

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 28574

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* he used discretion to buy bond funds for a client’s account, without obtaining prior written authorization from the client and prior written acceptance of the account as discretionary from his firm, in violation of National Association of Securities Dealers (“NASD” now known as the Financial Industry Regulatory Authority, Inc. of “FINRA”) Conduct Rule 2510(b) and FINRA Rule 2010.

II. Findings of Fact

2011 CFP Board Case - Customer Complaint

In January 2011, one of Respondent’s brokerage clients, Ms. C, filed a customer complaint against him for unauthorized trading. In her complaint, Ms. C stated that after meeting Respondent in May 2010, she had a more formal in-person meeting with him in September 2010. At that time, an advisor at another firm managed Ms. C’s investments. Respondent’s current employer was Firm. At the September 2010 meeting, Ms. C and Respondent discussed the asset allocation of Ms. C’s portfolio and Respondent made some mutual fund recommendations. After the meeting, Ms. C decided to transfer her entire portfolio from the other firm to Respondent at Firm. Firm received Ms. C’s assets in September 2010.

According to Ms. C’s complaint, in September 2010, Respondent sold her existing mutual funds and purchased two bond funds (\$100,000 in each fund). Ms. C alleged that Respondent did not contact her prior to entering the trades in her non-discretionary account. Ms. C stated that her instructions to Respondent were to complete the transfer of her funds to Firm and then she would meet again with Respondent to discuss which funds were not performing and make a final decision on reallocation at the second meeting.

Ms. C received trade confirmations regarding the purchases in early October 2010 and was upset that Respondent had purchased the bond funds for her account. Ms. C met with Respondent in October 2010 to again discuss her dissatisfaction with Respondent’s trades in her account. Shortly after that meeting, Ms. C filed her customer complaint against Respondent.

In Respondent’s November 2011 statement to CFP Board, he stated that during their initial meeting in September 2010, Ms. C expressed concern that her mutual funds were losing value, and she did not want to lose any more money. Respondent recommended a portfolio that was 50% in bonds, 30% in equities and the remaining in cash. He then discussed the two previously mentioned bond funds with her. Ms. C agreed to the purchase of the bond funds. According to Respondent, Ms. C did not express concern over the bond fund purchase until a few months later when the stock market had gone up.

In March 2011, Firm agreed to reverse all the trades in question, and reimbursed Ms. C approximately \$52,000, which was the purchase price of the funds. In January 2012, CFP Board dismissed Respondent's matter, cautioning him as to the importance of not engaging in conduct that reflects adversely on his integrity or fitness as a CFP® professional, upon the CFP® marks, or upon the profession. In its dismissal letter, CFP Board informed Respondent of its right to re-open its investigation of the matter if deemed appropriate.

2013 CFP Board Case

In May 2013, Respondent contacted CFP Board to disclose a suspension issued by FINRA following its investigation of Ms. C's customer complaint. Respondent disclosed that he would be suspended by FINRA for 15 business days. Respondent also stated that FINRA fined him \$5,000. As a result of Respondent's disclosure, CFP Board exercised its right to re-open Respondent's matter, and began a new investigation.

In May 2013, CFP Board mailed a Notice of Investigation ("NOI") to Respondent requesting information and documentation on FINRA's Investigation. In June 2013, Ms. F, a Compliance Specialist with Firm responded to the NOI on Respondent's behalf. Ms. F declined to provide any of the documents requested on FINRA's investigation.

In June 2013, CFP Board mailed a request for additional information and documentation to Respondent. CFP Board again requested the FINRA Investigation documents, Ms. C's account opening documents, a description of the type of account (discretionary/non-discretionary) Ms. C held at Firm and Respondent's meeting notes from the September 2010 meeting with Ms. C.

In July 2013, Ms. F responded via email on Respondent's behalf to CFP Board's June 2013 Request. In her email, Ms. F stated that she had prepared the responsive documentation, which had been burned onto an encrypted CD, and would be delivered to CFP Board via Federal Express. Ms. F also provided the password for the CD. In July 2013, Ms. F faxed a two-page letter to CFP Board. In her letter, Ms. F confirmed that Respondent did not have discretion over Ms. C's account. Ms. F declined to provide any of the other requested information and documentation. On the same day that CFP Board received Ms. F's fax, CFP Board emailed Ms. F to ask for clarification – would she still be sending the encrypted CD, or was the two-page fax her entire response? In July 2013, Ms. F responded to CFP Board's email. Ms. F stated that her prior communication sent to CFP Board regarding a CD delivery was in error.

In July 2013, CFP Board's Director of Investigations ("Director") telephoned Ms. F for further clarification on her conflicting responses. Ms. F did not return the Director's call. The Director telephoned Ms. F again on July 2013. Ms. F did not return the Director's call.

