

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 28795

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This is a summary of a decision issued following the February 2014 hearings of the Disciplinary and Ethics Commission (“Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The Reinstatement Application for Certification (“Application”) at issue in this case was filed after September 14, 2012. CFP Board’s *Fitness Standards for Candidates and Professionals Eligible for Reinstatement* (“*Fitness Standards*”) were in effect at that time.

I. Issues Presented

Whether a candidate for CFP® certification (“Respondent”) could be certified when she was the subject of a 2007 Termination from Firm and a 2007 Federal Industry Regulatory Authority, Inc. (“FINRA”) Letter of Acceptance, Waiver and Consent (“AWC”) stemming from her exercise of discretion in the accounts of 33 Firm customers without first having obtained written customer authorization that was accepted by her Firm..

II. Findings of Fact Relevant to the Commission’s Decision

*2007 FIRM TERMINATION*

Respondent’s BrokerCheck record indicated that Firm terminated her employment on August 29, 2007 for exercising discretion in customer accounts without prior written authorization.

Respondent provided a letter of September 2007 from S.H., an employee with Firm’s Registration and Qualification Department, which attached a copy of the Form U5 Notice of Termination that Firm filed regarding Respondent.

Respondent also added that in November 2013, she contacted Firm’s Human Resources Department to try to obtain information relating to the termination. In November 2013, Respondent followed up with an email to CFP Board stating that K.P. in Firm’s Legal Department informed Respondent that Firm checked multiple locations and Firm did not have any information responsive relating to the termination.

*2007 FINRA INVESTIGATION*

In September 2007, FINRA began an investigation of Respondent as a result of her termination from Firm. On that date, a Senior Investigation Analyst with FINRA (“FINRA Analyst”) sent a letter to Respondent requesting a statement on her termination.

According to her October 2007 statement to FINRA Analyst, she and her business partner, D.A. managed non-discretionary accounts for their clients at Firm. Respondent explained that she and D.A. understood that they were required to obtain client approval before executing trades. They thought they were complying with that requirement by having regular conversations with clients regarding investment strategies. Respondent stated that whenever she or D.A. saw opportunities to execute trades that were consistent with previously agreed upon investment strategies, they would occasionally place orders without first confirming them with the client. On those particular occasions, they would always speak with the client about the trade a day or two after the trade’s

execution. Respondent explained that they thought they had time and price discretion to execute trades based on ongoing conversations they previously had with their clients regarding their investment strategies.

Respondent stated that she and her partner understood that they did not meet the requirements of time and price discretion. They now understood that they were required to discuss a proposed trade with each client before every trade was executed. Respondent added that although their actions were well-intentioned, they violated FINRA rules and Firm's policies each time they executed a trade without prior client authorization. Respondent stated that they regretted their actions and were committed to following FINRA's rules.

Respondent cited several mitigating factors to their situation including: 1) out of the approximately 240 client accounts she and D.A. managed, they exercised discretion in only 33 of them; 2) no client filed a complaint as a result of this conduct; 3) most of the accounts in which they exercised discretion were fee-based accounts so they did not receive any commissions; 4) their motivation was to provide good service to their clients, not to benefit personally; and 5) their terminations from Firm have been effective punishment and they will not repeat the misconduct.

In May 2008, C.O. with FINRA's Division of Enforcement requested additional information from Respondent. C.O. requested a list of the 33 households in which she exercised discretion while at Firm. In May 2008, Respondent responded to C.O.'s request. Respondent provided him with a listing of the clients for whom she occasionally placed discretionary trades. Respondent also included a short summary on each client, describing the client relationship she had with each of them. In March 2009, C.O. requested information from Respondent regarding a list of specific clients and whether she exercised discretion in their accounts. In March 2009, Respondent responded to C.O.'s request.

In August 2009, C.O. sent a letter to Respondent notifying her that FINRA staff made a preliminary determination to recommend that disciplinary action be brought against her. C.O. advised Respondent that she could also file a Wells submission indicating why an action should not be brought against her. In August 2009, F.T., General Counsel for Firm 2, Respondent's current firm, responded on behalf of Respondent. F.T. asked that C.O. review Respondent's initial response that she provided to FINRA in October 2007. F.T. also enclosed a Statement of Mitigating Circumstances, which was similar to the statement provided by Respondent in her October 2007 response to FINRA.

#### *2009 FINRA AWC*

In October 2009, Respondent entered into an AWC with FINRA. Without admitting or denying the findings, Respondent accepted and consented to the following findings by FINRA:

Between February 2003 and August 2007, Respondent and D.A. occasionally exercised discretion in the accounts of 33 Firm customers without first having obtained written customer authorization that was accepted by her Firm. Furthermore during that same timeframe and the same 33 accounts, Respondent and D.A. occasionally exercised time and price discretion after the business day on which the customer granted such discretion, without the customer's written authorization.

Respondent consented to the imposition of the following sanctions: 1) a suspension from associating with any member firm in any capacity for 10 business days; and 2) a \$10,000 fine. Respondent's suspension was in effect in November 2009.

In January 2012, Respondent filed a Petition for Consideration pursuant to CFP Board's *Fitness Standards*.

### III. Discipline Imposed

Under CFP Board's *Fitness Standards*, Respondent's conduct is presumed to be unacceptable, and will bar an individual from becoming certified unless the individual petitions the Commission for reconsideration.

The Commission determined that Respondent's conduct did not reflect adversely on the profession or the CFP® marks and granted Respondent's Petition for Consideration.

The Commission cited no mitigating or aggravating factors.

In reaching its decision, the Commission consulted *Anonymous Case Histories* ("ACH") 26937, 23296, 26835 and 26150. The Commission noted that Respondent's conduct demonstrated her inability to understand the rules and procedures with regards to discretionary authority were worthy of her suspension and fine. Proper management of Respondent's activities, and those of her partner, may have avoided this situation entirely. While the Commission was concerned with Respondent's conduct, the Commission determined that Respondent's conduct did not reflect adversely based upon her lack of prior discipline and the fact she has had an exemplary record since the incident. In addition, the personal recommendations from various individuals, and pursuit of the CFP® certification spoke to Respondent's desire to further enhance her profession and the marks.

The Commission determined that the conduct at issue did not reflect adversely on Respondent's fitness for CFP® certification or upon the professional and the Petition for Consideration was granted.