

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 28882

This is a summary of a Settlement Agreement entered into at the June 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. 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) executed a trade for a client at a later time and date than the client original requested; 2) misstated to the client his firm’s policy on management fees charged on cash balances; 3) directed his assistant to falsely state on a membership renewal application that he had no customer complaints within the last five years when he did; and 4) accepting a trade for a client via email.

II. Findings of Fact

2013 Termination

According to Respondent’s BrokerCheck report, Respondent’s firm terminated him in December 2013 for inaccurately reporting information on an application to a not-for-profit professional organization servicing market analysis professionals (“Organization”). BrokerCheck’s summary also indicated his firm’s “loss of confidence” due to Respondent’s inaccurate reporting.

In his statement of February 2014 to CFP Board, Respondent stated that he had been employed at his firm for 29 years as a financial advisor. In December 2013, Respondent received a membership renewal application for his membership with Organization. Respondent gave the form to his assistant for payment. Respondent’s assistant later told him that the renewal application asked if Respondent had any complaints to disclose within the last five years. Respondent instructed his assistant to check “no” and to complete the renewal. Later that day, Respondent notified Organization that he did have complaints within the last five years.

In his March 2014 statement to CFP Board, Respondent stated that his firm never mentioned any specific company policy that he violated, other than “loss of confidence.” As to why Respondent directed his assistant to report to Organization that he had no complaints within the past five years to disclose, Respondent stated: “I take ownership for directing my assistant to submit my renewal without providing the requested complaint disclosure. Without thinking, I made a spontaneous decision that I regret making.” Respondent confirmed that after his assistant completed his application online, she presented Respondent’s error to their branch manager instead of discussing the situation directly with Respondent. Afterwards, Respondent discussed the application with his branch manager and quickly corrected the inaccurate response he had previously made to Organization.

2012 DW Customer Complaint

In August 2012, DW filed a customer complaint against Respondent. DW's complaint concerned two issues: 1) a trading error; and 2) management fees charged on the cash balance held in a DW Account.

Trading Error

According to DW, in November 2011, he requested via email that Respondent sell 36,760 shares of a particular stock at market open in November 2011. DW noted that the stock opened at \$6.25 in November, and he expected that an average sales price per share would have been comfortably above \$6.00 when the sale was executed. Respondent failed to execute DW's order at the market open as requested, and ultimately, he sold the stock at \$5.23 per share. DW expected to be reimbursed for the difference between an expected share price of \$6.00 per share and the executed price of \$5.23 per share, or approximately \$28,290.

According to Respondent's statement of September 2012 to a Senior Compliance Advisor at his firm, DW sent him an email after-market hours to sell his stock in the morning. Respondent responded by sending an email that simply said "okay." Respondent acknowledged that his email response was his first error. Respondent stated that the reason he acknowledged the sell request was because DW lived in a state that was four time zones away, and if Respondent asked DW to call him in the morning before the market opened, it would be 5:00 am because of the four hour time difference between Respondent's location and that of DW.

When the market opened one day in November 2011, the stock was down \$1.00. Respondent stated that since the stock was already down, he planned to wait and call DW about 7:30 am DW's time. Respondent acknowledged his error in deciding to wait was compounded by the stock dropping further. At approximately 10:00 am EST, which was 6:00 am in DW's state, DW called Respondent and directed him to sell the stock immediately.

DW told Respondent that he failed to follow DW's instructions and wanted the higher price at the open as a result of Respondent's delay in placing the trade. At that time, Respondent offered to reduce DW's management fees from 1.5% to 0.75% as compensation for the error. DW initially accepted Respondent's offer, but months later he changed his mind and wanted to be fully compensated for the error.

In his March 2014 statement to CFP Board, Respondent stated the following regarding DW's fee reduction: "I did not seek the manager's pre-approval nor did I believe that I had to. I always had discretion to set the management fee at an amount that I felt was appropriate. Obviously, the lower the gross amount of the fee, the greater the reduction of my net payout."

Management Fees Charged on Cash Balance

DW also complained about the management fees charged on the cash balance held in the DW Joint Account. DW stated that he held significant cash in this account based on repeated verbal representations from Respondent that management fees were not applied to cash balances. DW expected reimbursement for fees charged on 80% of cash balances held for the quarters beginning in July 2011; October 2011; January 2012; April 2012; and July 2012. DW stated that reimbursement of 80% is based on their telephone conversation wherein Respondent informed him that Respondent mistakenly thought that fees were only charged on 20% of the cash balance held rather than on any cash that exceeded 20% of the total account balance.