In July 2013, CFP Board telephoned Ms. C to confirm details of her customer complaint against Respondent. Ms. C confirmed the following: 1) from 2010 to 2011, Ms. C maintained an account with Merrill Lynch and Respondent was her investment advisor during that time; 2) in September 2010, Respondent purchased two bond funds for Ms. C's account; 3) Respondent did not have discretionary authority over Ms. C's account; 4) Ms. C did not give either verbal or written authorization for Respondent to purchase these bond funds for her account; and 5) shortly after Firm reversed the bond fund trades, Ms. C transferred her entire portfolio back to the previous firm. In August 2013, Ms. C signed an affidavit attesting to this information.

In July 2013, CFP Board sent a request for additional information to Respondent regarding: 1) the commissions Respondent received for executing the bond trades in Ms. C's account; 2) any discipline Respondent may have received from Firm as a result of executing the bond trades; and 3) an explanation of Firm's policies concerning the execution of trades for a client's non-discretionary account.

In response to CFP Board's request, Respondent stated that he received a commission for the bond trades, but the commission was reversed. He did not indicate the value of the commission. He also stated that he was disciplined by Firm after executing the trades for Ms. C, but did not provide any details on the discipline. Respondent stated that the Firm policy he was required to follow regarding executing trades in a client's non-discretionary account was "Prohibitions on Time/Price Discretion and Order Methods." This policy requires all transactions be specifically authorized by the client at the time the trade is entered. In July 2013, CFP Board requested more details from Respondent on his commission and discipline. Respondent responded on the same day. He stated that he received a commission of 2,000 production credits for the bond trades prior to their reversal. He also stated that he received a Letter of Reprimand from Firm.

2011 FINRA Investigation

According to Respondent's May 2013 disclosure to CFP Board, sometime in 2011, FINRA began an investigation of Respondent relating to Ms. C's customer complaint. Respondent stated that the reason FINRA initiated an investigation was because Firm's "settlement" of Ms. C's complaint exceeded \$50,000. In his disclosure, Respondent stated that Ms. C denied that she said she wanted to purchase the bond funds after the market went up over a four-month time period. Respondent admitted that he did not have the proper documentation to support his recommendation of the bond funds to Ms. C, and that Firm reversed the trades in her account for that reason.

2013 FINRA AWC

In April 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 September 2010, Respondent exercised discretion in connection with 17 transactions he effected in the account of one customer. Respondent, however, did not have written authorization from the customer to place discretionary trades. Moreover, he failed to obtain written acceptance of the account as discretionary from Firm. By exercising discretion in a customer account without written authority, Respondent violated NASD Conduct Rule 2510(b) and FINRA Rule 2010."

Respondent consented to the imposition of the following sanctions: 1) a suspension from associating in any and all capacities with any FINRA member firm for fifteen business days; and 2) a \$5,000 fine. Respondent's suspension was in effect from May 2013 through June 2013.

III. Rule Violations

A. Rule 1.4 – A certificant shall at all times place the interest of the client ahead of his or her own.

Respondent failed to place the interest of his client ahead of his own when he used discretion to buy bond funds for a client's account, without obtaining prior written authorization from the client and prior written acceptance of her account as discretionary from his firm. Thus, Respondent violated *Rules of Conduct* Rule 1.4.

B. 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 clients when he used discretion to buy bond funds for a client's account, without obtaining prior written authorization from the client and prior written acceptance of her account as discretionary from his firm, in

violation of NASD Conduct Rule 2510(b) and FINRA Rule 2010. Thus, Respondent violated *Rules of Conduct* Rule 4.3.

C. *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 used discretion to buy bond funds for a client's account, without obtaining prior written authorization from the client and prior written acceptance of her account as discretionary from his firm. Thus, Respondent violated *Rules of Conduct* Rule 4.4.

D. *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 the *Code of Ethics* when he used discretion to buy bond funds for a client's account, without obtaining prior written authorization from the client and prior written acceptance of her account as discretionary from his firm, in violation of NASD Conduct Rule 2510(b) and FINRA Rule 2010. Thus, Respondent violated *Rules of Conduct* Rule 5.1.

E. *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 upon the profession when he: 1) used discretion to buy bond funds for a client's account, without obtaining prior written authorization from the client and prior written acceptance of her account as discretionary from his firm, in violation of NASD Conduct Rule 2510(b) and FINRA Rule 2010; and 2) was suspended by FINRA for violating FINRA rules. 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 1.4, 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 a Public Letter of Admonition to Respondent, pursuant to Article 4.2 of the *Disciplinary Rules*.

The Commission considered as a mitigating factor that the conduct involved one client and occurred on one day.

The Commission did not consider any aggravating factors.

The Commission consulted Anonymous Case History 15982 and *Sanction Guideline 32* (Professional Discipline as defined in Article 13.6 involving a suspension for up to one calendar month) in arriving at its decision.