

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29230

This is a summary of a Settlement Agreement 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 publicly misrepresented his compensation method as “fee-only” to clients and prospective clients on CFP Board’s “Find a CFP® Professional” search tool because Respondent is entitled to receive commissions as a registered broker with a broker-dealer (“BD”) and received commissions.

II. Findings of Fact

In July 2014, CFP Board discovered that Respondent misrepresented his compensation method on CFP Board’s online “Find a CFP® Professional” search function as “fee-only” while employed as a broker and investment advisor with a broker-dealer registered with the Financial Industry Regulatory Authority, Inc. (“FINRA”)¹ and Firm² an investment advisory firm registered with the Securities and Exchange Commission (“SEC”). Respondent’s email signature line indicates that he is employed with Firm as Vice President and Financial Advisor.

Firm’s March 2012 firm brochure/Form ADV Part 2A indicates that BD is its majority shareholder and that Firm and the broker-dealer are related entities. BD also engages in the sale of insurance for commission. Firm’s Form ADV lists several potential conflicts of interest, including affiliated brokers. Respondent has been registered as a broker since January 2012 and the affiliates all share the same address. Firm and the broker-dealer are related parties of Respondent.

In July 2014, CFP Board mailed a Notice of Investigation (“NOI”) to Respondent. In August 2014, Respondent responded to the NOI via email. Respondent stated that as a financial advisor with Firm, his compensation is based exclusively on fees the firm charges on investment products they manage for clients. The fees are based on assets under management and their clients are not charged commission, nor do they pay referral fees.

CFP Board’s Fee-Only Definition and Guidance to CFP® Professionals

In August 2013, CFP Board mailed every CFP® professional a physical copy of the *Notice to CFP® Professionals: Importance of Accurate Compensation Disclosures (“Notice”)*. The *Notice* informed CFP® professionals of the following:

The *Rules of Conduct* require CFP® professionals to disclose to clients and prospective clients certain information concerning the CFP® Professional’s compensation. In the terminology

¹ See Respondent’s BrokerCheck Report.

² See Respondent’s Investment Adviser Representative Public Disclosure (“IAPD”) Report.

section set forth on page 4 of the *Standards of Professional Conduct*, CFP Board defines “compensation” as “any non-trivial economic benefit, whether monetary or non-monetary, that a certificant or related party receives or is entitled to receive for providing professional activities.” Therefore, in addition to informing a client or prospective client of the compensation that the CFP® professional receives or is entitled to receive for providing professional activities, a CFP® professional is required to disclose the compensation that a related party, such as the CFP® professional's employer, receives or is entitled to receive for providing professional activities. This includes:

- Compensation that the CFP® professional receives or is entitled to receive from a client or prospective client for providing professional activities;
- Compensation that related parties, such as the CFP® professional’s employer, receives or is entitled to receive from a client, prospective client, or other source for providing professional activities; and
- Compensation the CFP® professional receives or is entitled to receive from related parties, such as the CFP® professional’s employer or other sources, for providing professional activities.

Note that as set forth in the “compensation” definition, compensation includes “any non-trivial economic benefit, whether monetary or non-monetary.” As a general rule, CFP Board considers as non-trivial any consideration received in exchange for providing professional activities.

Additionally, in August 2013, CFP Board presented an online webinar entitled “How to Avoid Misleading Compensation Disclosures.” The webinar was available for all CFP® professionals to view live. CFP Board then posted both the *Notice* and the webinar on CFP Board’s Web site, www.cfp.net, for public access.

CFP Board allows CFP® professionals to create a profile that is searchable by the public through CFP Board’s “Find a CFP® Professional” search tool. In September 2013, CFP Board removed the term “fee-only” from the profiles of every CFP® professional who listed “fee-only” as their compensation method on the “Find a CFP® Professional” search tool. In September 2013, CFP Board sent an email to the CFP® professionals who were affected by the “fee-only” removal. The email stated:

ACTION REQUIRED: Because you have identified your compensation as “fee-only” in our “Find” search tool, we are asking you to carefully review CFP Board’s compensation disclosure rules and definitions and to update your search profile with the description that accurately reflects your compensation.

