CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29017

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 CFP Board's *Rules of Conduct.*

I. Issue Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he failed to obtain the proper verbal authorization from a client, as required by his firm's Procedures Manual, prior to executing a trade, resulting in unauthorized trades and the wiring of a client's funds to a criminal in response to a fraudulent trade request.

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

Respondent's firm discharged him in September 2013. Respondent's U5 indicates that the termination resulted from Respondent's inability "to comply with the firm's rules and industry regulations regarding unauthorized trading and the firm's procedures pertaining to processing of customer wire transfer requests."

The circumstances that led to Respondent's termination arose from four mutual fund trades executed in September 2013, resulting in no commission or compensation to Respondent. The trades were based on multiple requests received by Respondent via email from the client, BB. These email communications indicated that funds were allegedly needed for a relative's medical emergency, which placed a time constraint and sense of urgency on the execution of the trades. The client's email included a written and signed request for the transactions. The signature was deemed authentic by both of the Operations Departments involved.

Respondent's firm's rules and the industry's regulations specify that email does not constitute client authorization. Only phone or in-person instructions establish proper authorization. Respondent and his assistant attempted numerous times to reach the client by telephone, without success. The client's only phone at that time was a cell phone with poor reception in State. Due to these call quality issues, Respondent experienced continual problems contacting the client except by email during his stay at that location. Email was virtually Respondent's only method of communication. Ultimately, Respondent executed the mutual fund transactions based on the written requests contained in the client's emails without making telephonic contact with the client.

The emails allegedly sent by BB to Respondent directing that the mutual fund trades be executed were, in fact, fraudulent. Criminals had hacked into BB's computer and obtained all of the personal information needed for the distribution request, and had forged his signature expertly enough to clear two Operations Departments. As a result, the criminals were able to steal approximately $26,000 from the client's account. Respondent admitted that if had he spoken to BB via telephone, this outcome would have been avoided.

III. Commission's Analysis and Conclusions Regarding Rule Violations

The Commission found that Respondent failed to obtain the proper verbal authorization from a client, as required by his firm's Procedures Manual, prior to executing a trade. This failure resulted in unauthorized trades and the wiring of a client's funds to a criminal in response to a fraudulent trade request. The Commission found that this conduct violated *Rules of Conduct* Rules 3.2, 4.4, 5.1, and 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 it determined that Respondent violated Rules 3.2, 4.4, 5.1, and 6.5 of the *Rules of Conduct.* After careful consideration of the evidence in Respondent's matter, the Commission found grounds for discipline and decided to issue a Private Censure pursuant to Article 4.1 of the *Disciplinary Rules*.

The Commission considered as mitigating factors that:

1. Respondent's conduct at issue was undertaken in a genuine effort to assist a client;

2. The transactions that were executed without client consent were non-commissionable;

3. The client, who was victimized by the fraud, submitted to the Commission a letter of support for Respondent; and

4. The client remained a client of Respondent even after Respondent transitioned to a new broker-dealer.

The Commission identified no aggravating factors.

In arriving at its decision, the Commission consulted *Sanction Guidelines* 12 (Employer Policies Violation) and 30 (Securities Law Violation). The Commission also considered Anonymous Case Histories 22602 and 28523.