserted that these statements were not material misrepresentations, and that he had a reasonable basis for making these statements. Respondent noted that SLF had consistently paid investors significant returns, had a strong history of satisfying redemption requests, and compared to other alternative investments that a registered independent broker dealer ("RIB") offered, it provided increased liquidity. Respondent further observed that he discussed SLF with these investors and provided all relevant information to these clients before they purchased SLF, including the SLF Private Placement Memorandum, which detailed the investment risk warnings. Finally, Respondent noted that his statements about SLF were consistent with the history of the company, and were made in the context of having provided full, written disclosures to the customers.

Allegations regarding books and records violations

FINRA alleged that Respondent increased the net worth of client PS in RIB's records. FINRA claimed that PS did not have a net worth of $2.2 million or an annual income of $65,000 and that Respondent caused RIB's books and records to be inaccurate.

Respondent explained that PS managed her family's RIB accounts, which were worth approximately $6 million at the time when her net worth was increased from $1.6 million to $2.2 million in RIB's records. Although a substantial portion of the funds belonged to PS's two children, it was PS who managed these accounts. PS received significant gifts from her children's accounts every year. Respondent considered the total amount of assets as being split between the three family members. Therefore, he had a reasonable basis for believing that PS had a net worth of approximately $2.2 million. Her annual income was increased in RIB's records to reflect earnings from driving elderly individuals to their appointments, art therapy classes she taught, and annual gifts from her children.

2013 FINRA Letter of Acceptance, Waiver and Consent ("AWC")

In January 2013, Respondent entered into an AWC with FINRA. Without admitting or denying the findings, Respondent accepted and consented to the following findings by FINRA:

In February 2008 and August 2008, Respondent sent emails to two RIB clients regarding their purchases of units in SLF that contained the following material misrepresentations regarding SLF's liquidity:

- In February 2008, Respondent emailed RIB customer JS representing that "[t]here is only [a] 60 day lock and then every 30 days the money is liquid" for an investment in the SLF Fund. In February 2008, JS purchased $50,000 of SLF through Respondent.
- In August 2008, Respondent emailed RIB customer MS representing that "[i]f you can project your needs at least 90 days in advance then yes, I'm comfortable with SLF. Otherwise, there isn't much selection with more liquidity and stability" when describing the SLF Fund. In August 2008, MS purchased $100,000 of SLF through Respondent.

The statements Respondent made were in direct contradiction to the disclosures in the Private Placement Memorandum about the illiquidity of SLF and the significant limitations on redemptions. Therefore, Respondent's representations regarding the liquidity of SLF were false and misleading.

In addition, in March 2008, Respondent sent an email to an RIB client who did not purchase units in SLF. In this email, Respondent made misleading and unwarranted statements regarding the safety of an investment in SLF:

- In March 2008, Respondent emailed RIB client BB representing that "[n]o investor has ever lost a penny of principal with SLF. SLF has never failed to make a monthly interest payment. We believe that the note is an excellent safe haven in today's volatile stock markets, precisely

> because it has NO tie to the stock markets, to residential (subprime) real estate, etc. It is an independent investment, delivering a consistent high yield to conservative investors."

Respondent's statements exaggerated the safety of SLF in light of the risks presented by SLF. Respondent's representation to the above client regarding the safety of SLF was, therefore misleading.

Also, none of the three emails described above provided a balanced discussion of SLF and instead addressed only positive attributes of the investment. The emails omitted any discussion of the risks associated with an investment in SLF.

By sending emails to clients in February 2008 and August 2008 that contained misrepresentations about the liquidity of SLF, and in March 2008, sending an email to a client that contained unwarranted and misleading statements about the safety of SLF, Respondent violated National Association of Securities Dealers ("NASD") Rule 2110. In addition, by sending these emails, which also failed to provide a balanced discussion of SLF, Respondent violated NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), and 2211(d)(1). By violating NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), and 2211(d)(1), Respondent also violated NASD Rule 2110.

Additionally, in April 2008, Respondent caused RIB customer PS's account records to reflect false annual income and net worth information, causing RIB's records to be inaccurate.

In April 2008, RIB client PS agreed to invest $80,000 in SLF through Respondent. After preparing the paperwork for the purchase, Respondent's assistant informed him that the proposed $80,000 investment in SLF would increase the percentage of PS's net worth invested in alternative investments to more than 20 percent, which would exceed RIB guidelines. Respondent then instructed his assistant to increase PS's net worth to $1.9 million and then to $2.2 million, bringing the percentage of PS's net worth invested in alternative investments within RIB guidelines. Respondent also asked his assistant to change PS's annual income from $30,000 to $65,000.

Respondent did not have a reasonable basis for requesting the increases in PS's net worth or for requesting that her annual income be increased. In fact, PS's net worth was less than $1.9 million and her annual income was not $65,000.

