

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 28945

This is a summary of a Settlement Agreement entered into at the October 2015 hearings of the Disciplinary and Ethics Commission (“the Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred both prior to and after January 1, 2009. The Rules in effect for conduct occurring before January 1, 2009 were Rules 101 through 705 of CFP Board’s *Code of Ethics and Professional Responsibility* (“*Code of Ethics*”). The Rules in effect for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board’s *Rules of Conduct*.

I. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) engaged in investment advisory business in State without proper registration, resulting in a Consent Order from the State Securities Division; and 2) failed to disclose the Consent Order with State on his 2009, 2012 and 2014 CFP® certification Renewal Applications.

II. Findings of Fact

Respondent is a registered representative of Broker-Dealer (“BD”). In 2007, Respondent started to work with an RIA firm (“RIA”). Respondent provided financial planning and managed client relationships and RIA managed the clients’ portfolios. RIA billed the investment management fees and paid Respondent a portion of the fees. This arrangement was fully disclosed to BD. Respondent used his S Corporation, KAS, to process the revenue and expenses of his work with both BD and RIA.

In April 2009, BD’s Chief Compliance Officer received a letter from an Audit Investigator with the State Securities Division (“State”). The letter indicated that Respondent and another advisor, not a CFP® professional, were not licensed as investment advisor representatives in State at the time asset management fees were paid to Respondent and the other advisor by BD. The letter included an attached Consent Agreement as a settlement offer regarding the matter.

In May 2009, BD responded to the State letter and stated its belief that Respondent and the other advisor were qualified to receive asset management fees under certain State Revised Statutes. The letter pointed out that both Respondent and the other advisor were licensed sales representatives of BD, a registered broker-dealer in State and that the only investment advisory activity that Respondent and the other advisor participated in was the sale of investment advice as part of a wrap fee program. It was requested that State reconsider the Consent Agreement as it was believed no State securities laws were violated in allowing Respondent and the other advisor to receive these fees.

In June 2009, BD entered into a Consent Agreement with State. Without admitting or denying the findings, BD consented to State’s finding that BD failed to license two investment adviser representatives. BD consented to a fine of \$15,000.

During a subsequent inspection of Respondent’s office, State determined that Respondent was not sufficiently registered to receive investment advisory fees from RIA.

In July 2009, Respondent and his firm, KAS, entered into an Administrative Consent Order with State. Without admitting or denying the allegations, Respondent and his firm consented to the following findings:

- RIA paid asset management fees directly to KAS for services, in the form of sales activity, of Respondent, in the amount of approximately \$43,700.00, during the period of 2007 through January 2009;
- KAS was not licensed as a Registered Investment Adviser in State from 2007 through January 2009 and could not legally have received asset management fees on behalf of Respondent;
- During the period of 2007 through January 9, 2009, Respondent failed to register as a Representative of RIA, and thereby acted in an unlicensed capacity; and
- During the period of 2007 through January 2009, KAS collected fees on behalf of Respondent and was compensated by RIA, while failing to register as an Investment Adviser in State, and thereby acted in an unlicensed capacity.

Respondent and KAS agreed to comply with the State Revised Statutes and the State Administrative Code. Respondent and KAS were also ordered to pay investigative costs of \$7,500.

Respondent believed that it was his responsibility and BD's to ensure that he was lawfully registered with State. Respondent admitted that he is responsible for completing any registration paperwork and paying applicable fees. BD is responsible for ensuring that he is registered correctly before they can pay him. Respondent stated that he relied on BD to make him aware of any licensing/registrations requirements. Respondent estimated that he serviced approximately 12 clients in State during the time that he was unregistered. At the time of the inspection, Respondent was beginning to transition his practice from mostly commission-based business to fee-based.

Respondent failed to disclose the State Consent Order on his 2009, 2012 and 2014 Renewal Applications. According to Respondent, he did not think that the Consent Order needed to be disclosed because there was not a complaint, hearing or any enforcement action.

III. Grounds for Discipline

First Ground for Discipline

Pursuant to Article 3A of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 201 of the *Code of Ethics*, which provides that a certificant shall exercise reasonable and prudent professional judgment in providing professional services. Respondent, a certificant, failed to exercise reasonable and prudent professional judgment in providing professional services when, from 2007 through December 2008, he engaged in investment advisory business in State without proper registration. Thus, Respondent violated *Code of Ethics* Rule 201.

