

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29057

This is a summary of a Settlement Agreement entered into at the October 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 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 she instructed her clients to sign forms that were incomplete, in violation of her firm’s policy and Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 2010.

II. Findings of Fact

In March 2014, Respondent disclosed the following on her Renewal Application: 1) a 2012 Firm Termination; and 2) a 2013 FINRA Investigation and Cautionary Action Letter. In April 2014, CFP Board commenced an investigation and mailed a Notice of Investigation (“NOI”) to Respondent pursuant to Article 6.2 of the *Disciplinary Rules and Procedures* (“*Disciplinary Rules*”). Respondent responded to the NOI in May 2014. In June 2014, CFP Board sent Respondent a request for additional information (“RFAI”) relating to the Firm Termination and the FINRA Inquiry. Respondent responded to the RFAI in June 2014.

The information below is derived from Respondent’s statements to CFP Board, documents she provided to CFP Board in response to its requests for information and information CFP Board discovered.

2013 Firm Termination

In May 2012, Firm terminated Respondent for providing a client with, and instructing the client to sign, three incomplete documents to be completed at a later date by branch personnel. The documents were Letters of Authorization (“LOAs”) that were submitted to the firm for processing.

Prior to the termination, Firm’s Compliance Department had given Respondent four warning letters. In Respondent’s June 2014 response to CFP Board’s RFAI, she stated that she was unable to provide a termination letter because she did not receive one from Firm. Respondent stated that she was notified of the termination via telephone. Respondent also stated that neither she nor her attorney were in possession of her Form U5.

In response to CFP Board’s request for copies of Firm’s four warning letters to Respondent, Respondent stated that she received the warnings via email and was unable to retain any email files after her termination.

2013 FINRA Investigation and Cautionary Action Letter

In June 2012, FINRA opened an inquiry into Respondent’s Firm Termination. Respondent did not provide a copy of her response to the June 2012 FINRA Inquiry Letter. In January 2013, FINRA informed Respondent that its Preliminary Investigations Unit had completed its review of Respondent’s Firm Termination and had decided to refer the matter to FINRA’s Enforcement Department.

In January 2013, FINRA’s Enforcement Department sent a request for information to Respondent regarding Firm’s warning letters, the LOAs and the Compliance Review conducted by the firm in March 2012. In its

January 2014 letter, FINRA referenced three warning letters sent to Respondent on the following dates: 1) June 2009; 2) January 2010; and 3) December 2010.

June 2009 Warning Letter

Firm issued this letter in connection with two matters. The first matter concerned Respondent's signing her daughter's name on several LOAs that she submitted to the firm for processing. In her response to FINRA in February 2013, Respondent stated that she recalls signing only one LOA, at the instruction of and on behalf of her daughter, sometime in 2009. Respondent signed the LOA because her daughter needed an immediate deposit of funds to in connection with the purchase of a home, and Respondent's office was an hour away from her daughter.

The second matter concerned Respondent's acceptance of a trade from an unauthorized party for client MR's account. Respondent denied that she accepted a trade from an unauthorized party for MR's account and stated that she did not have any documents in connection with the trade that occurred several years ago. Respondent recalled that the processed order was authorized by MR but facilitated by his wife due to a language barrier. Respondent stated that she received a phone call from a woman who identified herself as "MR's wife" and stated that she was calling in MR's presence to effect a transaction because he did not speak English. "MR's wife" requested liquidation of a holding and to have the proceeds withdrawn from MR's IRA account. Respondent informed "MR's wife" that she would complete the transaction, but MR would have to come to the office and sign an IRA withdrawal form.

Several days later, MR and his daughter came into the office and informed Respondent that the individual on the phone was not his wife, but another relative who did not have MR's authorization to act on his behalf. Respondent informed Firm's Compliance Department of the circumstances and the trade was reversed.

January 2010 Warning Letter

Firm issued this letter in connection with three matters. The first matter involved the transmission of unapproved sales correspondence to a client without prior firm approval. In her February 2013 response, Respondent stated that she did not have a copy of the letter and does not recall sending unapproved sales correspondence to a client without prior firm approval three years ago.

The second matter involved having a customer sign blank acknowledgement letters. Respondent stated that she did not have a copy of the January 2010 wire and did not recall having a customer sign blank acknowledgement letters.

The third matter involved allowing her firm office to be used for non-firm business. Respondent stated that she did not allow her office to be used for non-firm business. According to Respondent, she is a partner in the office building where Firm's branch office was located and one of the tenants, a nutritionist, asked to use Respondent's conference room for a class. Respondent stated that she allowed the tenant a one-time use, but does not have any paperwork related to the incident as it occurred several years ago.

