

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 28972

This is a summary of a decision entered into at the June 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 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* when he misrepresented his compensation structure as “fee-only” on CFP Board’s “Find a CFP® Professional” search tool.

II. Findings of Fact

In March 2013, CFP Board granted Respondent the right to use the CFP® marks. That same day, Respondent entered “fee-only” as his compensation method on his “Find a CFP® Professional” search profile on CFP Board’s web site. At this time, Respondent was a registered representative and investment adviser representative with a broker-dealer (“BD”). Respondent was also licensed as an insurance agent through Firm.

In August 2013, CFP Board issued a document titled “Notice to CFP® professionals: Importance of Accurate Compensation Disclosures.” This document provided an important reminder to all CFP® professionals of the scope of the term compensation and the obligation to make accurate disclosures of compensation methods on all public websites. It also provided a definition of the term “fee-only.”

In September 2013, CFP Board removed “fee-only” from Respondent’s “Find a CFP® Professional” search profile on CFP Board’s website. The next day, CFP Board sent Respondent an email in which it asked Respondent to “carefully review” CFP Board’s compensation disclosure rules and definition and to update his search profile with a compensation description that accurately reflects his compensation. That same day after receiving the email, Respondent re-entered “fee-only” as his compensation method on his “Find a CFP® Professional” search tool on CFP Board’s website.

Respondent stated that he became aware of the specific content of CFP Board’s email dated September 2013 regarding the definition of “fee-only” only after he received CFP Board’s NOI. After reading the proper definition of “fee-only” as explained in the email, Respondent realized he was improperly listed as a “fee-only” advisor on the “Find a CFP® Professional” search tool. He then immediately removed the “fee-only” selection from his profile and later changed it to “Commission and Fee.”

Respondent provided a written explanation and testimony regarding his practice with Firm. Respondent works with a group of CFP® professionals who do not hold themselves out to clients or prospective clients as “fee-only” advisors. Respondent explained that the majority of Firm’s revenue is from “fee based” accounts, or a percentage of the assets under management. He added that Firm also has smaller accounts in non-brokerage C-shares, which are consistent with the firm’s objective of a 1.2% fee, but are technically commissioned accounts. Firm also provides insurance, which is a small portion of its business. Respondent has sold mutual fund products with a commission, but not any insurance products, although he holds both securities and insurance licenses. He explained that he recently sold a client C shares of a mutual fund and that 100% of the commission went to his

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firm. He added that he doesn't receive any trailing commissions, but his firm receives trails on accounts that Respondent set up prior to 2013. Firm received approximately \$2,700.00 in trailing commissions from all mutual funds he set up since he began working for them. Respondent is a salaried employee and receives a year-end bonus.

In February 2014, CFP Board received an anonymous grievance alleging that Respondent misrepresented his compensation structure as "fee-only" on CFP Board's "Find a CFP® Professional" search tool. The grievant provided a copy of Respondent's "Find a CFP® Professional" search profile. The grievant also noted Respondent's affiliation with insurance companies by providing a copy of the listing of Respondent's insurance licenses from the State Department of Insurance's web site. The grievant also provided a copy of Respondent's BrokerCheck Report indicating that Respondent was registered with BD and licensed as a registered investment advisor in 30 states. In addition, the grievant provided a copy of a page from the web site of Firm, indicating that Respondent was dually registered as a registered representative with BD and an investment advisor representative with BD.

III. Rule Violations

- A. *Rule 2.1 – 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. A certificant shall not mislead any parties about the potential benefits of the certificant's service. A certificant shall not fail to disclose or otherwise omit facts where disclosure is necessary to avoid misleading clients.*

Respondent communicated misleading information related to his professional services when he inaccurately disclosed his compensation structure as "fee-only" on CFP Board's web site profile because: 1) Although Respondent is a salaried employee of Firm, Respondent is entitled to receive commissions because he is dually registered as both a registered representative and an investment advisor representative; and 2) Respondent's related party and his employer, Firm, receives commissions and commission trails from investments Respondent sells. Thus, Respondent violated *Rules of Conduct* Rule 2.1.

- B. *Rule 2.2(a) – A certificant shall disclose to a prospective client or client an accurate and understandable description of compensation arrangements being offered.*

Respondent failed to disclose an accurate and understandable description of compensation arrangements being offered when he inaccurately disclosed his compensation structure as "fee-only" on CFP Board's web site profile because: 1) Although Respondent is a salaried employee of Firm, Respondent is entitled to receive commissions because he is dually registered as both a registered representative and an investment advisor representative; and 2) Respondent's related party and his employer, Firm, receives commissions and commission trails from investments Respondent sells. Thus, Respondent violated *Rules of Conduct* Rule 2.2(a).

- C. *Rule 6.5 – A certificant shall not engage in conduct which reflects adversely on 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 inaccurately disclosed his compensation structure as "fee-only" on CFP Board's web site profile because: 1) Although Respondent is a salaried employee of Firm, Respondent is entitled to receive commissions because he is dually registered as both a registered representative and an investment advisor representative; and 2) Respondent's related party and his employer, Firm, receives commissions and trails from investments Respondent sells. 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 2.1, 2.2(a) and 6.5 of the *Rules of Conduct*. Based on the Findings of Fact and Rule Violations, the Commission issued to Respondent a Private Censure, pursuant to Article 4.1 of the *Disciplinary Rules*.

The Commission considered in mitigation that:

1. The "fee-only" disclosure only appeared only on CFP Board's "Find a CFP® Professional" search function. All of Respondent's other public disclosures accurately disclosed possibility of commissions, including the engagement letter Respondent would use with clients;
2. Respondent quickly removed "fee-only" from his "Find a CFP® Professional" search profile upon notification of CFP Board's investigation;
3. Respondent promptly complied with all requests from CFP Board;
4. Respondent was not a principal of the firm where he worked;
5. Respondent's compensation is not tied to commissionable products. Rather, he receives a salary and bonus from his firm;
6. The only commissionable products sold by Respondent were C-share mutual funds, which benefited the clients because they carried a 1% contingent deferred sales charges as opposed to his firm's usual asset management fee of 1.2%;
7. The record did not contain any evidence that clients were harmed by or complained about Respondent's conduct;
8. Respondent had no prior disciplinary history; and
9. Respondent was remorseful and apologetic for his mistake.

The Commission did not consider any aggravating factors.

In arriving at its decision, the Commission consulted *Sanction Guideline 20(d)* (Misrepresentation to Clients and Prospective Clients). The Commission also considered Anonymous Case Histories 28197, 28263, 28295, 29231 and 29221. The Commission felt Respondent's actions were not done to intentionally mislead the public and resulted from carelessness and not taking the time to fully understand CFP Board's *Standards of Professional Conduct*. The Commission felt this conduct did not warrant public discipline.