CFP Board recently mailed to you and other CFP® professionals a [notice on the importance of accurate compensation disclosures](#). As set forth in that notice, “fee-only” is strictly defined in CFP Board’s *Standards of Professional Conduct* as follows:

A certificant may describe his or her practice as “Fee-only” if, and only if, all of the certificant’s compensation from all of his or her client work comes exclusively from the clients in the form of fixed, flat, hourly, percentage or performance-based fees.

The “fee-only” description is appropriate only when the CFP® professional and any related parties receive, or are entitled to receive, only fees for providing professional activities. As a general rule, if you are a registered representative of a broker/dealer, are dually-registered, or are an employee of an insurance firm, your compensation may not be described as “fee-only.”

CFP® professionals are responsible for disclosing their compensation consistent with our compensation disclosure rules and definitions. Should it come to our attention, subsequent to the opportunity to fully understand and comply with our rules, that a CFP® professional is misrepresenting their compensation, the matter will be referred to our enforcement process.

The September 2013 email provided a link to the *Notice* and informed each CFP® professional that any subsequent misrepresentation would be referred to CFP Board’s enforcement process.

Respondent’s Use of Fee-Only on the “Find a CFP® Professional” Search Tool

Respondent represented his compensation method on CFP Board’s “Find a CFP® Professional” search tool as “fee-only” in 2013 until CFP Board removed it in September 2013. In November 2013, Respondent edited his public profile and selected “fee-only” as his compensation method. Respondent’s profile on the “Find a CFP® Professional” search tool still indicated that his compensation method was “fee-only” until November 2014. This change followed telephone conversations between Respondent and CFP Board staff.

III. Grounds for Discipline

- 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 that disclosure is necessary to avoid misleading clients.*

The Commission determined that Respondent communicated, directly or indirectly, to clients and prospective clients false or misleading information directly or indirectly related to his professional qualifications or services when he publicly misrepresented his compensation method as “fee-only” to clients and prospective clients on CFP Board’s “Find a CFP® Professional” search tool. Respondent is entitled to receive commissions because he is registered as a broker. Firm and BD are related parties to Respondent and receive commissions. Thus, Respondent violated Rule 2.1 of the *Rules of Conduct*.

- 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.*

The Commission determined that Respondent publicly misrepresented his compensation method as “fee-only” to clients and prospective clients on CFP Board’s “Find a CFP® Professional” search tool. Respondent is entitled to receive commissions because he is registered as a broker. In addition, Firm and BD are related parties to Respondent and receive commissions. Thus, Respondent violated Rule 2.2(a) of the *Rules of Conduct*.

C. *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 publicly misrepresented his compensation method as “fee-only” to clients and prospective clients on CFP Board’s “Find a CFP® Professional” search tool. Respondent is entitled to receive commissions because he is registered as a broker. In addition, Firm and BD are related parties to Respondent and receive commissions. Thus, Respondent violated Rule 6.5 of the *Rules of Conduct*.

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*. The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the Findings of Fact and Grounds for Discipline. Based on the terms of the Settlement Agreement, the Commission issued to Respondent a private censure.

The Commission considered in mitigation that Respondent had no prior discipline, no clients were harmed and he admitted his wrongdoing. At the time of the hearing, Respondent was also in the process of ceasing to receive trailing commissions and has updated his compensation structure to “fee and commission” in accordance with his association with a broker-dealer.

In aggravation, the Commission considered that:

1. CFP Board discovered Respondent’s conduct;
2. After CFP Board removed “fee-only” from certificants’ profiles, he changed his back to “fee-only”;
3. Respondent received approximately \$340.00 in trailing commissions; and
4. Respondent works for an RIA firm, but the broker-dealer that owns his firm receives commissions from insurance sales.

The Commission consulted *Sanctions Guidelines* 14(b) (Failure to Provide in Writing, Discuss or Disclose Required Information to Client) and 20 (Fraud, Misrepresentation or Deceit). The Commission also consulted Anonymous Case Histories 29015 and 29221.