December 2010 Warning Letter

Firm issued this letter in connection with three matters. The first matter involved Respondent's solicitation of insurance and annuity business without a license. Respondent stated that she did not solicit insurance and annuity business without a license and she does not have a copy of the December 2010 letter.

The second matter involved Respondent's attempt to place an annuity trade for client DS although the client resided in a state where Respondent was not licensed. Respondent stated that DS formerly lived in State 1 and

moved to State 2, but he continued to visit Respondent's office in State 1 once or twice a year. At DS's request, Respondent sold certain securities to purchase an annuity. According to Respondent, after she submitted the annuity paperwork to the firm, they informed her that she was not insurance-licensed in State 2.

The third matter involved Respondent's holding of DS's funds during the period she remained unlicensed. According to Respondent, she promptly informed DS that she was not insurance-licensed but would be applying for such license. Respondent also stated that she informed the client that he could reverse the trade, but he asked her to hold the proceeds until Respondent became insurance-licensed in State 2.

In response to FINRA's question whether Firm had imposed any special supervision on her as a result of the above-referenced matters, Respondent stated that in 2010, the firm placed her on special supervision, but she could not recall the date, terms or any violations in connection with the special supervision. Respondent did recall that she was taken off special supervision in 2011.

March 2012 Internal Review

This matter concerned married clients AC and WC and Respondent's provision of an uncompleted LOA for electronic fund transfers to AC for her signature. Respondent stated that in response to the elderly clients' request, she provided the necessary forms to complete the requested withdrawals and completed the forms in order to avoid inconveniencing AC and WC with additional travel back to her office. Respondent also stated that she does not recall the date she provided the LOA to AC and that the only additional information she added out of clients' presence was the bank routing number and account number.

FINRA's Cautionary Action Letter

In October 2013, FINRA concluded its investigation and issued Respondent a Cautionary Action Letter. FINRA made the following findings: 1) during the period November through December 2011, Respondent provided three LOA forms to two clients and instructed the clients to sign the LOAs although the documents were incomplete at the time the clients signed them; 2) Respondent permitted the clients to sign the incomplete forms with the intention that the documents would be completed at a later date by the firm's branch personnel; and 3) Respondent submitted the forms to the firm for processing and revised the forms at a later date after receiving additional information from the clients and re-submitted them to the firm for processing.

FINRA determined that by allowing her clients to sign incomplete forms, Respondent violated her firm's policy. As a result, FINRA concluded that Respondent violated FINRA Rule 2010 because she failed to observe high standards of commercial honor and just and equitable principles of trade.

III. Rule Violations

- A. *Rule 4.3 – A certificiant shall comply with applicable regulatory requirements governing professional services provided to the client.*

Respondent failed to comply with applicable regulatory requirements governing professional services provided to the client when she allowed her clients to sign forms that were not completely filled out, in violation of her firm's policy and FINRA Rule 2010. Thus, Respondent violated *Rules of Conduct* Rule 4.3.

B. 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 she allowed her clients to sign forms that were not completely filled out, in violation of her firm's policy and FINRA Rule 2010. Thus, Respondent violated *Rules of Conduct* Rule 4.4.

C. 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 her employer/principal and in accordance with CFP Board's *Code of Ethics* when she provided a client with, and instructed the client to sign, three incomplete documents to be completed at a later date by branch personnel, in violation of her firm's policy. Thus, Respondent violated *Rules of Conduct* Rule 5.1.

D. 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 her integrity or fitness as a CFP® professional, upon the CFP® marks and upon the profession when she allowed her clients to sign forms that were not completely filled out, in violation of her firm's policy and FINRA Rule 2010. As a result of her conduct, Respondent's firm terminated her services and FINRA issued her a Cautionary Action Letter. Thus, Respondent violated *Rules of Conduct* Rule 6.5.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 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 4.3, 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*.

The Commission considered in mitigation that Respondent's conduct did not result in any client harm and that he had no prior disciplinary actions on his record.

The Commission considered as an aggravating factor that Respondent failed to report the employer termination and FINRA determination to CFP Board in a timely manner, although it was self-disclosed on his renewal application.

In arriving at its decision, the Commission consulted *Anonymous Case Histories* 27488 and 27004 as well as *Sanction Guidelines* 12 (Employer Policy Violation) and 30 (Securities Law Violation).