

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29211

This is a summary of a Settlement Agreement entered into at the October 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 after January 1, 2009. Rules 1.1 through 6.5 of the *Rules of Conduct* were in effect.

I. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he signed the names of six clients on suitability forms and failed to disclose his Financial Industry Regulatory Authority, Inc. (“FINRA”) suspension to CFP Board within 30 days as required by Article 13.2 of the *Disciplinary Rules and Procedures* (“*Disciplinary Rules*”).

II. Findings of Fact

In 2011, Respondent’s employer instituted a “Books and Records Suitability Update” and required its registered representatives to obtain updated suitability information on their customers. In his response to CFP Board, Respondent said that, if his employer did not receive an updated suitability form from a client, it would reassign the client to a new broker at the firm’s call center. Respondent’s employer provided its registered representatives 14 months to obtain the updated information.

Respondent acknowledged that he signed clients’ names on the suitability forms to prevent his firm from reassigning the clients. Specifically, Respondent forged the names of six clients: JC, CP, AS, AB, SB and KM. Respondent submitted the suitability update forms to his firm and misrepresented the signatures as authentic. Respondent’s firm discovered the forged signatures during an internal examination. Respondent’s firm’s written supervisory procedures prohibited its registered representatives from signing a customer’s name, even if the customer requests the registered representative to do so. In April 2013, Respondent’s firm terminated him for cause.

FINRA REGULATORY ACTION

In April 2014, Respondent entered into a Letter of Acceptance, Waiver and Consent (“AWC”) with FINRA. In the AWC, Respondent agreed to the entry of findings that he signed six clients’ names on suitability forms from April 2012 to September 2012. Five of the clients did not consent or authorize Respondent to sign their names. Respondent’s conduct violated FINRA Rule 2010. FINRA fined Respondent \$5,000 and suspended him from associating with any FINRA member in any capacity for six months.

Article 13.2 of the *Disciplinary Rules* requires CFP® professionals to notify CFP Board in writing upon being the subject of professional discipline within 30 days after the CFP® professional receives notice of the discipline. A professional discipline includes a suspension, bar or revocation for the purpose of discipline by any governmental agency, industry self-regulatory organization or professional association. Therefore, Respondent was required to report his FINRA suspension by May 2014. Respondent failed to report the FINRA suspension to CFP Board.

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 interests of his clients ahead of his own when he signed the names of six clients on suitability forms. 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 the client when he signed the names of six clients on suitability forms, in violation of 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 when he signed the names of six clients on suitability forms. 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 the employer/principal and in accordance with CFP Board’s *Code of Ethics* when he signed the names of six clients on suitability forms, in violation of his employer’s policy. 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 certificant, upon the CFP® marks and upon the profession when he signed the names of six clients on suitability forms and failed to disclose his FINRA suspension to CFP Board within 30 days as required by the *Disciplinary Rules*. Thus, Respondent violated *Rules of Conduct* Rule 6.5.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a), 3(d) and 3(e) of CFP Board’s *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 1.4, 4.3, 4.4, 5.1 and 6.5 of the *Rules of Conduct*. Article 3(d) of the *Disciplinary Rules* establishes 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 Respondent signed the names of six clients on suitability forms and was suspended by FINRA for six months. Article 3(e) of the *Disciplinary Rules* establishes grounds for discipline for any act or omission that violates the *Disciplinary Rules* or which violates an order of discipline. Respondent violated the *Disciplinary Rules* when failed to disclose his suspension to CFP Board in writing within 30 days as required by Article 13.2 of the *Disciplinary Rules*, thereby providing grounds for discipline pursuant to Article 3(e). 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 in mitigation that:

1. Respondent did not have any customer complaints for the past 23 years and none of the clients at issue filed a complaint regarding the forgery;
2. The suitability update did not cause client harm;
3. Clients were trying to complete the forms and Respondent was correcting the forms on their behalf (implied consent) to avoid the call center.
4. This was one isolated event involving six clients.
5. Respondent made several significant attempts to get these forms signed as requested and required by the firm rules.

The Commission considered as an aggravating factor that CFP Board discovered the FINRA AWC, which Respondent was required to disclose to CFP Board within 30 days of being notified of the existence of the AWC.

In arriving at its decision, the Commission consulted *Anonymous Case Histories* 27711, 24467, 22961 and 24519 as well as *Sanction Guidelines* 12 (Employer Policy Violation) and 19 (Forgery).