By instructing his assistant to record false net worth and annual income information on PS's account records at the firm, Respondent caused RIB's books and records to be inaccurate. By causing RIB to maintain inaccurate books and records, Respondent violated NASD Rule 3110(a). By violating NASD Rule 3110(a), Respondent also violated NASD Rule 2110.

Respondent consented to the imposition of the following sanctions: 1) a five-month suspension from associating with any FINRA member in any capacity; and 2) a fine of $30,000. Respondent's suspension was in effect in 2013.

2013 STATE DIVISION OF SECURITIES SUSPENSION

In June 2013, CFP Board conducted a routine background check and discovered that in April 2013, Respondent entered into a Consent Agreement with the State Division of Securities ("State") in which Respondent consented to a five-month suspension, concurrent with his FINRA suspension. In June 2013, CFP Board requested all correspondence relating to the State suspension, including an explanation of Respondent's failure to disclose the suspension within 30 calendar days as required by Article 13.2 of CFP Board's Disciplinary Rules. In July 2013, Respondent responded.

Respondent provided CFP Board with a copy of Respondent's Suspension Order and Consent Agreement. State's findings mirror those of FINRA. State found that Respondent violated State Code in each of his emails by misrepresenting the liquidity of SLF to the investors and further misrepresenting the annual income and net worth of a client in order to effectuate the sale of a security. State also found that Respondent was not of good business repute as set forth in State Code.

Respondent consented to State suspending his State securities salesperson license and investment adviser representative license for five months, retroactively and concurrently with the FINRA suspension.

In his July 2013 response, Respondent provided an explanation for his failure to disclose the State Suspension to CFP Board. Pursuant to FINRA Rules, Respondent did timely update his U5 to reflect his State Suspension. The State Suspension was also made publicly available on State's website. Specific notice of the State Suspension was inadvertently not provided to CFP Board because the action was based on his FINRA action, which was timely provided to CFP Board, and because there was an ongoing CFP Board investigation. Respondent was not attempting to hide his State Suspension, given the reporting of the State Suspension on his U5 and the public disclosure of State's Order on State's website. Respondent served his suspension and was re-registered with RIB with FINRA in early July 2013 and with State a few days later.

In July 2013, CFP Board requested the following additional information and documentation from Respondent: 1) All correspondence to and from State that led to Respondent's Consent Order; and 2) An explanation as to whether Respondent was under investigation by any other agency or regulator. In August 2013, Respondent stated that there was no formal investigation of Respondent by State. State's Order was based on Respondent's FINRA Suspension. Respondent had not been the subject of any other regulatory suspension order, nor had Respondent been under investigation by any other state agency or regulator.

2012 PS FINRA ARBITRATION

In September 2012, PS filed a Statement of Claim against RIB. Respondent was not named in the Statement of Claim but was the advisor of record regarding the allegations made in the Statement of Claim. PS made allegations as to material misrepresentations and unsuitability regarding the products Respondent recommended and sold to her. Respondent recommended and sold the following investments to PS:

CLAIMANT	DATE	INVESTMENT	AMOUNT
PS	2/07	Fund 1	$84,000
PS	2/07	Fund 2	$84,000
PS	6/07	Fund 1	$150,000
PS	4/08	Fund 3	$80,000
TOTAL:			$398,000

Respondent received the following commissions for PS's investments: 1) Fund 1: $6,000; 2) Fund 2: $5,000; 3) Fund 1: $10,000; and 4) SLF: $2,000.

In November 2012, RIB filed its Answer to PS's Statement of Claim. In its Answer, RIB stated that Respondent fully disclosed the risks of the investments to PS, her investments were consistent with her investment objectives and that RIB performed all due diligence regarding the investments before recommending them to PS. RIB added that PS was a seasoned investor, having extensive prior experience with non-publicly traded securities which specialized in both the industrial and commercial real estate markets. In October 2013, RIB settled PS's Claim for $151,000 with no individual contribution from Respondent.

PS's July 2005 Brokerage Account Application showed PS's annual income to be $30,000 and her net worth to be $500,000. Her investment objective was growth and income and her risk tolerance was moderate. A later Brokerage Account Application showed PS's annual income as $65,000 and her net worth as $1,600,000.

PS's total investment in alternative investments was $397,000. Therefore, PS's holdings in alternative investments represented approximately 25% of her net worth. This percentage exceeded RIB's guidelines that an investor should not have more than 20% of his or her net worth in alternative investments. Respondent's assistant informed him that once PS invested in SLF, her alternative investments would exceed RIB's 20% guideline. Respondent then directed his assistant to change PS's annual income and net worth so her percentage invested in alternative investments would be in compliance with RIB's guidelines.

III. Rule Violations

A. *Rule 102 – In the course of professional activities, a CFP Board designee shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.*

Respondent communicated misleading information related to his professional activities when he: 1) sent emails to two clients in connection with their purchase of SLF that contained material misrepresentations regarding SLF's liquidity; 2) sent an email to a third client that contained misleading and unwarranted statements regarding the safety of SLF. None of the three emails provided a balanced discussion of SLF and instead addressed only positive attributes of the investment. The emails omitted any discussion of the risks associated with an investment in SLF; and 3) caused a client's account records to reflect false annual income and net worth information, causing the business records maintained by RIB to be inaccurate. Thus, Respondent violated *Code of Ethics* Rule 102.

