

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 29287

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This is a summary of a decision issued following 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, disclosed his compensation structure as “fee-only” on CFP Board’s “Find a CFP® Professional” search function while receiving commissions from insurance sales.

II. Findings of Fact

On August 7, 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 stated that “as a general rule, CFP Board considers as non-trivial any consideration received in exchange for providing professional activities.” It also provided a definition of the term “fee-only.” During the hearing, Respondent testified that he had consulted this document and was aware of its contents.

In September 2013, Respondent listed his compensation method as “fee-only” on CFP Board’s “Find a CFP® Professionals” search tool. At this time, Respondent was a registered representative with Firm, a related-party, and was actively engaged in the sale of insurance products for which he earned commissions.

That same day, CFP Board removed “fee-only” from Respondent’s “Find a CFP® professional” search profile. The following day, in September 2013 CFP Board sent an e-mail to Respondent at his e-mail address informing him that CFP Board had removed “fee-only” from his “Find a CFP® professional” search profile. The email requested that Respondent “carefully review” CFP Board’s compensation disclosure rules and definitions.

In January 2014, approximately three and half months after “fee-only” was removed from his profile Respondent again selected “fee-only” as his compensation method on the “Find a CFP® professional” search tool. Respondent maintained his use of “fee-only” until at least the time of the hearing. During this time, Respondent was receiving commissions in the form of “first year” commissions and “insurance trail revenue.” Respondent also maintained active appointments with insurance companies.

III. Rule Violations

The Commission determined that Respondent inaccurately represented his compensation structure as “fee-only” to clients and prospective clients on CFP Board’s “Find a CFP® Professional” search tool because Respondent was actually earning commissions while he was using “fee-only.” Therefore, Respondent violated Rules 2.1, 2.2(a) and 6.5 of the *Rules of Conduct*.

The Terminology Section of CFP Board's *Standards of Professional Conduct* 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." The record is clear that Respondent received a monetary benefit for providing the professional activity of selling insurance to his clients. On the issue of non-trivial, Respondent's argument that his commission compensation of less than 5% is trivial is inconsistent with prior Commission decisions. See Anonymous Case History ("ACH") 29221 (finding that less than 5% of compensation earned in the form of trailing commissions was non-trivial). Accordingly, the commissions earned by Respondent are compensation as defined by CFP Board. This results in the conclusion that because Respondent earns compensation that is a commission, he cannot accurately describe his practice as "fee-only."

#### IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*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*.

In arriving at its decision, the Commission consulted *Sanction Guideline 20(d)* (Misrepresentation to Clients and Prospective Clients) and ACH 29221. The Commission deviated from *Sanction Guideline 20(d)* and ACH 29221 after considering the following mitigating factors:

1. Respondent's commissions were a relatively small portion of his overall compensation earned for his professional activities;
2. Based on the record, Respondent has not actively sold any new insurance products after he selected "fee-only" on the "Find a CFP® Professional" search tool;
3. Respondent testified under oath that he will not sell any insurance products in the future; and
4. Respondent maintains his life insurance license as a requirement of state law in order to provide holistic financial planning.

The Commission did not consider any aggravating factors.

The Commission directed Respondent to cease all use of the term "fee-only."