Second Ground for Discipline

Pursuant to Article 3A of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 606(a) of the *Code of Ethics*, which provides that a certificant shall perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities. Respondent, a certificant, failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when, from 2007 through December 2008, he engaged in investment

advisory business in State without proper registration, as required by the State Revised Statutes and the State Administrative Code, resulting in a Consent Order from the State Securities Division. Thus, Respondent violated *Code of Ethics* Rule 606(a).

Third Ground for Discipline

Pursuant to Article 3A of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 607 of the *Code of Ethics*, which provides that a certificant 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, a certificant, engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when, from 2007 through December 2008, he engaged in investment advisory business in State without proper registration. Thus, Respondent violated *Code of Ethics* Rule 607.

Fourth Ground for Discipline

Pursuant to Article 3A of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 2.1 of the *Rules of Conduct*, which provides that a certificant shall not communicate, directly or indirectly, to clients or prospective clients any false or misleading information directly or indirectly related to the certificant's professional qualifications or services. Respondent, a certificant, communicated, directly or indirectly, to clients or prospective clients misleading information directly or indirectly related to the certificant's professional qualifications or services when, in 2009, he engaged in investment advisory business in State without proper registration. Thus, Respondent violated Rule 2.1 of the *Rules of Conduct*.

Fifth Ground for Discipline

Pursuant to Article 3A of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.3 of the *Rules of Conduct*, which provides that a certificant shall be in compliance with applicable regulatory requirements governing professional services provided to the client. Respondent, a certificant, failed to comply with applicable regulatory requirements governing professional services provided to the client when, in 2009, he engaged in investment advisory business in State without proper registration, as required by the State Revised Statutes and the State Administrative Code, resulting in a Consent Order from the State Securities Division. Thus, Respondent violated Rule 4.3 of the *Rules of Conduct*.

Sixth Ground for Discipline

Pursuant to Article 3A of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.4 of the *Rules of Conduct*, which provides that a certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients. Respondent, a certificant, failed to exercise reasonable and prudent professional judgment in providing professional services to clients when, in 2009, he engaged in investment advisory business in State without proper registration. Thus, Respondent violated Rule 4.4 of the *Rules of Conduct*.

Seventh Ground for Discipline

Pursuant to Article 3A of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 6.2 of the *Rules of Conduct*, which provides that a certificant shall meet all CFP Board requirements, including continuing education requirements, to retain the right to use the CFP® marks. Respondent, a certificant, failed to meet all CFP Board requirements, including continuing education requirements, to retain the

right to use the CFP® marks when he failed to disclose the State Consent Order on his 2009, 2012 and 2014 Renewal Applications. Thus, Respondent violated Rule 6.2 of the *Rules of Conduct*.

Eighth Ground for Discipline

Pursuant to Article 3A of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 6.5 of the *Rules of Conduct*, which provides that 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, a certificant, engaged in conduct that reflects adversely on his integrity and fitness as a certificant, upon the CFP® marks, and upon the profession when, in 2009, he engaged in investment advisory business in State without proper registration. 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*. The Commission found that Respondent's conduct violated Rules 201, 606(a) and 607 of the *Code of Ethics* and Rules 2.1, 4.3, 4.4, 6.2 and 6.5 of the *Rules of Conduct*. Based on the terms of the Settlement Agreement, the Commission issued to Respondent a Private Censure, pursuant to Article 4.1 of the *Disciplinary Rules*.

In reaching its decision, the Commission identified the following mitigating factors:

1. Respondent had no prior disciplinary history;
2. Respondent's conduct resulted in no client harm;
3. Respondent was cooperative during the course of CFP Board's investigation and process; and
4. State did not suspend Respondent and only assessed investigative fees.

The Commission did not identify any aggravating factors.

The Commission consulted *Sanctions Guidelines* 14(a) (Failure to Disclose to CFP Board), 27 (Practicing Without a Professional License) and 30 (Securities Law Violation). The Commission also reviewed *Anonymous Case Histories* 28891, 28956 and 28376.