B. *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) sent emails to two clients in connection with their purchase of SLF that contained material misrepresentations regarding SLF's liquidity; 2) sent an email to a third client that contained misleading and unwarranted statements regarding the safety of SLF. None of the three emails provided a balanced discussion of SLF and instead addressed only positive attributes of the investment. The emails omitted any discussion of the risks associated with an investment in SLF; and 3) caused a client's account records to reflect false annual income and net worth information, causing the business records maintained by RIB to be inaccurate. Thus, Respondent violated *Code of Ethics* Rule 201.

C. *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.*

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 caused a client's account records to reflect false annual income and net worth information, causing the business records maintained by RIB to be inaccurate, in violation of NASD Rules 3110(a) and 2110 and State Code. Thus, Respondent violated *Code of Ethics* Rule 406.

D. *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: 1) sent emails to two clients in connection with their purchase of SLF that contained material misrepresentations regarding SLF's liquidity; 2) sent an email to a third client that contained misleading and unwarranted statements regarding the safety of SLF. None of the three emails provided a balanced discussion of SLF and instead addressed only positive attributes of the investment. The emails omitted any discussion of the risks associated with an investment in SLF. By sending these emails, Respondent violated NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), 2211(d)(1) and 2110 and State Code; and 3) caused a client's account records to reflect false annual income and net worth information, causing the business records maintained by RIB to be inaccurate, in violation of NASD Rules 3110(a) and 2110 and State Code. Thus, Respondent violated *Code of Ethics* Rule 606(a).

E. *Rule 607 – A CFP Board designee shall not engage in any conduct which reflects adversely on his or her 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 marks and upon the profession when he: 1) sent emails to two clients in connection with their purchase of SLF that contained material misrepresentations regarding SLF's liquidity; 2) sent an email to a third client that contained misleading and unwarranted statements regarding the safety of SLF. None of the three emails provided a balanced discussion of SLF and instead addressed only positive attributes of the investment. The emails omitted any discussion of the risks associated with an investment in SLF. By sending these emails, Respondent violated NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), 2211(d)(1) and 2110 and State Code; and 3) caused a client's account records to reflect false annual income and net worth information, causing the business records maintained by RIB to be inaccurate, in violation of NASD Rules 3110(a) and 2110 and State Code. Thus, Respondent violated *Code of Ethics* Rule 607.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a), 3(d) and 3(e) of CFP Board's *Discplinary 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*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 102, 201, 406, 606(a) and 607 of CFP Board's *Code of Ethics*. Article 3(d) of the *Disciplinary Rules* establishes grounds for discipline for any act that is the proper basis for professional suspension, as defined herein, provided professional suspension shall not be a prerequisite to the institution of disciplinary proceedings, and provided further, that dismissal of charges in a professional suspension proceeding shall not necessarily bar a disciplinary action. The Commission found grounds for discipline under Article 3(d) because FINRA and the State suspended Respondent for five months. Article 3(e) of the *Disciplinary Rules* establishes grounds for discipline for any act or omission that violates these *Disciplinary Rules* or which violates an order of discipline. The Commission found grounds for discipline under Article 3(e) because Respondent failed to disclose his State suspension within the required time period. 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 1-year and 1-day suspension, pursuant to Article 4.3 of the *Disciplinary Rules*.

The Commission arrived at this sanction because it determined that Respondent made misleading statements to clients when he described the attributes of a high-risk investment without providing a balanced perspective regarding the risks involved. Further, Respondent's involvement in arbitrations appears to indicate a pattern of conduct regarding these types of investments and clients. Finally, he did not demonstrate concern for making sure recommended investments were appropriate and suitable for clients. Instead, for example, in the one situation, it appears that Respondent changed a client's net worth only to meet suitability requirements.

The Commission considered as a mitigating factor that the conduct in question took place five years ago.

The Commission cited the following aggravating factors:

1. Respondent did not disclose the FINRA suspension to a client;
2. The statements made in Respondent's email correspondence were at least reckless, if not intentionally misleading;
3. Respondent's conduct indicates a pattern of misconduct because there were multiple clients involved who all had similar complaints or situations;
4. Investors lost money and Respondent's clients were harmed; and
5. Many of the injured clients were not sophisticated enough to be making such high-risk investments.

In arriving at its decision, the Commission reviewed Anonymous Case History 28077. The Commission also consulted *Sanction Guidelines* 2 (Books and Records Violation), 20(d) (Misrepresentation to Clients and Prospective Clients), 30 (Securities Law Violation) and 34 (Professional discipline as defined in Article 13.6 involving a suspension for more than three months).