

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 28993

This is a summary of a decision issued following the October 2014 hearings of the Disciplinary and Ethics Commission (“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 for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of the *Rules of Conduct*.

I. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he misappropriated funds and submitted false records to his member firm regarding business expense reimbursement claims for personal expenditures over a period of more than five years..

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

According to Respondent’s Form U5, his firm terminated Respondent in December 2013 for the following: “Financial advisor filed false expense reports which resulted in monies being wrongfully deducted from his two partners’ income. Not client-related.” Respondent admitted that his termination was due to improper use of the business expense system that impacted his partners’ portion of the monthly profits, but asserts that there was never any client money involved or misappropriated. In particular, Respondent used the firm expense system to pay for country club dues and some personal travel and meals. By submitting his personal expenses as business expenses, Respondent caused his partners’ monthly profit checks to be impacted by the improper deductions submitted. Respondent stated that he used firm’s expense system to pay for his personal expenses for a period of six years, ultimately accumulating a liability of approximately \$90,000 (pre-tax dollars) to his partners due to the improper use of the business expense system.

Respondent admitted his wrong doing, and agreed with firm’s proposed solution: Respondent’s termination from firm, and Respondent’s compliance with a restitution plan in which he forfeited his partial ownership in the building owned with his partners (equity of approximately \$17,000) and agreed to allow his partners to retain all profits from the partnership until they were completely reimbursed. Respondent also agreed to encourage all clients to stay with the office. According to Respondent, restitution of his partners should be completed by December 2014.

In June 2014, Respondent entered into a Letter of Acceptance, Waiver and Consent with the Financial Industry Regulatory Authority, Inc. (“FINRA” formerly known as the National Association of Securities Dealers or “NASD”) arising from his termination from firm and his abuse of the business expense system. Respondent accepted and consented, without admitting or denying, to the entry of the following findings:

In February 2008, Respondent began submitting business expense reimbursement claims for personal expenditures. This conduct continued until December 2013, when Respondent’s two business partners detected and reported Respondent’s actions which [firm] investigated. Respondent submitted over 750 false claims for personal expenses such as mileage, country club fees, supermarket expenditures, dining, travel, lodging, entertainment, sporting events, social and family activities, home appliances, home maintenance, gas, and other expenses.

These false claims resulted in approximately \$157,000 being paid from partnership funds to Respondent for personal expenses. As the partners shared the payment of expenses equally, Respondent caused his two partners to pay approximately \$52,333 each (1/3 of the false claims) towards Respondent's personal expenses without their knowledge or consent.

By misappropriating funds in this manner and submitting false records to [firm], Respondent violated NASD Rule 2110 for the false claims and misappropriation occurring prior to December 2008, and FINRA Rule 2010 for the false claims and misappropriation occurring on or after December 2008.

Respondent consented to the imposition of the FINRA permanent bar effective June 2014.

III. Commission's Analysis and Conclusions Regarding Rule Violations

- A. *Rule 102 - In the course of professional activities, a CFP Board designee shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.*

The Commission determined that Respondent misappropriated funds and submitted false records to his member firm regarding business expense reimbursement claims for personal expenditures over a period of more than five years. Thus, Respondent violated Rule 102 of the *Code of Ethics*.

- B. *Rule 406 – A CFP Board designee who is an employee shall perform professional services with dedication to the lawful objectives of the employer and in accordance with this Code of Ethics.*

The Commission determined that Respondent misappropriated funds and submitted false records to his member firm regarding business expense reimbursement claims for personal expenditures over a period of more than five years. Thus, Respondent violated Rule 406 of the *Code of Ethics*.

- C. *Rule 607 – A CFP Board designee 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.*

The Commission determined that Respondent misappropriated funds and submitted false records to his member firm regarding business expense reimbursement claims for personal expenditures over a period of more than five years. Thus, Respondent violated Rule 607 of the *Code of Ethics*.

- D. *Rule 5.1 - A certificant who is an employee/agent shall perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's Code of Ethics.*

The Commission determined that Respondent misappropriated funds and submitted false records to his member firm regarding business expense reimbursement claims for personal expenditures over a period of more than five years. Thus, Respondent violated Rule 5.1 of the *Rules of Conduct*.

- 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.*

The Commission determined that Respondent misappropriated funds and submitted false records to his member firm regarding business expense reimbursement claims for personal expenditures over a period of more than five years. Thus, Respondent violated Rule 6.5 of the *Rules of Conduct*.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a) and 3(d) of CFP Board's *Disciplinary Rules and Procedures* ("Disciplinary Rules"). Article 3(a) 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 5.1 and 6.5 of the *Rules of Conduct*. Article 3(d) provides grounds for discipline for any act that is the proper basis for discipline. The Commission found grounds for discipline under Article 3(d) because FINRA permanently barred Respondent in June 2014. Pursuant to Article 4.3 of the *Disciplinary Rules*, the Commission issued Respondent a four-year suspension of his CFP® certification.

The Commission considered as a mitigating factor that:

1. Respondent was very remorseful;
2. Most of the expenses at issue occurred at the same time as a business downturn;
3. Respondent's conduct did not result in harm to any client;
4. Respondent had no history of disciplinary violations in his 25-year career in the financial services industry; and
5. Respondent consented to FINRA's entry of a lifetime bar in order to avoid additional expenses and to prevent his family and friends from continued difficulties, despite the fact that Respondent had a significant chance of receiving a lesser sanction if he had contested FINRA's enforcement action.

The Commission considered as an aggravating factor that Respondent was late in responding to the CFP Board requests for information.

In arriving at its decision, the Commission considered Anonymous Case Histories 17262 and 23012, but determined that they were not applicable. The Commission also consulted *Sanction Guidelines* 12 (Employer Policy Violation) and 20(a) (Fraud Involving Professional Activities).