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Respondent responded to his firm's Senior Compliance Advisor in September 2012 regarding this issue. Respondent stated:

Regarding [DW] being billed on cash, I assumed that only 20% of the outstanding cash balance [was billed] and do not believe [DW] was previously under the impression we billed on cash. Quite frankly, I am unsure if this was discussed prior to the email or not. When [DW] calculated his fee based on the account value minus the cash, he discovered that cash was in the billable amount. Prior to having a \$400k balance it was never large enough for [DW] to notice.

In April 2014, Respondent provided further information to CFP Board regarding his representations to DW on management fees charged on cash balances. Respondent stated "I told DW our policy was that 20% of cash was considered waiting for investment and would be billed." In his April 2014 statement, Respondent estimated that he received \$797.05 in fees as a result of his misquote to DW regarding management fees charged on cash balances for the third quarter of 2011 through the third quarter of 2012.

In September 2012, the Vice President of Finance and Administration, Asset Management at Respondent's firm, reviewed DW's cash balances, multiplied them by 80%, then by the management fee to come up with \$1,811.49. The Vice President emailed this figure to the Senior Compliance Advisor. The Senior Compliance Advisor then forwarded the figure on to a firm representative with the Private Client Group and to the firm's Senior Vice President, Investments and Branch Manager. In his September 2012 email to the Branch Manager, the firm representative stated, "[s]ince [Respondent] said he misquoted the policy re cash in an account for billing purposes I see no way that you don't offer the amount below [\$1,811.49]."

In October 2012, the firm executed a settlement agreement with DW for \$25,115.40. Respondent's individual contribution was \$6,811.49. Respondent's Errors and Omissions deductible was \$5,000 and \$1,811.49 represented the amount of management fees billed to DW's account on his cash balance, which the firm reimbursed to DW due to Respondent's misquote regarding the policy of charging management fees on cash. In his April 2014 statement to CFP Board, Respondent confirmed that this information was accurate.

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) failed to execute a trade for a client in a timely manner, resulting in losses to the client; 2) failed to provide the client with accurate information regarding his firm's policy on management fees charged on cash balances. This misquote resulted in the client making investment decisions based on erroneous advice; and 3) violated firm policy by accepting a trade for a client via email. Thus, Respondent violated Rule 4.4 of the *Rules of Conduct*.

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 the *Code of Ethics* when he: 1) directed his assistant to falsely state on a

membership renewal application that he had no customer complaints within the last five years when he did. Respondent's firm terminated him for this action; and 2) violated firm policy by accepting a trade for a client via email. Thus, Respondent violated Rule 5.1 of the *Rules of Conduct*.

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 upon the profession when he: 1) failed to execute a trade for a client in a timely manner, resulting in losses to the client; 2) failed to provide the client with accurate information regarding his firm's policy on management fees charged on cash balances. This misquote resulted in the client making investment decisions based on erroneous advice; 3) directed his assistant to falsely state on a membership renewal application that he had no customer complaints within the last five years when he did. Respondent's firm terminated him for this action; and 4) violated firm policy by accepting a trade for a client via email. Thus, Respondent violated Rule 6.5 of the *Rules of Conduct*.

IV. Discipline Imposed

The Commission found grounds for discipline under Article 3(a) 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 4.4, 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 to Respondent a Public Letter of Admonition, pursuant to Article 4.2 of the *Disciplinary Rules*.

In aggravation, the Commission considered that:

1. Respondent failed to disclose the conduct at issue;
2. Respondent had a prior CFP Board case in 2005 involving providing inaccurate disclosure information that was dismissed with caution;
3. According to Respondent's Central Registration Depository record, Respondent had been involved in seven customer complaints since 1998, which were all settled; and
4. Respondent was terminated by his employer.

The Commission considered in mitigation that Respondent has had a long, 31-year career and that he appeared to be contrite and accepting of his discipline so he may move on with his career.

In reaching its decision, the Commission consulted Anonymous Case History 28190 as well as *Sanction Guidelines* 11 (Diligence) and 20 (Fraud, Misrepresentation or Deceit). The Commission noted that he committed four distinct violations, each of which would normally warrant a private censure. Due to the aggravating factors, the Commission determined that a public discipline was warranted.